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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the right to education, Vernor Muñoz

Addendum

Communications sent to and replies received from Governments*

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

Contents

I. Introduction

1. The present addendum to the report of the Special Rapporteur on the right to education contains, on a country-by-country basis, summaries of general and individual letters of allegations and urgent appeals transmitted to Governments between 16 March 2009 and 15 March 2010, as well as replies received between 1 May 2009 and 30 April 2010. Observations made by the Special Rapporteur have also been included where applicable. Letter of allegations and urgent appeals sent after 15 March 2010 as well as Government replies received after 30 April 2010 will be included in the Special Rapporteur's next communications report.

2. The Special Rapporteur receives information alleging violations of the right to education and related rights from national, regional and international non-governmental organizations, as well as intergovernmental organizations. The Special Rapporteur responds to information received and considered to be reliable on alleged violations of the right to education, by writing to the Government and others actors concerned, either together with other special procedure mandates or independently, inviting comment on the allegation, seeking clarification, reminding them of their obligations under international law in relation to the right to education and requesting information, where relevant, on steps being taken by the authorities to redress the situation in question. The Special Rapporteur urges all Governments and other actors to respond promptly to his communications and, in appropriate cases, to take all steps necessary to redress situations involving the violation of the right to education.

3. The Special Rapporteur recalls that in transmitting allegations and urgent appeals, he does not make any judgement concerning the merits of the cases, nor does he support the opinion of the persons on behalf of whom he intervenes. The Special Rapporteur draws attention to the fact that the issues reflected in this addendum are not representative of the wide range of issues encompassed by the right to education.

4. Owing to restrictions on the length of documents, the Special Rapporteur has reduced when necessary the details of communications sent and received. To the extent that his limited resources permit, the Special Rapporteur continues to follow up on communications sent and to monitor the situation where no reply has been received or where questions remain outstanding.

5. During the period under review, the Special Rapporteur transmitted 12 communications to the Governments of 12 countries: Bulgaria, China (People's Republic of), France, Honduras, India, Iran (Islamic Republic of), Italy, Paraguay, Slovakia, Sudan, Thailand and United States of America.

6. Eleven responses to these communications were received and one reply to a communication transmitted by the Special Rapporteur in the previous year. The Special Rapporteur regrets that some Governments failed to respond and thanks those which took the time and made the effort to provide replies, which are reflected in the present report.

II. Communications sent and replies from Governments

Bulgaria

Communication sent

7. On 10 June 2009, the Special Rapporteur sent a communication concerning children with moderate, severe or profound disabilities who are living in "Homes for Mentally

Disabled Children" (HMDC) and who allegedly were receiving no effective education on account of their disabilities.

8. According to the information received, Children living in "Homes for Mentally Disabled Children" (HMDC) were receiving no education on account of their disabilities. According to reports, a very limited number of the children living in HMDC had been enrolled in schools. Furthermore, it was alleged that mainstream schools are not adapted to accommodate the abilities and needs of children from HMDC. Also, it was reported that staff of HMDC provide no or wholly inadequate education for the resident children. It was further alleged that the current educational system in Bulgaria denied the right to education for these children and that this denial is discriminatory. Reports indicated that the problem cannot be seen as due to a lack of resources or as an early step in the progressive realization of rights but it reflected instead the discriminatory denial of the right to education, as the situation is a result of policy failures which could be addressed effectively by the Government.

9. The source mentioned a complaint presented before the European Committee of Social Rights ("the Committee") and declared admissible on 26 June 2007. The Committee issued its decision on the merits on 10 June 2008 (Mental Disability Advocacy Centre v. Bulgaria, Complaint 41/2007). The decision of the European Committee of Social Rights (the Committee), made public on 11 October 2008, found that the Bulgarian government deprived institutionalised children with mental disabilities of their right to education and this was due to disability discrimination. The Committee reportedly found that there was a violation of Article 17(2) (right to education) alone and in conjunction with Article E (non-discrimination) of the Revised European Social Charter because children with moderate, severe and profound intellectual disabilities residing in "Homes for Mentally Disabled Children" do not have an effective right to education and this is due to disability-based discrimination. Although it was recognized the Bulgarian government's efforts to respect the educational rights of children with disabilities living in institutions through adopting legislation and drafting action plans, the Committee highlighted deficient implementation of legislation and policies, and noted that there were inadequate standards for the right to education and equality of educational opportunities.

10. In its decision, the Committee of Social Rights also referred to the educational standards established by the United Nations Committee on Economic, Social and Cultural Rights, which considered that education must fulfill the criteria of availability, accessibility, acceptability and adaptability. In light of these criteria, the Committee found that the Bulgarian educational standards were inadequate because mainstream educational institutions and curricula were not accessible in practice: only 2.8% of children with intellectual disabilities residing in institutions were integrated in mainstream primary schools, whereas integration should be the norm. The Committee also reported that only 3.4% of the children attended special classes, and concluded that special education was not accessible to children living in HMDC. Furthermore, mainstream schools were not adapted to the needs of children with intellectual disabilities, teachers were not appropriately trained, and resources were not developed to cater to the educational needs of children with disabilities. Due to the absence of primary educational opportunities, children with disabilities were ineligible to enter secondary education

11. It was reported that in its decision, the Committee argued that the burden was on the Government to refute the allegations presented in the complaint. As the Government allegedly provided neither evidence nor justification for why children living in the HMDC were disproportionately denied their right to education, compared with children attending mainstream schools, it concluded that the disparity between the two groups was so great that it constituted discrimination against children with disabilities.

12. It was further reported that on 23 January 2009, a new regulation, Regulation № 1 for the Education of Children and Pupils with Special Educational Needs and/or Chronic Diseases, was adopted by the Minister of Education. According to the Regulation, children living in institutions for children with intellectual disabilities are only permitted to study in special schools, while those with profound disabilities are excluded from the education system altogether. It is alleged that these newly enacted provisions not only violate the Public Education Act which provides for mandatory and free education for all children up to the age of 16, but also depart from the decision of the European Committee of Social Rights.

13. It was finally alleged that the Regulation did not achieve its initial aim of adopting state educational requirements for the academic achievements of children with intellectual disabilities – a gap that could leave these children functionally illiterate. Also the Regulation establishes a clear division between children with sensory disabilities and children with intellectual disabilities: while legal provisions for the first group are enumerated with respect to the provision of a supportive environment, resources needed to ensure inclusive education, development of the talents of these children in school, and ensuring their vocational training in different fields, children with intellectual disabilities are excluded from those chapters. It was noted that the European Committee of Social Rights explicitly stated that Bulgarian schools are not suited to meet the needs of children with intellectual disabilities particularly because teaching materials are inadequate.

Communication received

14. By letter dated 14 December 2009, the Government informed that on 3 June 2008 the European Committee of Social Rights with the Council of Europe (ESCR) prepared a report containing a Decision on the Merits on Collective Complaint N°41, according to the Additional Protocol to the European Social Charter (ESC) of 1995 Providing for a System of Collective Complaints. The Decision points out that Bulgaria has violated Article 17§2 separately and in conjunction with Article E of the ESC because children with moderate, severe or profound intellectual disabilities residing in homes for mentally disabled children do not have an effective right to education, as well as that there is discrimination against children with moderate, severe or profound intellectual disabilities residing in such homes as a result of the low number of such children receiving any type of education when compared to other children.

15. According to Article 8§1 and §2 of the Protocol, the Committee of Independent Experts "shall draw up a report in which it shall describe the steps taken by it to examine the complaint and present its conclusions as to whether or not the Contracting Party concerned has ensured the satisfactory application of the provision of the Charter referred to in the a complaint. The report shall be transmitted the report containing its Decision to the Committee of Ministers. According to Article 9§1 of the Protocol, "…on the basis of the report of the Committee on Independent Experts, the Committee of Ministers shall adopt a resolution by a majority of those voting. If the Committee of Independent Experts finds that the Charter has not been applied in a satisfactory manner, the Committee of Ministers shall adopt, by a majority of two-thirds of those voting, a recommendation addressed to the Contacting Party concerned."

16. The Government notes that at this point of time, the matter figures on the agenda of the Committee of Ministers, but the said Committee has not adopted a recommendation or a resolution in connection with it. This means that, albeit formally, the procedure on the matter is not completed. Both the ESC and the Additional Protocol to it contain identical provisions stating that both treaties legal obligations of an international character, the application of which is submitted solely to the supervision provided for" by themselves. We therefore believe that it is inadmissible for another body, all the more so outside the system

of the Council of Europe, to exercise control over the application of the ESC, and moreover while a procedure is pending before a control authority under that international treaty which is vested with exclusive powers under it and which was expressly created for this purpose. Despite this argument, the Government informs of the steps and practical measures taken by the Government of the Republic of Bulgarian further to the Decision of European Committee of Social Rights on Collective Complaint N° 41/2007 of the Mental Disability Advocacy Center (Hungary) v. Bulgaria.

17. The Ministry of Labour and Social Policy, the Ministry of Education and the State Agency for Child Protection, in their capacity as institutions vested with competences on the 41 findings raided in the collective complaint, examined closely the Decision on the Merits of the European Committee of Social Rights. To this end, a special interagency working group was formed and it analyzed the assessment and the conclusions of the Committee, with a view to taking the actions necessary to address the statements contained in the above mentioned Decision.

18. The Government is making concerted efforts for the consistent and purposeful implementation of the policy intended to ensure appropriate conditions for the schooling of mentally retarded children, for development of their potential with a view to their further successful social inclusion and integration into society, regardless of whether they live in a family environment or are placed in a specialized child care institution.

19. The allegations of the complainant, as well as the assessment of the European Committee of Social Rights, are based mostly on the Annual Report of the State Agency for Child Protection for 2005. Which contains out-of-date statistics which are no longer relevant. In this connection, we would like to provide information on the development of the situation since the adoption of the ESCR Decision:

20. A new Ordinance N° 1 of 23 January 2009 on the Tuition of Children and Pupils with Special Educational Needs and/or Chronic Diseases was issued. The Ordinance regulates the conduct of a review and assessment, on the basis of documents, of children and pupils with special educational needs by an expressly formed expert commission at the Ministry of Education. This documents guarantees precision and objectivity upon the assessment and referral of children and pupils with special educational needs (including children residing in the relevant institutions) for attendance of special kindergartens and schools. The Ordinance also creates prerequisites for an improved co-ordination and co-operation among institutions and experts upon the assessment and referral of children which special educational needs to a particular type of tuition;

21. At present, 1,018 educational establishments (820 schools and 198 kindergartens) are attended by children and pupils with special educational needs, compared to 953 schools and kindergartens in 2008: an increase of 6.8 per cent;

22. The resource centres provide the specialists necessary to assist the mainstream schooling of children and pupils with special educational needs: 933 resource teachers, psychologists, speech therapists and hearing and speech remediation personnel, compared to 883 in 2008: an increase of 5.6 per cent; (by comparison, 717 children and pupils were receiving mainstream schooling in the 2004/2005 school year, and they were assisted by 129 resource teachers and other specialists; in 2005/2006 the children and pupils numbered 1,538 and the resource teachers 223; in 2006/2007 there were over 4,400 children and pupils and 635 resource teachers and specialists).

23. Accessible built environment has been constructed at 234 schools, kindergartens and auxiliary units countrywide. By comparison, such environment was available at 50 schools in 2008. The number of schools with accessible built environment has increased by 27.2 per cent;

24. The National Pedagogical Centre has delivered training to 519 educators for work with children with disabilities in a general educational environment, compared to 400 in 2008: the number of trained teachers increased by 29.8 per cent;

25. In 2006 the State Agency for Child Protection organized the process of definitive evaluation of the specialized child care institutions on the basis of expressly developed criteria for the reform, restructuring or closure of the child care homes. As a result, all 26 specialized care homes for children with disabilities have elaborated plans for reform, restructuring or closure;

26. Along with the upward tendency in the number of children from specialized institutions for children with disabilities who receive mainstream schooling, as part of the overall sustained deinstitutionalization of children, the total population of care homes for children with disabilities has been steadily diminishing. This population was 1,039 at 31 December 2008, 862 fewer than in 2001 or a decrease of 45.3 per cent. Compared to 2007, the number of children placed at specialized institutions for children with disabilities dropped by 76 or 6.8 per cent;

27. At 31 December 2008, of the children placed at the care homes for mentally retarded adolescents/care homes for mentally retarded children:

- 13 attended kindergarten outside the specialized institution;
- 204 children attended school outside the care home;
- 260 attended rehabilitation school;
- 51 children attended mainstream school in the settlement;
- 19 children attended mainstream school outside the settlement;
- 153 children attended day care centres for children with disabilities.

28. In addition to the information already provided, it should be noted that an interagency working group was formed at the end of 2008 to co-ordinate the drafting of a National Plan for Children with Disabilities, and the suggestions of the Bulgarian mothers of children with disabilities were taken into consideration. The purpose of this plan is not only to act on the recommendations for the European Committee of Social Rights, but also to continue the implementation of the Bulgarian Government's measures for improvement of the living conditions of children with disabilities and their families.

29. The Government does not contest that lingering challenges are encountered in ensuring school education to children with mental disabilities, but cannot possibly agree that the children with mental disabilities residing in child care homes for mentally retarded children do not have an effective right to education. We believe that the situation in this sphere has improved substantially during those three years (since the 2005 report of the State Agency for Child Protection).

30. As evident from the statistics cited, the Government is working consistently and purposefully on the policy intended to ensure appropriate conditions for the schooling of mentally retarded children, for development of their potential with a view to their further successful social inclusion and integration into society, regardless of whether they live in a family environment or are placed in a specialized child care institution.

31. The Government is resolved to achieve the objectives of the Charter by showing tangible progress within a feasible timeframe with financing maximizing the utilization of available resources.

32. Regarding the allocation of financial resources for the exercise of the right to education of children with disabilities, the Government informs that according to §68 (1) of

the Transitional and Final Provisions of the 2009 State Budget of the Republic of Bulgaria Act, the State budget resources for the activities of upbringing, preparation and tuition of children and pupils at the state and municipal schools, kindergartens and auxiliary units within the public education system are allocated per first-level spending unit on the basis of uniform expenditure standards per child and per pupil, approved by the Council of Ministers. These principles of allocation of financing for the secondary education system will continue to operate in the coming budget years as well. In 2009, the Council of Ministers determined the standards by its Decision N°29 of 23 January 2009 on the Separation of Activities Financed through the Municipal Budgets between Local Activities and State-Delegated Activities and on the Determination of Standards for Financing of State-Delegated in 2009. The general schools are allocated an equal amount of financial resources for all their pupils, including those with disabilities who are mainstreamed in these schools. Schools which mainstream children with special educational needs are allocated an extra 10 per cent of the resources fixed as a uniform expenditure standard per resource-assisted pupil.

33. For the creation of conditions for allocation of financing for the specific activities of assisting children with special educational needs mainstreamed in a general educational environment, Council of Ministers Decision N° 29 of 2009 determined a uniform expenditure standard per resource-assisted pupil. The financial resources allocated in this way are provided to 28 resource centers, which employ some 1,100 educational specialists (resource teachers, psychologists, speech therapists) who assist the successful integration of children with disabilities.

34. To achieve sustainability of the financing of children with special educational needs who are mainstreamed in a general educational environment, the Ministry of Education, Youth and Science plans to propose that in 2010 the uniform expenditure standards include a supplement for children and pupils with special educational needs who attend mainstream kindergartens, general and vocation schools. This supplement will provided in addition to the financial resources provided to kindergartens, general and vocational schools for children and pupils with disabilities. At the same time, the resource centres will also continue to be financed according to the standards.

35. Finally, the Government would like to emphasize that the right to education is a fundamental principle guaranteed by the Constitution of the Republic of Bulgaria (Article 53 (1)). Compulsory schooling up to the age of 16 has been introduced in accordance with this principle. The State encourages education by establishing and financing schools, assisting gifted pupils and students, and creating conditions for vocational training and preparation.

36. The policy of the Ministry of Education, Youth and Science targets ensuring appropriate conditions for the schooling of children and pupils with special educational needs, including mentally retarded children, for development of their potential with a view to their further successful social inclusion and integration into society, regardless of whether they live in a family environment or are placed in a specialized child care institution. At the same time, it is fair to note that part of the children residing in care homes for mentally retarded children to not receive adequate education. This situation, however, is not the result of discriminatory practices. It is due to an intricate complex of economic, social and other administrative existing reasons.

37. The Ministry of Education, Youth and Science consistently addressed the problems encountered by school education and pre-school upbringing and preparation in Bulgaria. It seeks to define and foreground the issues to which the public is particularly sensitive and whose solution is essential for school education in Bulgaria becoming modern, accessible and high-quality, including for mentally disabled children. Specific measures are developed on the basis of the identified problems, and deadlines are set for their implementation as

well as arrangements are made for the appropriate resource allocation and regulatory framework.

38. The effective Bulgarian legislation explicitly regulates the right of equal access to education and the obligation of kindergartens and of schools to enroll children and pupils with special educational needs, including children aged under 16 residing in homes for mentally disabled children. Special guarantees are also provided for the tuition and upbringing of children with disabilities (children with special educational needs), with chronic diseases, with deviant behaviour and of children deprived of parental care. The tendency is to mainstream most of the children with disabilities in the general schools which are attended by their peers.

39. Educational policy envisages, on the one hand, reducing the number of special schools and an increasing the number of mainstreamed children with special educational needs and, on the other, assigning new functions to those special schools which will continue to exist, focused on children with severe and multiple disabilities, and on supporting inclusive education with methods and competent specialists. The mainstreaming of children with special educational needs in the kindergartens and general schools requires a number of measures intended to create a supportive environment for their tuition, which includes accessible physical environment, a possibility to be tutored according to individual syllabi, provision of textbooks, study aids, technical devices and equipment, specialists qualified to work with children with disabilities in a mainstream environment etc. These are also the key areas of the measures which Bulgaria has taken for the purpose of mainstreaming children with special educational needs into a general educational environment.

40. Implementing the policy of comprehensive, accessible and high-quality education and training in the sphere of secondary education in respect of children and pupils with special educational needs, substantial results have been achieved, part of which were discussed above. In addition, we would like to emphasise the following:

41. Methodological Guidelines for the work of the 28 integrated educational assessment teams (one at each regional education inspectorate) were developed in 2007. The Guidelines regulate the methods for assessment of the educational needs of children and pupils and are addressed to the members of the integrated educational assessment teams, to the teams and all educators at kindergartens and schools at which mainstream tuition is provided, as well as to parents, who are a key partner to the teams in elaboration of the individual syllabi for children and pupils with special educational needs;

42. Textbooks by subjects, as well as Braille textbooks for visually impaired children, for children with special educational needs who are mainstreamed, as well as for the pupils in the special schools, are provided annually free of change;

43 Two electronic Braille printers have been purchased and provided to the two secondary schools for visually impaired children in Bulgaria: the Louis Braille School for Visually Impaired Children in the City of Sofia and the Dr Ivan Shishmanov School for Visually Impaired Children in the City of Varna. The availability of electronic Braille printers in the two schools makes it possible to print on a permanent basis textbooks, study aids, study aids, study materials and examination papers using Braille code, which are necessary for the tuition of visually challenged pupils both in the special and in the general and vocational schools;

44. The necessary conditions have been created for pupils with special educational needs to sit for state matriculation examinations: consultant teachers are available depending on the pupils' educational needs, and the duration of the examination has been increased by 120 minutes. In 2008 157 school-leavers with special educational needs sat for

state matriculation examinations, and in 2009, 130 school-leavers with special educational needs sat for the such examinations;

45. Twenty-four special schools: 13 schools for pupils with special educational needs and/or with chronic diseases (rehabilitation schools, speech-therapy schools, convalescence schools and hospital schools) and nine schools for pupils with deviant behaviour were closed down in the 2006-2007 school year. Thirteen special schools: four rehabilitation schools for (mentally retarded pupils), two schools for pupils with deviant behaviour (correctional boarding schools and social educational boarding schools), there convalescence schools and four convalescence vocational schools were closed down in the 2007/2008 school year. Most of the pupils who attended the closed down special schools for children with special educational needs have been referred to mainstream tuition in a general educational environment. There are currently 82 special schools. The care homes for children deprived of parental care have been decentralized as well: as from 1 January 2007, the care homes for children deprived of parental care were transformed into specialized institutions for provision of social services to children.

46. All children and pupils with special educational needs, including the mentally disabled children, are ensured equal access to education under the syllabi of the respective kindergartens and schools. The children and pupils who fail to attain the state educational requirements for learning content for a particular grade, stage and level of education, are tutored under individual syllabi geared to their needs and capacities. Regardless of their tutoring under individual syllabi, they can achieve professional training in a particular specialty, as well as obtain a document attesting to the attainment of a level of education like all other pupils when they achieve the relevant State educational requirements.

47. Children placed at care homes for mentally retarded children have the same opportunities for education as all other children-depending on the assessment of their educational needs made by the integrated educational assessment teams with the regional education inspectorates, part of them are mainstreamed in general schools, and another part are tutored in special schools. Tuition of children with severe and multiple disabilities is organized on site at the care homes for mentally disabled children by teachers from the special schools or by resource teachers. All children placed at care homes for mentally disabled children, who have been presented by the directors of such homes for assessment to the integrated educational assessment teams with the regional education inspectorates, of the children of compulsory school age placed at care homes for mentally disabled children, at present 75 children with disabilities attend general and vocational schools and 259 children with disabilities attend special schools. Forty-one specialists of the specialized child care institutions participate in the assessment of children and pupils with disabilities, conducted by the integrated educational assessment teams with the regional education inspectorates.

48. A comprehensive check of all rehabilitation schools in Bulgaria was conducted in 2006. The check was intended to evaluate the rehabilitation schools and to optimize their network, to examine the existing conditions for the removal of pupils from such schools and for their mainstreaming in general and vocational schools, to identify the opportunities for relocation of the existing personnel resources to reinforce mainstream tuition.

49. In connection with the creation of conditions and guarantees for integration of people with disabilities in the kindergartens, schools and auxiliary units within the public education system, as well as in the higher schools in Bulgaria, by Order N°. P 09-355 of 13 March 2007 the Minister of Education and Science designated the officials of the Ministry of Education and Science and the Regional Education Inspectorates who are competent to draw up written statements ascertaining administrative violations in the sphere of education under Article 53 (1) and (2) Article 54 (1) of the Integration of Persons with Disabilities Act.

50. The directors of all specialized child care institutions where are children of compulsory school age with various disabilities reside are directly responsible for providing information to the competent regional education inspectorates and for taking the necessary measures and creating conditions for the inclusion in tuition of children residing in such institutions. On the other hand, Chapter Seven "Administrative Penalty Provisions" of the Public Education Act regulated the written statements on violations drawn up by the municipal authorities in respect of all parents, curators and tutors who fail to ensure the attendance of their children at school for the time during which they are subject to compulsory schooling.

Observations

51. The Special Rapporteur thanks the Government for its extensive and informative reply.

China (People's Republic of)

Communication sent

52. On 16 December 2009, the Special Rapporteur sent a communication regarding the alleged deprivation of non-Chinese speaking children with special educational needs, in the Hong Kong Special Administrative Region, from their fundamental right to appropriate education.

53. According to information received, the Education Bureau of the Government of the Hong Kong Special Administrative Region (Hong Kong) considered children to have special educational needs (SEN) if they have learning difficulties or disabilities which prevent or hinder them from making use of educational facilities generally provided in schools for children of their age. It was assumed, in line with internationally accepted standards, that approximately six percent of the population had a special educational need. In 2006 there were 38'048 documented ethnic minority children, under the age of 15, in Hong Kong. It was therefore alleged that Hong Kong has around 2'282 potential SEN children of non-Chinese speaking backgrounds. However, it was reported that there are currently merely 22 placements for non-Chinese speaking SEN students in government schools, supplemented by 282 placements in English Schools Foundations (ESF-partially subsidised by the Government) and other private international schools.

54. This shortfall of 1973 places for non-Chinese speaking children with SEN in the educational system of Hong Kong was believed to be a result of such children being unable to attend mainstream public schools, in which Chinese is the only language of instruction. Despite English and Chinese being the two official languages of Hong Kong, most educational establishments are Chinese-medium schools. Moreover, it was alleged that there exists just one special school for non-Chinese speaking students. The remaining places for non-Chinese speaking students with SEN, at both the primary and secondary levels, were offered by the aforementioned ESF and private international schools.

55. This situation allegedly put appropriate education out of reach for most non-Chinese speaking children with SEN, as school fees at private international schools are too high for most families to afford. At the same time, information received indicated that a waiting list has been established for non-Chinese speaking students with SEN wanting a place at one of the ESF schools. The average waiting time for this list was allegedly between 24 and 36 months.

56. According to the sources, this situation indicated that non-Chinese speaking children with SEN are frequently denied their fundamental right to appropriate education on the basis of language. Such students, who would better be able to learn with English as the

language of instruction, were reportedly prevented from doing so by a lack of suitable educational places. Chinese-speaking students with SEN are generally believed to be able to learn to their full potential, thanks to an adequate number of places available in 60 special schools and special education classes offered in some of the 641 mainstream government schools.

Communication received

57. By letter dated 3 March 2010, the Government informed that it is the policy of the Hong Kong Special Administration Region (HKSAR) to facilitate the early integration of non-Chinese speaking (NCS) students into the local education system and the wider community. To this end, various support measures have been put in place to meet the needs of NSC students and NCS students with special educational needs (SEN). All legally eligible children, irrespective of ethnic origin and physical or intellectual ability, have the right to enjoy basic education in public-sector schools. Since 1978, Hong Kong has been providing nine years of free and universal basic education from primary to junior secondary levels in public-sector schools. Starting from the 2008/09 school year, free education is extended to include senior secondary education in public-sector secondary schools, including special schools (there are at present 60 special schools in HKSAR offering more than 8.000 school places) which operate senior secondary courses. There is no disparity of treatment between Chinese-speaking and NSC students in this regard.

58. The HKSAR's policy on Integrated Education (IE) is to provide equal opportunities and full participation for all the students. With parents' consent, children (including NSC children) with severe learning difficulties and multiple disabilities are referred to special schools where they can receive more intensive individualized support. Other children are enrolled in ordinary schools. The schools are obliged to cater for the diverse needs of their students and the Government provides additional resources and professional support to facilitate these schools to adopt the Whole School Approach to cater for students with SEN. In formulating the integration policy for NCS and SEN students, the Government of HKSAR is mindful of the compliance of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and local anti-discrimination legislation.

59. Chinese and English are the two official languages of the HKSAR. Students are taught both the Chinese language and the English language in all public-sector schools. NSC students, including those with SEN, are encouraged to study in public –sector schools adopting the Chinese or English as the teaching medium to facilitate their integration into the local community (please see paragraphs 8-9 below for details on admission). That said, studying under the local education system does not mean that the NCS students are forced to learn in Chinese at all costs. Although most schools use Chinese as the main medium of instruction, there are quite a number of public-sector schools adopting English as the teaching medium in all or some subjects which NCS students may get enrolled, if the NCS students concerned (some of whom may not have English as their mother tongue) could indeed learn better in English. In short, there are sufficient school places in public-sector schools to cater for all eligible children, including NCS children with SEN. We have pledge to help all eligible students, including NCS students with SEN, and provide them a place in a public-sector school so as to ensure that their right to education is suitably protected. There is question of NCS children with SEN being deprived of their right to basic education in HKSAR due their language backgrounds or disabilities.

60. Concerning the issue of identification and assessment, the Government informed that under the current mechanism, medical professionals work in partnership with parents to monitor the development of children (including NCS children) from birth to the age of five

and to identify any possible developmental problems. There is also in place a cross-departmental programme called the Comprehensive Child Development Service (CCDS), which enables pre-primary educators to identify and refer children with health, developmental and behavioral problems to respective Maternal and Child Health Centres run by the Government for assessment and timely assistance. The CCDS also provides comprehensive and integrated support for parents in need.

61. In assessing whether NCS students are with SEN, their different cultural and experiential backgrounds as well as their language abilities will be taken into account and adjustments will be made where appropriate. For instance, non-verbal tests of intelligence may be used for NSC students who are not proficient in Chinese. When specialists interpret the assessment findings, NCS students' learning history, social adaptive behavior and cultural and experiential exposure will also be taken into consideration.

62. Concerning admission to schools for NCS children, the Government mentioned that NCS children are encouraged to attend local kindergartens using Chinese as the medium of instruction to facilitate their early immersion in the Chinese environment. Pre-schoolers with disabilities may attend special child care centres or join an Integrated Programme in Kindergarten-cum-Child Centre, depending on their degree of disabilities. All eligible students, including NCS children, have equal access to Primary One or Secondary One of public-sector schools through the centralized Primary One Admission (POA) or Secondary School Places Allocation (SSPA) systems operated by the Education Bureau (EDB) of the HKSAR Government. In POA, NCS children are provided with an opportunity for allocation to schools that traditionally admit more NCS children. If parents indicate in POA application form that their child has SEN, the EDB would follow up by collecting relevant diagnosis/ assessment report (s) and related information on the child so as to identify his/her educational needs, and discussing with the parents the appropriate educational provision for him/her. Similar arrangements are also available under the SSPA. Students with severe or multiple disabilities may be placed in special schools according to the assessment and recommendations of the respective specialists/physicians and upon parents' written consent. Other children with SEN are offered places in ordinary schools. NCS students may also seek placement assistance from the EDB for other grade levels.

63. Regarding education support for NCS children including NCS children with SEN, the Government informed that support services in place to help NCS students adapt to the local education system include a full-time 6 month Initiation Programme and a 60-hour Induction Programme for newly arrived NCS children, a School-based Support Scheme Grant for public-sector schools to run school-based support programmes such as supplementary language classes for newly arrived NCS students, a 4 week Summer Bridging Programme at Primary One to Primary Four for NCS students to help them consolidate what they have learnt at Learning Stage 1 and prepare them for transition to Learning Stage 2, etc. To enhance the learning of the Chinese Language for NCS students "designated schools " for the NCS students have been set up and provided with a recurrent grant. Other support services include the "Supplementary Guide to the Chinese Language Curriculum for NCS Students". The Guide, which covers the principles, strategies and recommendations for implementing the Chinese Language curriculum in the learning context of the NCS students, has been issued to schools. Reference teaching materials and adapted textbooks have also been issued to schools and NCS students. The development of assessment tools in underway. Tailor-made training courses are made available for Chinese Language teachers. After school Chinese courses to reinforce what NCS students have learnt in class have been provided through the operation of the Chinese Language Learning Support Centres.

64. In fact, a multi-lingual (English, Chinese, Hini, Indonesian, Nepali, Thai and Urdu) parent information package entitled "Non-Chinese Speaking Parent Information Package: Your Guide to Education in Hong Kong" has been published and distributed to NCS parents to introduce to them the local school system, major education policies and related education services, including education services for NCS children with SEN.

65. With the enactment of the Disability Discrimination Ordinance (DDO) in September 1996 and the Code of Practice on Education published in July 2001, all education establishments have the legal obligations to admit students with SEN and provide appropriate accommodation to help them develop their potentials. NCS students with SEN studying in ordinary public-sector schools have equal opportunities to benefit from the same curriculum as the other local students. Curriculum adaptation, differentiated teaching and assessment accommodation are provided to cater for individual differences. Schools also provide a variety of support for students with SEN, including those NCS students with SEN. These include small group teaching, co-teaching, Intensive Remedial Teaching Programme, individualized education programmes, learning support by teaching assistants, speech therapy service, language learning support programmes for Chinese and English, peer tutoring and individual and group guidance, etc.

66. The HKSAR Government implements the Whole School Approach to IE, which is in line with the global trend. The aim is to enhance ordinary schools' capability of supporting student diversity through establishing inclusive culture, policy and practices. The Government recognizes that the success of IE hinges on teachers' capacity in catering for the diverse needs of their students. The overall school policy, practices and resource deployment are also important. As such, it has put much emphasis on teacher training and professional support for schools to support the implementation of IE. It also provides additional resources to schools and encourages them to use the resources flexibly to cater for their students' needs (specific details were also provided).

67. For NCS Students studying in special schools, the schools will design individualized education programmes for them to cater for their SEN, including languages needs. For those with severe disabilities to the level that they are unable to communicate through verbal means, teaching and learning are conducted through the multi-sensory approach. To cater for the needs of their students for intensive individualized support, special schools operate with smaller class sizes (ranging from 8 to 15 students per class in different types of special schools). A part from the basic teacher provisions according to the prescribed teacher-to-class ratio, special schools are provided with additional teachers and specialist staff such as native-speaking English teachers, low vision training teachers, mobility instructors, resource teachers for autistic children, teachers assisting in speech therapy, Primary School Master/Mistress (Curriculum Development), school social workers, school nurses, speech therapists, physiotherapists, occupational therapists, occupational therapy assistants and educational psychologists. Some of the special schools also provide boarding service for students assessed to have genuine boarding needs.

68. Finally, regarding other education opportunities outside the public school sector, the Government informs that there are other education opportunities outside the public school sector to provide an alternative in the education system for NCS students who have their own language and/or curriculum preferences. Fifteen English Schools Foundation (ESF) schools and 35 privately operated international schools are providing education services for NCS students (including those with SEN). There are 127 SEN students studying in learning support classes in ESF mainstream schools whereas there are 60 places for SEN students in a special school operated by ESF. Same as public-sector schools, they are required by law to admit students with SEN and provide appropriate accommodation for them.

69. ESF receives, as one of its major income sources, government subsidy for the provision of special education services under segregated and integrated modes. Under the segregated mode, ESF operates one special school and provides education services to students who have severe learning difficulties and require an alternative curriculum. Under the integrated mode, ESF operates Learning Support Classes (LSC) in ESF mainstream schools to SEN students with a moderate level of disabilities who require a modified curriculum. In the light of a review undertaken by ESF on all applicants on its waiting list for SEN provision, the HKSAR Government has allocated extra resources to ESF schools to increase their school places in the LSC to provide appropriate support for students with SEN. That said, we have to reiterate that ESF and international schools are, by design, not intended for meeting any unmet demands for services in the public school sector and they are serving as an alternative choice for parents who have their own language and/or curriculum preferences.

70. In its response to the allegations, the Government wishes to mention that against the background set out above, all eligible school-age children, including NCS children with SEN, in the HKSAR enjoy equal opportunities to receiving basic education. The HKSAR Government guarantees sufficient provision of school places within the public school system, where ordinary schools and special schools are operated in parallel, to cater for the students. In the 2008/09 school year, the public-sector primary and secondary schools (including special schools) provide a total of around 830 000 school places to meet the demand from eligible children including NCS students with SEN. All eligible children have equal access to public-sector schools and are provided with appropriate support and accommodation in accordance with their needs. At the same time, there are alternative education opportunities outside the public school system such as ESF schools and international schools for those NCS students who have other language and/or curriculum preferences. De spite the fact that ESF and other private international schools have been providing different types of SEN services for those students in need, they are by design not meant to meet any unmet demand in the public sector. It is a misconception that the ESF schools are the major providers of school places for NCS children with SEN.

71. Without a sufficient source of information or methodology for the estimation of 2 282 NCS students with SEN residing in the HKSAR as mentioned in the letter, we are unable to comment further. However, the allegation that there are only 22 placements for NCS students with SEN in government schools is factually incorrect. According to the records of the HKSAR Government in the 2008/09 school year, around 300 NCS students with SEN attended public-sector schools comprising government and aided schools. We would like to highlight that such data is inputted directly by schools through a computer system which was fully developed in mid-2008. Hence, it would take some time for schools to take full advantage of the system. The data may therefore be subject to further refinement. In any case, the allegation of a shortfall of nearly 2000 school places for NCS children with SEN in the education system of the HKSAR is definitely ungrounded. The HKSAR Government will, as usual, monitor closely the provision of school places for all eligible children, including NCS children with SEN, to ensure equal access to education services by all eligible children.

72. The HKSAR Government is committed to promoting equal opportunities and eliminating all forms of discrimination. All education establishments in the HKSAR have the legal obligations to admit students with SEN and provide appropriate accommodation to help them develop their potentials according to the DDO which took effect in the HKSAR in September 1996 and the Code of Practice on Education published in July 2001. We have ensured a fair and non-discriminatory access to the existing local education system for all NCS students with SEN.

73. The Government also provides additional information on teacher training, additional resources and professional support for ordinary public-sector schools to cater for students with SEN.

Observations

74. The Special Rapporteur thanks the Government for its extensive and informative reply.

France

Communication envoyée

75. Le 10 décembre 2009, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, et le Rapporteur spécial sur les droits de l'homme des migrants a envoyé une communication au Gouvernement concernant des informations reçues au sujet de la mise en œuvre d'un logiciel de données « Base-élèves premier degré» au sein de l'Education nationale dans lequel sont inscrites des données nominatives concernant les enfants scolarisés dans les établissements scolaires, et dont les directeurs d'écoles sont dans l'obligation d'y inscrire tous les élèves scolarisés dans leur établissement.

76. Selon les informations reçues, le 9 octobre 2009, MM. Claude Didier, Michel Duckit et Rémi Riallan et Mmes Elisabeth Heurtier et Patricia Arthaud, directeurs et directrices d'écoles dans le département de l'Isère, auraient reçu une lettre de l'inspection académique de leur département leur demandant d'enregistrer les élèves de leurs établissements dans le fichier informatique Base élèves premier degré, sous peine de sanction allant jusqu'au retrait de leur postes. Le courrier de l'inspection académique préciserait que cette saisie devait être effectuée au plus tard le 25 octobre 2009. MM. Didier, Duckit et Rallian et Mmes Heurtier et Arthaud auraient déjà fait l'objet de sanctions disciplinaires en raison de leur refus d'appliquer l'arrêté du 20 octobre 2008 portant création de la Base élèves premier degré au motif que le fichier serait contraire au droit des enfants et de leurs familles au respect de leur vie privée. Plusieurs retenues de journées de salaire auraient été effectuées à l'encontre de ces directeurs. Par ailleurs, M. Jean-Yves Le Gall se serait vu retirer son poste de directeur et aurait été muté d'office pour les même raisons.

77. Il fut également allégué que plus d'un millier de plaintes auraient été déposées par des parents pour enregistrement illégal de leurs enfants dans la Base élèves premier degré. Le Conseil d'Etat aurait été saisi de cette question. Les requérants, ainsi que les directeurs d'école, demanderaient à ce que soient respectées les observations et recommandations récemment adoptées par le Comité des Nations Unies des droits de l'enfant.

78. Des craintes furent exprimées quant au fait que les mesures disciplinaires prises à l'encontre de ces directeurs et directrices d'école ainsi que les menaces de sanctions disciplinaires soient liées à leurs activités non violentes de promotion et de protection des droits de l'homme, notamment du droit au respect de la vie privée. Des craintes furent également soulevées au sujet de la conservation de données nominatives des élèves pendant une durée de trente-cinq ans, et du fait que ces données pourraient être utilisées pour la recherche des enfants de parents migrants en situation irrégulière ou pour la collecte de données sur la délinquance.

Observations

79. Le Rapporteur spécial regrette de n'avoir pas reçu de réponse à la communication mentionnée précédemment.

Honduras

Comunicación enviada

80. El 2 de junio de 2009, el Relator Especial mando una comunicación respecto a informaciones recibidas en relación al Estatuto del Docente Hondureño y su Reglamento. Se mencionó que el Estatuto del Docente "tiene como propósito dignificar el ejercicio del magisterio, garantizar al docente un nivel de vida acorde con su profesión y asegurarle al pueblo hondureño una educación de alta calidad", con el fin de "lograr la eficiencia del sistema educativo, fundamentada en la realidad nacional, en la ciencia, la cultura y orientada al desarrollo humano hondureño".

81. Según la información recibida, se totalizarían 204 días en los cuales los niños y jóvenes hondureños no recibirían clases. Los maestros sólo estarían cumpliendo con su obligación docente unos 161 días al año. En este contexto, se menciona que los maestros hondureños estarían incumpliendo con el artículo 12 del Reglamento General del Estatuto que establece que "el tiempo efectivo de trabajo durante el año lectivo será de diez meses y constará de un mínimo de 200 días laborables"

82. Se informó también que en virtud de las reivindicaciones salariales que se han desarrollado en el país, el Estatuto del Docente Hondureño pudiera haberse convertido en un instrumento exclusivo de lucha salarial y que se habría olvidado de la calidad educativa, en los términos contenidos en el citado reglamento. Como consecuencia del deterioro del sistema educativo público a nivel nacional, los padres y madres de familia estarían obligados a pagar por la educación de sus hijos en centros privados, en perjuicio de la economía familiar y propiciando la polarización social entre los que pueden y los que no pueden pagar por la educación adecuada para sus hijos.

Observaciones

83. El Relator Especial lamenta no haber recibido respuesta del Gobierno en relación a la comunicación mencionada previamente.

India

Communication sent

84. On 28 December 2009, the Special Rapporteur sent a communication regarding the conflict in India's Bihar and Jhakhand States between the Maoist rebels (Naxalites) and government security forces.

85. According to information received, it was alleged that education of tens of thousands of India's most disadvantaged and marginalized children was being disrupted by the ongoing conflict between Naxalite insurgents and police and other security forces in the eastern states of Bihar and Jharkhand. Security forces are allegedly occupying government school buildings as bases for anti-Naxalite operations, sometimes only for few days but often for periods lasting years. Meanwhile, it was reported that the Naxalites are directly targeting and blowing up government schools, including those not used or occupied by security forces.

86. It was reported that police and paramilitary forces were occupying school buildings either temporarily or for extended periods, as part of their counter-insurgency operations. Security forces had been known to take over entire school facilities and campuses, completely shutting down the school, or occupy part of school buildings, forcing classes to continue in the reduced space and alongside the armed men. While some of these occupations had lasted only days at a time and coincide with extra protection to schools and

remote locations during times such as an election, many other police occupations had been reported to last for many months and even for several years.

87. It was further alleged that the presence of heavily armed police and paramilitaries living and working in the same buildings where children were studying has detrimental impacts on children's studies and frequently puts the authorities in breach of their obligations to realize children's right to education.

88. It was s reported that school principals, teachers, parents, and students have not received prior notification regarding the police occupying their schools. Concern had been expressed that this lack of notification to school authorities deprived the community of the opportunity to prepare better alternatives for continuing studies and eliminates the opportunity for local residents and their children to propose alternative locations for the police presence. Moreover, lack of notification and explanation to the students left the children confused and uncertain. Moreover, it was also reported that representatives from the Bihar and Jharkhand Departments responsible for education and schools had opposed and objected to the use of their schools by security forces, yet their objections had not been considered by the security units carrying out the school occupations.

89. It was further alleged that the generalized fear and disruption that results from attacks by the Naxalite rebels had lead to some students dropping out from school or experiencing interruptions to their studies. Concern had been expressed that girls especially appear likely to drop out following a partial occupation of a school. Although some students may transfer to other schools in the area if their parents can cover the related costs, many students simply drop out of education all together. The increased rate of girl students dropping out was linked to either perceived or experienced instances of harassment by the security forces of girl students. As well as leading to increased rates of students dropping out of school, long-term occupation of schools had been reported to also decrease the enrollment rate and the rate of students continuing on to higher years of study.

Communication received

90. On 7 April 2010, the Government responded to the communication sent by the Special Rapporteur on 28 December 2009 and informed that the Government had examined this communication and, according to the concerned State authorities, no breach of the right to education of children had been reported in Bihar. However, the concerned authorities had been sensitized to provide adequate protection in this regard, so as to enable prompt and suitable action in the event of an instance of such a breach.

Observations

91. The Special Rapporteur thanks the Government for its reply, but nevertheless would like to express concern regarding the conflict in India’s Bihar and Jhakhand States between the Maoist rebels (Naxalites) and government security forces and its effects in the realization of the right to education.

Iran (Islamic Republic of)

Communication sent

92. On 13 July 2009, the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent an urgent communication regarding Ms. Clotilde Reiss, a 23-year-old graduate from Lille Political Sciences Institute and an assistant teacher at Isfahan University.

93. According to the information received, Ms. Clotilde Reiss was arrested on Wednesday, 1 July 2009, at Mehrabat Tehran Airport by security agents, when she was on her way home to France. She was taken to Evin prison. French consular authorities, who were notified on 2 July of her arrest, had been in regular contact by telephone, but have not yet been able to visit her. It was further reported that Ms. Reiss had been accused of espionage solely because custom officers found in her mobile telephone some photographs of the demonstrations which took place in Isfahan in the aftermath of the June 12 presidential elections.

Observations

94. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

Italy

Communication sent

95. On 31 December 2009, the Special Rapporteur, together with the Special Rapporteur on the human rights of migrants sent a communication concerning some of the legislative developments, including Law No. 94 of 15 July 2009 on public security ("the Security Law"), Law Decree no. 11/2009 of 23 February 2009 ("Law Decree"), Law no. 125 of 24 July 2008 ("Law no. 125"), and Law no. 155 of 31 July 2005 ("the Pisanu Law"). In this communication, it was highlighed certain aspects of these laws which may have a negative impact on the rights of migrants, including: (a) irregular migration status as an aggravating factor in sentencing; (b) the offence of illegal entry and stay; (c) the expulsion of aliens; (d) the extension of administrative detention for migrants; (e) restrictions on money transfer; (f) the modification of the Civil Code affecting irregular migrants' right to marry; and (g) restrictions on the right to birth registration.

(a) Irregular migration status as an aggravating factor in sentencing

96. Law no. 125 provides that when a person commits an offence while unlawfully present in the national territory, his or her unlawful presence will be deemed an aggravating factor in respect of sentencing. This may increase the period of imprisonment a person is sentenced to by up to one third. The imposition of a more severe punishment solely on the basis of a convicted person's legal status in the country is a subject of concern, as it may result in discrimination based on one's immigration status..

(b) The offence of illegal entry and stay

97. The Security Law introduced the offence of illegal entry and stay within the territory of the State. Under Article 1, Paragraph 16, the offender is subject to punishment by a penalty ranging from 5,000 to 10,000 Euros. While acknowledging the sovereign right of the State to regulate the entry and stay of aliens, concern was expressed about the effects of the criminalization of illegal entry and stay on the human rights of irregular migrants migration, which could further hamper access to, *inter alia*, education, health, housing, labor rights and the justice system, because of the fear of being denounced, imprisoned and ultimately deported. It had already been reported that many irregular migrants choose not to access health care even when their physical conditions demand medical attention, because of the fear that they would be reported by public officials and subsequently convicted of a crime. According to information received, the number of migrants seeking treatment in the main hospitals in Rome had decreased by 35%, following the approval of the Security Law. Furthermore, there were reports that mothers and children who required urgent medical attention have died, because they did not access hospitals or doctors for fear of being

reported as illegal immigrants. The criminalization of illegal entry and stay also fueled anti-migrant sentiments, aggravating an acute social problem. The Security Law appeared to be not in line with the commitments of States, inter alia, in the framework of the Durban Declaration and Plan of Action which highlighted the importance of creating conditions conducive to greater harmony, tolerance and respect between migrants and the rest of society in the countries in which they find themselves. As reiterated irregular migration should be regarded as an administrative offence and irregular migrants should not be treated as criminals.

98. According to Article 1, Paragraph 17 of the Security Law, the offence was adjudicated through a new fast-track procedure. This procedure, which is designed to be fast and informal, was conducted before a justice of peace and allows the public prosecutor to transfer the defendant to trial before a justice of peace within 15 days, if there are particular reasons of urgency or the accused person is not subject to detention measures. If the accused person is detained, the public prosecutor may send the defendant immediately before the justice of peace. In preparation of the defence, the defendant can request no more than 7 days, or 48 hours in case he or she is already detained or for reasons of urgency. Concern was expressed that the fast-track procedure diminishes the right of migrants to a fair trial guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), given the limited time available to prepare a defense.

(c) Expulsion of aliens

99. Article 1, Paragraph 22M of the Security Law envisages the administrative expulsion of persons for illegal entry or stay without the authorization of a criminal judge. An alien subject to expulsion may challenge the order of expulsion in a hearing before a justice of peace and the ordinary judge is only notified of the execution of expulsion. Concern was expressed that a migrant is not afforded the right to challenge his or her expulsion before a competent, independent and impartial tribunal established by law and that the scope of review for the administrative expulsion is narrow, as the justice of peace is only asked to verify that all procedures have been duly complied with and that the person has been reported for the offence of illegal entry and stay.

100. In addition, Article 3(1) of the Pisanu Law allows for expulsion of aliens by decree of the Minister of the Interior or the prefect when the alien is suspected of terrorist activities. According to the information received, the Government had expelled three Tunisian terrorist suspects pursuant to the Pisanu Law since June 2008, despite the ruling of the European Court of Human Rights (ECHR) to suspend the expulsion until the ECHR issues decisions on their claims that they would face torture or other mistreatment upon their return to Tunisia. Mr. Essid Sami Ben Khemais and Mr. Mourad Trabelsi were deported to Tunisia in June 2008 and December 2008 respectively. With regard to the case of Mr. Essid Sami Ben Khemais, the ECHR held on 24 February 2009 that Italy violated article 3 (prohibition of torture and inhuman or degrading treatment) and article 34 (right of individual petition) of the European Convention on Human Rights. Despite Court's interim measure to suspend the planned expulsion, it was reported that the Government had forcibly expelled Mr. Ali Ben Sassi Toumi to Tunisia on 2 August 2009.

101. Concern was expressed about the expulsion procedures, which did not seem to guarantee the principle of *non-refoulement*. The Government was asked to provide for adequate safeguards to ensure that the State refrains from expulsion where there are substantial grounds for believing that an individual faces a real risk, following the removal, of torture and cruel, inhuman or degrading treatment or punishment or other violations of fundamental human rights, which seemed not to be the case neither in the procedures for administrative expulsion under the Security Law nor in the expulsion procedures under the Pisanu Law. In light of these considerations, Article 1, Paragraph 22M of the Security Law

also raised some concern, as it appeared to favor and perpetuate the use of expulsion. Paragraph 22M requires the *Questore* (provincial police chief) to continue re-ordering expulsion where a person violates an order of expulsion, while the law in force before the amendments only sanctioned the person with detention.

(d) The extension of administrative detention for migrants

102. It was reported that the Law Decree significantly increases the maximum length of administrative detention. While the maximum period of detention was 60 days under the previous legislation, the Law Decree allowed renewals of 60 days up to a maximum of 6 months by the justice of peace in cases of lack of cooperation of the irregular migrant or delays in obtaining the documentation from third countries that is necessary for repatriation. Concern was expressed that the length of the administrative detention is not proportionate to the objectives of such detention, particularly in light of reports that unaccompanied children are often subject to long administrative detention.

103. While the new maximum period of administrative detention is still in line with the European Union Return Directive which allows detention of irregular migrants for up to 18 months, concern was expressed that the decision of your Excellency's Government to increase the maximum period of administrative detention from 60 days to 6 months appeared to be inconsistent with the principle of non-retrogression, which requires the most careful consideration in the adoption of any deliberately retrogressive measure. In addition, concern was expressed that the scope of review for administrative detention was limited, as the review processes were identical to those for administrative expulsion, which did not allow for a review on the merits.

(e) Restrictions on money transfer

104. Article 1, Paragraphs 20 and 21 of the Security Law imposes restrictive requirements on money transfer operations, which are often used by migrants to remit part of their income to their country of origin. The provisions require that in cases of non-EU nationals requesting to transfer money abroad the, money transfer agents must acquire and store for 10 years a copy of the resident permit. If the permit is missing, the agent must inform the local police within twelve hours. Failure to comply with this requirement may result in the cancellation of the agent's license. The new requirement may further foster a culture of denunciation vis-à-vis irregular migrants. Concern was expressed that the requirements unduly interfered with the private and family life of migrants, given that the possibility of transferring earnings, assets and pensions is essential for many migrants whose families rely on their support.

(f) Modification of the Civil Code affecting irregular migrants' right to marry

105. Article 1, Paragraph 15 of the Security Law amends Article 116 of the Civil Code, which regulates the conditions for contracting marriage for aliens. Aliens would be obliged to present a document demonstrating the legality of their presence in Italian territory before they could enter into a marriage recognized by the Italian Republic, Concern was expressed that this requirement impaired the enjoyment of the right of irregular migrants to marry, as legal resident status becomes a prerequisite to the exercise of this right.

(g) Restrictions of the right to birth registration

106. Article 1, Paragraph 20 of the Security Law requires the presentation of a residence permit before the birth of a child can be registered. This effectively deprives the child of an irregular migrant of the right to personal identity and citizenship at the time of birth. According to information received, in the first six months of 2009 alone, there were at least 412 children who were born to parents without a residence permit and whose birth was

hence not registered. While irregular migrant mothers are entitled to a residence permit for the entire period of pregnancy and for the first six months after a child is born pursuant to Article 19 of Law no. 125, this temporary permit does not seem to effectively facilitate the registration of irregular migrant children, as the permit is granted only if the applicant mother holds a valid passport or an equivalent document, which many of the irregular migrants do not have. The lack of registration may have grave consequences for the child, as he or she may be removed from his or her mother as an "abandoned" child and transferred to the social services by order of the Juvenile Court. In addition, concern was expressed about the right to education in light of this new legislation that would significantly add further barriers to the full realization of the right to education to all, including irregular or undocumented migrants.

Finally, reference was also made to other related information which raised specific concerns regarding the human rights of migrants.

Communication received

107. By letter dated 26 March 2010, the Government of Italy provided the following information.

108. A. Non-EU nationals can enter Italy for the purpose of tourism, study, family reunification and work. A stay permit is required for periods exceeding three-months. A computer-based procedure has been introduced to ensure the prompt release of the stay permit. In case of protection for victims of human trafficking, the permit can be released on the spot. Individuals from certain countries are not required to get a visa for tourism reason.

109. At each Prefecture, it has been established an immigration desk processing applications for the recruitment of foreign workers, family reunification and the change of a residence permit. In Autumn 2009, the above-mentioned computer-based procedure was introduced to facilitate the regularisation of those migrants**,** even without stay permit, involved in the informal labour sector. In few months, approximately 300.000 applications were submitted.

110. .B. With specific regard to the measures laid down in the so-called **"**security package**"**, they are meant to curb criminal behaviours of individuals and no provision at all is envisaged against any community, group or class nor is linked to any form of discrimination and xenophobia.

111. As for the offence of illegal entry and stay in Italy, the relevant provision has been introduced with the aim of reducing the mass flow of migrants illegally staying in Italy. More importantly, unlike other countries, to this end Italy has introduced a mere fine. Plus, under whatsoever circumstances, when the illegal migrant leaves the Country, the extinguishment of offence is applied by Law.

112. As for the aggravating circumstances, it applies to illegal migrants found guilty of a main crime. Such provision responds to the increasing trend, observed by the Italian judicial system, on the involvement of illegal or irregular migrants used as a workforce by the organized crime. Along these lines it has been introduced the detention penalty for those who rent apartments to illegal migrants.

113. The Government aims at addressing, more effectively, the illegal immigration (and its possible connection with organized crime) and its negative effects on the society as a whole, including the hundreds of thousands of legal migrants. To this end, it has been introduced the payment of a minimum tax and a test of the Italian Language as for the release or the renewal of the stay permit.

114. The granting of the citizenship for foreigners stems from either a ten-year residence, or marriage, or birth combined with residence up to the coming of age. The relevant legislation, passed in 1992, has been supplemented by the "security package" for the case of family's reunification, in the event of marriage. This envisages the release of the citizenship after a two-year period of legal residence of the spouses (couple) in Italy, while being in the past a six-month term.

115. As for the children, the Law ensures that "any foreigner, born in Italy, who has resided legally and without any interruption, acquires the Italian citizenship at the coming of age, provided that s/he makes a declaration to this end, within one year". The rationale behind this provision is clear: the best interest of the child is saved in the event of omission or delays in the registration procedure by the parents. It is sufficient that the child concerned can prove his/her stay, for instance by medical or school certificates. Accordingly, as for the birth declaration (birth register and civil status register), no residence-related document shall be produced as long as the submission of the declaration itself is sufficient.

116. As to the allegations/concerns about the possible limitations to enjoy the right of access to health-care service and education, the Government fully observes the relevant constitutional principles. No limitation to the right to health and to education has been introduced so far. The "security package" does not oblige physicians or school principals to denounce illegal migrants.

117. The provisions concerning the expulsion of aliens abide by Art.13 of ICCPR and by Protocol No.7 of the ECHR. Foreigners illegally entering or staying in Italy who fail to meet the requirements either provided by law, or due to public order or national security, may be refouled, returned under escort to the frontiers, expelled, or receive an expulsion order to leave the country. The domestic legislation envisages the judicial control over the order of expulsion adopted by the administrative authority. The request for validation of the order is submitted to the competent judge (justice of peace), within 48 hours. The judge may confirm the order within the following 48 hours. In case of expulsion, despite the ten-year prohibition to re-enter ("security package"), the foreigner may always return to Italy if a stay permit for family reunification is granted or s/he is regularly hired. Besides a Constitutional Court's verdict (No. 376/00) has stipulated the prohibition of expulsion to the spouse of pregnant women, or to the parent of a six-month child.

118. The expulsion measure is adopted by the Minister of Interior or the Prefect and executed by the Head of the Local Police HQs. (*Questore*).

119. At the normative level, the Unified Text on Immigration (286/98) envisages three differing expulsion measures: the cited administrative expulsion measure, the expulsion measure as a security measures and the expulsion replacing the detention penalty. The last two cases fall within the competence of the judicial Authorities, and, as per Constitution, have to be inspired by the principles of the fair trial and the due process of law.

120. As for the limits to said discipline, Italian Authorities reiterate: the compliance with international standards -as long as no collective expulsion measure can be adopted; the enforcement of the non-refoulement (Arts.32-33 of the 1951 Geneva Convention and Art. 19 of the Nice Charter); the migrant worker cannot be expelled further to dismissal (ILO Convention No. 143); and, last but not least, in compliance with Art. 13 of ICCPR and Art. 1 of Protocol No.7 to the European Convention on Human Rights, specific safeguards apply, allowing the lodging of complaint before the competent Authorities.

121. With specific regard to the additional case of expulsion for terrorism, it is worth recalling that since the entry into force of the Italian Constitution (1948), the legal system has to be and is in line with the general international law (Art.10). Along these lines, the Italian counter-terrorism legislation is in strict compliance with international law. Since

2001, Italy has not introduced any special procedure for terrorist cases, or special jurisdiction. Only the Courts of law may try and judge an individuals for terrorism-related crimes.

122. On a more specific note, in line with the EU policy and provisions, Italy adopted Law Decree No.144/2005, which was then converted into law by the so-called Pisanu Law (In brief, the law allows for increased surveillance and enhanced police powers to gather evidence in terrorism cases, for example DNA for purposes of identification). The European Court of Human Rights has acknowledged the necessity of the normative tools so introduced. The Constitutional Court has emphasized, with regard to the terrorism threat: the admissibility of provisions with a broad scope; the indefectible duty of the legal system towards democratic order and public security; and the admissibility of ad hoc measures, though under peremptory terms. In this perspective the additional administrative expulsion measure should be considered. The new case introduced by the Pisanu Law includes a suspensive effect of the expulsion measure upon request by the individual concerned; and that the procedure will follow and ensure the same safeguards envisaged in the event of the judicial expulsion. Thus the principle of non refoulement is not restricted at all.

123. Besides, the recent domestic case-law shows the trend to replace the expulsion following the criminal conviction under Article 235 of the penal code with the so-called alternative measures to the detention penalty [specifically the transfer in a labour house, pursuant to Art. 216 of the penal code]. This decision matches both the public interest and the full compliance with relevant international obligations through a system of alternative sanctions that could limit the social dangerousness of the person convicted and fully secure the physical and psychological integrity while avoiding deportation.

124. In terms of data, it is worth recalling that: 1) on March 2, 2010 the Minister of Interior reported before the Italian Senate that since the introduction of the relevant measures by the "security package", over 15,000 illegal migrants had been denounced; 2) In 2008, the measures against foreigners irregularly staying in Italy amounted to 70.625, of whom 24.234 were repatriated; in 2009 they amounted to 52.823, of whom 18.361 were repatriated; 3) As for those affiliated to terrorism-related organizations amounted to 8 people and twelve people between 2008 and 2009, respectively (see Annex 1 for additional data).

125. C. With specific regard to the reception procedures, as for the extension of the stay in the Identification and Expulsion Centre up to 6 months, in line with the EU Directive on return (by which the holding period may be extended to a maximum of 18 months), such a provision has been adopted with the aim of detecting the identity of the migrant without documents. In this regard, it has to be mentioned that it is the judge - and not the administrative authority – to be tasked with controlling whether it is necessary and legitimate to extend the stay. Such review will take place every 30/60 days.

126. In terms of reception, the initial phase includes health-care services, cultural mediation, legal counselling, identification, examination of the relevant applications and, eventually, repatriation, only for those who are not entitled to stay in Italy.

127. To this end, the Reception Centres have a capacity of 3.400 places. The Centres for the first-aid and reception (CPSA) with a 1.200-place capacity are placed in the locations most affected by landings from the sea, for instance in Lampedusa Island. There are thirteen Identification and Expulsion Centres (CIE) across the country with 1806 places.

128. As for asylum-seekers, specific reception Centres (CARA) have a 2.083-place capacity**.** They are also intended for undocumented people, those who violate border controls, and foreigners detained because illegally staying in Italy.

129. Specifically, as regards asylum-seekers, the decision on the asylum application, as a general rule, should take 35 days. After this deadline, if a decision is still pending, a renewable temporary residence permit is granted; and asylum-seekers can leave the Centre during the day. In line with the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol, Italy has established a system for providing protection to refugees.

130. The Government also provides temporary protection measures to individuals who may not qualify as refugees under the 1951 Convention, which have to be renewed periodically and do not ensure future permanent residence. As for the asylum procedure, no modifications has been introduced by the security-package (which has introduced: a fine for the illegal entry or residence in Italy; while the aggravating circumstance under reference applies only if a crime has been perpetrated by the illegal migrant; the requirement to pass a language test for the release of the stay permit; the extension of the stay in the CIE up to 180 days when the expulsion order or the return cannot be enforced, inter alia, to ascertain the identity or to acquire due travel documents).

131. Stepping back to the asylum procedures, in order to speed up the processing of all the asylum applications -in 2009 amounted to 16.120-, in addition to the ten Territorial Commissions, five more sections have been established in 2009. It should be noted that in all the Commissions, there is a UNHCR representative. A negative decision may be appealed before the Judiciary. In all stages of the proceeding, it may be requested legal aid.

132. If a decision is not taken on the individual case within six months – period during which the applicant can be accommodated by the State – s/he will get a residence permit, allowing her/him to work. To this end, in 19 out of 20 Regions, the SPRAR system - which is a network including local institutions and private sector – in charge of ensuring the integration of asylum-seekers and refugees, can make 6.000 places available, per year. In 2008, this System guaranteed accommodation to 8412 refugees.

133. In terms of data, according to the most recent comparable data between the EU countries, in 2008 Italy granted asylum, subsidiary or humanitarian protection measures to the 48.2% of the applications against 28.3% of the EU average.

134. To date, Italy has translated all the EU asylum-related Directives. Within the EU framework Italy is also a party to the Dublin II Instruction**,** whose adherents generally transfer asylum applications to the first member country, in which the applicant was present.

135. Within the EU framework, Italy has been developing "emergency resettlement" projects for vulnerable individuals, including unaccompanied minors, women at risk, victims of torture and of physical and sexual violence, the elderly, and people who have suffered a prolonged detention or with serious health diseases. As for minors, they cannot be deported unless the removal order applies to the entire family. As for unaccompanied minors, until the coming of age, they enjoy the full protection, including the right of access to education and health-care. Victims of trafficking are granted protection and assistance, regardless of their cooperation with the police . They are granted a special social protection permit, while attention is paid to ensure their voluntary assisted return to the country of origin.

136. Further Italy has signed 30 bilateral re-admission and cooperation agreements for the return of irregular migrants being untitled to international protection. These agreements are a useful tool to fight human trafficking and promote regular migration.

137. The integration of foreign nationals remains a key factor for social cohesion. Many projects are underway. In each Province there are Territorial Councils for immigration, which include immigrants representatives. For instance, a "Portal for Integration" is currently under implementation. It will be a useful multimedia instrument for supplying

information and, at the same time, circulate all possible data for migrants inclusion within the Italian society, with a special focus on their rights and duties as well as their working opportunities in our country.

138. Along these lines, it is worth recalling that in Italy regular migrant workers are fully protected and enjoy equal civil, economic, social and cultural rights. According to Italian legislation, the national collective contract of employment signed with organizations representing workers and associations of employers, aims at jointly pre-regulate the minimum economic and regulatory issues applicable to all workers, including migrant workers. Thus several social protection measures, including social benefits**,** are ensured to all migrant workers.

139. In conclusion, the Government reiterated that the legislation on immigration has no relation with any kind of xenophobic attitude but, on the contrary, have the objective to address more effectively the phenomenon of illegal immigration, trafficking in human beings and exploitation, including its connection with organized crime and its negative consequences also on thousands of regular migrants living in Italy.

140. In the Government's view, the basic rule, if any, which should guide modern democracies in the protection of rights, is *the effective implementation of the principle of non-discrimination (*as laid down in Art. 3 of the Italian Constitution). In this regard, this principle is and remain at the core of the *modus operandi* of the domestic Institutions. It is, indeed, one of the main pillars of our constitutional code, upon which the domestic legislative system is based. Therefore, such criterion is at the core of both the relevant legislation and the ongoing criminal proceeding under reference.

Italian Authorities reiterated their willingness to continue to fully cooperate with international human rights mechanisms.

Observations

141. The Special Rapporteur thanks the Government for its extensive and informative reply.

Malaysia

Communication received

142. By letter dated 24 November 2009, the Government responded to the communication sent by the Special Rapporteur on 20 November 2008[1], together with the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people and the Special Rapporteur on violence against women, its causes and consequences, and informed that based on the information made available by the authorities, since 1995 there have been one (1) police report involving a Penan girl and three (3) police reports involving Penan women. The reported cases are as follows:

Marudi District Police Report 279/1995

143. A 14 year old Penan girl claimed that she was raped. Upon investigation the police had insufficient evidences to prosecute on the following grounds:

(a) The medical doctor's report stated that the victim's hymen was intact;

(b) The victim could not identify the suspects; and

1 See A/HRC/11/8/Add.1, pars 155-160

(c) Witnesses/landlord denies knowing or even allowing the victim to stay at his house.

Marudi District Police Report 645/2008

144. A police report was lodged by the victim, known as Cynthia, (not her real name). Cynthia's ordeal was reported in the local newspaper "The Star on 6 october 2008 entitled "*Against their Will*". According to the said article, Cynthia was abused and raped by loggers when she hitched a ride on the logging company's vehicle to go to school. As a result Cynthia had given birth to baby girl in July 2008. The Investigation Papers have been submitted to the Senior Federal Counsel (SFC) of Sarawak on 17 December 2008. The SFC has instructed the police to conduct further investigation.

Marudi District Police Report 646/2008

145. A police report was lodged by DSP Roselina from the Police Contingent Headquarters based on the article in "The Star" dated 6 October 2008 entitled "*Against Their Will*". The victim, known as Rina (not her real name) did not make any police report but the report was necessary to allow the police to initiate investigations. Upon investigation and based on the article, it was alleged that a logger came to Rina's house in a drunken state and she was raped. As a result, Rina gave birth in May 2005. The investigation Papers have been submitted to the Senior Federal Counsel (SFC) in Sarawak on 17 December 2008. The SFC has instructed the police to conduct further investigation.

Marudi District Police Report 647/2008

146. A police report was lodged by the victim, known as Mindy (not her real name). Mindy's ordeal was also reported in the local newspaper "The Star" on 6 Ocober 2008 entitled "*Against Their Will*". According to the said article, Mindy was alleged raped by a logger named Ah Heng and have given birth to two (2) children. The Investigation Papers have been submitted to the Senior Federal Counsel (SFC) in Sarawak on 17 December 2008. The SFC has instructed the police to conduct further investigation.

147. Concerning the details, results, of the investigations carried out in relation to the cases, the Government informs that with regard to the Marudi District Police Report 279/1995 as mentioned earlier, the investigation showed insufficient evidence to support any prosecution for rape. As for the other three cases, the SFC has instructed that the cases be investigated further. Apart from the police investigation, the Government had established the National-level Task Force to investigate the Accusations of Sexual Abuses towards the Penan Girls in Sarawak ("the Task Force") on 8 October 2008. The Task Force is helmed by the Ministry of Women, Family and Community Development, and was chaired by the then Minister of Women, Family and Community Development, Dato's Sri Dr. Ng Yen Yen. Membres of the Task Force consists of senior officials from other Ministries and Agencies, including the Ministry of Home Affairs, the Ministry of Health, the Ministry of Education; the Ministry of information, Community and Culture, Ministry of Rural and Regional Development, the Sarawak Government, and Non-Governmental organizations.

148. The establishment of the Task Force is aimed at investigating the accusations of sexual exploitation of Penan women and school girls in Sarawak by the logging company workers. Members of the Task Force participated in a visit to the Baram area of Sarawak from 10 to 15 November 2008. As a result of the said visit, the Task Force proposed several improvements that falls under the jurisdiction of several Ministries/Government Agencies.

149. In its report, the Task Force unanimously concluded among others that the sexual abuse mostly occurred due to the victims' dependency on transportation owned by the logging company and the presence of outsiders dealing with the village people to purchase of forest products; the sexual abuse mostly occurred due to the victims' dependency on transportation owned by the logging company and the presence of outsiders dealing with the village people to purchase of forest products.

150. The Penan community are exposed to sexual abuse and exploitation due to the following reasons: poverty; isolated places of residence; high dependency on logging companies not only for transport for health services and schooling, but also for the basic necessities such as water, electric generators, etc; lack of trust towards higher authorities; the negative perception, prejudice and negative stereotypes with labels such as lazy, liars and alcoholics directed at the Penan by outside society making the Penan feel alienated and suffering from low self-esteem.

151. The Government informs that lack of infrastructure, such as roads, in addition to the lack of transportation let to the difficulties faced by the Penan villagers in dealing with outsiders, including Government agencies; and to ensure a more balanced development, there should be increased involvement of the Penan tribe in the decision-making processes relevant to them.

152. The full report of the Taskforce is available for public viewing on the official website of the Ministry of Women, Family and Community Development. It must be highlighted that findings of the said Task Force is by no means meant to determine the criminal liability of any person or groups of persons. The Government wishes to draw the attention again to the fact that investigations with regards to cases involving police reports no.645, 646 and 647 of 2008 are still on-going.

153. The Government reassures that should there be sufficient evidence of any criminal wrong doing, the perpetrators would be brought to court for trial. If a person is charged for the offence of rape under section 375 of the Malaysian Penal Code, upon conviction, those found guilty could be punished with a very heavy custodial sentence for a term of not less than five years and not more than thirty years and shall also be liable to whipping.

154. Concerning programmes or measures taken by both the Federal and Sarawak Governments to ensure the safety of the Penan women and girls and ensure that Penan children provided safe affordable transportation to reach their schools, the Federal Government had been working in collaboration with the Sarawak State Government to initiate several development programs to ensure that the Penan children have safe access to schools specifically through the Service Centre Development in the Penan area. The Service Centres in the Penan area are equipped with facilities such as schools, clinics and agricultural stations. Additionally, the State Government of Sarawak has also provides financial support for transport of Penan children that are staying too far from schools. The implementation of the transport service is managed by the Resident's and District Office as well as the schools involved.

155. The Government takes note of Article (4) § (d) of the United Nations Declaration on the Elimination of Violence against Women that was raised by the Experts. Malaysia has enacted or amended laws to punish acts of violence against women who are subjected to violence. Among those laws is the Penal Code whereby the punishment for rape has been amended from 20 years imprisonment to a minimum of 5 years and a maximum of 30 years.

156. Women who are subjected to violence have been provided with unhindered access to justice and health services. The Government has set up programs for sexually abused women and also provides legal assistance for those who cannot afford their own legal counsel. The Government reaffirms it commitments to continue to fully protect indigenous

peoples in Malaysia as had been carried out long before the adoption of the United Nations Declaration on the Rights of indigenous Peoples by the international community. Malaysia's actions are fully in compliance with the requirements of this Declaration, in particular Article 22(2) whereby States shall take measures, together with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination, as well as the provisions of Human Rights Resolution 2005/41-Elimination of violence against women.

157. The Government has long established structured programmes and mechanisms to consult with and in addressing issues raised by the indigenous communities in the country, in compliance with Article 21 (2) of the said Declaration. Besides the United Nations Declaration on the Rights of indigenous Peoples, the Government of Malaysia also complies with Article 26 of the Universal Declaration of Human Rights and Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), even though Malaysia is not a party to the ICESCR.

158. The Government further notes the thematic report of the Special Rapporteur on the right to education (E/CN.4/2006/45), particularly his observation in paragraph 48 on the issue of safety on the way to and from school. Malaysia is making continuous efforts to improve this situation.

159. The Government wishes to reaffirm its commitment to provide education to all in consonance with its obligations under the CRC and CEDAW. The Government is serious in providing education to all in Malaysia. It has continually provided programmes to provide access to the education system to the indigenous peoples which include the Penans. The Federal Constitution provides these rights under Article 12.

160. The Government concludes by submitting that the summary of the facts contained in the communication sent does not reflect the accurate facts and information. In this regard, the Government gives its assurance and pledge that the investigation on the sexual abuses against Penan women and girls will be conducted in accordance with the prevailing domestic laws of Malaysia which are fully consonant with the norms and standards of international law. The government reiterates its commitment to take necessary steps and measures to continuously guarantee to promote, protect and implement all human rights and fundamental freedoms as well as to guarantee the individual and collective rights of indigenous peoples, including their rights to culture, identity, language, employment, health, education and others.

Observations

161. The Special Rapporteur thanks the Government for its extensive and informative reply.

Pakistan

Communication received

162. On 22 March 2010, the Government responded to the communication sent by the Special Rapporteur on 7 July 2009[2], together with the Special Rapporteur on Freedom of Religion and Belief and informed that the matter was referred to the concerned authorities for necessary investigation and response. The concerned authorities mentioned that no

[2] See A/HRC/11/8/Add.1, pars 161-166.

Ahmadi student was suspended or dismissed from Punjab Medical College in Faisalabad. However, some students were shifted to other Medical Colleges on administrative grounds.

Observations

163. The Special Rapporteur thanks the Government for its reply.

Paraguay

Comunicación enviada

164. El 22 de diciembre de 2009, el relator Especial, junto con el Relator Especial sobre los efectos nocivos para el goce de los derechos humanos del traslado y vertimiento de productos y desechos tóxicos y peligrosos, y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, envió una comunicación relativa a impactos negativos causados por el cultivo intensivo de la soja y el uso asociado de agroquímicos sobre las comunidades campesinas e indígenas que viven cerca de dichos cultivos, y la supuesta situación de las comunidades indígenas Ka'agy Roky, Loma Tajy, Formosa, Ka'aty Miri, Ysati y Ka'a Poty en Alto Paraná, que habrían sido rociadas con agroquímicos por empresas privadas brasileñas.

165. De acuerdo con la información recibida, la soja es el cultivo de mayor producción en el Paraguay, en volumen y valor monetario, que se desarrolla sobre cerca de 2.5 millones de hectáreas, principalmente en los departamentos de Alto Paraná, Itapúa, Canindeyú y Caaguazú. La producción de la soya se ha extendido rápidamente en las últimas décadas, multiplicándose por más de cuatro la superficie cultivada entre 1991 y 2008 y concentrándose 87 por ciento la producción en explotaciones de más de 100 hectáreas. La mayoría de la producción de soja se realiza en monocultivos industrializados con fines de exportación.

166. En el cultivo de la soja se haría supuestamente un uso intensivo de herbicidas, cuya aplicación infringiría con frecuencia las normas jurídicamente establecidas. Entre las normas que serían ignoradas se encuentran las referentes a las franjas de seguridad para proteger a las poblaciones; las barreras vivas destinadas a minimizar la deriva de los agroquímicos; las franjas de bosque destinadas a proteger cuerpos de agua; y el aviso previo para las fumigaciones aéreas. Asimismo, se reporta que el uso frecuente de variedades de soja transgénicas resistentes a herbicidas fomentaría una aplicación excesiva de éstos. En particular, la variedad de soja *Roundup Ready,* producida por la empresa Monsanto, estaría ligada a un uso extendido de herbicidas con glisofato como su agente activo.

167. Se alega también que el uso intensivo de herbicidas ha conducido a numerosos casos de intoxicaciones agudas y crónicas en las comunidades colindantes a los campos de soja. Actualmente no existiría ningún seguimiento sistemático de las intoxicaciones crónicas, cuyas manifestaciones incluirían cefaleas, náuseas, conjuntivitis, problemas dermatológicos, dificultades respiratorias y trastornos nerviosos, convulsiones, esterilidad, anemia aplásica, cáncer, neurotoxicidad y afecciones a la descendencia. Según se informa, una intoxicación por agroquímicos habría sido la causa de la reciente muerte de 12 indígenas Mby'a entre junio y septiembre de 2009.

168. Según la información recibida, seria común que los sembradíos de soja se encuentren a poca distancia de las escuelas rurales. Al no respetarse las franjas mínimas de seguridad o las barreras protectoras, las fumigaciones constantes alrededor de las escuelas pondrían en riesgo la salud de los alumnos y afectarían, por lo tanto, su acceso a la educación. En algunas escuelas rurales se reportan casos recurrentes de cefaleas entre los alumnos.

169. La información llegada indicaría cambios en el marco normativo. Se habría anulado la entrada en vigor del decreto 1937/09, "Por el cual se establecen medidas sanitarias para el uso adecuado de plaguicidas en la producción agropecuaria", que concentraba en una sola norma diversas disposiciones relativas al uso de plaguicidas, supuestamente simplificando su cumplimiento y vigilancia. Por otro lado, el Congreso habría aprobado la Ley "De control de productos fitosanitarios de uso agrícola", la cual transferiría atribuciones de vigilancia del Ministerio de Salud Pública y la Secretaría del Ambiente al Servicio Nacional de Calidad y Sanidad Vegetal y de Semillas, presuntamente socavando la capacidad pública para controlar los efectos de los agroquímicos sobre la salud humana.

170. De acuerdo con las informaciones recibidas, el 6 de noviembre de 2009 las comunidades indígenas Ka'agy Roky, Loma Tajy, Formosa, Ka'aty Miri, Ysati y Ka'a Poty – pertenecientes al pueblo Avá Guaraní en Alto Paraná – habrían sufrido un intento de desalojo. Las seis comunidades con sus 140 habitantes habrían resistido el intento de desalojo dirigido por fuerzas policiales y la fiscal María Raquel Fernández, quien contaba con una orden de desalojo por invasión de inmueble. Más tarde el mismo día, un avión fumigador habría rociado directamente sobre las casas de las comunidades con pesticidas normalmente utilizados en cultivos de soja. Según la información recibida, la operación aérea habría sido realizada por parte de productores brasileños supuestamente para intimidar las comunidades indígenas a dejar sus tierras. Las comunidades estarían en conflicto con los productores de soja brasileños sobre 2 638 hectáreas de tierra. Las fumigaciones se habrían llevado a cabo al mediodía en sitios donde no existen cultivos, con el pleno conocimiento de la presencia de las seis comunidades. Más de 200 personas habrían sido afectadas, reportando náuseas y desmayos, entre otros síntomas. Al menos siete personas habrían sido trasladadas al hospital por presentar cuadros graves.

171. Finalmente, el Instituto Nacional del Indígena (INDI) habría presentado una denuncia formal ante la Fiscalía de Itakyry y el Presidente Fernando Lugo Méndez habría ordenado que se investigue la situación y que se identifique a los responsables de la intoxicación. Se nota también que una comitiva integrada por titulares de diferentes carteras del Estado habría viajado a la zona para constatar las condiciones en las que se encuentran los indígenas y prestar asistencia humanitaria que incluía paquetes de alimentos.

Comunicación recibida

172. Por carta enviada el 23 de febrero de 2010, el Gobierno informa que las comunidades afectadas son las siguientes: Kaa Poty, Kaaguy Roky, Kaaty Miri-Formosa, Loma Tajy y Ysaty pertenecientes a las etnias Ava Guaraní y Mbya Guaraní, con una población de cerca de 140 familias.

173. El conjunto de comunidades habita en su territorio ancestral, en finca titulada en nombre del Instituto Paraguayo del Indígena (INDI), inscripta como finca Nº 1584 del Distrito de Itakyry, adquirida del Sr. Manglio Vicente Medina Cáceres, en el año 1996 y la finca Nº 1709, del Distrito de Itakyry, adquirida del Sr. Francisco Gustavo Vargas Aguayo, en el año 1997, del Distrito de Itakyry. Ambas fincas tienen en total una superficie de 2638 Hectáreas y se hallan ubicadas a 45 kilómetros de la línea de frontera con Brasil. El INDI es el órgano público encargado de la política indígena.

174. El Instituto Nacional de Desarrollo Rural y de la Tierra (INDERT) manifiesta que los alegatos presentados según experiencia y conocimiento de las diferentes situaciones de las poblaciones campesinas e indígenas aledañas a los cultivos de soja en general, son muy próximos. Sobre este caso específico, se considera que debe haber exactitud, porque los diferentes informes emitidos tienen coincidencias.

175. Las investigaciones sobre el hecho se están realizando ante el Juzgado mencionado se ha presentado formal imputación en contra del ciudadano brasileño Alair Alfonso, por el supuesto hecho punible de trasgresión de la Ley Nº 716/96, Maltrato de Suelos, Comercialización y Uso no autorizado de sustancias químicas y producción de Riesgos Comunes, causa a cargo del Agente Fiscal de la Unidad Especializada en Hechos Punibles contra el Medio Ambiente de la Región 2 de Alto Paraná.

176. Actualmente, el Ministerio de Salud Publica y Bienestar Social, forma parte del equipo intersectorial, conformado por entidades estatales y no gubernamentales y gremios involucrados a la producción agropecuaria que estudia la reglamentación de la Ley 3742/09 "De control de Productos Fitosanitarios de Uso Agrícola". Esta labor está coordinada por el SENAVE, Servicio Nacional de Calidad y Sanidad Vegetal y de Semillas.

177. Respecto a la información telefónica que obtuvo el INDI sobre el problema suscitado, desde la primera comunicación de los líderes comunitarios, particularmente del líder Ignacio Gauto, los hechos ocurrieron como consecuencia de que los indígenas se defendieron contra un desalojo dirigido por los propietarios oponentes a los derechos del INDI sobre las tierras, y en base a un oficio de la Agente Fiscal María Raquel Fernández, la que había sido recusada por los abogados del INDI y los indígenas, y en consecuencia, el desalojo suspendido. Como parte de este informe se incluyen los antecedentes del problema judicial existente sobre supuestas superposiciones de fincas.

178. El Estado Paraguayo adquirió dichas tierras, tituladas provisoriamente en nombre del INDI, a fin de cumplir con los derechos reconocidos a las comunidades indígenas, tanto en la Constitución de la República, como en la Ley 904, Estatuto de las Comunidades Indígenas, y los instrumentos internacionales ratificados. No fue posible realizar la transferencia de las tierras a las comunidades ya que muy pronto surgieron las amenazas de sus vecinos brasileños dedicados al cultivo extensivo de soja. Grandes sojales rodean a las cinco comunidades, cuyas tierras se ven alteradas y sus arroyos dañados.

179. Desde hace varios años, el INDI ha venido sosteniendo un largo proceso judicial, por problemas de catastro. En todo este tiempo, los propietarios brasileños vienen alegando que las tierras son suyas, negándose a reconocer los derechos de propiedad del INDI y negando que dichas tierras constituyan parte del territorio ancestral de las comunidades Ava Guaraní. Por esta razón, el INDI ha promovido varios juicios y cuenta a su favor con una Mensura Judicial aprobada por Sentencia Nº 848 del 21 de Noviembre de 2007, y con una Medida Cautelar de No Innovar del Juez Hugo Becker, proveído en el año 2009. A pesar de ello, los indígenas vienen soportando constantemente los asedios procesales y amenazas de todo orden de parte de los inversionistas brasileños, y sufriendo los efectos de pesticidas destinados al cultivo extensivo de soja.

180. El día 6 de Noviembre de 2009, fue formulada una grave denuncia por los líderes de las comunidades, la que daba cuenta de que dichas tierras habían sufrido el efecto de un extraño producto lanzado desde una avioneta. La reacción del Instituto Paraguayo del Indígena fue inmediata, presentando un informe al Ministerio Público, a fin de que dicho órgano realice una investigación para precautelar la seguridad y el respeto a los derechos humanos de las comunidades indígenas. Al mismo tiempo, emitía un comunicado a la prensa sobre tal hecho proveniente de particulares contra los indígenas.

181. Ante la denuncia planteada, el Poder Ejecutivo (Presidencia de la República), dispuso el traslado de una Comitiva de Alto Nivel, al lugar ubicado a seis horas por tierra desde la capital, a fin de verificar la denuncia de los indígenas, y obtener mayor información sobre los responsables de tal hecho, y mostrar un claro mensaje de apoyo y de seguridad a las comunidades indígenas y a las actividades del INDI en su lucha por la defensa legal de las tierras, tituladas por el INDI, y en conflicto judicial con inversionistas brasileños.

182. En cumplimiento de esta decisión, el día 7 de Noviembre de 2009, la Presidenta del INDI se trasladó a Itakyry en compañía de una Comitiva del Poder Ejecutivo, integrada por representantes ministeriales: La Ministra de Salud Pública, el Ministro de la Secretaría Nacional del Ambiente, SEAM, el Ministro de la Secretaría de Acción Social, el Viceministro de Asuntos Políticos del Ministerio del Interior, la Ministra de la Secretaría de la Niñez y la Adolescencia, acompañados de sus asesores. A esta Comitiva se sumaron representantes de la Organización Pojoajú, la que nuclea a varias organizaciones no gubernamentales, así como representantes de la ONG Ambientalista Alter-Vida. A la comitiva acompañaron destacados periodistas de la prensa televisiva, oral y escrita.

183. Los representantes del Poder Ejecutivo, y en particular el INDI, han sido los primeros en denunciar el abuso cometido contra las comunidades, ante los órganos de justicia competentes. Así mismo, el Estado ha tomado todas las medidas conducentes al bienestar de las comunidades afectadas. Tales medidas y obras se detallan en páginas siguientes.

184. A la llegada al lugar donde estaban esperando los líderes indígenas y los miembros de las comunidades, se realizó un Aty – Guazú (Gran Reunión). En la ocasión, los indígenas hicieron un relato pormenorizado de todo lo acontecido, y las autoridades manifestaron su interés de verificar la situación a fin de hacer respetar los derechos humanos de las familias indígenas. Para el efecto, la comitiva realizó un recorrido a todos los lugares, tales como el terreno sobre el cual se realizó el sobrevuelo del avión; el cementerio y otros sitios identificados por los propios indígenas. Luego de este recorrido se realizó una última reunión, donde se acordaron las pautas a seguir y los indígenas entregaron un listado de sus necesidades.

185. La Secretaría del Ambiente (SEAM) manifiesta que se puede afirmar que la mayoría de los hechos son ciertos, aunque no así cuanto sigue: lo establecido en la página 2, 5° párrafo, pues tras el veto parcial dado por el Presidente Lugo, a la Ley 3742 "De Control de Productos Fitosanitarios de uso agrícola" fueron derogados los artículos donde se atribuían al SENAVE funciones del Ministerio de Salud Pública y Bienestar Social y la SEAM. Considera que es impreciso hablar de herbicidas ya que en el país en los cultivos extensivos se aplican diferentes tipos de plaguicidas, no solo herbicidas.

186. En cuanto a las medidas que se han adoptado para solucionar el problema del uso intensivo de herbicidas cerca de las poblaciones, el Gobierno informa que para la Secretaria del Ambiente al Servicio Nacional de Calidad y Sanidad Vegetal y de Semillas (SENAVE) manifiesta que en referencia a estos hechos técnicos de esta institución realizaron un procedimiento técnico en la comunidad indígena del distrito de Itakyry a los efectos de inspeccionar las fincas agrícolas colindantes y corroborar el cumplimiento de las disposiciones legales vigentes.

187. El Ministerio de Salud dispone de un protocolo para la investigación de intoxicación por plaguicidas que es utilizado a nivel nacional y que está basado en los procedimientos internacionales. En otro orden, el Ministerio, forma parte del equipo intersectorial, conformado por entidades estatales y no gubernamentales y gremios involucrados a la producción agropecuaria que estudia la reglamentación de la Ley 3742/09 *"De control de Productos Fitosanitarios de Uso Agrícola"*. Esta labor está coordinada por el SENAVE, Servicio Nacional de Calidad y Sanidad Vegetal y de Semillas

188. Al respecto, han intensificados los monitoreos de producciones agrícolas extensivas ubicados en torno a comunidades indígenas y campesinas de manera a verificar el cumplimiento de medidas de mitigación. Como resultado de los monitoreos hechos desde la segunda quincena de noviembre de 2009 hasta fines de enero de 2010, se han intervenido cerca de 50 fincas agrícolas en los Departamentos de Alto Paraná, San Pedro, Caaguazú, Caazapá y Canindeyú que incumplen con las medidas de mitigación necesarias para

impedir que derivas de herbicidas y otros plaguicidas lleguen a poblaciones cercanas. Muchas de estas fincas intervenidas ya cuentan con sumarios abiertos.

189. Para la SNNA, bien se describen en las alegaciones las denuncias realizadas por el INDI, ante "Personas Innominadas" por la comisión de los hechos punibles de Lesión Grave y Coacción Grave; y otra presentada por Delitos Ambientales, en el caso de Itakyry, y el Gobierno sugere remitirse al informe del INDI.

190. Desde la SNNA se ha acompañado a la Comunidad de Campo Aguae, del Pueblo Avá Guaraní del Distrito de Curuguaty Dpto. De Canindeyu, donde aproximadamente 60 familias son afectadas por el monocultivo de soja, las fumigaciones con agrotóxicos, y la contaminación de fuentes de agua (nacientes y arroyos), incluso los pobladores denuncian la muerte de niños antes de nacer y recién nacidos. Esta Secretaría ha visitado el lugar en varias ocasiones, se ha apoyado a los pobladores con denuncias ante la Secretaría del Ambiente (SEAM) y la Fiscalía de Curuguaty del mismo Departamento. Las últimas informaciones de la zona hacen referencia a que la fiscalía se ha constituido en el lugar y han constatado las irregularidades de los cultivos, la falta de barrera viva y la proximidad de los cultivos y fumigaciones de la población. Desde la SNNA se ha participado también de reuniones y asambleas con la Coordinadora de Víctimas de Agrotóxicos desde donde se han aportados datos e informaciones con relación a este tipo de hechos. Este espacio es coordinado por organizaciones campesinas, organizaciones barriales urbanas, movimientos sociales, comunidades indígenas y es apoyado por ONGs. Si bien este espacio se ha constituido requiere de mayor visibilidad y apoyo por parte de las instituciones públicas y privadas, desde la SNNA se ha planteado en varias ocasiones crear una Mesa Interinstitucional de atención de Víctimas por Agrotóxicos pero esta iniciativa no ha tomado impulso.

191. En cuanto al cumplimiento de las normas para la protección de las personas y el medio ambiente del uso de herbicidas, el Gobierno informa que conforme al mandato de la Ley 2459/04, uno de los objetivos generales del SENAVE es la de controlar los insumos de uso agrícola sujetos a regulación conforme a normas vigentes legales. En el ámbito administrativo el SENAVE a procedió a notificar a aquellos propietarios que incumplen con las medidas establecidas en las reglamentaciones vigentes, para dicho cumplimiento de establece al infractor un plazo de manera a implementar las medidas correctivas. En el caso de no dar cumplimiento a lo dispuesto el SENAVE denuncia el hecho a la Fiscalía de Medio Ambiente.

192. El Ministerio de Salud Publica y Bienestar Social a través de la Dirección General de Vigilancia de la Salud lleva a cabo la coordinación de otras direcciones ministeriales, para la realización y conclusión de los estudios epidemiológicos resultantes de los casos sospechosos de intoxicación por agroquímicos que se extienden por gran parte del territorio paraguayo. Acerca de los acontecimientos sobre la supuesta fumigación sobre las poblaciones indígenas de Alto Paraná, el mismo día de la denuncia, las primeras atenciones fueron realizadas por personal de salud de Itakyry y la intendencia municipal quienes derivaron a seis personas para su evaluación al Hospital Regional con asiento en Ciudad del Este donde se procedió a la toma de muestras de sangre que fueron remitidas para su procesamiento a laboratorios privados de esa ciudad. Posteriormente, las comunidades fueron visitadas por médicos y enfermeras de esa Región Sanitaria y al día siguiente por profesionales de la Dirección General de Asistencia a Grupos Vulnerables del Ministerio de Salud y personal del Centro Nacional de Toxicología, quien obtuvo muestras que fueron derivadas a un laboratorio privado de la ciudad de Asunción por disposición de la Fiscalía del Medio Ambiente de ese distrito a cargo del Abogado Gustavo Sosa. Por otra parte, la Dirección General de Sanidad Ambiental, realizo los estudios técnicos de las fuentes de agua para consumo y aseo, entre otros, utilizadas por las comunidades afectadas. De acuerdo con las conclusiones alcanzadas por esa dependencia conjuntamente con la

Facultad de Ciencias Exactas y Naturales de la Universidad Nacional de Asunción, las fuentes utilizadas para las necesidades básicas carecen de protección sanitaria adecuada, por lo que se hayan expuestas a factores de riesgo, entre ellos el uso de plaguicidas. Por lo tanto, las mismas no reúnen las condiciones mínimas requeridas que aseguren el acceso al agua segura para el consumo humano.

193. El encargado es el Ministerio Público a través de sus Unidades Especializadas en Hechos Punibles contra el Medio Ambiente, quienes promueven la acción penal a través de sus denuncias, o a partir del conocimiento por cualquier medio fehaciente de la comisión de algún hecho punible contra el Medio Ambiente. Las sanciones a dichos hechos punibles se encuentran previstas en el Código Penal Paraguayo, y en las diferentes leyes ambientales, como ser la Ley 716/96, siendo una de las sanciones la pena privativa de libertad.

194. La SEAM lleva a cabo fiscalizaciones e intervenciones a los efectos de certificar si cumplen con las normativas vigentes; en los casos en que se detecten inobservancias a las normativas, se procede a las instrucciones de sumarios administrativos donde los sumariados tienen derecho a presentar sus descargos correspondientes y en caso de determinarse las infracciones pueden aplicarse sanciones desde multas, suspensiones temporales y/o cancelaciones de Licencia y la reparación del daño ambiental cometido así como otras medidas de mitigación y/o remediación. En los casos en que observe la posible comisión de hechos punibles (delitos ambientales) se procede a relevar inmediatamente todos los antecedentes al ministerio público a los efectos que se inicie la investigación pertinente (esto puede darse durante intervención, fiscalización, durante el sumario o a la culminación del sumario)

195. En cuanto a los mecanismos de vigilancia que se han puesto en marcha para dar seguimiento y atender casos de intoxicaciones agudas y crónicas producidas por agroquímicos, el gobierno informa que el Ministerio de Salud Pública se encuentra en la fase de recolección de datos sobre los casos específicos relativos a estos efectos y sus consecuencias en la salud de las poblaciones afectadas por la cercanía de las plantaciones de soja que utilizan herbicidas. En cuanto a los análisis laboratoriales practicados a las poblaciones afectadas, en general se recurre a laboratorios privados, ya que no se cuenta con la tecnología para análisis específicos.

196. El Servicio Nacional de Calidad y Sanidad Vegetal y de Semillas (SENAVE) en el marco de sus atribuciones y como órgano de aplicación de la Ley 123/91, contempla el control sobre el manejo y uso de agroquímicos en el tratamiento de cultivos, dentro de ese contexto, se realiza la aplicación del Decreto 2048/04 " Por la cual se reglamenta el uso y manejo de plaguicidas de uso agrícola establecido en la Ley 123/91, la Resolución Nº 485/03 "Por la cual se establecen medidas para el uso correcto de plaguicidas en la producción agropecuaria", esta llevando a cabo fiscalizaciones a nivel de campo de manera a notificar a aquellos productores que no cumplen con estas reglamentaciones a fin de evitar posibles contaminaciones por deriva a terceros.

197. Sobre el hecho si se han llevado a cabo estudios específicos para recolectar y analizar información sobre los supuestos efectos nocivos a la salud de las personas y al medio ambiente producidos por el uso intensivo de agroquímicos en los campos de soja, el Gobierno informa que en los procedimientos de campo realizados, constatamos de acuerdo a las evidencias agronómicas, como ser tipo de productos aplicados, mecanismos de aplicación de plaguicidas, realizamos las notificaciones correspondientes para la implementación de las medidas correctivas según lo establecido en las disposiciones legales vigentes.

198. La fiscalización realizada no tiene alcance de la comprobación de hechos derivados en daños medio ambientales, incluyendo la salud humana y animales, siendo estas afirmaciones competencias de otras entidades del estado.

199. Los afectados directos reciben la atención de las diferentes unidades sanitarias distribuidas por todo el país, siendo uno de los objetivos el registro de los diagnósticos médicos relacionados con los efectos del uso de estos químicos. Por otra parte, el Ministerio de Salud, ha convenido la tarea de expertos de la OPS que asesoran a la cartera sobre planes y estrategias relativos a las consecuencias que esta práctica produce en la salud humana.

200. No se cuenta con estudios específicos sobre los efectos nocivos al medio ambiente realizados por la SEAM. En ciertos casos, como en el de la presunta aplicación vía aérea de agroquímicos sobre comunidades indígenas de Itakyry, uno de los agentes fiscales presentes expresó que tomaron muestras de agua y aparentemente también de suelo para su posterior análisis y utilización como pruebas por parte de la fiscalía.

201. Sobre el hecho si se ha consultado a las comunidades afectadas y a expertos independientes sobre la expansión del cultivo industrial de la soja, el gobierno informa que en la comunidad indígena denominada KA AGUY ROKY, se realizo la primera verificación, en un primer momento encontramos una barrera en el que los nativos impedían paso a dicha comunidad. Nos acercamos al sitio en el que se encontraban apostados, para poder dialogar con ellos y expresarles el motivo de nuestra visita al lugar, mantuvimos conversación con el representante del grupo, el lider encargado Edelmiro Orrego, quien nos permitió el paso junto con representantes de la Secretaria del Ambiente a los efectos de proceder a la investigación de la causa de supuesta mala utilización de plaguicidas. Es la metodología que comúnmente utilizamos para proceder a atender a casos relacionados con comunidades indígenas.

202. El Gobierno informa que la Secretaría de la Niñez y Adolescencia (SNNA) a través de la Regional de Alto Paraná viene desarrollando acciones de desarrollo comunitario con los Pobladores de la Comunidad Ysatî de los Mbya Guaraní de Itakyry, una de las comunidades afectadas, por medio de los referentes de esta comunidad se ha generado vínculos con los pobladores de las demás comunidades, y son visitados periódicamente por los técnicos y abogados de la misma, brindando todo tipo de apoyo en el marco de la medida de no innovar impuesta por el Juzgado que entiende en la causa.

203. Al inicio de la gestión jurisdiccional, los indígenas miembros de las comunidades de Itakyry, han sido los protagonistas, siendo consultados para todos los pasos del manejo del expediente. En realidad, los indígenas permanecieron en su tierra ancestral gracias a su activa participación en base a su derecho a la libre determinación.

204. Durante la crisis planteada se adhirieron a la gestión del Poder Ejecutivo en la defensa de los derechos indígenas, articulaciones como la Coordinadora por la Autonomía de los Pueblos Indígenas, CAPI, la que presentó por su propia iniciativa una denuncia ante el Ministerio Público. Así mismo, la Coordinadora de ONGs al Servicio de los Pueblos Indígenas emitió un pronunciamiento a favor de las comunidades. En el mismo contexto se pronunciaron la Organización *Pojoajú* y la ONG Ambientalista Alter-Vida.

205. El Gobierno informa que en varias constituciones de fiscalizadores ambientales de la SEAM, realizadas para atención de denuncias sobre uso masivo de plaguicidas en soja, en el último semestre de 2009, se hicieron reuniones con los pobladores denunciantes de manera a escuchar las inquietudes de los mismos con relación al cultivo extensivo de soja y las implicancias de su expansión. La SEAM además tiene previsto hacer en la segunda semana de febrero, reuniones en 4 comunidades campesinas de Alto Paraná que están rodeadas por sojales.

206. Además, se han tenido conversaciones permanentes con organizaciones sociales, campesinas en particular, comunidades indígenas, organización indígenas, en donde se han discutido como enfrentar las consecuencias del cultivo extensivo de la soja y como consecuencia de las mismas se han llevado a cabo fiscalizaciones. Es importante aclarar

que la legislación vigente exige a la SEAM el desarrollo de audiencias publicas en los casos de actividades de gran envergadura (1.000 Ha en adelante).

207. Sobre las medidas que se han tomado para asegurar que las escuelas rurales estén protegidas de los efectos nocivos del uso de agroquímicos en los campos aledaños y proteger el derecho a la educación de los niños de las zonas afectadas con el cultivo de la soja, el Gobierno informa que entre los días 6 y 7 de noviembre de 2009, se registraron 454 consultas de la población expuesta al hecho denunciado. Del total de personas asistidas, los cuadros clínicos fueron evaluados como leve y moderados. Se identificaron a 151 personas con síntomas agudos compatibles con la exposición a sustancias químicas irritantes de la piel y mucosas con repercusión sobre los sistemas gastrointestinal y respiratorio. En 11 de los casos, con síntomas de mayor compromiso, se utilizo la ficha epidemiológica específica para la evaluación de intoxicación por plaguicidas y seis de estas personas fueron derivadas al Hospital Regional de Ciudad del Este para su observación y evaluación. El análisis de estas fichas sugiere que los síntomas referidos pueden ser asociados a la exposición aguda a sustancias químicas como el glifosato o el paraquat, no así para compuestos organofosforados (según informe de la SENAVE, Servicio Nacional de Calidad y Sanidad Vegetal y de Semillas, en un informe emitido el 25 de noviembre de 2009, el glifosato y el paraquat son sustancias habitualmente utilizadas en esa zona en época de cultivo de soja.

208. El 7 de noviembre, la comunidad recibió a una delegación del Poder Ejecutivo, integrada por la Ministra de Salud, Esperanza Matínez, el vice ministro del Interior, Elvio Segovia, el Secretario de Acción Social, Pablino Cáceres, la Secretaria de la Niñez y Adolescencia, Liz Torres .el Secretario del Medio Ambiente, Oscar Rivas, la presidenta del INDI, Lida Acuña y sus respectivos equipos técnicos. Los lideres y miembros de las comunidades expresaron sus testimonios y sus denuncias, las cuales quedaron documentadas en una filmación que ha sido distribuida en los medios de comunicación y en las distintas instituciones del Estado. Una semana después de los hechos denunciados, la Secretaria de la Niñez y Adolescencia, realizó un censo de las cinco comunidades, por lo cual se pudo precisar el número de familias y personas con riesgo de exposición. El resultado de este relevamiento es una totalidad de 91 familias con un total de 419 personas.

209. El 19 de noviembre, en cumplimiento al plan de seguimiento, se constituyo en el lugar un equipo del Ministerio de Salud, de la Dirección General de Asistencia a Personas Vulnerables y otro del Hospital Distrital de Itakyry. En la oportunidad se realizaron entrevistas a los pobladores y se completaron las imágenes con nuevos testimonios que también fueron editados en la película mencionada anteriormente.

210. Por iniciativa de la Dirección General y Escolar Básica del Ministerio de Educación y Culto, con fecha de 28 de mayo del 2009, El Ministro de Educación y Cultura Dr. Luis Alberto Riart, remitió a la Cámara de Senadores un pronunciamiento ante la perspectiva de aprobación del anteproyecto, entonces de Ley, "De control de Productos Fitosanitarios de Uso Agrícola", donde expresa su rechazo a la aprobación de dicho anteproyecto; según consta en el párrafo que se transcribe a continuación: "Haciéndonos eco de los efectos perniciosos de la vigencia de la ley para el país, y concretamente las familias y los escolares de las zonas rurales, queremos dejar sentado en forma suficiente nuestro rechazo a la ley "De control de productos Fitosanitarios de Uso Agrícola" sin que se den las garantías suficientes a la población en general y a nuestros niños, niñas y adolescentes en particular".

211. La creación de una comisión inter-direcciones del MEC, que estudió y elaboró en el año 2009 una propuesta de Reglamento para regular los procesos de apertura, habilitación, funcionamiento y clausura de instituciones educativas, la misma esta puesta a consideración del Ministro, para su puesta en vigencia en el año en curso.

212. La puesta en ejecución en el año en curso del Proyecto " Área de Ambiente Sano y No Violencia" diseñado y gestionado por la Dirección General de Educación Inicial y Escolar Básica del MEC con la cooperación de UNICEF Paraguay.

213. La necesidad de contar con un área específica de trabajo dentro del Ministerio de Educación y Cultura en función al medio ambiente y la no violencia del niño y la niña se hace primordial, pues tanto investigaciones como datos estadísticos de los diferentes entes nacionales, así como las organizaciones de la sociedad civil, han venido denunciando sistemáticamente la ausencia del cumplimiento de los derechos del niño y la niña en la protección de su integridad física y mental.

214. El Ministerio de Educación y Cultura como ente regulador de las políticas educativas del país, es corresponsable de las acciones tendientes a mejorar los sistemas de protección de la infancia ya que el sujeto principal y fin de su existencia son los niños y niñas que viven, conviven y se forman en las diferentes modalidades educativas que tiene a su cargo. Ubicar al niño y la niña como centro de sus acciones y la promoción de sus derechos como norte, son indicadores de que arribamos por buen camino.

215. Por ende, el proyecto pretende profundizar en las prácticas pedagógicas que lleven a lograr la concientización de los diferentes actores educativos hacia el respeto de los derechos del niño y la niña, y el seguimiento y efectiva solución de los casos de maltratos detectados, en colaboración de los actores sociales a nivel departamental y local.

216. El proyecto se compone de tres áreas de acción diferenciadas: Difusión, Asesoría y seguimientos a los casos de denuncia y Información y capacitación a recursos humanos de la EEB.

217. La participación del MEC a través de la Dirección General de Educación Inicial y Escolar Básica en el Consejo Nacional de la Niñez y la Adolescencia, presidido por la Secretaria Nacional de la Niñez y la Adolescencia según la Ley Nº 1680 "Código de la Niñez y la Adolescencia", y la articulación de acciones vinculadas a la protección de derechos, y en particular, el derecho a la educación de niños/as y adolescentes.

218. En cuanto a las investigaciones iniciadas en relación con las fumigaciones del pueblo Avá Gurarní, incluyendo los resultados de los exámenes médicos llevado a cabo, el Gobierno informa los tramites y procesos que se fueron gestionados.

219. Entre los días 6 y 7 de noviembre de 2009, se registraron 454 consultas de la población expuesta al hecho denunciado. Del total de personas asistidas, los cuadros clínicos fueron evaluados como leve y moderados. Se identificaron a 151 personas con síntomas agudos compatibles con la exposición a sustancias químicas irritantes de la piel y mucosas con repercusión sobre los sistemas gastrointestinal y respiratorio. En 11 de los casos, con síntomas de mayor compromiso, se utilizo la ficha epidemiológica específica para la evaluación de intoxicación por plaguicidas y seis de estas personas fueron derivadas al Hospital Regional de Ciudad del Este para su observación y evaluación. El análisis de estas fichas sugiere que los síntomas referidos pueden ser asociados a la exposición aguda a sustancias químicas como el glifosato o el paraquat, no así para compuestos organofosforados (según informe de la SENAVE, Servicio Nacional de Calidad y Sanidad Vegetal y de Semillas, en un informe emitido el 25 de noviembre de 2009, el glifosato y el paraquat son sustancias habitualmente utilizadas en esa zona en época de cultivo de soja.

220. El 7 de noviembre, la comunidad recibió a una delegación del Poder Ejecutivo, integrada por la Ministra de Salud, Esperanza Martínez, el Viceministro del Interior, Elvio Segovia, el Secretario de Acción Social, Pablino Cáceres, la Secretaria de la Niñez y Adolescencia, Liz Torres .el Secretario del Medio Ambiente, Oscar Rivas, la presidenta del INDI, Lida Acuña y sus respectivos equipos técnicos. Los lideres y miembros de las comunidades expresaron sus testimonios y sus denuncias, las cuales quedaron

documentadas en una filmación que ha sido distribuida en los medios de comunicación y en las distintas instituciones del Estado.

221. Una semana después de los hechos denunciados, la Secretaria de la Niñez y Adolescencia, realizó un censo de las cinco comunidades, por lo cual se pudo precisar el número de familias y personas con riesgo de exposición. El resultado de este relevamiento es una totalidad de 91 familias con un total de 419 personas.

222. El 19 de noviembre, en cumplimiento al plan de seguimiento, se constituyo en el lugar un equipo del Ministerio de Salud, de la Dirección General de Asistencia a Personas Vulnerables y otro del Hospital Distrital de Itakyry. En la oportunidad se realizaron entrevistas a los pobladores y se completaron las imágenes con nuevos testimonios que también fueron editados en la película mencionada anteriormente.

223. Actualmente funciona en la zona una Unidad de Salud Familiar, USF, con la contratación de seis funcionarios: dos médicos, dos licenciadas en enfermería y dos enfermeras auxiliares. Asimismo se adquirió una camioneta 4 x 4 cero kilómetro para el acceso a todas las comunidades. El punto focal de la atención de las poblaciones indígenas es el Centro de Salud de Itakyry.

224. El Instituto Paraguayo del Indígena, INDI, presentó ante el Ministerio Público una denuncia concreta sobre coacción y uso indebido de pesticidas. Esa denuncia viene siguiendo su proceso en la Fiscalía. La Fiscalía es el órgano encargado de impulsar las denuncias presentadas. El Instituto Paraguayo del Indígena ha contratado un Abogado especialista, quien se encuentra a cargo del expediente.

225. En fecha 7 noviembre de 2009, ante la denuncia de que 5 comunidades Ava guaraní, del Departamento de Alto Paraná, Distrito de Itakyry, habían sido rociadas, desde una aeronave, aparentemente con agroquímicos, presuntamente por colonos brasileños afincados en tierras colindantes a las tierras que éstos poseen, lo que produjo efectos inmediatos en los miembros de las comunidades, se constituyeron en el lugar los Ministros del Ambiente, de Salud Pública y Bienestar Social, de Acción Social, de la Niñez y la Adolescencia, y el Vice Ministro de Asuntos Políticos del Ministerio del Interior. El Ministro de la Secretaría del Ambiente, estuvo acompañado por funcionarios de la Institución, entre los que se encontraban la Directora Adjunta de Fiscalización Ambiental Integrada, Abog. Miriam Romero, el Director de Asesoría Jurídica, Abog, Juan Bautista Rivarola Cáceres, la Asesora del Ministro, Ing. Patricia Sacco, entre otros.

226. El hecho se produjo el día anterior debido a que los colonos solicitaron a la Fiscalía del Crimen el desalojo por la fuerza de las comunidades indígenas. Ante la intervención del INDI, que certificó que dichas tierras se encuentran en litigio ante la Justicia en la Jurisdicción Civil, y que sobre las mismas pesan medidas de no innovar de hecho y de derecho a favor de las comunidades, en virtud a la ley 43/89 “Que Establece el Régimen de Regularización de los Asentamientos de las Comunidades Indígenas”, se frustró el procedimiento fiscal, creando una situación de alta tensión entre los colonos brasileños y los indígenas, que derivó en la reacción violenta por parte de los primeros.

227. En la constitución realizada por el Ministro y los funcionarios de la SEAM, se constató a simple vista que las propiedades colindantes con la poligonal de las tierras que se encuentran en posesión de las comunidades indígenas, no cumplían con las normativas exigidas para la utilización de agroquímicos en producción agrícola y que sus cultivos llegaban a pocos metros de las viviendas de las poblaciones indígenas, no respetando los 100 metros de franja de protección que establece la resolución MAG 485/03 que debe existir entre cultivos objetos de aplicación de plaguicidas y asentamientos humanos, así como tampoco los colonos brasileños implantaron barreras vivas en sus parcelas con cultivos agrícolas objeto de aplicación de plaguicidas, incumplimiento así el decreto 2.048/04; en todos los casos, los sojales llegaban hasta la vera del camino, no observándose

ninguna plantación que reuniese los requisitos legales de protección. El día de la constitución estuvo presente, aunque no acompaño todo el recorrido, el Fiscal de Delitos Ambientales de Alto Paraná, Abog. Gustavo Sosa.

228. Durante el recorrido de las tierras en litigio, se constató vegetación quemada, presumiblemente a consecuencia de aplicaciones de herbicidas. Según opiniones de funcionarios del ministerio público, se tomaron horas antes de la presencia de técnicos de la SEAM en el lugar, muestras de agua y aparentemente también de suelo para su posterior análisis y utilización como pruebas por parte de la fiscalía. Por este motivo, las muestras tomadas por técnicos de la Secretaría del Ambiente no fueron analizadas.

229. Los técnicos de la SEAM escucharon el testimonio de varios líderes de la comunidad donde se ratificaban que había sido lanzada una sustancia líquida de color blanco, que inmediatamente produjo efectos de hinchazón en los ojos, dolores de estómago, vómitos, dolores de cabeza, y otros síntomas propios de la intoxicación. Todos los testimonios eran homogéneos y concordantes.

230. En los días posteriores (10, 11, 12 y 13 de noviembre de 2009), la Dirección de Fiscalización Ambiental Integrada de la SEAM, procedió a realizar un relevamiento de la zona y como consecuencia del mismo se pudo constatar el incumplimiento de normativas ambientales, por parte de los agricultores colindantes, tanto brasileños como paraguayos, además de observarse producción ganadera y cultivos de soja dentro de las tierras en litigio. Ninguno de los agricultores monitoreados tenía Licencia Ambiental, salvo el señor Alair Alfonso quien dijo que su licencia estaba en trámite, hecho que se pudo corroborar posteriormente.

231. Como consecuencia de las intervenciones hechas por la Dirección de Fiscalización Ambiental Integrada de la SEAM, se han instruido sumarios administrativos en la Asesoría Jurídica de la SEAM a varias personas y proporciona información detallada de los trámites y procedimientos judiciales en proceso.

232. Finalmente, el Gobierno informa de varias medidas adoptadas por el Estado y que para el INDERT, algunas medidas adoptadas para proteger la salud y seguridad de la población aledaña a los campos de soja, son las capacitaciones realizadas para las medidas de protección que deben realizar los asentados, para exigir el cumplimiento de la legislación tal como las exigencias de las franjas verdes para la protección en linderos con los campos de soja. Gracias a esta capacitación y la presencia de organizaciones, aumentaron las denuncias y exigencias a los productores.

Observaciones

233. El Relator Especial agradece al Gobierno por su informativa y detallada respuesta.

Slovak Republic

Communication sent

234. On 7 August 2009, the Special Rapporteur, together with the independent Expert on Minorities Issues sent a communication concerning Romani children who are allegedly denied their right to education free from discrimination as they are placed in “special schools” or classes for children with mental disabilities (despite not having any mental disability), or are segregated in Roma-only schools or classes.

235. According to the information received Romani children were being denied their right to education as they were placed in “special schools” or classes for children with mental disabilities (despite not having any mental disability), or they were segregated in Roma-only schools or classes. In both cases they study a lower curriculum in virtual

isolation from other pupils. Sub-standard education reduces future employment prospects and further education opportunities for the children and further contributes to the marginalization and poverty of Romani people.

236. It was reported that in 2006, only three per cent of Romani children reached secondary school, while only eight per cent enrolled in secondary technical schools. Although some measures have been taken by the authorities, the most important being the new Education Act passed in 2008 that bans all forms of discrimination, particularly segregation, this ban was not accompanied by any effective measures to ensure that it is implemented in practice.

237. It was further alleged that Romani children come in the majority from "settlements" and are identified as students from "socially disadvantaged environment". Because of their social status, they are perceived as children with special educational needs, alongside "students with disabilities". It is mentioned that the government's Policy on the Roma minority includes a goal to differentiate Romani children from students with disabilities, requiring special upbringing and education. The Education Act 2008, however, fails to include this important distinction. The lack of a clear definition further contributes to the confusion and leaves school placement of Romani children susceptible to discrimination.

238. It was reported that the decisions to place children in special schools are made at the age of entry to compulsory education. The majority of Romani children are put at an immediate disadvantage because they usually do not speak Slovak and have not had the benefit of pre-school education. The tests used for assessments in Slovakia have been criticized as not being culturally neutral, and not suitable for Romani children. Parents often agree with such a placement because they know their children will experience less rejection and stereotyping from their non-Romani peers, parents or teachers. The right to education, including a prohibition of discrimination and segregation in education, is enshrined in many international and regional human rights standards and treaties to which Slovakia is a state party.

239. The source mentioned a judgment issued in 2007, by the European Court of Human Rights which ruled in the case of D.H. and Others v. the Czech Republic that segregating Roma students into special schools is a form of unlawful discrimination according to the European Convention on Human Rights. The placement of a disproportionate number of Romani children in special schools has also been considered a practice of racial segregation by the UN Committee on the Elimination of Racial Discrimination. In its review of Slovakia, the Committee expressed concern "at de facto segregation of Roma children in special schools, including special remedial classes for mentally disabled children."

240. It was finally alleged that there is no effective independent complaints mechanism in Slovakia that parents can easily access if, for instance, their children are inappropriately placed in special schools. The State School Inspectorate, mandated to process individual complaints and petitions, although independent in its activities, cannot issue sanctions related to segregation. Unlike similar bodies in neighboring countries, the Slovak National Centre for Human Rights does not have authority to investigate individual complaints, to initiate its own investigations, or to recommend remedies in individual cases of violations of the right to education.

Communication received

241. By letter dated 5 October 2009, the Government informed that it disagreed with the statements stipulated in the communication sent, claiming that Roma children were being placed in special schools unreasonably or grounds of ethnicity.

242. The Government mentioned that the legal guardian of a child is obliged to sign the child up for compulsory school attendance in a primary school. The headmaster of the

school will decide on admitting a child with special educational needs based on a written application y the legal guardian and a written opinion from the educational counselling and prevention facility. Before granting the child admission, the headmaster will inform the legal guardian about all the educational options available for his/her child.

243. Children and pupils are admitted to schools for children with health disabilities or pupils with health disabilities on the basis of their health disability with a view to determining their special educational needs. Naturally, multiple experts observe, assess and diagnose whether "clear signs of a mental handicap" are present or not: a physician, pedagogue, special pedagogue, psychologist, or therapeutic pedagogue. The written opinion of the educational counselling and prevention facility is drawn up with full responsibility after the consideration of all factors affecting the child's psychological and personality development.

244. Furthermore, the Government informed that the details of the procedure by the acceptance of children and pupils to special schools are set out in the Decree of the Ministry of Education of the Slovak Republic No. 322/2006 Coll. of 6 August 2008 on Special Schools, effective as of 1 September 2008.

245. Schools for children with health handicaps and pupils with health handicaps accept children or pupils with demonstrable health handicaps who, due to their health handicap cannot be successfully educated in a kindergarten or an elementary school, on the basis of diagnostic examinations with the consent of a parent or a natural person than the parent, who is the guardian or provides foster care to the child, on the basis of a court decision or with the consent of a representative of the facilities in which institutional care, educational measures, interim measure or protective education are provided.

246. Before the acceptance of a child or pupil with a health handicap into a school, the educational counselling and prevention facility shall perform a diagnostic examination of the pupil, which forms a part of the documentation considered in the decision on whether to accept the child or pupil to a school.

247. A child or pupil with a health handicap is accepted on the basis of his health handicap evidenced in a completed and confirmed form approved by the Ministry of Education of the Slovak Republic. This form also contains the report from the diagnostic examination with the determination of diagnosis, recommendations regarding the education and training of the child or pupil and for the child's or pupil's acceptance to or rejection from the respective school. A specialized physician for children and youth and a representative of the school founder may also be members of the acceptance commission.

248. The Government informed that a Test of Educational Capability of Socially Disadvantaged Children was developed, verified and standadised (April 2005) within the framework of the PHARE project (programme: Phare 2002/000.610-03, ECO; project: Phare SRO 103.01) entitled "Reintegration of Socially Disadvantaged Children from Special Schools into Standard Primary Schools". It is a psychometric (screening and developmental) tool serving for objective and unbiased evaluation of the educational capability of children coming from a socially disadvantaged environment in order to ensure adequate consideration of their capabilities and realistic educational prospects. The test was developed by experts at the Research Institute for Child Psychology and Pathopsychology. The methodologies evolve and allow for increasing result precision.

249. Another reason for the higher proportion of children with mental handicaps among the Roma population, and the consequent higher numbers of Roma children placed in special schools, is the closed character of their communities, which causes a higher incidence of predispositions to transfer genes causing an unfavorable state of health of children, including mental disabilities. A vast majority of the children are placed in special schools legitimately. They are looked after by expert personnel (special pedagogues),

conditions exist for individual work (fewer children in one class), and the educational content is adequate to the pupils' capabilities. Pupils also have the possibility to acquire specialized education on a level corresponding to their abilities (certain study fields)

250. Only sporadic complaints are registered with regard to possible discrimination in the field of education. They mostly concern failures on the part of the relevant responsible staff of schools or school-founding authorities. However this should not be generalized as a structural failure of education system. In such cases, effective instruments exist in the form of school inspections and control carried out by the Regional School Authorities, which deal with individual cases.

251. Based on information from the Control Department of the Ministry of Education of the Slovak Republic (MoEdu) pertaining to the year 2008, it was discovered that four complaints concerned discrimination. Of the above, three complaints were related to discrimination on health-related grounds and inadequate treatment of pupils by pedagogue (emotional maltreatment, failure to observe procedures in the education of integrated pupils, humiliation and being offended in front of classmates). These were referred to the State School Inspection. One complaint concerned discrimination on ethnic grounds; the complaint was sent to the school-founding authority to make a decision. Since these complaints were referred to the competent authorities, the MoEdu Control Department did not assess as to whether they were justified or not.

252. The issue of placing Roma children in special schools was also the subject of a report by an NGO entitled "A Tale of Two Schools-Segregating Roma into Special Education in Slovakia". The Regional School Office in Košice and the State School Inspection carried out controls in respect of the unjustified admittance of Roma pupils in the Primary Special School in Pavlovice nad Uhom. Conclusions were formulated and corrective action was taken. The Deputy Prime Minister of the Government for knowledge-Based Society, European Affairs, Human Rights and Minorities, held two work meetings with the representatives of NGOs and other stakeholders, aimed at addressing the problem.

253. The Government considers the resolution of Roma issues as one of its priorities. The Government supports all development programs that aim to improve the life of Roma and the integration of the Roma community into society with an effective and target oriented use of sources in fields of education, culture, health and social care, infrastructure and housing. In the field of education, new laws, concepts and concrete measures have been adopted. In the field of the Roma issue in March 2008, the Government adopted the Medium-term Concept of Development of the Roma Ethnic Minority in the Slovak Republic SOLIDARITY-INTEGRITY-INCLUSION 2008-2013 (the "Medium-term Concept"), which is based on a analysis of previous government concepts. It defines current problems in the sphere of education, health, employment and housing and proposes relevant measures. The Government provided specific details on the Medium-term Concept and the measures proposed in the field of education of Roma children and pupils. One of the objectives of the concept is to lower the percentage of Roma children attending special elementary schools for pupils with mental disabilities.

254. The Government also informed that in May 2008 the National Council of the Slovak Republic adopted Act No.245/2008 Coll. on Education and Training (the School Act) and on amendments to certain acts. Pursuant to the School Act, education and training are based inter alia on the principle of prohibition of all forms of discrimination and especially of segregation. For the first time, children and pupils with special needs also include children and pupils from a socially disadvantaged environment. The Act defines theses as children and pupils living in an environment which, given its social, family, economic and cultural conditions, insufficiently stimulates the development of the mental facilities, including volitional and emotional capacities of the children and / or students, fails to encourage their

socialization, and does not provide enough adequate stimuli for the development of their personality.

255. In order to provide for education pursuant to the Convention on the Rights of the Child (the task of general and local government bodies to establish conditions, under which children have equal access to education, with particular emphasis on groups disadvantaged in the educational system in view of their social and cultural specifics), and to the results of the PISA Studies (the level of education in the Slovak Republic in below the OECD average and it is strongly influenced by the socioeconomic background), help needed to be targeted and aimed at children from a socially disadvantaged environment.

256. If a child or pupil comes from a socially disadvantaged environment, systemic support of access to education is ensured (both in financial and institutional terms): free pre-school education starting from the age of 5, zero grades in primary schools, specialized classes in primary schools-a compensatory and development programme, a teacher assistant, a normative contribution per pupil coming from a socially disadvantaged environment, subsidies for meals and teaching aids, support for schools-development projects, the European Social Fund, etc. These measures are conceptual (the Concept of Upbringing and Education of Roma Children and Pupils Including the Development of Secondary and Tertiary Education approved by Government Resolution No. 206/2008) and address the reasons why Roma children are failing in primary schools and /or why they do not achieve educational capability.

257. At primary schools, a specialized class may be set up for pupils whose education requires a compensatory programme or a development programme and for pupils previously attending a school with as educational programme for pupils with health disabilities. Pupils are only assigned to the specialized class for the time necessary. No separate schools are set up for pupils from a socially disadvantaged environment.

258. The State School Inspection performs state oversight of the quality of pedagogical management, the quality of education and training, and the material and technical conditions, including practical teaching in schools and school facilities, in practical training centres, practical training facilities and in educational institutions. In the discharge of its functions, it monitors the compliance of the education and training programmes on the national and the school level with the training and education objectives and principles (including the observance of the prohibition of all forms of discrimination and segregation in particular), monitors and assesses the quality of education and training, and handles complaints and petitions. It submits regular annual report on the educational and training process to the Minister of Education.

259. On suspicion that the equal treatment principle in the educational and training process was violated on grounds of children and pupils belonging to the Roma ethnic group, a complaint may be filed with the Slovak National Centre for Human Rights. The centre offers free-of-charge legal assistance and consultancy with a view to addressing the problems related to the violation of the equal treatment principle. The observance of the equal treatment principle consist in the prohibition of discrimination on any grounds whatsoever and the exercise of rights and obligations in line with good morals, as well as the adoption of measures to protect against discrimination in accordance with the provisions of Act No. 365/2004 Coll. on equal treatment in certain areas and on the protection against discrimination (the “Anti-Discrimination Act”).

Observations

260. The Special Rapporteur thanks the Government for its extensive and informative reply.

Sudan

Communication sent

261. On 24 March 2009, the Special Rapporteur, together 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 Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right to food, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on violence against women, its causes and consequences sent an urgent communication regarding the revocation of licenses of 16 non-governmental organisations working in the region of Darfur, in Northern Sudan and in the Transitional Areas. Such a decision would have devastating consequences on the human rights of approximately 4.7 million people affected by the conflict, particularly in the sectors of food, health, water, sanitation, adequate housing and education. Of this population approximately 2.7 million are internally displaced persons living in camps across the country.

262. According to the information received, on 5 March 2009, following the issuance of an arrest warrant against President Omar al-Bashir by the International Criminal Court, it was announced that the operations relating to humanitarian assistance and human rights work of these organisations were suspended. These organisations included 13 international non-governmental organisations, namely Action contre la Faim, Solidarités, Save the Children UK and Save the Children US, Médecins sans Frontières Holland and Médecins sans Frontières France, Care International, Oxfam GB, Mercy Corps, International Rescue Committee (IRC), Norwegian Refugee Council, Cooperative Housing Foundation and PADCO. In addition, the activities of three national organisations were also terminated, namely the Sudan Social Development Organization (SUDO), the Amel Centre for Treatment and Rehabilitation of Victims of Violence, and the Khartoum Centre for Human Rights. These 16 organisation employed nearly 6,500 national and international personnel, this constituting close to half of the workforce in Darfur. Eviction orders have reportedly been appealed (according to Sudanese law) by relief and humanitarian NGOs, while the closing down of local NGOs cannot be appealed according to the Humanitarian Act of 2006. Incidents of threats against NGO personnel were reported as well as systematic confiscation and seizure of property, including passports, computers, cars and confidential items, reportedly on the basis of an agreement signed by NGO personnel with the Humanitarian Aid Commission (HAC) stipulating that they have to hand their assets over to the State if they leave.

263. The impact would not only be limited to Darfur, but also the Three Transitional Areas and Eastern Sudan. According to estimates, 1.5 million beneficiaries no longer had access to health and nutrition services. Host and IDP populations were particularly affected. Water supply, sanitation and hygiene services provided by these NGOs to 1.16 million people have been interrupted (Blue Nile – 102,000; Eastern States – 50,000; and Darfur – 1,007,000). Some 1.1 million people have stopped receiving general food distribution and the treatment of some 4,000 children for severe and moderate malnutrition over the next three months could be interrupted. In the Non-Food Item (NFI) and Emergency Shelter (ES) sector, 670,000 individuals are to be affected. Distributions of Non-Food Relief Items (which include cooking equipment and other basic household goods) and emergency shelter have ceased in 19 camps and locations in Darfur.

264. The longer term humanitarian consequences, such as depletion and shortages of food stocks and other assets and the upcoming rainy season, would reportedly have a serious impact on the ability of the communities concerned to have access to sufficient and adequate food.

265. On 8 March 2009, the decision to terminate the activities of the abovementioned organisations had started to show its effects. In some IDP camps in the Zalingei area, for example, the fuel for operation of the water pumps had begun to run low without an alternative option in place for its re-supply. Garbage had also started piling up inside these camps. Absence of water and a waste disposal system would have serious consequences on people's health and nutrition.

266. Finally, disturbing reports of censorship, temporary newspaper suspensions, threats and arbitrary arrest and detention to prevent human rights defenders, journalists and members of opposition parties from freely expressing their opinions, were reported. Privately-owned print media reportedly continued to be subjected to daily censorship by officials of the National Intelligence and Security Service (NISS) who may order the removal of any article from the following day's paper. In response to the censorship there had been a number of protests by journalists.

Observations

267. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

Thailand

Communication sent

268. On 24 August 2009, the Special Rapporteur, together with the Special Rapporteur on on extrajudicial, summary or arbitrary executions sent a communication regarding the targeting and burning of schools, school closures, murder and mutilation of, and threats against, teachers and students in certain districts in Southern Thailand (Pattani, Yala, Narathiwat, and five districts of Songkhla).

269. According to the information received, for the past five years a separatist insurgency had raged in these four predominately Muslim provinces in Southern Thailand (Pattani, Yala, Narathiwat, and five districts of Songkhla). Security forces had allegedly struggled unsuccessfully to protect schools, teachers, and students against attacks by the insurgents with the result that schools had often been shut down in many districts or even entire provinces.

270. During the night of 4 January 2004, groups of separatist militants burned down 20 government schools in Narathiwat in a series of near-simultaneous attacks. By 27 January 2004, nearly 700 schools (out of the total 925) across the southern border provinces had to be shut down temporarily as a result of growing fears of insurgent attacks.

271. It was further reported that on 13 June 2007, militants burned down 11 schools in Yala province's Raman district, apparently in retaliation for the murder of Abdulraman Sama, age 60, a respected Muslim religious teacher. More than 500 Muslim women and children blocked a highway in front of a mosque in Raman district in protest of his killing, accusing government security forces of responsibility. Fears of further reprisal attacks on schools led to the closure of 60 other schools.

272. Over the past five years, there had also been many reported attacks on mosques and Muslim schools (ponoh). There had been no successful criminal investigations of these cases.

273. Separatist insurgents were increasingly attacking teachers. Since the beginning of the new school term in May 2009, five teachers had been killed by insurgents in the south. After each attack, schools in affected areas were closed down for security reasons. Hundreds of teachers have requested transfers from the region. On 19 May 2009, a teacher at Nikhom Pattana Park Tai School was reportedly shot dead as he was riding a motorcycle from his home to his school in Bannang Sta district of Yala province. On 2 June 2009, insurgents allegedly attacked a pickup truck transporting six teachers from their schools in Ja Nae district of Narathiwat province. Two Buddhist Thai teachers were singled out and killed: Atcharaporn Thepsorn, a teacher at Ban Dusung Ngor school who was eight months pregnant, and Warunee Navaka, a teacher at Ban Ri Nge School.

274. On 6 June 2009, insurgents killed Matohe Yama, a teacher at Ban Palukasamo in Bajoh district of Narathiwat province, and on 16 June 2009, insurgents shot dead Lekha Issara, a teacher at Ban Poh Maeng school, while she was riding on a motorcycle from home to work in Raman district of Yala province.

Observations

275. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

United States of America

Communication sent

276. On 24 August 2009, the Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a communication regarding the use of corporal punishment in public schools to discipline students with disabilities.

277. According to information received, corporal punishment is permitted in twenty states and hundreds of school districts allegedly make routine use of it to discipline pupils. It was alleged that the most common form of corporal punishment in these institutions is paddling, whereby students are repeatedly hit on the buttocks with a wooden board resembling a shaved-down baseball bat. Students have purportedly also been struck with other objects, such as rulers and toy hammers. Numerous reports of spanking, pinching, grabbing, bruising, beating and forceful restraint had also been received and must all equally be considered as corporal punishment.

278. Students with disabilities were allegedly subjected to corporal punishment at disproportionately high rates. Data received indicated that at least 41,972 students with disabilities received corporal punishment at least once in the 2006-2007 school year. The majority of these students are defined as disabled under the Individuals with Disabilities Education Act, while the remainder receive assistance under Section 504 of the Rehabilitation Act. The total number of pupils, with and without disabilities, subjected to this form of discipline in US public schools during the 2006-2007 school year was 223,190. Hence, students with disabilities made up 18.8 percent of those who received corporal punishment, despite constituting just 13.7 percent of the national student population. The figures were allegedly much higher in certain states and only reflect reported incidents.

279. Information received suggested that students with disabilities were frequently punished for behaviour related to their disabilities. Such practices may indicate that educators lack sufficient training on the nature of their pupils' disabilities and/or the best means by which to respond to possibly inappropriate behaviour related to these disabilities. In addition to causing immediate physical discomfort, numerous incidents of corporal punishment had allegedly resulted in lasting injuries and barriers to education. Students have been known to become angry, depressed and deeply reluctant to return to school following physical discipline in the classroom. Data received indicated that the threat of severe educational barriers was particularly high for children with disabilities whose medical conditions may be worsened as a direct consequence of corporal punishment.

280. Finally, it was alleged that parents are frequently not informed of the full extent of violence used against their children. Reporting was not mandated for many types of corporal punishment and school districts did not always choose to report incidents to the parents of a child that was physically disciplined. In the case of children with disabilities, the potential lack of information was higher as many children are unable to verbalise their experiences. Reports received suggested that parents who have attempted to engage in discussion with educators in response to violent discipline of their disabled child at school had often seen their concerns and complaints ignored.

Communication received

281. By letter dated 21 December 2009, the Government informed that in the United States, unless Federal law provides otherwise, education matters, including whether corporal punishment may be administered in schools, are considered to be matters controlled by State and local laws. In 1977, in Ingraham v. Wright, 430 U. S. 651, 664, the U.S. Supreme Court rejected an argument that the Eighth Amendment's prohibition against cruel and unusual punishment was applicable to corporal punishment inflicted by school administrators. The Court also held that a student's procedural due process rights are not violated by the administration of corporal punishment if the student has adequate post-punishment remedies under State law. Id. at 672-80. Students who receive corporal punishment that is excessive or capricious may seek appropriate state-law criminal and civil relief. In addition, U.S. courts have recognized a constitutionally-protected interest of students to be free of corporal punishment that is excessive or arbitrary. Kirkland v. Greene County Board of Education, 347 F.3d 903 (11th Cir. 2003); P.B. v. Koch, 96 F.3d 1298 (9th Cir. 1996); Moore v. Willis Independent School District, 233 F.3d 871 (5tn Cir. 2000); Saylor v. Board of Education of Harlan County, 118 F.3d 507 (6th Cir. 1997).

282. At the time of the Ingraham decision, only two of the 50 States prohibited corporal punishment in schools. Inrgaham, supra, at 662. Today, according to the Center for Effective Discipline, 30 States prohibit the use of corporal punishment in schools, while 20 States still permit schools to administer corporal punishment in some form. Based on anecdotal information, within these States, some school districts have acted independently to prohibit corporal punishment in their schools, but we do not know how widespread these policies may be. For school year 1975-76, the U.S. Department of Education, based on a weighted sample of the nation's school districts made a statistical projection that 1,521,896 children were subjected to corporal punishment in schools. For school year 2005-2006, the Department's statistical projection was that 223,190 children received corporal punishment in schools. Of the 223,190 projected to have received corporal punishment in schools in 2005-2006, 41,972 were projected to be students with disabilities. Based on these data, in school year 2005-2006, approximately 0.63% of identified children with disabilities received corporal punishment.

283. The Government further informed that it provides extensive protections for the rights of children with disabilities to a free, appropriate public education in settings to the maximum extent appropriate to the needs of the individual child in settings with their nondisabled peers. Federal law emphasizes the use of positive behavioral interventions and supports to address challenging behavior of children with disabilities in schools. State law, however, as noted above, controls whether school administrators may administer corporal punishment in schools, including corporal punishment for children with disabilities. As discussed below, remedies are available for violations of the rights of children with disabilities to a free, appropriate public education and for the administration of corporal punishment that is excessive or arbitrary.

284. The Government provided information regarding Federal Laws addressing the Right to Education for Children with Disabilities. Since 1975, a Federal law, now named the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., has required that the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the elementary and secondary schools operated or funded by the Department of the Interior for Indian children on reservations, as well as the Freely Associated States of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, in exchange for funding for a portion of the costs of the program, ensure the provision of a free, appropriate public education to each child with a disability within their jurisdictions who, because of that disability needs special education and related services. Through the IDEA, eligible children are entitled to appropriate special education and related services and supplementary aids and supports generally from age three through age 21 or until they graduate from secondary school with a regular high school diploma or reach the maximum age for secondary school in the State, whichever comes first. 20 U.S.C. § 1412(a)(1). In fall 2007, the most recent year for which data are available, 6,718,203 children with disabilities aged three through 21 were served under the IDEA.

285. The IDEA requires that, to the maximum extent appropriate to the needs of the individual child, he or she is educated in regular classes with nondisabled children and that removal from regular classes occurs only when education for the child with a disability cannot be satisfactorily achieved in the regular setting. 20 U.S.C. § 1412(a)(5). Appropriate services must be determined annually on an individual basis by considering the strengths of the child; the concerns of the parents for enhancing the education of their child; the academic, developmental and functional needs of the child; and periodically updated individual evaluations at a meeting involving the child's parents, one or more of the child's teachers and related service providers and school administrators, and, as appropriate, the child. 20 U.S.C. § 1414(d)(1)(B) and (3)(A).

286. Significantly, for a child whose behavior impedes the child's learning or the learning of others, the participants in this meeting must consider the use of positive behavioral interventions and supports and other strategies to address that behavior. 20 U.S.C. § 1414(d)(3)(B)(i). At the conclusion of this meeting, the team writes an individualized education program (IEP) that identifies the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; a statement of measurable annual academic and functional goals for the child; a description of how the child's progress toward those goals will be measured and when periodic reports to parents will be provided; a statement of the special education and related services and supplementary aids and services to be provided to, or on behalf of, the child; an explanation of the extent, if any, to which the child will not participate with nondisabled children in regular classes; a statement of any individually appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and school district-wide assessments; the projected date for the beginning of services and the anticipated

frequency, location, and duration of those services; and, for children beginning at least at age 16, appropriate measurable postsecondary goals and transition services needed to help the student reach those goals. 20 U.S.C § 1414(d)(1)(A).

287. Both the IDEA and Title I of the Elementary and Secondary Education Act, 20 U.S.C. § 6301 et seq., the largest Federal grant program for elementary and secondary education, emphasize efforts to improve educational results for children with disabilities and close academic achievement gaps between children with and without disabilities. These laws promote high quality instruction by providing school staff with opportunities for professional development, requiring that staff be appropriately and adequately prepared and trained, and require that school districts and States be held accountable for the academic achievement of children with disabilities. 20 U.S.C. §§ 1412(a)(14)-(16); 6311(b)(2); and 6319. (Under Title I, school districts and States are held accountable for the academic achievement of all students including children with disabilities.)

288. Through the IDEA, the U.S. Department of Education provides extensive support to State efforts to adopt research-based positive approaches for establishing the social culture and behavioral supports needed for all children in a school to achieve both social and academic success, primarily through research, technical assistance and professional development. For example, the Department funds the Center for Positive Behavioral Interventions and Supports (PBIS), which is designed to provide capacity-building information and technical assistance to States, school districts, and schools for identifying, adopting, and sustaining effective positive school-wide behavioral practices. In a study assessing the extent to which States are adopting research-based approaches to addressing student behavior, 38 of the 41 responding State educational agencies reported that they are implementing, in at least some sites, a positive behavior intervention approach with support from the PBIS Center. ("Statewide Behavior Initiatives" Project Forum, National Association of State Directors of Special Education, 2007.) The Department also encourages States and school districts to use available IDEA funds for professional development activities and for early intervening services, to implement school-wide programs of positive behavioral interventions and supports for children who need additional behavioral support to succeed in the general education environment.

289. The IDEA includes an extensive series of procedural safeguards designed to ensure that parents of children with disabilities may seek redress whenever they are concerned about the identification, evaluation, educational placement, or any matter related to the provision of a free, appropriate public education to their child. These safeguards include written prior notice to the parents whenever the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free, appropriate education to the child; an opportunity for mediation; an opportunity to present a due process complaint with respect to any matter relating to the identification, evaluation, educational placement, or the provision for a free appropriate public education to the child; and for an impartial due process hearing on any of those matters. 20 U.S.C. § 1415(b), (e), and (f)-(i)(1). Failure to consider the need for positive behavioral interventions and supports for a child whose behavior interferes with learning and failure to implement those positive behavioral interventions and supports, for example, could be redressed through filing a due process complaint. If a parent is still dissatisfied after a due process hearing decision and its administrative appeal, if available in that State, the parents may appeal that decision to Federal or State court. 20 U.S.C. § 1415(i)(2)-(3). During the pendency of a due process hearing or appeals, the child must remain in the educational placement he or she was in at the beginning of the case, unless the parent and school district agree otherwise. 20 U.S.C. § 1415(j).

290. Through regulation, the U. S. Department of Education also requires States to offer a more informal complaint process, through which any individual or organization may file a written, signed complaint with the State educational agency alleging a violation of any requirement of the IDEA. 34 CFR §§300.151-300.153. Under these procedures the State must issue a written decision addressing each allegation of the complaint within 60 calendar days, unless the time is extended for extraordinary circumstances with respect to the particular complaint or the parties agree to an extension of time to engage in mediation or other alternative dispute resolution.

291. The IDEA also includes procedures concerning the administration of discipline to children with disabilities. 20 U.S.C. § 1415(k). These procedures, however, are directed primarily at ensuring that children with disabilities are not removed on a long-term basis through discipline from their regular educational environment for behavior that is a manifestation of their disability and for ensuring the provision of appropriate services, in another setting, to these children with disabilities who are appropriately removed on a long-term basis for disciplinary reasons from their regular educational environment. For example, if a school is proposing to remove a child from his or her regular placement for more than 10 school days, within 10 school days of that decision the child's IEP team must meet to review all relevant information and assess whether the child's behavior was a manifestation of the child's disability. If it is determined to be a manifestation, the IEP team must conduct a functional behavioral assessment of the child and implement a behavioral intervention plan for the child or review and revise an existing plan. 20 U.S.C. § 1415(k)(1)(E) and (F). Failure to comply with a behavioral intervention plan, for example, by substituting corporal punishment for some other response to inappropriate behavior described in that plan, would be a violation of the IDEA and redress could be sought through the mechanisms described previously.

292. The Government further informed that two other Federal civil rights laws, Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131, are also relevant to the issue of public education for children with disabilities. Section 504 prohibits discrimination on the basis of disability in programs and activities conducted by, or receiving financial assistance from, Federal agencies; Title II of the ADA prohibits discrimination on the basis of disability in State and local government services. A child is protected by these laws if the child has a physical or mental impairment that substantially limits a major life activity, has a record of a substantially limiting impairment, or is regarded as having a substantially limiting impairment, including children who have a disability within the meaning of Section 504 and Title II but who may not be eligible for IDEA services.

293. The discrimination prohibited by these laws includes denying any qualified child with a disability a free appropriate public education, including an appropriate education that is provided in the least restrictive environment appropriate for the child. Under these laws, an appropriate education is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met and that adhere to other specific procedures. 34 C.F.R. § 104.33(b)(1). For example, a failure to respond to disruptive behavior by a child consistent with the positive behavior interventions and supports included in the child's IEP could constitute a violation of Section 504 and Title II of the ADA. Similarly, administering corporal punishment to children with disabilities and some other discipline to children without disabilities also could be a violation of Section 504 and Title II of the ADA.

294. Section 504 regulations require school districts to establish and implement procedural safeguards with respect to the identification, evaluation, or educational placement of students protected by Section 504. This system of procedural safeguards includes notice, an opportunity for parents or guardians to examine relevant records, an impartial hearing with the opportunity for participation by parents or guardians and by counsel, and a review procedure. See 34 C.F.R. § 104.36. In addition, complaints alleging violations of Section 504 and Title II of the ADA in elementary and secondary education may be filed with the U.S. Department of Education's Office for Civil Rights (OCR). When OCR receives a complaint, OCR evaluates the complaint and investigates if appropriate. Pursuant to both statute and regulation, OCR is obligated to resolve civil rights violations by voluntary and informal means, if possible. If negotiation and resolution methods fail, OCR issues a violation letter of findings and again attempts to negotiate a settlement agreement to correct the violations. If compliance cannot be secured by voluntary means, OCR cap seek compliance through an administrative hearing process or through referring cases to the U.S. Department of Justice for enforcement through litigation. Additionally, individuals who believe they have been intentionally discriminated against in violation of these laws may bring an action in federal court for appropriate relief, including monetary damages.

295. Regarding the facts alleged in the communication sent, the Government replied that it could only respond to the accuracy of the numbers and percentages of children who were subjected to corporal punishment that are cited in the paragraph of your letter that starts on the bottom of page 1 and carries over to the top of page 2, and cap confirm that the numbers and percentages cited appear to be from or based on the U. S. Department of Education's Civil Rights Data Collection (CRDC). (The CRDC is conducted as a weighted sample of approximately 6,000 of the more than 16,000 school districts in the United States. Based on the data collected from that sample, the Department develops statistical projections for States and for the United States as a whole. The statement in the information that these data concern the 2006-2007 school year is not accurate, however. Although the data was submitted to the Department in the 2006-2007 school year, the data represent the Department's projections for the 2005-2006 school year.

296. On September 11, 2009, the U.S. Department of Education proposed to expand its existing collection of data regarding corporal punishment and students with disabilities by proposing to collect that data disaggregated by race/ethnicity, Limited English Proficient status, and sex, consistent with the corporal punishment data collection for students without disabilities. The Department's proposal regarding this and other revisions to the CRDC are now being considered in a public comment period that concluded on November 10, 2009. The Government had no further information on the accuracy of the remaining facts alleged in the summary of the case.

297. The Government further mentioned that the U.S. Department of Education's OCR does receive some complaints alleging disability discrimination related to corporal punishment. As described previously, when OCR receives a complaint, OCR evaluates the complaint and investigates if appropriate. There are a number of different ways in which a complaint can be resolved. This includes OCR finding that a civil rights violation has occurred, or finding insufficient evidence of non-compliance with applicable civil rights laws, or dismissing a complaint due to, for example, lack of subject matter jurisdiction. As noted previously, if compliance cannot be secured by voluntary means, OCR can seek compliance through the administrative hearing process or through referring cases to the U.S. Department of Justice for enforcement through litigation. The Government further provided some examples of complaints received and investigated.

298. Finally, the Government informed that the inquiries specific about the use of corporal punishment in schools have been limited to the collection of data regarding the use of corporal punishment in public schools through the CRDC and in the investigation of complaints alleging that the use of corporal punishment violates Federal civil rights laws, as mentioned previously, and also provided examples of efforts made by State and local authorities to adopt research-based positive approaches for establishing the social culture and behavioral supports needed for all children in a school to achieve both social and academic success, primarily through funding research, technical assistance, and professional development activities.

Observations

299. The Special Rapporteur thanks the Government for its extensive and informative reply.