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**Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action**

### **Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai**

Addendum

**Summary of cases transmitted to governments and replies received\***

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\* Owing to its length, the present report is circulated as received.

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## I. Introduction

1. This addendum to the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance gives an account of the communications sent to Governments by the Special Rapporteur between 1 January 2009 and 28 February 2010.<sup>1</sup> It also contains in summary form the replies received from Governments to his communications until 14 May 2010, as well as observations of the Special Rapporteur where considered appropriate. Replies to communications which were received by the Special Rapporteur after 14 May 2010 will be reflected in his next communications report.

2. Where appropriate, the Special Rapporteur has joint allegation letters or joint urgent appeals with one or more special procedures of the Human Rights Council where the allegations raised concerned racism, racial discrimination, xenophobia and related intolerance, as well as rights addressed under other mandates.

3. During the period under review, the Special Rapporteur sent a total of 14 communications concerning racism, racial discrimination, xenophobia and related intolerance to 12 States. Of these 14 communications transmitted, 8 replies were received from 8 Governments.

4. The Special Rapporteur appreciates and thanks the concerned States for these replies. However, he regrets that some Governments have failed to respond. These communications remain outstanding and the Special Rapporteur encourages Governments to respond to every communication.

## II. Summary of cases transmitted and replies received

### A. Australia

**Communication sent on 9 July 2009 jointly with the Special Rapporteur on the human rights of migrants**

#### (a) Allegations transmitted to the Government

5. The Special Rapporteurs brought to the attention of the Government of Australia information they received concerning attacks on Mr. R. S., Mr. M. K. A., Mr. S. B., Mr. R. K., Mr. S. K., Mr. B. S., who are all international students from India.

6. According to the information received, on 29 June 2009, Mr. R. S., an Indian Student from Della International College, was on his way back to Melbourne, after finishing his work in Cranbourne. He was sitting in Dandenong train station with one of his friend, when they were approached by two people. They started abusing Mr. R. S. verbally with racist insults and then went away. They however came back with four or five people and with a pair of scissors. When they approached Mr. R. S. for the second time, they removed his turban and gave him a punch on his face. After this, they started kicking him. They also pulled his hair and started cutting it. Mr. R. S.'s friend was also beaten up. The police arrived and arrested three of the people.

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<sup>1</sup> General statistical information on communications sent by Special Procedures mandate holders is available on OHCHR website: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>.

7. Mr. M. K. A., an Indian student from the Victoria Institute of Technology in Melbourne, was attacked on the evening of 22 June 2009 when he was coming out of a hair salon. He was walking near a railway station in eastern suburb of Melbourne when two men, wearing hooded jackets walked up to him and punched him without any provocation. They reportedly demanded money from him and when he resisted, they attacked him on his right eye. He was thereafter admitted to a local hospital.

8. Mr. S. B., an Indian student from the Deakin University in Melbourne, was physically assaulted by two men as he was about to get into his car in Boronia on 12 June 2009. Reportedly, the two men came up to Mr. S. B. and asked him for money. They then slammed the car door onto the hands of Mr. S. B. and punched him in the head and stomach and racially abused him.

9. On 24 May 2009, Mr. R. K., an Indian hospitality student in Sydney, was sitting on his bed in the front room of his rented house when an unknown person allegedly threw a small petrol bomb through his window. The explosion and subsequent fire left Mr. R. K. with burns to a third of his body.

10. Mr. S. K., an Indian automobile engineering student in Melbourne, was stabbed with a screwdriver on 23 May 2009 when two teenagers arrived at a party. While the party was on, one of the two teenagers came in and asked Mr. S. K. to switch off the music. The teenager started to create problems and first refused to leave. After a few minutes, the two teenagers left the party. Everyone got back inside and the music was turned on. Suddenly one of the teenagers came back but was stopped by Mr. S. K. While both argued on the doorstep, the other teenager came out of the car with a screwdriver and stabbed Mr. S. K. The police, who were patrolling the area, reportedly caught the two teenagers.

11. Mr. B. S., an Indian student in Melbourne, was attacked on the night of 22 May 2009, when two men carrying weapons approached him and demanded money. As Mr. B. S. was searching through his bag to hand over his wallet, they stabbed him with a screwdriver in the abdomen. The attackers reportedly laughed while stabbing him and then fled the scene. Mr. B. S. was admitted to the hospital thereafter.

12. The Australian Prime Minister publicly condemned the recent attacks on Indian students and stated that the Government is working with the authorities to bring those responsible for the violence to justice.

13. Concern was expressed by the Special Rapporteurs that these attacks reflect a pattern of xenophobic violence in Australia.

**(b) Response from the Government dated 28 October 2009**

14. On 28 October 2009, the Government of Australia replied to the communication of 9 July 2000. In its response, the Government affirmed that it is committed to opposing intolerance and continuing to build Australia as an inclusive and cohesive society. It combats prejudice and discrimination through community education programmes, anti-discrimination legislation and maintains effective and independent processes for resolving complaints about prejudice and discrimination. Racism of any form, from any individual, is unacceptable in Australian society. Governments in Australia, at federal, state and territory levels, are committed to ensuring that crimes committed against all persons within their jurisdiction, irrespective of race or any other characteristic of a victim or perpetrator, are investigated fully and prosecuted where possible.

15. Concerning the facts alleged in the particular cases and details of the results of investigations and judicial or other inquiries, the Government of Australia provided the following information.

16. The police arrested and charged three suspects in relation to the incidents involving Mr. R. S. One suspect was convicted on 13 August 2009 of recklessly causing serious injury and sentenced to eight months in a youth detention centre. One suspect was convicted on 9 September 2009 of recklessly causing serious injury and sentenced to three months in a youth detention centre. The third suspect was not charged with the assault offences.

17. The police have apprehended and charged two suspects in relation to the incident involving Mr. K. A. One offender was 18 years old and one offender was 15 years old. Both suspects are on bail and are due to appear in Court in coming months.

18. In relation to the incidents involving Mr. S. B. and Mr. B. S., the victims reported the matter to the local police station. At the time of writing of the Government's reply, no offenders had been charged. However, investigations are continuing.

19. In relation to the incident involving Mr. R. K., a strike force has been established by the police and a team of detectives is investigating the incident. A number of statements have been taken from witnesses, and items have been seized for forensic examination. At this stage of the investigation, no suspects have been identified. The police are conducting patrols in the area and are speaking to persons in the area matching the descriptions provided by witnesses. The police have also encouraged the Indian community residing in the area to report all incidents of crime and any information relating to the incident.

20. In relation to the incident involving Mr. S. K., a 17 year-old male was charged and remanded in custody on 24 May 2009. A committal hearing was scheduled to occur on 16 November 2009.

21. Concerning measures taken to prevent the recurrence of acts of violence against Indian students and to protect ethnic minorities, the Government of Australia indicated that international students are welcome in Australia, and most international students have an overwhelmingly positive experience of study in the country. Australian political leaders at all levels have publicly condemned the assaults, and pledged to work together to bring perpetrators to justice, respond to these crimes, and protect students and others in the community. The police have advised that the majority of attacks experienced by international students are opportunistic and, in general, not racially motivated. Many of the attacks occurred late at night and were concentrated along particular train lines. While this is the case, all governments are responsive to the needs of international students in the community and have been consulting the Indian community and international students around Australia for ways to change or improve student experiences in a range of areas.

22. In its response, the Government referred to the following measures taken by the Victorian, New South Wales and Australian Governments to prevent the recurrence of acts of violence and to address the issues raised by the student community.

23. The Victorian Government has undertaken a number of initiatives to improve international students' experiences in Victoria. These include existing initiatives such as the Multicultural Victoria Act 2004, an Overseas Student Education Experience Taskforce and the 2009 Victorian International Education Strategy. Recent initiatives also include the establishment of a taskforce in the Victorian Department of Premier and Cabinet to co-ordinate and manage issues relating to international students; a major crackdown on crime at train stations through the Safe Stations Operation; the announcement by the Premier of Victoria of an additional 120 police on the streets and of stronger powers for the Police to combat violence and antisocial behaviour; the inaugural Walk for Harmony on 12 July 2009 to reaffirm Victoria's strong support for multiculturalism; as well as the amending of sentencing laws to require judges to take into account hatred for, or prejudice against, a particular group as an aggravating factor when sentencing. Other students and safety initiatives relate to the pro-active work undertaken by the Victoria Police with community

groups. For instance, the Police Indian Western Reference Group was established in January 2009 and comprises of a wide range of community members and representatives from a diverse range of organizations committed to reduce violence for Indian students. The aim is to identify, implement and monitor strategies to engage police, Indian communities and international students to reduce the risk of becoming a victim of violent crime.

24. In New South Wales, the Premier of New South Wales met with the new Australian High Commissioner to India on 23 July 2009 to brief him about the issues related to international students and the measures that the New South Wales Government is putting in place to address the issues. The Premier also met with the Indian External Affairs Minister on 6 August 2009 to assure the Minister of the Government's commitment to make New South Wales a safe destination to all overseas students. The New South Wales Police Force conducts a range of crime prevention strategies with international students including information sessions, safety campaigns at railway stations and local business centres, safety materials in English and Indian languages, joint projects within universities and liaison and relationship building with peak community bodies. Highly visible policing operations have also been undertaken in the Harris Park/Granville area, where many students from India reside. Following the incident referred to by the Special Rapporteurs which occurred in New South Wales, consultation is taking place with the local community, the office of the Indian Consul General and the Community Relations Commission, which takes proactive steps to ensure a cohesive and harmonious society. Concerning meetings and community engagement, the New South Wales Premier, Attorney General, Minister for Education and Minister for Citizenship met with leaders of the Indian community. The discussion focused on the need for more comprehensive and better targeted information to be made available to students on safety and security issues, the quality of education, as well as the reporting of crimes. As agreed at the meeting, the Chairman of the Community Relations Commission is leading a working group to put together a practical package for international students containing advice and assistance on studying, working and living in New South Wales.

25. In addition to the above, on 10 June 2009, a meeting was held between Indian community leaders, students and business people, the Indian Consul General, local councilors, Police and the Community Relations Commission. The meeting established a small committee of local business people and Indian students which is acting as a liaison point for the New South Wales Police. On 18 June 2009, the Community Relations Commission held a further forum at the Parramatta RSL Club for Indian community leaders and students. Other initiatives include discussion in August 2009 by the Standing Committee on Immigration and Multicultural Affairs and by the Ministerial Council for Immigration and Multicultural Affairs of the issue of violence against international students; as well as the establishment in late 2008 of the New South Wales Ministerial Taskforce on International Education to examine the New South Wales international education industry, including issues regarding all international students. The Taskforce is examining issues such as safety and security, social inclusion, welfare, immigration and marketing.

26. The Government of Australia has instituted a number of measures following the assaults against Indian students. Such measures aim to provide greater protection to international students, as well as addressing broader concerns regarding education and support for international students in Australia. For instance, in June 2009 a taskforce was established to coordinate the Government's efforts to address matters affecting the safety of international students. The Council of Australian Governments (COAG) established a Senior Officials Working Group to coordinate the Government's efforts to stop the attacks against students. State, Territory and Commonwealth governments have pledged to work together to bring the perpetrators to justice, respond to these crimes and protect students and others in the community. The COAG also agreed to develop a comprehensive National

International Student Strategy to improve the experience of international students in Australia and in turn benefit all of Australian society. The Government of Australia has also made it easier for international students to make their voice heard through the hotline for students to raise concerns, anonymously if they wish. In addition, on 19 June 2009, the Minister for Immigration and Citizenship met representatives of the Indian community in Melbourne. He encouraged the Indian community to work with the police to catch the people responsible for crimes.

27. On the issue of the protection of ethnic minorities more generally, the Government acknowledged that Australia has benefited from the contributions of the millions of migrants from around the world who have made Australia home and helped shape its unique national identity. The Government's migration program is carefully managed to provide maximum benefit for the Australian community. Australia's cultural and religious diversity is a source of social and economic strength. Australians are generally committed to the principles of egalitarianism and giving everyone a fair go.

28. The Government of Australia takes very seriously its reputation as a safe destination for international students seeking high quality education and will not tolerate discrimination or victimization of students who are guests in its country. The Government condemns racially motivated violence in all its forms. Under the Commonwealth Criminal Code 1995, it is an offence to urge violence against a group on the basis of race, religion, nationality or political opinion. In 2006, the Australian Law Reform Commission recommended that the offence be expanded to ensure it also applies where a person urges violence against another person based on national origin. A discussion paper was also released by the Government of Australia for public consultation on the proposals to amend Australia's national security and counter-terrorism laws. It includes a proposal to extend the existing community violence offences in the Criminal Code to cover circumstances where a person urges another person to use force or violence against a group, or member of a group in the community, that is distinguished by race, religion, nationality, national origin or political opinion. Legislative protections relate to the amendments of the Sentencing Act by the Victorian Government to require judges to take into account hatred for, or prejudice against, a particular group as an aggravating factor when sentencing; as well as the Crimes (Sentencing Procedure) Act 1999 in New South Wales which provides that motivation by hatred for, or prejudice against, a group of people (including people of a particular racial or ethnic origin) may be taken into account as an aggravating factor in sentencing.

29. Moreover, there are a range of community relations programs run by all levels of government in Australia, with many of these targeted at school children so citizens are being exposed to concepts of respect, fairness and belonging at an early age. These include the Diverse Australia Program which is designed to provide the additional resources often needed by not-for-profit community organizations to develop their own projects and find their own ways of helping all Australians to build stronger community relations. Finally, the Community Liaison Officer Network in the Department of Immigration and Citizenship identifies key issues within and between Australia's diverse communities and facilitates productive two-way communication with the Government.

**(c) Observations by the Special Rapporteur**

30. The Special Rapporteur is grateful that the Government of Australia replied in a detailed manner to the communication of 9 July 2009. He hopes that the measures taken by the Government of Australia at all levels will help prevent the recurrence of attacks against international students, in particular Indian students.

## **B. Bulgaria**

### **Communication sent on 14 October 2009 jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Independent Expert on minority issues**

#### **(a) Allegations transmitted to the Government**

31. The Special Procedures mandate holders brought to the attention of the Government of Bulgaria information they received concerning reported the forced eviction and housing demolition suffered by 40 Romani households in the Gorno Ezerovo district of Bourgas, as well as the threatened forced eviction of many others from Gorno Ezerovo and the Meden Rudnik community, also situated in Bourgas.

32. According to the information received, the Regional Agency for the Control of Unlawful Building has issued eviction orders against the communities of Gorno Ezerovo and Meden Rudnik in the Municipality of Bourgas, Bulgaria. The eviction orders cite Art. 225, paragraph 1 of the Territory Law which allows for demolition of housing built without the proper permits. It has been reported that the eviction orders were intended to remedy a property rights claim by private individuals over the land on which these long-standing communities reside.

33. In the Gorno Ezerovo community, 52 Romani households received eviction orders in 2007. On 8 September 2009, the Bourgas municipal authorities forcibly evicted 27 Romani households and demolished their houses. The demolitions were carried out with the assistance of the local police, who reportedly forced the people out of their homes and in some cases assaulted them. The families were rendered homeless, including children and the elderly.

34. In the Meden Rudnik community, approximately 32 houses out of 300 were allegedly under imminent threat of forced eviction, after originally receiving eviction orders in 2007. About half of these homes have existed for around 20 years while the other half are newer.

35. According to allegations, no meaningful consultation has taken place with the communities prior to the evictions and none of the affected families have been offered alternative housing, despite public statements of local authorities ensuring resettlement for families legally registered in Bourgas.

36. The Gorno Ezerovo and the Meden Rudnik communities are settlements inhabited by impoverished Roma citizens of Bulgaria. Both communities have been in existence for over 50 years. During this time, the communities were reportedly recognized by public authorities, including being provided with individual mail service and public services such as water, sanitation and electricity.

37. It has been reported that the establishment of informal settlements in Gorno Ezerovo and Meden Rudnik has largely been the result of the persistent pattern of racial discrimination against Roma, who lack access to education and employment opportunities (necessary to afford housing at market rates), and are displaced from rural land.

#### **(b) Response from the Government dated 23 December 2009**

38. On 23 December 2009, the Government of Bulgaria replied to the communication of 14 October 2009. The Government first provided clarifications on the policy for equal integration of Roma in Bulgarian society. One of the fundamental constitutional principles is the principle of equality of all citizens before the law (art. 6 (2) of the Bulgarian Constitution). The Constitution does not allow for any limitation of rights nor for any



privileges whatsoever on the basis of race, nationality, ethnic identity, sex, origin, religion, education, convictions, political affiliation, personal or social status. The legislation in force in Bulgaria confers equal rights on all citizens, regardless of their ethnic identity, in respect of the possibility of, and access to, rental accommodation in social housing or construction or, respectively, purchase of own home.

39. The Roma policy is based on the Framework Programme for Equal Integration of Roma in Bulgarian Society (FPEIRBS), elaborated in cooperation with the government institutions and adopted by the Council of Ministers Decision in 1999. Section IV entitled “Territorial Structure of the Roma Neighbourhoods” of the FPEIRBS observes that the separated Roma neighbourhoods, most of which are outside the respective city plans and do not have adequate infrastructure, are one of the most serious socio-economic problems of the community. The FPEIRBS recommends amendments to the Territorial Development Act in order to abolish the complex procedure of legalizing of housing. It suggests commencement of legalizing the housings in the Roma neighbourhoods on the basis of the principle of minimum interference with the existing situation. The goal is to legalize a large part of the existing housing fund in the Roma neighbourhoods and to provide owners with ownership documents within the shortest possible term. Concurrently, the FPEIRBS recommends that the housing fund should be improved through different forms of support to the people who desire to improve their housing conditions. A targeted State subsidy is needed for urban renewal of the Roma neighbourhoods. Since the adoption of the FPEIRBS in 1999, strategic documents covering all spheres of public life, entirely addressed to the Roma or with a special focus on the Roma community, have set out measures and actions for the equal integration of Roma in Bulgarian society. These include the National Action Plan Regarding the Decade of Roma Inclusion (2005-2015); the National Action Plan for Employment; the Health Strategy for Disadvantaged Members of Ethnic Minorities; and the National Programme for Improvement of Roma Housing Conditions in the Republic of Bulgaria (2005-2015), which underscores the responsibilities of the State, of the bodies of local government and self-government, as well as the possibilities for NGOs to participate in the relevant activities from the conceptual design phase to the monitoring and reporting of the results.

40. The Government emphasized that since 1990 a possibility has been provided to legalize all unlawful buildings that conform to the statutory requirements and possess the relevant technical specifications. The legalization initiative was vested in the owner. Any buildings, for which no application for legalization was submitted until 26 January 2004 or for which the legalization proceedings were completed by an enforceable refusal to issue an act of legalization, are subject to removal. This, however, is not proceeded with automatically and without notice.

41. The Government stressed that in the context of compliance with the criteria for membership of the European Union, a number of projects aimed at improving the situation of members of ethnic groups with a special focus on the Roma have been implemented. One of the major projects of this type is the construction of social housing, financed by a loan from the Council of Europe Development Bank. A large number of smaller projects have been implemented under the PHARE programme of the European Union, and they contribute substantially to an improvement of living conditions in Roma neighbourhoods in a number of cities. However, lingering problems in certain municipalities pose a substantial obstacle to the planned implementation of this policy. These problems consist in a delay of addressing the prevention of the illegal building development of spatial-development areas or the prompt removal of unlawful buildings. This is related to the internal migration from economically distressed areas to the cities and to areas of rapid economic growth. Part of the migrants and the most mobile of them are Bulgarian citizens of Roma origin, who, when they resettle, not always comply with the statutory requirements for residency registration and settlement in specific spatial-development areas.

42. The activities for Roma integration are subject to constant monitoring. A Commission on Roma Integration has been established within the National Council for Cooperation on Ethnic and Demographic Issues, which is an advisory and coordinating body under the Council of Ministers. In addition, a Protection against Discrimination Act was adopted in 2003. It defines the types of prohibited discrimination, specifies the procedures and the bodies for protection against discrimination, as well as the discriminators' liability. Consequently, the Government of Bulgaria is of the view that the allegation of racial discrimination against Roma quoted in the urgent appeal dated 14 October 2009 is manifestly ill-founded and contrary to the facts.

43. In the second part of its reply, the Government of Bulgaria provided detailed information on the administrative proceedings and subsequent measures to address the illegal housing construction in the districts of Gorno Ezerovo and Meden Rudnik in Burgas municipality. In particular, the Burgas Municipal Administration conducted an inspection in 2004, identifying 44 unlawful construction works and 10 light structures outside the regulation boundaries of the District of Gorno Ezerovo, as well as 21 unlawful construction works and 21 light construction units within the territory of the District of Meden Rudnik, occupying municipal-owned land tracts allotted for a street and a private-owned land tract. Administrative proceedings concerning the unlawful construction workers in the Gorno Ezerovo District and the Meden Rudnik District, city of Burgas, resulted in the issuing of orders for removal (motivated by the lack of ownership of the corporeal immovable, as well as the absence of the required construction file). The execution of coercive measures in respect of the unlawful structures and buildings was preceded by a sustained effort by the local authorities to clarify the action that had to be taken by the owners of these structures and buildings. The administrative proceeding, which lasted nearly three years, made it possible for the Municipal administration and the Regional Office of the National Construction Control Directorate authorities to examine carefully and thoroughly each particular case. The unlawful construction works in the Districts of Gorno Ezerovo and Meden Rudnik were removed in the period between 8 and 24 September 2009. The orders were executed within two to five years after their issuance, with the owners being given a last chance to comply voluntarily within 30 days. A large part of the occupants of the structures (23 altogether) removed them by themselves. According to information by the competent institutions, there was neither a single case where people had to be evicted from their homes by force, nor any case where movable property had to be coercively removed to municipal storage. No breaches of public order threatening the life and health of the participants and the bystanders were committed in the course of execution of the orders. Only on 8 September 2009, before commencement of the steps for demolition of the unlawful dwellings in the Quarter of Gorno Ezerovo, the Ministry of Interior had to resort to force in order to halt an assault by a group of residents in which a police officer was hit by a stone. The Government also provided a detailed list of orders which were issued and executed in the 2007-2009 period for the removal of unlawful construction works in the Districts of Meden Rudnik and Gorno Ezerovo in the city of Burgas.

44. Replying to the specific questions raised by the Special Procedures mandate holders in the urgent appeal sent on 14 October 2009, the Government indicated that information quoted in this urgent appeal regarding the eviction and demolition of Romani households, as well as threatened eviction of many others in the Districts of Gorno Ezerovo and Meden Rudnik in September 2009 was not accurate. Regarding complaints lodged by or on behalf of the alleged victims, the Government replied that part of the orders on the execution of the coercive measures in respect of the unlawful structures and buildings were appealed by the affected parties before the court, which upheld the legal conformity of the administrative orders. According to the Government, the administrative proceeding was conducted according to the procedure established by the Spatial Development Act. The procedure for removal of the unlawful structures followed Ordinance No. 13 of 23 July

2001 on Coercive Enforcement of Orders for Removal of Unlawful Construction Works of Parts Thereof by the National Construction Control Directorate Authorities. The identified unlawful construction works lacked a construction file on their legally conforming electricity supply, water supply and removal of household wastewater and rainwater. The Government also ensured that all measures had been taken to ensure the conformity of the actions in respect of the unlawful structures and buildings and their occupants with the obligations of Bulgaria which arise from international human rights law.

45. Finally, on measures taken to ensure that no individual or group of individuals is subject to discrimination based on legislation or policies that are manifestly incompatible with legal obligations relating the right to adequate housing, the Government referred to the consistent policy for equal integration of the Roma population in society. This policy includes a number of measures for the prevention of all forms of discrimination against that population, including discrimination based on legislation or policies contrary to the legal obligations regarding the right to adequate housing. The Programme of the Government assigns prominence to an acceleration of the social integration and an improvement of the economic and social status of Roma. Bulgaria pays particular attention to the implementation of the ten-year National Programme for Improvement of the Living Conditions of Roma, which envisages the construction of new housing and an improvement of the infrastructure for their needs.

**(c) Observations by the Special Rapporteur**

46. The Special Rapporteur is grateful that the Government of Bulgaria replied in a detailed manner to the communication of 14 October 2009. He hopes that measures taken by the authorities will allow for a significant improvement of the living conditions of members of the Roma community in Bulgaria. In this regard, he would like to emphasize the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/BGR/CO/1, para. 15) whereby the Committee recommended that Bulgaria continue taking positive measures to improve the living conditions of Roma in respect of access to work, health care, housing and education within the framework of the Plan of Action for Roma Inclusion and the Decade for Roma Inclusion, in accordance with article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and general recommendation XXVII (2000) on discrimination against Roma (art. 5).

**C. Czech Republic**

**Communication sent on 31 July 2009 jointly with the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Chairperson-Rapporteur of the Working Group on arbitrary detention**

**(a) Allegations transmitted to the Government**

47. The Special Procedures mandate holders brought to the attention of the Government information they received concerning Mr. S. M., aged 30, citizen of Uzbekistan, currently held at Vazebni Veznice in Prague.

48. According to the information received, Mr. S. M. was arrested on 21 October 2008 without any explanation and taken to the main police criminal investigation department in Prague. There he was severely beaten and called “dirty and black foreigner”. In the process, he was stripped of his clothes. As a result of the beatings, he knelt down and begged the police to tell him why he had been arrested, to inform his consular authorities and to allow him access to a lawyer, but to no avail. Rather, the officers continued to beat him and

forced him to sign some papers, which he did, despite the fact that everything was written in Czech, of which he has limited knowledge. As a result his head was bleeding and he felt the taste of blood in his mouth. The treatment continued on 22 October, when he received even stronger blows and his hands were handcuffed to a tube. The handcuffs were so tight he could not feel one of his hands.

49. It subsequently turned out that he and his brother were accused of having committed a murder. The brother was held in the neighbouring room, and Mr. S. M. could hear him beg for help. When he reiterated his request for a lawyer and an interpreter, one of the police officers took out a rifle and put it to his head, threatening to kill him. The policemen also allegedly indicated that foreigners were considered “shit and litter”, so nobody would believe them, in case they decided to file any complaints. Once he had made a confession, he was finally led to an office, where a defence lawyer was present. He said that he had nothing to do with the crime, but nobody listened to him.

50. The Special Procedures mandate holders expressed fear Mr. S. M. may be sentenced on the basis of evidence obtained under torture/ill-treatment.

**(b) Response from the Government dated 1 October 2009**

51. On 1 October 2009, the Government of the Czech Republic replied to the communication of 31 July 2009. The Government indicated that the first complaint against performed police action was received by the Ministry of Foreign Affairs from the Embassy of Uzbekistan in Austria, dated 27 March 2009, pursuant to the demand of Mr. S. M.’s parents asking for help against the arbitrary detention of their son. The Regional Police Directorate in Prague investigated this complaint. The result was that no violation of the law or service instruction had occurred during the actions performed by the police. The report of the investigation was sent to the attention of the Ministry of Internal Affairs on 27 May 2009. A second complaint was received from Mr. S. M. on 19 May 2009, regarding his dissent with the official action of four unnamed police officers who reportedly beat and kicked him, served him no food or drink and refused his request to call a lawyer on 21 and 22 October 2008. During the examination of this complaint, two other complaints by Mr. S. M. were received by the Regional Police Directorate of Prague on 30 July 2009. The first was addressed to the Ministry of Foreign Affairs and the second to the Ministry of Internal Affairs. The content was nearly the same as in the complaint from 19 May 2009. The result of the common investigation of all three complaints was that no police officer had treated the accused in a manner that was in violation of law or service instructions and that no reduction of the rights of the accused had occurred. Mr. S. M. was not subjected to physical cruelty, verbal assaults, threats or other similar acts. In addition, he was regularly served meals and drinks. Even the Municipal Court in Prague did not find any violation of the law in the actions performed by the police.

52. In its reply, the Government provided an explanation on the circumstances of the murder of a citizen of Belarus. According to the Government, there was a justified suspicion that Mr. S. M. and others had participated in the murder. The state attorney of the Metropolitan Prosecuting Attorney’s Office in Prague approved their detention. On 21 October 2008, Mr. S. M. was detained in the parking of the Imperial Hotel in Prague, where he had been employed. In the course of his detention, holds and grasps were used, in accordance with Police Act No. 283/1991. He was also handcuffed due to his active resistance. Three other persons were also arrested. The investigation continued, and one of the detainees was released. The other men, including Mr. S. M., were handed over to the detention cell in the Regional Police Directorate. On 22 October 2008, the criminal prosecution began. The resolution to commence prosecution was handed over to Mr. S. M. in the presence of his appointed counsel. His interrogation was then conducted in the presence of his defending counsels and an interpreter. On 24 October 2008, through the

resolution of the District Court Judge, Mr. S. M. was remanded in custody, and he was transferred to Remand Prison Pankrac, where he is currently detained.

**(e) Observations by the Special Rapporteur**

53. The Special Rapporteur is grateful that the Government of the Czech Republic replied to the communication of 31 July 2009. With regard to strategies to be developed to prevent racial discrimination in the administration and functioning of the criminal justice system, he would like to refer to the general recommendation XXXI of the Committee on the Elimination of Racial Discrimination (CERD) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. In particular, the CERD recommends that States parties “develop, through appropriate education programmes, training in respect for human rights, tolerance and friendship among racial or ethnic groups, as well as sensitization to intercultural relations, for law enforcement officials: police personnel, persons working in the system of justice, prison institutions, psychiatric establishments, social and medical services, etc.”.

**D. Dominican Republic**

**Comunicación enviada el 26 de octubre de 2009 junto con el Relator Especial sobre los derechos humanos de los migrantes y la Experta independiente sobre cuestiones de las minorías**

**(a) Alegaciones transmitidas al Gobierno**

54. Los titulares de mandato de los Procedimientos Especiales señalaron a la atención del Gobierno de la República Dominicana información recibida en relación con presuntos abusos a trabajadores migrantes de origen haitiano.

55. Según la información recibida, el 4 de octubre de 2009, presuntos soldados entraron en una casa de Montecristi donde trabajadores migratorios de origen haitiano atendían una sesión de formación sobre los derechos laborales de los trabajadores migratorios conducida por la Asociación Solidaria de Trabajadores Migrantes de la Línea Noroeste (ASOMILIN). Veinticinco de estos trabajadores migratorios de origen haitiano habrían sido trasladados a la base militar de Montecristi. El día siguiente, el 5 de octubre de 2009, los habrían llevado a la ciudad frontera de Dajabón y posteriormente los habrían forzado a cruzar la frontera hacia Haití.

56. De conformidad con la información recibida, a los migrantes detenidos no se les habrían reconocido algunas de las garantías asociadas al debido proceso tales como la oportunidad de impugnar la legalidad de su detención o el tener acceso a un mecanismo para controvertir la decisión de expulsarlos a Haití. De igual manera, los trabajadores migratorios no habrían tenido acceso a un abogado ni a informarle a sus familiares sobre su situación. Los supuestos soldados les habrían impedido tomar sus objetos personales así como recibir los salarios que les adeudaban.

57. Se expresa profunda preocupación por la situación de estos veinticinco Haitianos expulsados y de sus familias dejadas en República Dominicana. De manera general, se expresa también preocupación por el tratamiento otorgado a las comunidades haitianas o de ascendencia haitiana en República Dominicana, que alcanzarían, de conformidad con estimativos de diversas fuentes, una población de aproximadamente un millón de individuos. En este contexto, la atención del Gobierno esta llamada sobre el reporte conjunto del Relator Especial sobre Formas Contemporáneas de Racismo, Discriminación Racial, Xenofobia y Formas Conexas de Intolerancia y la Experta Independiente sobre Cuestiones de las Minorías (A/HRC/7/19/Add.5, A/HRC/7/23/Add.3), el cual hace referencia al prejuicio racial existente en el anti-haitianismo así como a las expulsiones y

deportaciones. El reporte conjunto se refiere a deportaciones indiscriminadas y arbitrarias, y señala que las “deportaciones indiscriminadas y arbitrarias, [...] carecen de la protección que otorga el proceso con las debidas garantías. Ciudadanos dominicanos de ascendencia haitiana y haitianos residentes en el país desde hace tiempo tienen las mismas posibilidades que los inmigrantes recién llegados de ser deportados sin disponer de una ocasión adecuada para hacer valer las debidas diferencias. Las deportaciones se realizan tan rápidamente que no se informa a los familiares”. En dicho reporte conjunto, también se expresó preocupación sobre los procedimientos de expulsiones y deportaciones que “iban dirigidos especialmente contra personas de las que se sospechaba que eran ‘haitianos’, una identificación que principalmente se basa en el color de la piel, sin hacer distinciones entre haitianos, dominicanos de descendencia haitiana y dominicanos negros desprovistos de cualquier vinculación con Haití”.

**(b) Respuesta del Gobierno de fecha 5 de mayo de 2010**

58. El 5 de mayo de 2010, el Gobierno de República Dominicana envió respuesta a la carta de alegación enviada el 26 de octubre de 2009, aceptando que el 4 de octubre de 2009, fueron detenidos y conducidos a la Fortaleza San Fernando en la ciudad de Montecristi y luego trasladados a la Fortaleza Beller en la ciudad de Dajabón desde donde fueron repatriados a su país de origen, vía Oficina Nacional de Migración veinticinco nacionales haitianos que fueron sorprendidos reunidos en las inmediaciones del Batey Jaramillo, Provincia Montecristi por miembros del Destacamento Operativo de Inteligencia Fronteriza, después de haber recibido información vía nota confidencial de que una gran cantidad de nacionales haitianos se estarían organizando en la zona con la finalidad de recibir entrenamiento militar para llevar a cabo acciones subversivas.

59. En su respuesta, el Gobierno también informó que el encargado del Departamento Operativo de Inteligencia Fronteriza de la ciudad de Montecristi recibió instrucciones del Coordinador del Departamento de Inteligencia Fronteriza para que investigara en relación a que en el Batey Jaramillo, una gran cantidad de nacionales haitianos se estaban reuniendo presuntamente con fines subversivos. Aunque dichas alegaciones no fueron comprobadas, ya que se informó que la reunión de haitianos tenía como objetivo formar una junta de vecinos, los hombres que se encontraban en el lugar eran indocumentados y las autoridades procedieron a su detención y a su posterior deportación. El Gobierno informó que en dicha reunión también participaban mujeres y niños, pero que solo detuvieron a los hombres y que ninguno le pidió hacer llamadas ni recoger pertenencias, ya que éstas quedaban en manos de sus esposas e hijos. Luego de estar en la Fortaleza, los ciudadanos detenidos hicieron llamadas a sus familiares, recibieron cena, sábanas y otros utensilios.

60. El Gobierno señaló igualmente que el 5 de octubre de 2009, la Oficina Nacional de Migración, recibió por parte de las fuerzas armadas, en el Punto Fronterizo de Dajabón, la cantidad de veintisiete personas de nacionalidad haitiana, presumiblemente ilegales en el territorio dominicano. Veinticinco de ellos declararon que no poseían documentación que avalase su estatus migratorio. Las autoridades gubernamentales procedieron a informarles sobre las disposiciones de la ley de Migración 285-04, con relación a la exigencia de la documentación migratoria que les permitiría permanecer en el territorio nacional; y que por esta razón, procedía la repatriación a su país de origen, conforme a lo establecido en la Ley 285-04 y por lo cual se procedió en consecuencia, a repatriar a esos veinticinco haitianos. A los dos que presentaron la documentación requerida, se les permitió permanecer en el país.

61. El Gobierno también informó que la Dirección General de Migración procedió a efectuar la repatriación en conformidad con la ley 285-04 (artículos 6, 17, 18, 65, 66, 67, 121.), y en función del derecho soberano reconocido en la Convención de Viena, en el pacto de los derechos Civiles y Políticos, en el Pacto Interamericano de los Derechos Humanos.

62. Finalmente, el Gobierno señaló que en investigaciones realizadas, el gobierno logró establecer que las medidas llevadas a cabo en estas fechas no fueron más adecuadas en cuanto a la forma, por lo cual, y para evitar problemas futuros, el Gobierno está en un proceso constante de mejora de los procedimientos de carácter migratorio en los operativos militares, con miras a garantizar el fiel cumplimiento de la Ley y el respeto de los derechos humanos de la población inmigrante ilegal.

**(c) Observaciones del Relator Especial**

63. El Relator Especial agradece al Gobierno de la República Dominicana por su respuesta a la comunicación de 26 de octubre de 2009. Asimismo, el Relator quisiera recordar que la Declaración y el Programa de Acción de Durban instan a los Estados a que “garanticen que los migrantes, independientemente de su situación, que hayan sido detenidos por las autoridades públicas sean tratados de forma humana e imparcial y reciban protección jurídica y, en su caso, la asistencia de un intérprete competente de acuerdo con las normas pertinentes del derecho internacional y de derechos humanos, particularmente durante los interrogatorios”.

**E. Germany**

**Communication sent on 24 August 2009 jointly with the Special Rapporteur on freedom of religion or belief**

**(a) Allegations transmitted to the Government**

64. The Special Rapporteurs brought to the attention of the Government information they received regarding the murder of Ms. M. A. S. in a Dresden courtroom. On 1 July 2009, Ms. M. A. S., a pregnant Muslim woman of Egyptian origin, was stabbed 18 times by Mr. A. W., a German of Russian origin, in a Dresden courtroom, in front of her husband, her 3 year-old son, judges and other witnesses.

65. Following an incident in a public park in Dresden in August 2008 where Mr. A. W. called Ms. M. A. S., who wore a headscarf, an “Islamist” and a “terrorist” when she asked him to make room for her son on the playground swings, the first instance court of Dresden (*Amtsgericht*) found Mr. A. W. guilty of slander. A 780 Euros fine was issued against him. However, during the trial, Mr. A. W. claimed mitigating circumstances for the act of insulting Ms. M. A. S. and suggested that “people like her” were not real humans and therefore could not be insulted. In addition, he told Ms. M. A. S. that “you don’t have the right to live here”. Consequently, the Public Prosecutor appealed the verdict of the first instance court in order to get a harsher sentence for the openly xenophobic words of Mr. A. W.

66. At the appeal trial in the second instance court of Dresden (*Landgericht*), Mr. A. W. reportedly asked Ms. M. A. S.: “Do you have a right to be in Germany at all?”. He then would have warned her that: “When the NPD [National Democratic Party] comes to power, there will be an end to that”. After Ms. M. A. S. had testified, Mr. A. W. leapt in the courtroom to stab her with a knife killing her, while allegedly shouting “You don’t deserve to live”. He also stabbed the husband of Ms. M. A. S., Mr. E. O., who was critically wounded after he tried to defend her against Mr. A. W. The police officer, who was called to intervene, mistook Mr. E. O. for the attacker and shot him in the leg.

67. Mr. A. W. was reportedly held on remand on suspicion of murder of Ms. M. A. S. and attempted murder of Mr. E. O. Condolences to the family of Ms. M. A. S. and public apologies have been expressed by the German authorities, including by the Chancellor. On 10 July 2009, the Federal Foreign Minister also sent a letter to the Egyptian Minister of

Foreign Affairs, where he said that “we are committed to ensuring that every person in Germany feels safe, regardless of their background, nationality or faith. This is the highest maxim for action by the State. Xenophobia and Islamophobia have no place in Germany.”

**(b) Response from the Government dated 20 October 2009**

68. On 20 October 2009, the Government of Germany replied to the communication of 24 August 2009. In its reply, the Government confirmed that the facts alleged in the above summary of the case were accurate. With regard to the investigation and judicial or other inquiries carried out in relation with this case, the Government indicated that the investigation by the Dresden Public Prosecution Office, which had begun immediately following the incident on 1 July 2009, had meanwhile been concluded. The public prosecution office charged Mr. A. W. with the murder of Ms. M. A. S. as well as the attempted murder of, and aggravated bodily harm on, her husband, Mr. E. O. The defendant had been in remand detention since the time of the alleged offence. The investigation has shown that the defendant stabbed Ms. M. A. S. at least 16 times in the back and chest area as well in the right arm, and stabbed her husband at least 16 times in the area of the head and throat, the upper body and the right arm. He used a kitchen knife with a blade measuring 18 centimetres, which he had brought unnoticed into the courtroom in a backpack. According to the public prosecution office, the murder element of malice forethought has been fulfilled because none of the victims had imagined that they might be attacked by the defendant, and because they were all helplessly subjected to the attack. Furthermore, the offence was committed out of base motives, because the defendant’s motive was his clear hatred for non-Europeans and Muslims. According to the evaluation by the psychiatric expert, there are no recognizable indications in the defendant of a lack of being able to control his actions or appreciate the consequences of them (so-called criminal responsibility).

69. After learning of the horrific act committed at the Dresden Regional Court, the Federal Public Prosecutor General has been receiving continual updates on the matter from the Dresden Public Prosecution Office. As a general rule, the Public Prosecution Offices of the *Länder* are responsible for criminal investigations. The law provides for assumption of the investigation by the Federal Public Prosecution Office only if very special prerequisites exist. The Federal Public Prosecutor General at the Federal Court of Justice has prosecution competence only in the very rare cases that an offence is to be classified as a state security offence directed against the state as a whole.

70. With regard to measures that are envisaged to prevent the recurrence of such violent acts, the Government indicated that an initial assessment of the incident had led to the review of the security concept for the courts of the Free State of Saxony. Saxony’s security had been directed in a reactive manner and had “open” judicial buildings without a general access control. Security was to be guaranteed by way of the most rapid possible alarm and reaction in unusual incidents, which was enabled primarily by building-technological security standards and the placement of areas intensively used by the public in the vicinity of the entrance. Further, relevant measures were taken in specific cases if a foreseeable danger might exist. In this specific case, this type of danger could not be anticipated in advance, however, the Government indicated that more care and sensitivity will surely be called for. Due to the grave incident at the Dresden Regional Court, in addition to the already-existing measures, there is now an increased focus on preventive measures which are designed to prevent bringing weapons and other dangerous items into the court building. The leadership level of the authorities in the courts and public prosecution offices have already taken measures in the exercise of their right to make rules in the building. These focus on increased access control, to the extent possible with the assistance of technical aid devices. Also, since 17 August 2009, members of a private security service



have been employed at Dresden Regional Court to assist with access control. Metal detector frames and hand-held scanners are used as well.

71. The Government indicated that the incident had contributed greatly to sensitizing the public and those working in the justice system. The case had been extensively discussed in the German media as well and the people in Germany were unanimous in clearly expressing their outrage and sharp condemnation. The government and justice system in Saxony were well aware of the special dimension of the case and had reacted accordingly to clearly and publicly express condemnation of the racist crime. Among other things, the State Minister of Justice visited the husband of the deceased woman in the hospital. Also, the Senior Public Prosecutor for the District of Alexandria in Egypt was personally received by the Public Prosecutor General of the Free State of Saxony and by the State Minister in order to gain an impression of the progress of the investigation. Claims by the family of the victim for financial compensation were being given favourable consideration by the competent offices in the Free State of Saxony, however, evaluation of these claims had not yet been completed.

72. Furthermore, the Government noted that it accorded great importance to the integration of Muslims and to a dialogue with Islam. It emphasized that Germany was engaging in multifaceted measures designed to protect and promote Muslims in Germany as well as to foster intercultural and interreligious dialogue. Examples of such measures were contained in the 16th to 18th State Report pursuant to Article 9 of the ICERD and in the first State Report within the scope of the Universal Periodic Review procedure before the Human Rights Council. Special mention was also made of the German Islam Conference (*Deutsche Islam Konferenz*), which in 2006 created the first national framework for fostering relations between the state and Muslims in Germany.

**(c) Observations by the Special Rapporteur**

73. The Special Rapporteur is grateful that the Government of Germany replied in a detailed manner to the communication of 24 August 2009. He also welcomes that the Criminal Chamber of the Regional Court of Dresden delivered its judgment on 11 November 2009 by which it convicted Mr. A. W. to life imprisonment for the xenophobic murder of Ms. M. A. S. and for the attempted murder on her husband.

**F. India**

**Communication sent on 5 November 2008 jointly with the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Independent Expert on minority issues**

**(a) Allegations transmitted to the Government**

74. The Special Procedures mandate holders brought to the attention of the Government of India information they received concerning the eruption of violence between the Bodo tribal and the Muslim communities in the Indian state of Assam. A summary of this communication is already reproduced in A/HRC/11/36/Add.1, paras. 39-40.

**(b) Response from the Government dated 25 June 2009**

75. On 25 June 2009, the Government of India replied to the communication dated 5 November 2008. In its response, the Government first indicated that it regards the matter as outside the purview of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

76. The Government then informed the Special Procedures mandate holders that of the 57 persons killed in the communal clashes that occurred in Darrang and Uladguri districts of Assam in the first week of October 2008, 23 persons were killed as a result of police firing and 34 persons were killed during the clashes. The Government emphasized that, at all times, the police opened fire at the mobs only as a last resort, as per the due procedure established under the law, on the orders of the Executive Magistrate who accompanied the police as required under the law, and only after the violent crowds had been given sufficient warning to disperse, other forms of milder tactics like baton charge and use of tear gas did not have any impact on these crowds, and the situation deteriorated to a point where there was no other alternative. The Government indicated that the use of force by the police had been both legitimate and proportional. It also noted that the intensity of the clashes reduced sharply subsequent to the firing by the police.

77. The Government indicated that a judicial inquiry, headed by a retired judge of Assam High Court, into the communal clashes had been ordered. Furthermore, the state authorities took all adequate steps to provide humanitarian aid to the affected people and to facilitate the safe return to their homes. Of the approximately 216,000 persons who had been displaced and put up in 98 relief camps, almost all people had returned to their villages and virtually all relief camps had been shut down by early March 2009, except for about 1,040 people who were in the process of being sent to their villages. Apart from providing 2.5 crores Indian Rupees (about USD 500,000) for relief measures in each district, the state authorities sanctioned payment of 3 lakhs Indian Rupees (about USD 6,000) to the next of kin of each person killed in the clashes. An amount of 50,000 Indian Rupees (about USD 1,000) was also sanctioned for each of those grievously injured. The authorities provided food, blankets, mosquito nets and, separately, building material and cash amounts to each family that had lost its home. The Government indicated that separate grants were sanctioned for rebuilding schools and colleges that had been affected by the violence.

**(c) Observations of the Special Rapporteur**

78. The Special Rapporteur is grateful that the Government of India replied in a detailed manner to the communication of 5 November 2008.

79. The Special Rapporteur would like to reaffirm that in accordance with his mandate, he is requested to focus on, inter alia, “incidents of contemporary forms of racism and racial discrimination against Africans and people of African descent, Arabs, Asians and people of Asian descent, migrants, refugees, asylum-seekers, persons belonging to minorities and indigenous peoples, as well as other victims included in the Durban Declaration and Programme of Action”. He therefore believes that the inter-communal violence involving members of the Bodo community and Muslims of Bengali descent may be addressed within the framework of his mandate.

**G. Italy**

**Communication sent on 11 January 2010 jointly with the Special Rapporteur on the human rights of migrants**

**(a) Allegations transmitted to the Government**

80. The Special Rapporteurs brought to the attention of the Government information they received concerning xenophobic violence targeting migrant workers in the town of Rosarno, Calabria.

81. According to the information received, on 7 January 2010, two African migrant workers returning from work were shot at with air guns by Italian men. In order to protest

against this incident, the migrant workers, whose great majority originates from Africa, took to the streets and demonstrated violently by setting fire to cars, smashing windscreens and attacking local shops. The police intervened in order to prevent the demonstrators from undertaking further violent acts.

82. On 8 January 2010, in reaction to the violent demonstrations by migrant workers and in order to drive them out of the area, some residents of Rosarno beat migrant workers with iron bars, shot at them, and intentionally run over them with cars. As a result, it has been alleged that more than 50 people were injured, including 18 police officers who intervened to stop the violence.

83. Following this incident, approximately 1400 migrants have been reportedly arrested and sent to the Bari and Crotone centers, including those in possession of residence permits and asylum seekers. According to the information received, the Italian authorities begun deportations of migrants held at the Crotone centre at the midday on 11 January 2010.

84. While the Special Rapporteurs acknowledged and appreciated that in the present case security forces appear to have taken prompt action to stop the violence and that official investigations on the incidents started promptly, concern was expressed that a backlash may occur unless prompt preventive measures are taken by the authorities.

**(b) Response from the Government dated 9 March 2010**

85. On 9 March 2010, the Government of Italy replied to the communication dated 11 January 2009. In its response, the Government drew attention to the prompt intervention by the Police, as well as the Public Prosecutor's office, which started investigations that are still ongoing.

86. With regard to the events, the Government confirmed that on 7 January 2010, between the towns of Rosarno and Gioia Tauro, unknown persons fired a few shots of compressed air gun against a group of foreign nationals of African origin. One of the migrants of Togolese origin reported a wound considered curable in ten days. Following that incident, several Non-EU citizens protested by a roadblock. About 100 foreign nationals demonstrated across the streets of Rosarno. During the demonstrations, the protesters damaged parked cars, shop windows, signs, street furniture and garbage bins. Some residents were victims of the riots and had to resort to medical care. The Police managed to contain the protest and arrested five non-EU citizens. The prosecutor promptly promoted, in respect of the above five migrants, three separate judicial proceedings on the charge of aggravated resistance to public officers. On the same day, the Court of Palmi confirmed the arrest and ordered the remand in custody for all the above persons, while postponing the trial, upon request by the defence counsels.

87. On 8 January 2010, many residents of Rosarno reacted to such events by acts of violence against a large numbers of migrants. It was reported the occurrence of many incidents of aggression by blows with a steel bar, many cases of beatings, and even some assassination attempts by voluntarily investing or trying to overrun with cars or other means Non-EU migrants. During the same day and the day after - on 9 January 2010 - three Non-EU citizens, in two separate incidents, were hit by shotgun fired by unknown persons. There were also episodes of threats at gunpoint by unknown persons, against migrants who were asked to leave the houses where they were staying. The police arrested in three separate episodes three citizens of Rosarno; and the measure was promptly confirmed by the Court. Several judicial proceedings against unknown persons for the crimes of damage or injuries have been started. At the hospital emergency, there were some citizens and many Non-EU nationals, the most serious of whom were hospitalised.

88. The number of the above proceedings is expected to grow, as soon as notices of crimes arise from medical reports or complaints submitted by the victims. For the time

being, the crimes to be ascertained, inter alia, refer to criminal association, attempted extortion, aggravated damage, use and illegal possession of weapons, aggravated injuries and other crimes. Investigations have already been delegated to the Police, Carabinieri and Guardia di Finanza that have provided investigators with additional resources. An ad hoc taskforce was established to work on a double-track: investigating both the individual conduct, and phenomena associated with and/or conducts systematically organized by groups, who may have planned and executed - possibly in a coordinated manner - retaliation and intimidation aimed to provoke the flee of migrant workers from the plain of Gioia Tauro. Investigations also started with regard to the illegal exploitation of migrants in the farms in the surroundings. Within this framework, a specific investigation was launched to determine whether, in relation to the first episode of injury and other incidents of violence against migrants, aggravating circumstances concerning the crimes committed for purposes of discrimination or ethnic/racial hatred may be considered. With the help of video-tapes recorded by the street cameras, some valuable evidence was collected. The prosecutor also requested the Ministry of Interior to issue special permits under Article 18 of the Unified Text on Immigration (Act No.286/1998), on behalf of five Non-EU nationals.

89. As for the number of migrants transferred by the Police in the centres of Bari and Crotone, on 9 January 2010, they amounted to 758 - and not 1,400 individuals. At that time, it was not clear how many of them were without a residence permit or applying for asylum in Italy.

90. More specifically, the Government indicated that following the Rosarno incidents, the Minister of Interior set up an ad hoc Taskforce to provide a complete and detailed picture of the situation and to identify the most suitable economic and social solutions for the area under reference. Further to contacts with relevant NGOs and International Organisations, the Taskforce arranged the immediate transfer of migrants to the reception centres in Crotone and Bari. A medical team carried out a thorough evaluation of the hygienic conditions of the buildings where migrants were living before such events, and also assessed their health conditions. In addition, inspections took place in all the enterprises of the area, which have employed Non-EU seasonal workers in the agriculture sector, so as to verify their compliance with the law. It is envisaged that the employers be compelled to ensure the availability of a proper accommodation for Non-EU workers. A similar initiative is being implemented in Castel Volturno (Caserta).

91. There were 428 Non-EU citizens at the Crotone reception centre who were partially identified by nationality. These people held the following legal status: a) 348 Non-EU citizens with a residence permit; b) 9 Non-EU citizens being under arrest; c) 20 Non-EU citizens recipients of an expulsion measure; d) 46 Non-EU citizens escaped without previous identification; e) 5 Non-EU nationals applying for asylum. Currently, only 8 asylum seekers are reported to be hosted in the above reception centre, while 6 other Non-EU citizens are held in an Identification and Expulsion Centre (C.I.E). 324 migrants were moved to the reception centre in Bari. Among them, 159 persons were reported to hold the residence permit, 14 were arrested due to non compliance with the order to leave the national territory, and the others have been held in the local C.I.E., with the exception of a Nigerian citizen, who was moved to the C.I.E. in Rome.

92. In order to prevent the recurrence of such a situation, the Minister of Interior proposed to improve the reception conditions, including housing for migrant workers, and more generally the integration of migrants. To this end, the Ministry of Interior launched projects for the establishment of a vocational training centre for migrants in Rosarno, besides significant requalification and renovation strategies for the surrounding under concern. Additional funding has been made available for this purpose from the Ministry of Interior and other sources. In particular, in Rosarno and in some neighbouring districts, specific

projects are in progress, in order to improve the reception and integration of immigrants present in the area. The Rosarno district is also interested in a project funded by the European Social Fund, managed by the Ministry of Labour and aimed at setting up accommodations for foreign seasonal workers.

**(c) Observations by the Special Rapporteur**

93. The Special Rapporteur is grateful that the Government of Italy replied in a detailed manner to the communication of 11 January 2010. The Special Rapporteur would like to refer to the Durban Declaration and Programme of Action (DDPA), which recognizes that migrants frequently find themselves in a “situation of vulnerability, owing, inter alia, to their departure from their countries of origin and to the difficulties they encounter because of differences in language, customs and culture, as well as economic and social difficulties and obstacles to the return of migrants who are undocumented or in an irregular situation”. As such, the DPPA reaffirms “the responsibility of States to protect the human rights of migrants under their jurisdiction and reaffirm the responsibility of States to safeguard and protect migrants against illegal or violent acts, in particular acts of racial discrimination and crimes perpetrated with racist or xenophobic motivation by individuals or groups; and stress the need for their fair, just and equitable treatment in society and in the workplace”.

**H. Libyan Arab Jamahiriya**

**Communication sent on 22 January 2009 jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and the Special Rapporteur on the situation of human rights defenders.**

**(a) Allegations transmitted to the Government**

94. The Special Rapporteurs brought to the attention of the Government information they received regarding Mr. S. M., Mr. M. H., Ms. A. S., Mr. F. B. and Mr. M. A. The aforementioned human rights defenders are members of the Federal Council of the World Congress of the Amazigh (CMA). The CMA is an international NGO for the defense of the Amazigh (Berber) people, created in 1995.

95. According to the information received, on 24 December 2008, around 300 members of the organization the “Youth of Tomorrow’s Libya” and the “Revolutionary Committees” gathered for a meeting in the town of Yfren, in Nefussi Province, west of Tripoli. The meeting took the form of an informal popular tribunal to try and convict defenders working on the human rights of the Amazigh people without formal judicial process. The gathering specifically targeted those human rights defenders who participated at the last General Assembly of the World Congress of the Amazigh held from 31 October to 2 November 2008 in Meknes, Morocco. At the meeting, Mr. S. M., Mr. M. H. and Ms. A. S. were publicly accused of being separatists and working for foreign interests. Mr. F. B. and Mr. M. A. were also part of the list of defendants mentioned during the meeting.

96. After approximately one hour, the leaders of the meeting, whose identity is known to the Special Rapporteurs, called on the individuals present to attack the homes of the CMA members. A crowd of some 500 people, which included plain-clothes police officers and was surrounded by soldiers, gathered outside the residence of Mr. S. M. The assembled group threw stones at the home, breaking several windows. The home of an elderly woman, Ms. A. E., was also damaged. Unidentified individuals also painted “Death to traitors” and other threats on the front of the residence. The police and military officers present did not intervene.

97. Prior to departing from the scene, organizers of the meeting threatened to kill anyone who participated in any meeting concerning the “Amazigh issue.” They also announced that punitive measures would be conducted in the coming days against Amazigh activists, especially in the localities of Zuwara, Jadu, Cabao and Ubari. To date these death threats have not been implemented. Following the attack on his home, Mr. S. M. filed a complaint with the Yfren Court. As yet, no response has been received.

98. The Special Rapporteurs expressed concern regarding the physical and psychological integrity of Mr. S. M., Mr. M. H., Ms. A. S., Mr. F. B. and Mr. M. A. Further concern was expressed that the harassment of, and attacks on, the above-mentioned persons may be related to their activities defending human rights, in particular the rights of the Amazigh people.

**(b) Observations by the Special Rapporteur**

99. The Special Rapporteur regrets that he has so far not received a reply from the Government of the Libyan Arab Jamahiriya concerning the above mentioned allegations.

**I. Mexico**

**Comunicación enviada el 15 de octubre de 2009 junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre los derechos humanos de los migrantes**

**(a) Alegaciones transmitidas al Gobierno**

100. Los titulares de mandato de los Procedimientos Especiales señalaron a la atención del Gobierno de México información recibida en relación con los presuntos atentados contra el derecho a la vida y la seguridad personal de los migrantes que residen en la Casa del Migrante de Belén, cerca de Saltillo en el Estado de Coahuila y el hostigamiento contra miembros del personal de dicha institución.

101. De conformidad con la información recibida, el 30 de septiembre del presente año, un joven de origen hondureño, de nombre Reyes Gustavo Ardón Alfaro, presuntamente asesinó a acuchilladas a Perla Judith Quintero Caballero, mujer saltillense de veintiséis años de edad e hirió de gravedad a Leslie Flores, quien era la empleada doméstica de la hoy occisa. El joven hondureño aparentemente se desempeñaba como pintor del negocio, propiedad de Perla Judith. Ha sido reportado que a partir de la ocurrencia de dicho caso, las personas migrantes han sido sujetos de actitudes xenofóbicas y discriminatorias y que el equipo de trabajo de la casa del migrante de Belén ha sido sujeto de hostigamiento por parte de algunos sectores de la sociedad civil y de los medios de comunicación. Así mismo, han sido reportados los siguientes presuntos acontecimientos: los días 2, 3 y 4 de octubre, algunos de los migrantes que habitan en la casa mencionada habrían sido objeto de agresiones verbales; el domingo 4 de octubre por la noche, presuntamente un migrante de origen hondureño habría sido golpeado en la estación del tren por dos individuos, quienes le dirían que se merecía dichos golpes por ser hondureño y porque un hondureño había asesinado a una mexicana; el 11 de octubre un grupo de entre 10 y 12 personas se habría acercado por la noche a la Casa del Migrante y habría roto y tirado al suelo el medidor de luz, interrumpiendo con ello el abastecimiento de energía eléctrica del lugar.

102. También se informa que a partir del 6 de octubre la población migrante que se alberga en la Casa del Migrante de Belén, habría disminuido por miedo represalias por parte de algunos grupos de la población de Saltillo.

103. Finalmente, según la información recibida, el 6 de octubre, el Congreso de Coahuila habría emitido un punto de acuerdo mediante el cual se solicita al Congreso de la Unión,

"para que se realicen las propuestas de modificación a la Ley General de Población con la finalidad de regular en forma clara la situación de las llamadas casas del migrante, sin perjudicar los derechos humanos de los extranjeros que de un modo u otro transitan o radican en [México]." El Relator Especial sobre los derechos humanos de los migrantes lamenta que la respuesta del gobierno incluya una acción legislativa (la modificación de la Ley General de Población) que esta fuera de la competencia del Poder Ejecutivo, el cual si tiene competencia para actuar directamente sobre las medidas de protección de los derechos humanos a los que se refiere este llamado de urgencia.

104. Aunque la solicitud realizada al Congreso en dicho instrumento jurídico es de carácter general, se ha llamado nuestra atención sobre algunos de los elementos contenidos en la exposición de motivos del punto de acuerdo, en los que se difundirían elementos de intolerancia contra las casas de migrantes y los migrantes irregulares.

**(b) Observaciones del Relator Especial**

105. El Relator Especial lamenta que al momento de finalizar este informe, el Gobierno de México no ha transmitido ninguna respuesta a esta comunicación.

**J. Russian Federation**

**Communication sent on 29 January 2008 jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and the Representative of the Secretary-General on the human rights of internally displaced persons**

**(a) Allegations transmitted to the Government**

106. The Special Procedures mandate holders brought to the attention of the Government of the Russian Federation information they received concerning allegations that 147 Chechen families who have been displaced to Ingushetia and Dagestan returned to the Chechen capital of Grozny. They reportedly had not yet found a durable solution and were at risk of being forcefully evicted from their accommodation. A summary of this communication is already reproduced in A/HRC/11/36/Add.1, paragraph 64.

**(b) Response from the Government dated 31 December 2008**

107. On 31 December 2008, the Government of the Russian Federation replied to the communication dated 29 January 2008. In its response, the Government indicated that the Federal Migration Service, together with the Government of the Chechen Republic in the Russian Federation, has done extensive work to implement Presidential Instruction No. Pr-1277 of 11 July 2001 on the creation of conditions for the return to their former places of residence of Russian citizens who were forced to leave the Chechen Republic during the settlement of the crisis (hereinafter referred to as "displaced persons"). Their combined efforts have made it possible to close all tent cities in the Republic of Ingushetia and in the Russian Federation and to facilitate the return of over 209,000 persons to their former places of residence.

108. The measures to return internally displaced persons to the Chechen Republic have been implemented on a strictly voluntary basis. Efforts have focused chiefly on providing economic incentives, social assistance and housing for returnees. To this end, an effective system of State support has been established. Returning inhabitants of the Chechen Republic receive assistance for travel and the transport of their baggage. In order to settle them in the Republic, the federal budget was used to finance the refurbishment of 32 dormitories, which serve as temporary housing. All dormitories are supplied with

electricity, gas, drinking water and heating. In accordance with Decision No. 404 of 4 July 2003 of the Government of the Russian Federation, compensation is paid for lost housing and property (monetary compensation in the amount of 4,028,000,255 roubles has been paid out to 37,935 families). Under Order No. 181-r of 21 April 2006, and Order No. 387-r, of 17 October 2007 of the Government of the Chechen Republic, that Government took over responsibility for supporting returnees and for providing them with housing. There is a special federal programme entitled “Restoration of the Economy and the Social Sphere in the Chechen Republic”. According to the Government of the Chechen Republic, under this programme, and in accordance with Decision No. 404 of 4 July 2003 of the Government of the Russian Federation, work is in progress to resettle persons living in dormitories by assigning them alternative permanent housing and parcels of land, and by paying them compensation for their lost housing and property. As at 5 December 2008, 236 families (1,184 people) had been assigned housing, 579 families had received compensation for lost housing and property, 290 families (1,840 people) had been returned to refurbished housing and 195 families (999 people) were living in dormitories. Forced evictions where no other decent housing is provided are prohibited.

109. As for the internally displaced people living in the dormitory at 4 Vyborgskaya Street in Grozny, according to the information currently available, as at 16 December 2008 there were 678 people (141 families) living there. They were formerly permanent residents of various villages in the Chechen Republic. However, they are now insisting on being housed in the city of Grozny itself, even while the Chechen authorities are working to make it possible for them to return to their previous places of residence. That is the crux of the dispute. Nevertheless, there is no question of any forced eviction of the persons living in that dormitory. They are continuing to live there until they receive alternative housing, in accordance with the legislation in force.

**(c) Observations by the Special Rapporteur**

110. The Special Rapporteur is grateful that the Government of the Russian Federation replied in a detailed manner to the communication of 29 January 2008. In particular, he would like to refer to article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, which prescribes that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights [...] the right to housing”.

**K. Serbia**

**Communication sent on 6 May 2009 jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and the Independent Expert on minority issues**

**(a) Allegations transmitted to the Government**

111. The Special Procedures mandate holders brought to the attention of the Government information they received regarding alleged forced evictions in Belgrade. Accordingly, on 3 April 2009, a community of about 47 Roma families living in informal homes in Yuri Gagarin Street-New Belgrade and identified as “Roma settlement in block 67” were forcibly evicted, allegedly with the intention to transform the site in view of the World University Games which will take place in Belgrade in July 2009.

112. On 2 April 2009, the community was reportedly notified of a decision taken by the Communal Inspector of the City Administration and told that they had one hour to remove



all their belongings and their shelters from the location. The decision provided a deadline of 15 days to appeal but it also specified that even if an appeal would have been introduced this would not have postponed the execution of the decision. Reportedly, on 3 April 2009 the police carried out the eviction, demolishing the informal homes of the inhabitants of the settlement and destroying much of their personal belongings.

113. Many of the evictees were children, women and former residents of Kosovo and reportedly no adequate housing alternative was offered to them. The affected families were told that they could find accommodation in containers in the Boljevcı settlement-Municipality of Surcin, but allegedly residents in Boljevcı made it impossible for the evictees to access the containers, forming a cordon around the settlement, smashing some containers as well as setting one container on fire. Following these events, women, children and elderly were reportedly offered shelter accommodation in social care institutions, but families refused this offer to avoid being separated.

114. While the fate of the majority of the evictees was unknown, it was alleged that many of them remained homeless and that only 5 families were sheltered in a social care institution. It was also reported that the mayor of Belgrade on various occasions affirmed that authorities would provide shelter only for Roma families which have a legal residence status in Belgrade. Particular concerns were raised concerning these pronouncements since thousand of Roma people have no residence status in Belgrade. Some of them have residence in other Serbian municipalities, some are former residents from Kosovo and some have no personal documentation. In addition, individuals of Roma origin reportedly face administrative obstacles to register officially, which also contribute to reinforcing their undocumented status.

115. Furthermore, concerns were raised over alleged racist and anti-Roma comments made by public officials. On 22 April 2009 and following a demonstration organized by dozen of the evictees from Yuri Gagarin Street, the mayor of Belgrade reportedly said that there would be no negotiation on alternative housing for the evictees. At that occasion he also reportedly requested the police to remove the demonstrators from the road they were blocking adding that “two million of people living in Belgrade cannot be held hostages of 15 or 150 people”.

**(b) Observations by the Special Rapporteur**

116. The Special Rapporteur regrets that at the time of the finalization of this report, the Government of Serbia had not transmitted any reply to this communication.

**L. South Africa**

**Communication sent on 10 December 2009 jointly with the Special Rapporteur on the human rights of migrants**

**(a) Allegations transmitted to the Government**

117. The Special Rapporteurs brought to the attention of the Government of South Africa information they received concerning xenophobic violence targeting 3000 foreign migrant workers in de Doorns, Western Cape province. According to the allegations received, on 17 November 2009, a mob attacked and demolished the shacks in an informal settlement of foreign workers, mainly Zimbabweans, in the town of De Doorns. The foreign workers were also prevented from going to work.

118. Reportedly, violence erupted following allegations that foreign migrant workers were willing to work for less than the minimum wage (R60) and without any legal contracts. They were therefore accused of stealing jobs from local residents.

119. The situation would have been allegedly tense since 13 November 2009, following a violent quarrel involving Zimbabweans in a local tavern. After that incident, some 68 Zimbabweans would have fled the area, fearing a resurgence of xenophobic violence, similar to the one which occurred in May 2008.

120. The South African authorities reacted promptly by helping to set up an internally displaced persons camp site at the De Doorns Sports Grounds. On 20, 21 and 23 November 2009, they also arrested 24 individuals involved in the xenophobic attacks on 17 November. These 24 individuals appeared in court on 23 November on charges of public violence and a hearing was postponed until 30 November for further investigations to take place. One of the 24 individuals, a minor, was subsequently released. Additional charges, including theft and damage to property, are being investigated in respect of the 23 remaining detainees. Following the 30 November 2009 court hearing, 12 of the 23 suspects were released for lack of evidence. The 11 remaining individuals should have appeared in court on Friday 4 December for another hearing.

121. The Special Rapporteurs acknowledged and appreciated that in the present case security forces appear to have taken prompt action to disperse the mob and that the authorities also reacted promptly by arresting individuals involved in these xenophobic attacks.

**(b) Response from the Government dated 3 May 2010**

122. On 3 May 2010, the Government of South Africa replied to the communication dated 10 December 2009. In its response, the Government provided information made available following consultations with the Department of Home Affairs, Cooperative Governance and Traditional Affairs, and the Breede Valley Municipality.

123. The Government indicated that after consultation with relevant stakeholders, it appears that simmering social tension between citizens of Zimbabwe and the local community gave rise to the outbreak of violence. It further seems that the preference of local farmers to rather employ the migrants for cheaper wages caused the local community to attack Zimbabwean nationals living in the area.

124. In order to discuss the situation, a meeting was held between stakeholders, including local government and municipal departments, employer associations, local community representatives and representatives of the Zimbabwean community. From the consultations, it became clear that a great number of the affected Zimbabwean citizens have applied for asylum. According to the provisions of the South African Refugees Act and the Constitution, they are entitled to engage in income generating activities in order to sustain their livelihoods. They were employed by the farmers.

125. The Department of Home Affairs facilitated the documentation process whereby people who lost their documents during flight and those who were still undocumented at the time of the attacks were provided with new documents. There were 717 Zimbabweans in possession of asylum permits. There were also 250 people who were undocumented, and 150 people who had lost their permits. The people who were undocumented and who also lost their permits were assisted by the Maitland Refugee Reception Office in Cape Town. The local authorities, in conjunction with the UNHCR, also provided temporary shelter for the migrant community, as well as protection services by the South African Police Service. Local authorities and NGOs also provided clothing and food.

126. After the attacks, 25 people were arrested on charges of public violence for the incidents of 17 November. Of those arrested, 12 people were released due to lack of evidence and 13 people were released on bail and appeared in court on 20 January 2010. Posters denouncing xenophobia were circulated in the neighbouring areas of Worcester and De Doorns as part of information dissemination just after the November 2009 attacks.

127. Concerning its international obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Government of South Africa indicated that it complies with article 4 of the ICERD which requires that measures be instituted for the punishment of offences that instigate hatred or propagate ideas based on racial superiority. The ICERD requirements are entrenched in Chapter 2, Section 16 of the South African Constitution. Furthermore, the Government has introduced the Prohibition of Hate Speech Bill which criminalizes hate speech, in order to give effect to the ICERD and to the Constitution. The Prohibition of Hate Speech Bill imposes penalties to anyone who publicly advocates hatred against any person or group of persons. It is deemed an offence to instigate hatred on the basis of race, ethnicity, gender or religion that is hurtful, harmful, intimidating or that incites imminent violence or seriously violates human rights.

128. The Government also indicated that it complies with article 7 of the ICERD which requires that measures to combat prejudices and to promote understanding and tolerance be put in place. This provision is entrenched in the preamble of the Immigration Act which provides for anti-xenophobia programmes; a human rights culture of immigration enforcement; compliance with Government's international obligations; and human rights education for civil society. In this regard, the Department of Home Affairs conducts public education and training for schools, communities and immigration officers. The education programme covers human rights, refugee protection and immigration issues.

129. In line with article 6 of ICERD, the Department of Home Affairs, in collaboration with other government departments, participated in consultative meetings and mediation with civil society organizations, Zimbabweans, farmers associations and political leadership. The purpose of these consultations was to assess the situation and identify possible solutions for the re-integration of the displaced Zimbabweans. Discussions are ongoing. In the specific case of De Doorns, three committees have been established to give feedback on a daily basis at the stakeholders meetings, which include a Camp Management Committee, a Reintegration Committee and Humanitarian Committee.

130. The Breede Valley Officials have also undertaken to investigate the issue of landownership by foreigners in De Doorns as from 7 January 2010. They have undertaken to ensure that residents living in flood prone areas will be relocated to safer sites and will receive basic services. The Breede Valley Municipality will conduct regular meetings with affected stakeholders as well as with the community to address developmental issues and the reintegration process.

131. Finally, the Government indicated that the Parliamentary Portfolio Committee on Labour and the Department of Labour also probed into the allegations of below minimum wages that farmers reported to have paid to the Zimbabwean nationals. The result of the investigations and recommendations from such investigations are dealt with by these relevant institutions.

**(c) Observations by the Special Rapporteur**

132. The Special Rapporteur is grateful that the Government of South Africa replied in detailed manner to the communication of 10 December 2009. The Special Rapporteur would like to refer to the Durban Declaration and Programme of Action (DDPA), which recognizes that migrants frequently find themselves in a "situation of vulnerability, owing, inter alia, to their departure from their countries of origin and to the difficulties they encounter because of differences in language, customs and culture, as well as economic and social difficulties and obstacles to the return of migrants who are undocumented or in an irregular situation". As such, the DPPA reaffirms "the responsibility of States to protect the human rights of migrants under their jurisdiction and reaffirm the responsibility of States to safeguard and protect migrants against illegal or violent acts, in particular acts of racial

discrimination and crimes perpetrated with racist or xenophobic motivation by individuals or groups; and stress the need for their fair, just and equitable treatment in society and in the workplace”.

## **M. Syrian Arab Republic**

### **1. Communication sent on 2 February 2009 jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Chairperson-Rapporteur of the Working Group on arbitrary detention and the Independent Expert on minority issues**

#### **(a) Allegations transmitted to the Government**

133. The Special Procedures mandate holders brought to the attention of the Government of the Syrian Arab Republic information they received regarding Mr. M. J., Mr. D. G., Mr. M. S. H. A. O., Mr. S. M. S., and Mr. S. S. U., Syrian nationals of Kurdish origin.

134. According to information received, on 26 October 2008, Mr. M. S. H. A. O. and Mr. S. M. S., members of the leading committee of the Kurdish Azadi Party in Syria, were both arrested by military security services in Romelan and Raas al-Ein. On 31 October 2008, Mr. S. S. U., a Kurdish activist, was arrested by military security services in Amuda. On 6 January 2009, Mr. M. J., deputy chairperson of the Syrian Kurdish Azadi Party in Syria, was arrested by Syrian security forces after a trial in Aleppo. He was summoned to appear before the military secret service. According to information received, he was transferred to Damascus on 10 January 2009, and is currently held by the military secret service in the Fir'a Vilistin near Damascus. On 13 January 2009, Mr. D. G., who established the Committee for Learning the Kurdish language and has been a member of the Kurdish PEN Centre for many years, was taken from his home in Qamishli, by the Syrian security forces. The latter allegedly raided his home again on 15 January 2009 and confiscated books, writings and transcripts.

135. The Special Procedures mandate holders expressed concern that Mr. M. J., Mr. D. G., Mr. M. S. H. A. O., Mr. S. M. S., and Mr. S. S. U. have been arrested and detained solely because of their political and cultural engagement as Kurdish activists.

#### **(b) Response from the Government dated 18 August 2009**

136. On 18 August 2009, the Government of the Syrian Arab Republic replied to the communication dated 2 February 2009. In its response, the Government indicated that the individuals referred to in the communication above are Syrian nationals who enjoy the full rights of citizenship accorded by Syrian law — which is entirely in conformity with all international treaties and instruments — in addition to the protection of the Syrian Constitution.

137. Mr. D. G. was arrested by the authorities on 13 January 2009 for engaging in unlawful secret activities and for promoting racial discrimination among the Syrian populace. He was released as there was insufficient evidence to prosecute him.

138. Mr. S. S. U. was arrested on 21 October 2008 for belonging to a secret organization that actively promotes racial discrimination, instigates sectarian strife among Syrian citizens and undermines national unity. A number of the organization's publications, which showed that he was actively involved in undermining Syrian national unity, were seized at the time of his arrest. He was then referred to the Hasakah province military court, where the Office of the Military Prosecutor initiated prosecution proceedings. He was tried and found guilty as charged and, on 7 June 2009, he was sentenced to six months' imprisonment under articles 327 and 328 of the Criminal Code, for belonging to a secret

organization, and to six months imprisonment under article 307 of the Criminal Code for instigating sectarian strife. The two sentences were combined to run concurrently and mitigating circumstances were taken into account. Hence, his sentence was reduced to six months imprisonment and a fine of 500 Syrian pounds.

139. Mr. S. M. S. and Mr. M. S. H. A. O. were arrested on 26 October 2008 and Mr. M. J. was arrested on 10 January 2009. All three are leaders of a secret organization that is banned in the Syrian Arab Republic and that aims to divide the State by encouraging acts of terrorism designed to undermine national unity, including through the distribution of publications that fabricate lies intended to create discord among citizens.

140. The accused were presented to the Office of the Public Prosecutor in Damascus, where a public prosecution case was initiated against them. The investigating judge in Damascus accused them of heading a political association and disseminating unauthorized printed materials with the intention of inciting unrest, weakening national sentiment, undermining national unity and altering the nature of the State, which acts are offences under the Criminal Code. The investigating judge in Damascus issued his decision No. 162 on 23 February 2009, charging the accused with making propaganda for the purpose of weakening national sentiment, stirring up racial strife, inciting unrest and civil war and altering the nature of the State and basic conditions in society by means of terrorism. Such acts are offences under the Criminal Code. The accused were to be tried by the Damascus Criminal Court for the major offence of undermining national unity together with the serious offences with which the investigating judge had decided to charge them. The accused lodged an appeal against the decision of the indictment division with the Syrian Court of Cassation, which reviewed the case and the legality of the procedures followed and issued its decision No. 1126 of 18 May 2009, dismissing the appeal on the merits and upholding the decision of the indictment division. The case file was then forwarded to the Damascus Criminal Court to try the accused for the offences listed in the bill of indictment.

141. The legal grounds for the arrest of the defendants and for their referral to the relevant courts consist of their engagement in unlawful activities through their membership of secret organizations that aim to undermine national unity by creating division and discrimination between Syrian citizens and by making propaganda that favours the dismemberment of the Syrian State by all means, including through the incitement of unrest and civil war. These are offences under Syrian law and the defendants must be prosecuted for them in the competent courts. These offences are not related to political and cultural activities, which the Syrian Constitution and legislation defends and protects in order to ensure freedom of opinion in accordance with international standards, including those set out in the ICCPR, the UDHR and the ICERD. The fact that Mr. D. G. was not brought to trial due to lack of evidence and that he was released is evidence of the existence of these standards in Syrian legislation.

**(c) Observations by the Special Rapporteur**

142. The Special Rapporteur is grateful that the Government of the Syrian Arab Republic replied to the communication of 2 February 2009.

143. While the Special Rapporteur acknowledges that unlawful activities should be prohibited and sanctioned, he would like to recall that this should be done in strict accordance with international human rights law. In particular, the sanctions should therefore be proportionate to the aim sought to be achieved and should not be applied in a discriminatory manner against a specific group of persons on the basis of race, colour, descent, national or ethnic origin.

144. In addition, the Special Rapporteur would like to refer to article 27 of the International Covenant on Civil and Political Rights - to which the Syrian Arab Republic is a State Party.

In accordance with this article, “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”.

**2. Communication sent on 10 November 2009 jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

**(a) Allegations transmitted to the Government**

145. The Special Rapporteurs brought to the attention of the Government of the Syrian Arab Republic information they received regarding Mr. M. S. H. A. O., Syrian national of Kurdish origin. Mr. M. S. H. A. O. has already been the subject of a joint urgent appeal addressed to the Syrian Arab Republic by the Chairperson-Rapporteur of the Working Group on arbitrary detention; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Independent Expert on minority issues; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, on 2 February 2009. The Chairperson-Rapporteur of the Working Group on arbitrary detention drew the attention of the Government to the case of Mr. M. S. H. A. O. pursuant to its regular procedure leading to the adoption of an Opinion in a separate communication dated 16 March 2009. While the Special Procedures mandate holders would like to thank the Government for its response dated 18 August 2009 to the aforementioned joint urgent appeal and for a further communication from the Government dated 17 March 2009, in which it, inter alia, expressed its surprise to receive an additional letter concerning the same case from the Chairperson-Rapporteur of the Working Group on arbitrary detention, the Special Rapporteurs explained that they would like to seek clarification in view of new allegations received.

146. According to the new allegations received, in September 2009, Mr. M. S. H. A. O.'s family was evicted from its home in Rameilan. This house had been provided by the State-owned Syrian Petroleum Company, where Mr. M. S. H. A. O. was employed. Following his arrest Mr. M. S. H. A. O. was suspended from employment without pay and stripped of all benefits, including his pension rights. It is reported that these measures have been imposed upon him and his family because of his political activities and in connection with the charges laid against him. However, according to Syrian laws, any such decision requires judicial authorization, which has not been issued.

147. Earlier, on 24 April 2009, Mr. M. S. H. A. O. suffered a stroke at Adra prison, Damascus, and was treated three hours later at the Ibn al-Nafees military hospital. On 6 May 2009, he was returned to Adra prison, where he is currently detained in a cell of 40-50 sqm that he has to share with 20 co-inmates. The medication he requires for continuous treatment has to be provided by his family, who is allowed to visit him once a week. There are concerns that Mr. M. S. H. A. O. is not receiving all necessary treatment for stroke victims including physiotherapy. The final verdict in the criminal trial against Mr. M. S. H. A. O. was expected for 15 November 2009.

148. The Special Rapporteurs expressed concern that the eviction of Mr. M. S. H. A. O.'s family from its house, as well as the lack of adequate health treatment provided to Mr. M. S. H. A. O. are due to the political and cultural activities in favour of Kurdish people undertaken by Mr. M. S. H. A. O. before he was arrested.

**(b) Observations by the Special Rapporteur**

149. The Special Rapporteur regrets that at the time of the finalization of this report, the Government of the Syrian Arab Republic had not transmitted any reply to this communication.

**N. Thailand****1. Communication sent on 11 November 2009 jointly with the Special Rapporteur on the human rights of migrants****(a) Allegations transmitted to the Government**

150. The Special Rapporteurs brought to the attention of the Government of Thailand information they received concerning the alleged exploitation of and systematic discrimination against migrant workers from Myanmar in Thailand, particularly with respect to: (1) the effects of the nationality verification process on migrant workers from Myanmar and; (2) the rights of migrant workers from Myanmar who are injured as a result of workplace accidents.

151. According to the information received and with regard to the nationality verification scheme: On 21 June 2003, the Governments of Thailand and of Myanmar reportedly entered into a *Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers*, establishing a nationality verification scheme for irregular migrant workers from Myanmar in Thailand. While these efforts to regularize migrant workers are a welcome step, the scheme has reportedly caused significant confusion in migrant communities. After the initial verification process began, which reports suggest was in mid-2009, many migrant workers have expressed confusion about the complexities of the registration process and the rights to which they would be entitled once their nationality had been verified.

152. The nationality verification scheme reportedly requires all registered migrant workers from Myanmar in Thailand to have their nationality verified by means of a complex 13-stage process involving Thai employment offices, the Embassy of Myanmar in Thailand, the Ministries of Foreign Affairs in Myanmar and Thailand, and National Verification and Processing Centres in three border crossings in both Myanmar (Kawthaung, Myawaddy and Tachileik) and Thailand (Ranong, Mae Sot and Mae Sai). In late 2008, the Government of Thailand reportedly announced that no irregular migrants would remain in Thailand after 28 February 2010, as all must complete nationality verification before this date or face deportation. The Government of Thailand then offered a final 30-day registration period in July 2009 to allow all unregistered migrants to register and complete the nationality verification process. As of early October 2009, the Special Rapporteurs were informed that around 2,000 of approximately 1 million registered migrants from Myanmar eligible for nationality verification have completed this process.

153. Despite the gravity of consequences of failing to complete the nationality verification process, it is alleged that the Government of Thailand has not provided migrant communities from Myanmar with sufficient information about the process, especially in their native languages. In addition, the perspective of the migrant communities appears to be that the deadline set by the Government of Thailand for the completion of the verification process is tight and unrealistic. Furthermore, it has been reported that certain ethnic groups, especially Shan and Mon, are increasingly fearful of providing personal information as part of the process, as they fear that their families will face harassment once

this personal information reaches the Myanmar's authorities and that Myanmar's authorities might be using the process to arrest political activists.

154. Further, taking advantage of the lack of public information and clarity on the nationality verification processes, private brokers have allegedly charged migrant workers exorbitant fees for assistance in the paperwork. It has been reported that some migrants were charged more than 7,000 baht (US\$ 250), which many cannot afford. In addition, it is not clear to migrants as to what these fees cover and whether they need to apply for new work permits at additional costs when they return to Thailand with their temporary passports and visas. There are also reports that in some cases, brokers disappeared without providing services, and there have even been allegations that the nationality verification process may contribute to increasing trafficking in persons. For example, the Special Rapporteurs received information that migrants going through the nationality verification process at the Mae Sai/Tachilek border crossing are charged exorbitantly high fees with no legal basis.

155. The Special Rapporteurs expressed concern that migrants are not well-informed about what rights they will be entitled to after completing the nationality verification process. In particular, it is unclear whether migrants would be afforded the rights to access health care services, social security or work accident compensation schemes.

156. With regard to the exploitation and systematic discrimination against migrant workers from Myanmar: According to information received, migrant workers in Thailand are often exploited by their employers and deprived of access to mechanisms for the protection of labour rights, given their "illegal" status. In particular, the Special Rapporteurs received information which raises particular concerns about the rights of migrant workers who are injured or disabled as a result of workplace accidents. Migrant workers from Myanmar are reportedly denied access to the Social Security Office ("SSO") Workmen's Compensation Fund ("WCF") in the event of workplace accidents, although the WCF should be available to all workers in the case of work-related accidents and disease.

157. The refusal to allow migrant workers from Myanmar access to the WCF apparently results from their inability to satisfy conditions stipulated in circular RS0711/W751, issued by the SSO on 25 October 2001. These conditions provide that to obtain compensation directly from the WCF, migrants: (a) must possess a passport or alien registration documents; and (b) their employers must have registered for and paid a dividend into the WCF. According to the information received, many migrants from Myanmar cannot satisfy these conditions, as they originally entered Thailand without documentation, or at best only possess one-year work permits, which are not accepted in lieu of passports or alien registration documents. The circular provides that if workers concerned cannot satisfy these conditions, their employers are responsible to compensate them directly. It has also been reported, however, that migrant workers from Myanmar rarely receive work accident compensation from their employers, as they are often not in the position to negotiate with them. Similarly, migrants often do not approach the SSO, due to the lack of knowledge about their rights. Even in few cases where the SSO orders employers to pay compensation to migrant workers, such orders are usually ignored and remain unenforced, as legal assistance necessary to enforce such orders is rarely accessible to migrant workers, because of language constraints and the lack of legal aid services.

158. In that regard, the Special Rapporteurs brought to the attention of the Government of Thailand the following individual cases.

159. Ms. N. N. M. S., a 37 year old migrant worker from Shan State, Myanmar, was injured while working for Nai Wirat Mangkhon, a subcontractor of Link Innofa Properties Co. Ltd. and Wo Hup Company (Thailand) Ltd., at the Shangri-la Hotel construction site in Chiangmai, Thailand. On 4 December 2006, a 300 kg mould fell from the 12th floor of the



building and a piece of the shattered mould struck Ms. N. N. M. S. who was working on the 2nd floor. As a result, Ms. N. N. M. S. suffered extensive injuries and was rendered permanently disabled by 70 percent. Her legs are paralyzed and she will never be able to walk again. On 27 April 2007, the SSO in Chiangmai ordered her employer to pay 6,206.20 baht for the time she was unable to work and for the period when she received medical treatment (from 4 December 2006 to 20 February 2007). On 20 July 2007, the SSO ordered again to her employer to compensate Ms. N. N. M. S. in the amount of 2,418 baht a month over 15 years, in addition to the medical treatment costs not exceeding 35,000 baht. Ms. N. N. M. S. appealed these orders to the WCF Appeals Committee on the basis that she is entitled to lump sum compensation from the WCF pursuant to the Workmen's Compensation Act 1994. On 10 November 2007, while Ms. N. N. M. S.'s employer agreed to pay lump sum compensation in the amount of 362,796 baht, they unfairly dismissed Ms. N. N. M. S. In addition, the SSO has reportedly refused Ms. N. N. M. S. rehabilitation assistance. On 24 November 2007, the appeal to the WCF Committee was rejected on the grounds that RS0711/W751 provides that only migrant workers entering Thailand legally could directly access the WCF. This decision was further appealed to the Region 5 Labour Court and then to the Supreme Court on 29 August 2008. The case is pending and yet to be assigned a hearing date.

160. Ms. N. N. M. S. has also been involved in several attempts, alongside other migrants, to challenge the SSO's policy in the administrative courts. It has been reported that on 27 November 2008, the Supreme Administrative Court of Thailand refused jurisdiction in her case on the basis that it was a labour case. Ms. N. N. M. S. and other migrants then proceeded to challenge the SSO circular in the Central Labour Court, which, on 25 May 2009, accepted jurisdiction over the case. The case, however, was then dismissed by the Region 5 Labour Court on 21 September 2009. The court refused to consider the legality of the SSO circular on the ground that the plaintiffs had no standing to petition the court. The case is now pending in the Supreme Court. It is noted that over a 2 year period, 4 different courts have reportedly refused to consider the validity of the SSO circular and/or to invalidate the circular on legal and jurisdictional grounds.

161. Mr. S. H., a 17 year old unregistered migrant worker from Shan State, Myanmar, worked for Nai Manas Promdaen on a local government flood defense project in Mae Rim district of Chiangmai Province, Thailand. On 20 June 2007, the riverbank collapsed on him and he died of brain injuries in a Chiangmai hospital on 24 June 2007. When Mr. S. H.'s relatives claimed compensation immediately after his death, the employer told them that unregistered workers had no right to accident compensation under Thai law. Sai Htun's family was assisted for several years to pressure the SSO in Chiangmai to issue an order in his case. Finally, on 9 June 2009, SSO Chiangmai issued an order against Nai Manas and the contractor of the flood defense project, whereby: (a) The person(s) who organized the funeral for Mr. S. H. was entitled to 100 times his daily salary prior to his death in compensation; and (b) dependents of Mr. S. H., in accordance with the definition in the law, were entitled to compensation for 8 years at 60 percent of his daily salary prior to his death. The order did not, however, state who the entitled persons were, despite the fact that the SSO apparently received an abundance of documents on the case, in Thai, Burmese and English. On 14 July 2009, dependents of Mr. S. H. appealed this SSO decision to the WCF Committee, arguing that the SSO should name those entitled to compensation based on the documents already provided, and that the WCF should pay compensation in one lump sum to Mr. S. H.'s dependents, and not his employer. The appeal is pending to date. On 3 September 2009, following extensive negotiations in Region 5 Labour Court on a separate damages claim by Sai Htun's family, it is reported that an agreement was endorsed by this Court whereby Sai Htun's employer and the contractor of the flood defense project agreed to pay his mother and father 210,000 baht of compensation, with the first payment due to be transferred electronically on 4 October 2009. The agreement was reached on the basis that

all SSO cases against the employer and the contractor as well as appeals were withdrawn. It is reported, however, that the employer or the contractor did not disburse the payments as scheduled on 4 October 2009. Mr. S. H.'s relatives claim that they still have to receive compensation for his death.

162. Mr. N. K. B., a 44 year-old migrant worker of Mon ethnicity from Myanmar, entered Thailand in 1998 with his wife. In April 2008, Mr. N. K. B. and his family began working at Roongsri Thanawat Co. Ltd, in Nakhon Pathom, which produced show soles, shoes, crepe rubber and foam boxes. He was paid 150 baht per day, which was below the minimum wage of 203 baht in this province. The conditions in the workplace were very dangerous and there was no personal protection equipment. On 9 June 2008, his right hand was cut off when he tried to place a 30 kg crepe rubber into a machine. On 30 July 2008, Mr. N. K. B. complained to the SSO in Nakhon Pathom and requested compensation for his injury. On 1 December 2008, the SSO issued compensation order No 3/2551 to his employer to pay medical expenses, 60 percent of Mr. N. K. B.'s salary during the period he was unable to work, and 3166.80 baht per month for the loss of an organ for 112 months in the total amount of 354,681.60 baht. On 25 December 2008, Mr. N. K. B. went to SSO to negotiate this order with his employer and his employer offered to make a single payment of 70,000 baht or pay compensation periodically for 112 months, as per the SSO's order. He refused this payment and instead appealed the order to the WCF Committee requesting a single one-off payment from the WCF. On 10 July 2009, the WCF Committee rejected Mr. N. K. B.'s appeal on the basis of the SSO Circular RS0711/W751, but ruled that he had the right to rehabilitation and ordered his employer to pay for rehabilitation. From 1 December 2008 to present, Mr. N. K. B.'s employer has paid him, as per the SSO order, 3,166.80 baht per month. However, he and his family live now in poverty and want to return home. Despite requests to the SSO, officials have allegedly refused to assist Mr. N. K. B. to receive his monthly payments back in Myanmar, insisting instead he travels himself, at the cost of 500 baht per trip, to pick up his compensation every month at the SSO office in Nakhon Pathom. Given the loss of his right hand, Mr. N. K. B. cannot work and the SSO has reportedly refused to allow him access to rehabilitation under the SSO schemes. At least three workers in the same factory as Mr. N. K. B. have had accidents and have been refused any compensation by their employer. Instead, they were dismissed by their employer and then deported back to Myanmar without compensation.

163. Mr. N. Y., a 39 year-old migrant worker from Myanmar, entered Thailand in 2001. In August 2008, he started to work for a shoe factory making soles for 300 baht per day in Mahachai, Samut Sakorn Province. On the second day at work, his left hand was cut by a rubber machine, as he tried to push the crepe rubber inside it. All of his fingers were amputated from his left hand. On 10 September 2008, Mr. N. Y. complained to SSO Samut Sakorn and requested compensation for his injury. SSO did not reportedly take any action, as they did not know the company or the name of the employer and said Mr. N. Y. had not provided appropriate medical evidence. Mr. N. Y. has not yet received any compensation and SSO Samut Sakorn has not issued an order in his case, despite having all the required medical evidence. SSO has reportedly not provided any rehabilitation assistance to Mr. N. Y.

164. Mr. N. J., a 35 year-old migrant worker from Myanmar, arrived in Thailand in 2001. On 23 February 2008, he started working for S.B.L. Industrial Co. Ltd and received 203 baht per day for placing iron in and out of a machine. On 3 August 2008, while he was taking the iron out, his fingers were cut off by the machine. His employer paid him 9,000 baht as compensation during the period in which he was unable to work. On 10 October 2008, Mr. N. J. complained to the SSO Samut Sakorn, but the SSO did not reportedly take action for a long time on the basis that officials did not know the company or the name of the employer and that Mr. N. J.'s name was spelt incorrectly on the hospital certificates. Mr. N. J. requested that his employer compensate him approximately 200,000 baht in

accordance with the law, but he has never received any compensation, except for the 9,000 baht. He is currently unemployed and has been arrested three times by the police since the accident due to his status as an undocumented migrant worker. On 29 September 2009, SSO Samut Sakorn issued an order in Mr. N. J.'s case, ruling that: (1) Mr. N. J. should receive compensation for the time he was unable to work of 3166.80 baht (60 percent of his pre-accident salary), not exceeding one year; and (2) Mr. N. J. should receive compensation for the loss of his fingers at 3166.80 baht for a period of 64 months, or in total 202,675.20 baht; and (c) Mr. N. J.'s employer must pay all medical expenses. It is alleged that Mr. N. J.'s employer continues to refuse to pay him any compensation and he is living in poverty. The SSO has reportedly never provided Mr. N. J. with any rehabilitation assistance.

165. Ms. N. S. W., a 23 year-old migrant worker from Myanmar, entered Thailand in 2003. In January 2008, she started to work at a factory in Samut Sakorn province for 175 baht per day, although the minimum wage in this province was 203 baht. Her job was to put plastic sacks into a grinding machine. On 8 January 2008, the forefinger and middle finger of her right hand were cut off by the grinding machine. Her employers, Don and Lee, agreed to pay her some money as compensation, but she claims she has not received it yet. Ms. N. S. W. complained to the SSO Samut Sakorn, but SSO did not reportedly respond to the complaint. When the SSO officials visited the employers, the factory had then been moved and it was no longer possible to trace them. When one of the employers, Lee, was located, he refused to acknowledge that Ms. N. S. W. was ever his employee. To date, Ms. N. S. W. has not received any compensation and the SSO has reportedly never provided her with any rehabilitation assistance.

**(b) Observations by the Special Rapporteur**

166. The Special Rapporteur regrets that he has so far not received a reply from the Government of Thailand concerning the above mentioned allegations.

167. On the situation of migrants, the Special Rapporteur would like to refer to the Durban Declaration and Programme of Action (DDPA), which recognizes that migrants frequently find themselves in a "situation of vulnerability, owing, inter alia, to their departure from their countries of origin and to the difficulties they encounter because of differences in language, customs and culture, as well as economic and social difficulties and obstacles to the return of migrants who are undocumented or in an irregular situation". As such, the Durban Programme of Action urges States to "take all possible measures to promote the full enjoyment by all migrants of all human rights, including those related to fair wages and equal remuneration for work of equal value without distinction of any kind, and to the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control, social security, including social insurance, access to education, health care, social services and respect for their cultural identity.

**2. Communication sent on 2 February 2010 jointly with the Special Rapporteur on the human rights of migrants**

**(a) Allegations transmitted to the Government**

168. The Special Rapporteurs referred to their communication of 10 November 2009 concerning the nationality verification process. In this context, they received further information that on 19 January 2010, the cabinet of the Government of Thailand approved a resolution for the extension of the nationality verification process and the temporary amnesty of permission to stay in the country by two years, for registered migrant workers who received work permits in 2009, in accordance with the cabinet resolutions of 18 December 2007 (382,541 persons), and in accordance with the Cabinet resolutions of 26

May 2009, 28 September 2009 and 3 November 2009 (a total of 928,149 person). The Special Rapporteurs welcomed the decision of the cabinet of the Government of Thailand to extend the nationality verification process until no later than 28 February 2012.

169. The Special Rapporteurs were informed that, following this announcement, the Deputy Director General of the Employment Office has stated that for migrants to benefit from the extension, they must now submit their nationality verification forms by 28 February 2010 and also renew their work permits by that time to be able to stay in the country. The Government will give permission for this group of workers to work temporarily in Thailand but only on the condition that every worker must enter into the Nationality Verification process and then return to the home country to complete the Nationality Verification process before 28 February 2012. If migrant workers do not submit national verification forms and renew work permits by 28 February 2010, they shall be considered illegal aliens for which the only option is arrest and deportation from the Kingdom of Thailand. The policy affects over one million migrant workers from Myanmar, together with 200,000 workers from Laos and Cambodia.

170. Furthermore, the Nationality Verification Process is not open to unregistered migrant workers (of which there is an estimated 1,000,000 people in Thailand) and children of migrant workers (estimated to be 100,000 people). Additionally, unregistered workers cannot register at this time; consequently, they cannot participate in the Nationality Verification Process. The concern is that as these individuals cannot register or go through the Nationality Verification Process, therefore, they may be deported after 28 February 2010, according to the 19 January 2010 resolution.

171. While officials from the Lao People's Democratic Republic and Cambodia will come to Thailand to assist their nationals, Myanmar's Government has reportedly refused to allow its officials to cross into Thailand. Instead, migrant workers from Myanmar must return to their country, and for many, such moves create anxiety amid fears of harassment and extortion by Myanmar officials.

**(b) Observations by the Special Rapporteur**

172. The Special Rapporteur regrets that he has so far not received a reply from the Government of Thailand concerning the above mentioned allegations.

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