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**SPECIFIC GROUPS AND INDIVIDUALS
MIGRANT WORKERS**

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

Addendum

Communications sent to Governments and replies received*

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

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SUMMARY OF COMMUNICATIONS SENT TO GOVERNMENTS AND REPLIES RECEIVED

General comments

This report covers communications issued under the mandate of the Special Rapporteur on the human rights of migrants from 1 January 2005 to 31 December 2005. It thus includes communications issued by Ms. Gabriela Rodríguez Pizarro and by Mr. Jorge Bustamante, who was appointed Special Rapporteur on 29 July 2005.

In 2005, 34 communications were sent to 25 countries. Of these, 3 were urgent appeals, the remaining allegation letters. 16 communications were sent jointly with other special procedures.

Communications were sent to the following countries¹: Bahrain (2); Bangladesh (1); China (1); China (Hong Kong) (1); Dominican Republic (1); France (1); India (1); Indonesia (2); Israel (3); Italy (1); Japan (1); Jordan (1); Kuwait (1); Libyan Arab Jamahiriya (1); Malaysia (1); Malta (1); Morocco (2); Myanmar (1); the Netherlands (1); Pakistan (1); Peru (1); Saudi Arabia (1); Spain (2); Sudan (1); Thailand (3); and the United States of America (1):

This report contains references to 26 replies or communications received from the following Governments: Bangladesh (1), China (Hong Kong), (1) Guatemala (2), Indonesia (2), Italy (1), Japan (1), Jordan (1), Kuwait (1), Libyan Arab Jamahiriya (1) Malaysia(2), Maldives (1), Malta (1), Morocco(1), Pakistan (1), the Philippines (1), Serbia Montenegro (1), Spain (5), Thailand (1), and the United States of America (1). The communications from Bangladesh, Jordan and one of the replies from Malaysia acknowledged receipt of allegations received and informed of action taken by the authorities to provide the Special Rapporteur with a response but did not provide substantive information. In the case of Spain, substantive replies were transmitted by the government to both communications transmitted in the course of 2005, as well to a request for information sent in 2004, following two letters acknowledging receipt.

As in previous years, Government communications received after 17 February could not be reflected in this year's report and will be summarized in next year's report.

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

Bahrain

Communications sent to the Government

1. By letter dated 19 September 2005, sent jointly with the Special Rapporteur on trafficking especially women and children, the Special Rapporteur on violence against women, including its causes and consequences, and the Special Rapporteur on sale of children, child prostitution and child pornography, the Special Rapporteur notified the Government that he had received information regarding the alleged mistreatment of migrant women working as domestic workers in Bahrain.
2. According to the information received migrant domestic workers, who typically live with their employers, are explicitly excluded from the protection of the 1976 Labour Law for the Private Sector. Many have to work 15 to 17 hours a day, seven days a week, and their employers often restrict their freedom of movement. Since their legal status in Bahrain depends on the continued visa sponsorship of their employers, migrant domestic worker who flee exploitative situations risk arrest, prolonged administrative detention and deportation. Their vulnerability is exacerbated by the fact that many employers take away their migrant domestic workers' passports, a practice that is reportedly officially tolerated. In addition, public authorities often privilege employers in disputes involving migrant workers.
3. In extreme cases, domestic migrant workers may also be subjected to physical or sexual abuse. Reference was made to the situation of Ms. A.B.J, an Indonesian girl.
4. According to the information received, A.B.J., then aged 16, was recruited through a Jakarta-based private employment agency by a Bahraini married couple, who agreed to sponsor her visa and employ her as a domestic worker. Actually born in 1989, the head of her Indonesian home village helped to arrange for her a passport that falsely stated her date of birth as 1 August 1978. After A.B.J. arrived in Bahrain on 24 June 2004, her new employers took her passport away.
5. On the evening of 26 June 2004, the employer touched A.B.J's intimate body parts against her will. His wife was present when the incident occurred but did not protest. On the evening of the next day, after the wife had left the house, the employer forced A.B.J to watch a pornographic film, tore off her clothes and touched her intimately once again even though she screamed in protest. The next morning, A.B.J informed the wife about the incident but the wife did not react.
6. Approximately one month later, the wife told A.B.J that she could earn additional money if she agreed to have sexual relations with men. On the evening of the same day, she was forced to leave the house with an unknown man. He took her to the premises of a factory where she was raped first by him and later by another man. The man told A.B.J that he had paid the wife to have sexual relations with A.B.J Even though she was bleeding and suffered strong pain after the rapes, A.B.J was not allowed to seek medical assistance. Instead, the wife gave her pain killers.
7. In the weeks thereafter, A.B.J was forced to have sexual relations with a number of men, including the husband/employer. To diminish her resistance, A.B.J was given stimulant drugs, presumably Methylenedioxymethamphetamine (also known as Ecstasy). During the entire period

she was confined to the house and not able to communicate by mail or telephone. Only on the occasion of a relative's visit she managed to contact her employment agency in Jakarta with the relative's mobile phone. The employment agency then organized her rescue.

8. A criminal investigation was opened and the husband was detained for a brief period of time but then released. A forensic medical examination proved that A.B.J had had repeated sexual intercourse, but no blood test was taken to determine the nature of the drugs that A.B.J had been given. The husband/employer was indicted for rape and the wife for facilitating prostitution. A court hearing is scheduled to take place in September 2005. A.B.J's former employers still retain possession of her passport and have neither paid her the wages agreed upon nor compensated her for the sexual violence suffered.

Bahrain/Indonesia (see also Indonesia/Bahrain)

9. By letter dated, 11 October 2005, sent jointly with the Special Rapporteur on violence against women, including its causes and consequences, the Special Rapporteur notified the Governments of the Bahrain and Indonesia that he had received information regarding the alleged mistreatment of Afiyah Binti Sapun, a migrant domestic worker from Indonesia working in Bahrain.

10. According to the information received, Ms. Afiyah Binti Sapun, a 22-years-old Indonesian domestic worker from Central Java, was placed with an Egyptian family in September of last year by the Tihana Manpower Services Agency. Since last year Ms. Sapun has been working for her male sponsor, his two brothers and their mother.

11. On 17 September 2005, Ms. Sapun was taken to the hospital (Salmaniya Medical Complex, SMC) after being severely beaten by her sponsor's mother. She has a fractured left forearm, cuts to her head and scratches on her neck. The incident was reported to the police on 18 September.

12. It is reported that, Ms. Sapun states that on Saturday 17 September at around 1 pm, she was beaten by the sponsor's mother because she alleged that she "did not clean her bedroom properly". The sponsor's mother squeezed Ms. Sapun's arm until it was broken. Ms. Sapun also declares that she has been repeatedly beaten by her sponsor's mother ever since she began working with the family. When it was considered that she was late in completing a task, the sponsor's mother would scratch her neck with her nails or hit her in the mouth with shoes and on the head with a stiletto heel. The sponsor's mother also cut Ms. Sapun's hair without permission. Ms. Sapun also states that during the past year, she had only received two-month salary of \$182 (BD68.600), which was sent to her family in Indonesia.

13. After a year, Ms. Sapun's family has only recently been allowed to contact her. In April of 2005, her relatives reportedly contacted the employment agency, which in turn contacted the sponsor, but he did not allow the agency to speak to Ms Sapun directly. Ms Sapun said she wrote several letters to her family and gave them to her sponsor's mother to post, but was not sure if they were ever sent. The Indonesian Consular Office is now arranging for Ms. Sapun to speak to her family.

Observations

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

Bangladesh/Jordan (see also Jordan/Bangladesh)

Communications sent to the Government

15. By letters dated 10 June 2005, the Special Rapporteur notified the Governments of Bangladesh and Jordan that she had received information regarding the situation of 115 Bangladeshi migrant workers in Jordan who have reportedly been submitted by their employer in that country to working conditions amounting to forced labour and to ill-treatment.

16. According to the information received, the 115 migrant workers were employed by the AS.A. Textile, Ramta, Jordan through a Bangladeshi manpower recruiting agency named G.V.I. operating in Dhaka. It is reported that the workers are forced to work extremely long hours of up to 16 hours a day, and are denied wages due to them in accordance with their employment contract. It is further alleged that they are not provided with enough food and water and that the 115 workers were all lodged together in a four room compound. When the workers demanded their wages they were reportedly severely beaten by their employer. Subsequently they were confined to the Apparels compound for ten days. During their detention they were allegedly denied food and water and the telephone line was cut.

17. Five of the workers were reportedly sent back to Bangladesh where, on 4 April 2005, they held a press conference to denounce their treatment as well that of their colleagues. The migrant workers have allegedly contacted the Bangladeshi Embassy in Jordan regarding their situation but have received no support. Those remaining in Jordan reportedly wish to return to Bangladesh.

Communications received from the Government

18. By letter dated 17 June 2005, the Government of Bangladesh informed the Special Rapporteur that the contents of the communication had been transmitted to the appropriate authorities for inquiry and action.

Observations

19. The Special Rapporteur would like to thank the Government of Bangladesh for keeping him informed on the status of its response. He would also like to reiterate his interest in receiving the reply of the Government of Bangladesh to these allegations.

**China (Hong Kong Special Administrative Region)/Indonesia (see also Indonesia/ China
(Hong Kong Special Administrative Region))**

Communications sent to the Government

20. By letters dated 8 November 2005, the Special Rapporteur notified the Governments of China and Indonesia that he had received information relating to the death on 24 April 2005 of Ms. Suprihatin, a 23 year old Indonesian domestic worker living in Hong Kong.

21. According to the information received, on 24 April 2005, at approximately 9:00 P.M, Ms. Suprihatin, fell from her employer's flat situated on the 19th floor of a building in Pok Fu Lam, Hong Kong. She died on 3 May 2005, at Queen Mary Hospital, Hong Kong as a result of injuries sustained. The employer allegedly dismissed her death as suicide claiming that Ms. Suprihatin was distraught because she was unable to financially support her family living in tsunami-stricken areas of Indonesia.

22. Nevertheless, it is alleged that two friends who visited Ms. Suprihatin in the hospital before her death reported that she indicated that she had not jumped, but had been pushed from the 19th floor. It is further alleged that Ms. Suprihatin did not have any known family members living in any areas of Indonesia affected by the 2004 tsunami. Furthermore, a number of friends and witnesses have reportedly claimed that her employer had physically abused her and that she had shown them bruises and marks from her abuse. It is further reported that persons living on the 20th floor, including Filipino migrants working in the flat above, reported often hearing shouts and scolding, including shortly before Ms. Suprihatin fell.

23. According to the testimony of several friends, a few months before she fell she had reported to her agency, the B.C.E.A. that she had been ill-treated by her employers. However, the agency allegedly took no action and advised her to do nothing.

24. Fears have been expressed that the police would support the conclusion that Ms. Suprihatin had committed suicide as they had allegedly stated that the case might be closed based on the fact that the consulate had not made an appeal to the police. On 9 May 2005, Ms. Suprihatin's body was allegedly returned from the mortuary to the police for a second autopsy.

Communications received from the Government

25. By letter dated 19 January 2006, the government of China provided the following information regarding the death of Ms. Suprihatin. The police have completed their investigation into the case and submitted their findings to the Coroner who will decide, under the Coroner's Ordinance (Cap. 504), whether the death should be investigated in the public interest. To date, the Coroner has not made a decision. In the course of their investigation, the police interviewed a number of witnesses, including Ms. Suprihatin's friends, but detected no suspicious circumstances. No specific complaint was made regarding Ms. Suprihatin's death. The Department of Justice of the Hong Kong Special Administrative Region Government will advise on the sufficiency of evidence for a criminal investigation. Furthermore, as legal proceedings are still in progress, it would not be appropriate for the HKSAR to disclose any further details.

26. Regarding the assistance provided by the Labour Department (LD) in Ms. Suprihatin's case, the government informed that according to the department's records no complaint was received regarding Ms. Suprihatin's employment. The LD was notified in May of 2005 of Ms. Suprihatin's death by the Chairperson of the Association of Indonesian Migrant Workers in Hong Kong. Ms. Suprihatin's parents have given a family member written authorization to carry out all post death arrangements. Accordingly the LD met with the family's representative and the Chair of the Association in order to explain applicable law regarding compensation in cases of employees who die as a result of an accident arising from and in the course of employment, as well as the claims procedures involved and how to apply for legal assistance. As Ms Suprihatin's employer has rejected that death was the result of an accident arising of and in the course of employment, the LD has informed the family's representative of her right to pursue the employee's compensation claim in a court of law in Hong Kong as well as how to approach the Legal Aid Department for assistance. The LD will continue to provide assistance in this case.

27. Regarding the regulation of employment agencies, the Government provided the following information. Part IIX of the Employment Ordinance (Cap. 57) (EO) and the Employment Agency Regulations (EAR) there under regulate the licensing and operation of employment agencies in Hong Kong. The EO is enforced by the labour department. It is an offence to operate an Employment Agency without a licence. Any person who wishes to operate an EA must apply for a licence from the Commissioner for Labour. The Commissioner is empowered to refuse to issue/renew the licence of an EA and may revoke it in a number of circumstances. In addition to licensing, the LD regulates the operation of EA's through inspection and the investigation of complaints in order to safeguard the interests of job seekers, including foreign domestic helpers. Complaints lodged by job seekers are investigated promptly and thoroughly. Criminal procedures will be instituted when there is sufficient evidence.

Observations

28. The Special Rapporteur would like to thank the government of China for its prompt and detailed reply. He would appreciate being kept informed of any new developments relating to the case of Ms. Suprihatin.

China

Communications sent to the Government

29. By letter dated 19 December 2005, sent jointly with the Special Rapporteur on the question of torture, Special Rapporteur on trafficking in persons, especially women and children and Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur notified the government that he had received information concerning allegations of trafficking and sexual exploitation of female citizens of the Democratic People's Republic of Korea (DPRK) in the Peoples Republic of China (PRC), especially in Jilin Province.

30. According to information received there are at least 50,000 DPRK citizens who only have irregular visa status in the Korean Autonomous Prefecture of Yanbian (Jilin Province), which borders the DPRK and is home to about one million Chinese citizens of Korean ethnicity. While

a considerable number clandestinely crossed the international border into the PRC to escape persecution many others fled the poor socio-economic situation.

31. About half of those who cross the border are women. After arriving in the PRC, many are trafficked and forced to marry or become the concubines of Chinese men. Human traffickers systematically target the women, who are usually hungry and desperate, by approaching them in the border region and promising them food, shelter, employment and protection. Once the traffickers have gained the women's confidence, the women are lured to an apartment, confined and then sold to local men. The buyers often lock their victims in the house, tie them up or take away their clothing to prevent them from escaping. In many cases, the women are also physically abused and raped.

32. Some women from the DPRK are also trafficked into the sex industry in Jinlin Province and other parts of the PRC. They are forced to prostitute themselves in brothels, which are often disguised as karaoke bars.

33. Women from the DPRK with an irregular visa status are extremely vulnerable to trafficking since the Chinese authorities have reportedly been instructed to arrest and deport DPRK citizens against their will, if they do not have a valid residence permit. The PRC reportedly considers these persons to be irregular migrants who cross the border only for economic reasons. This deportation policy has been adopted despite the fact that DPRK citizens face detention under cruel, inhuman and degrading conditions, ill-treatment and torture as well as, in extreme cases, summary execution in the DPRK. Human traffickers are well aware of this deportation policy and often manage to subdue their victims by threatening to report them to the authorities, if they resist.

Dominican Republic

Communications sent to the Government

34. By letter dated 7 September 2005, sent jointly with the Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, and the Independent Expert on minority issues, the Special Rapporteur notified the Government that he had received information concerning the detention and deportation of Haitian nationals.

35. According to the reports received, more than 3,000 Haitians have been detained and over 1,000 deported without consideration of their legal status in the country. Those with the legal right to remain and Dominicans of Haitian origin have allegedly had their papers confiscated and have been deported along with undocumented migrants. There are also reports of increasing violent attacks against Haitians, including three persons who were burnt alive by a gang and have since died. The reports received also indicate a racial connotation in the targeting, detention and deportation of Haitians.

Observations

36. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of the Dominican Republic regarding these allegations. He would also like to

reiterate his interest in receiving information in relation to the communication sent in 2002 (E/CN.4/2003/85/Add.1, paras. 19-33), which referred to similar allegations.

France

Communications adressées au gouvernement

37. Par lettre datée du 18 novembre 2005, le Rapporteur spécial a informé le gouvernement qu'il avait reçu des informations à l'égard des conditions de rétention administrative de migrants et de demandeurs d'asile en France.

38. Selon les renseignements reçus, la situation dans les centres et locaux de rétention administrative, réservés en principe aux étrangers en voie d'expulsion, se serait sensiblement dégradée depuis l'année 2003.

39. Certaines initiatives prises par votre Gouvernement sont signalées comme étant à l'origine de cette dégradation, notamment la loi sur l'immigration adoptée le 26 novembre 2003, qui a allongé les délais maximum de rétention des étrangers de douze jours à trente-deux jours, et des consignes qui auraient été données par le Ministre de l'intérieur à l'automne 2003 pour que le nombre de reconduites à la frontière soit doublé. La durée moyenne de maintien en rétention serait désormais deux fois plus longue qu'antérieurement, approchant les dix jours. La mise en conformité des locaux avec les normes édictées en 2001 prévue pour le 19 mars 2004 aurait été repoussée au 31 décembre 2006.

40. Le décret du 30 mai 2005 contiendrait une disposition déterminant que les personnes étrangères placées en rétention et sollicitant l'asile devraient désormais rémunérer elles-mêmes les interprètes qu'elles solliciteront pour rédiger leur demande et remplir le formulaire en français (la rédaction en français aurait été rendue obligatoire par un décret d'août 2004).

41. La situation générale est décrite comme préoccupante : contrôle massif des étrangers et dans certains cas, surcharge des locaux de rétention, entassement des personnes, tensions et incidents avec le personnel, promiscuité et propreté douteuse. Des pratiques auparavant rares seraient devenues plus courantes comme par exemple : opérations policières d'envergure sur la voie publique dans un large périmètre; arrestations d'étrangers venant de déposer un dossier de demande de mariage ou demande d'asile; et contrôles massifs et ciblés dans certains quartiers à forte population étrangère. La multiplication des contrôles aurait eu comme conséquence les placements d'étrangers en rétention parfois sans discernement, certains ayant été conduits plusieurs fois en rétention alors que les intervenants savaient qu'ils n'étaient pas « reconductibles ». On compterait parmi les personnes retenues de plus en plus de personnes en détresse sociale et psychologique, des femmes et des enfants. Dans ces conditions, les cas de violences et automutilation seraient de plus en plus fréquents.

42. Une grande partie des centres de rétention serait désormais surpeuplé avec les conséquences habituelles, soit l'augmentation des tensions, promiscuité et incidents réguliers.

43. La situation des enfants est décrite comme étant particulièrement préoccupante. Des enfants de tous âges, accompagnant leurs parents seraient placés régulièrement en rétention. Certains

enfants auraient été interpellés par la police dans des conditions humiliantes, à la sortie de l'école, et parfois dans l'école même, pour être conduits auprès de leurs parents en rétention.

Observations

44. Le Rapporteur spécial réitère son intérêt à recevoir une réponse du Gouvernement Français sur ces allégations.

Guatemala

Comunicaciones recibidas del Gobierno

Comunicación recibida del Gobierno con relación al caso del 7 de Octubre de 2004

45. Por cartas con fecha de 14 de febrero y 2 de agosto de 2005, el gobierno transmitió la información siguiente con relación al caso del 7 de octubre de 2004 relativo a los allanamientos realizados en el Centro de Atención al Migrante (ver E/CN.4/2005/85/Add.1, para. 100).

46. El 26 de octubre de 2004, la Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos (COPREDEH) recibió comunicación de los allanamientos realizados a las instalaciones del Centro de Atención al Migrante, ocurridos el 20, 25 y 26 de septiembre del 2004.

47. El 10 de Mayo de 2005, la Comisión solicitó al Ministerio Público información referente al caso.

48. El 24 de Mayo de 2005, el Ministerio público informó que la Sección contra Robos y Atracos del Servicio de Investigación Criminal de la Policía Nacional Civil realizó la investigación, con resultados negativos.

49. El caso se encuentra en fase de investigación por parte de la Dirección de Investigaciones Criminalísticas del Ministerio público que ha procedido a una entrevista y está procesando la información. El sistema de justicia del Estado de Guatemala, se encuentra realizando las investigaciones de este y otros hechos ocurridos, que guardan ciertas similitudes para establecer si existe o no un patrón, considerando además que todas estas organizaciones se encuentran ubicadas la misma zona de la ciudad capital de Guatemala. Como ejemplo se refiere a los siguientes casos: 1) Casa del Migrante; 2) Paz y Tercer Mundo; 3) Movimiento de Desviradas; 4) Centro para la Acción Legal en Derechos Humanos- CALDH; 5) Proyecto Institucionalización del Mesodiálogo; 6) Unión Progresista Amatitlaneca; 7) Cooperativa COOSADECO; 8) Asamblea de Población Desarraigada; 9) Gente Positiva; 10) Unidad de Defensores del Movimiento Nacional de Derechos Humanos y 11) Organización Hijos por la Identidad y la Justicia contra el Ovidio y el Silencio (H.I.J.O.S).

50. En cuanto se tengan reportes de los avances del proceso, se enviará la información sobre la identificación de los responsables, su juzgamiento y sanción.

Comunicación recibida del Gobierno con relación al pedido de información del 9 de diciembre de 2004

51. Por carta con fecha de 14 de febrero de 2005 el gobierno transmitió la información siguiente con relación al caso del 9 de diciembre de 2004 sobre los Sres. Adán Alberto Cadoza, Mario Armando Argumedo, Mario Portal Melgar, Ricardo Pérez Rivas, Norman Fernández, Kiny Alfredo Morales, Rogelio Menjivar, Carlos Martínez Alvarado y la Srta Merlin Oneida Alvarez (ver E/CN.4/2004/85/Add.1, paras. 101-106).

52. El 13 de enero de 2005, la Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos (COPREDEH) solicitó al Ministerio Público información sobre la existencia de denuncias interpuestas sobre amenazas de deportación y extorsión a los inmigrantes por parte de agentes de la Policía Nacional Civil. También, solicitó información a la Oficina de Responsabilidad Profesional de la Policía Nacional Civil a fin de establecer la existencia de denuncias.

53. En su informe preliminar, la Oficina de Responsabilidad Profesional estableció que no se habían interpuesto denuncias ante la Policía Nacional Civil sobre amenazas de deportación y extorsión.

54. El 3 y 7 de febrero, el Ministerio Público, informó que la Fiscalía de Distrital de Coatepeque del Departamento de Quetzaltenango se encuentra a cargo de los hechos denunciados bajo el número de registro 1106-04. La Fiscalía de Coatepeque ha solicitado información a la Oficina de Responsabilidad Profesional de la Policía Nacional Civil para establecer la naturaleza de la denuncia y ampliar la información interpuesta al Ministerio Público por el Subcoordinador de la Oficina de derechos humanos de los migrantes sobre hechos relacionados a amenazas y extorsión de agentes de la Policía Nacional Civil a inmigrantes salvadoreños y hondureños.

55. La CPPREDEH informa que el Ministerio Público ha realizado gestiones para contactar a las víctimas que no han tenido éxito porque no existe dirección donde se les pueda localizar.

56. El estado de Guatemala se encuentra a la espera de la ampliación del informe del Ministerio Público

Observaciones

57. El Relator Especial quisiera agradecer al Gobierno de Guatemala la información remitida sobre las comunicaciones transmitidas en el 2004. En relación con el caso del 7 de octubre de 2004, relativo a los allanamientos realizados en el Centro de Atención al Migrante, el Relator expresa su preocupación por el número de ONGs que, de acuerdo con la información propiciada por el Gobierno, fueron víctimas de acciones semejantes.

58. Agradecería al Gobierno que siga transmitiendo información sobre el desarrollo de las investigaciones de estos casos. El Relator Especial quisiera también reiterar su interés en recibir la respuesta del Gobierno de Guatemala en relación con las dos alegaciones enviadas en el 2002 (E/CN.4/2003/85/Add.1, paras. 82-86).

India

Communications sent to the Government

59. On 13 May 2005, jointly with the Working Group on Arbitrary Detention, the Special Rapporteur transmitted an Urgent Appeal to the Government of India concerning Mr. Aimaiti Alimu, a Uighyur refugee from Xinjiang province of China.

60. According to the information received, Mr. Aimaiti Alimu was arrested on 9 May 2005, and placed in a detention center in New Delhi by officials of the Foreigners Regional Registration Office (FRRO). He was detained at the Lampur Detention Centre in New Delhi.

61. Mr. Aimaiti Alimu is a member of the Uighyur Democratic Party in the Xinjiang province of China, which is not allowed to function legally. He had arrived in India on 14 February 2005 on a three-month visa which expires on 11 May 2005. According to Indian law, foreigners are required to register with the Foreigners Regional Registration Office (FRRO) if they intend to stay in the country for more than 180 days. On 9 May 2005, when Mr. Alimu went to the FRRO, with the intention of applying for an extension of his visa, he was arrested and taken into custody. On 10 May, he was from the FRRO to the Lampur Detention Centre, where foreigners are typically detained for overstaying or pending a decision on their deportation or other action.

62. Mr. Alimu speaks and understands no language apart from the Uighyur language. When his friend went to see him on the late evening of 10 May 2005, he was not allowed to speak to him for more than a few minutes.

63. It is feared that Mr. Alimu may be deported to China where he may be in danger of being tortured or executed.

Observations

64. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of the India regarding these allegations. He would also like to reiterate his interest in receiving a reply to the communication sent on 11 May 2004. (E/CN.4/2005/85/Add.1, para. 108-110)

Indonesia/Bahrain (see also Bahrain/Indonesia)

Communications sent to the Government

65. By letter dated 11 October 2005, sent jointly with the Special Rapporteur on violence against women, including its causes and consequences, the Special Rapporteur notified the Governments of Indonesia and the Bahrain regarding information he received on the alleged mistreatment of Afiyah Binti Sapun, a migrant domestic worker from Indonesia working in Bahrain.

66. According to the information received, Ms. Afiyah Binti Sapun, a 22-years-old Indonesian domestic worker from Central Java, was placed with an Egyptian family in September of 2004

by the Tihana Manpower Services Agency. Since last year Ms. Sapun has been working for her male sponsor, his two brothers and their mother.

67. On 17 September 2005, Ms. Sapun was taken to the hospital (Salmaniya Medical Complex, SMC) after being beaten by her sponsor's mother. She has a fractured left forearm, cuts to her head and scratches on her neck. She claims she has been repeatedly beaten by her sponsor's mother who was reported to the police on 18 September.

68. Ms. Sapun said she was beaten up by the sponsor's mother at around 1 pm on Saturday 17 September because she "did not clean her bedroom properly". The sponsor's mother squeezed Ms. Sapun's arm until it was broken. Ms. Sapun also claimed she was repeatedly beaten by her sponsor's mother since she was placed with the family. Every time she was late to do something, the sponsor's mother scratched her neck with nails, hit her in the mouth with shoes and on the head with a stiletto heel. The sponsor's mother also cut Ms. Sapun's hair without permission. Ms. Sapun also claimed that during the past year, she had only received two-month salary of \$182 (BD68.600), which was sent to her family in Indonesia.

69. Ms. Sapun's family has been recently contacted after a year without contact. Her relatives reportedly contacted the employment agency in April 2005, which in turn contacted the sponsor, but he did not allow the agency to speak to Ms Sapun directly. Ms Sapun said she wrote several letters to her family and gave them to her sponsor's mother to post, but was not sure if they were ever sent. The Indonesian Consular Office is now arranging for Ms. Sapun to speak to her family.

Communications received from the Government

70. By letter dated 15 November 2005, the Government transmitted information relative to the case of Aiyah Binti Sapun sent on 11 October 2005. According to the information received exploitation and abuse of domestic workers abroad has been a matter of serious concern for several years. The Government even imposed a ban on the deployment of Indonesian maids to Bahrain due to reports of rampant exploitation and abuse.

71. Regarding the case of Aiyah Binti Sapun, the Tihana Manpower Services agency tried unsuccessfully to contact her earlier in the year after receiving complaint from her family. Though the agency managed to speak to her employer they were not allowed to speak with Ms. Sapun. The Indonesian Consular Office was informed of the situation on 18 September 2005, by the Migrant Workers Protection Society and visited her the next day at the Salmaniya Medical Complex. Representatives from the Consulate and the Tihana Manpower Services reported the case to the police. Two police officers interviewed Ms. Sapun at the medical center and took a statement from her. A formal complaint was then filed against the employer and the sponsor's mother. The Indonesian Consulate is currently endeavoring to re-establish contact between Ms. Sapun and her family. The Consulate is also cooperating with Migrant Worker's Protection Society to file a case against her employer. Both also hope to ensure that she is reimbursed for unpaid wages. Ms Sapun hopes to stay in Bahrain and obtain work with another employer. The Consulate, working in collaboration with all relevant parties will continue to follow the situation closely.

Indonesia/China (Hong Kong Special Administrative Region)

72. By letters dated 8 November 2005, the Special Rapporteur notified the Governments of China and Indonesia that he had received information relating to the death on 24 April 2005 of Ms. Suprihatin, a 23 year old Indonesian domestic worker living in Hong Kong.

73. According to the information received, on 24 April 2005, at approximately 9:00 P.M, Ms. Suprihatin, fell from her employer's flat situated on the 19th floor of a building in Pok Fu Lam, Hong Kong. She died on 3 May 2005, at Queen Mary Hospital, Hong Kong as a result of injuries sustained. The employer allegedly dismissed her death as suicide claiming that Ms. Suprihatin was distraught because she was unable to financially support her family living in tsunami-stricken areas of Indonesia.

74. Nevertheless, it is alleged that two friends who visited Ms. Suprihatin in the hospital before her death reported that she indicated that she had not jumped, but had been pushed from the 19th floor. It is further alleged that Ms. Suprihatin did not have any known family members living in any areas of Indonesia affected by the 2004 tsunami. Furthermore, a number of friends and witnesses have reportedly claimed that her employer had physically abused her and that she had shown them bruises and marks from her abuse. It is further reported that persons living on the 20th floor, including Filipino migrants working in the flat above, reported often hearing shouts and scolding, including shortly before Ms. Suprihatin fell.

75. According to the testimony of several friends, a few months before she fell she had reported to her agency, the Best Choice Employment Agency that she had been ill-treated by her employers. However, the agency allegedly took no action and advised her to do nothing.

76. It is further alleged, that the Indonesian consulate failed to inform Ms. Suprihatin's family in a timely manner that she was in a critical state in the hospital with the result that they were unable to travel to Hong Kong to be with her when she died. The consulate reportedly also initially dismissed claims made by Ms. Suprihatin's friends on 29 April 2005 that she had been mistreated and did not appeal to the police for an inquiry into Ms. Suprihatin's death until much later.

77. Fears have been expressed that the police would support the conclusion that Ms. Suprihatin had committed suicide as they had allegedly stated that the case might be closed based on the fact that the consulate had not made an appeal to the police. On 9 May 2005, Ms. Suprihatin's body was allegedly returned from the mortuary to the police for a second autopsy.

Communications received from the Government

78. By letter dated 27 December 2005, the Government transmitted the following information relative to the case of Ms. Suprihatin transmitted on 8 November 2005. It has been claimed that the Indonesian Consulate in Hong Kong did not act speedily and initially dismissed the claims made by Ms. Suprihatin's friends in April of 2005. The Consulate however, has released a statement detailing its involvement in this case and has denied that such statement could be construed to imply a lack of concern. Prior to the statement, action had been taken to inform Ms. Suprihatin's family of the situation and update them on the state of her health. The Federation of

Indonesian Migrant Workers visited the family in East Java on 4 May 2005 as they had already been in contact with them and provided information on Ms. Sprihatin's condition.

79. Regarding the investigation, the Government informs that the police initially ruled Ms. Suprihatin's death a suicide, a finding that was questioned by migrant support groups and some of Ms. Suprihatin's friends. A second autopsy was carried out on 9 May 2005 the results of which were not conclusive. The Hong Kong authorities have not closed the case. However, there is no evidence to support allegations that are at present only suspicion and hearsay. The Government also pointed out that the roles played by her recruitment agency and her employer are a part of the ongoing investigation. The Government state that it has found no reason to detract from the investigations and findings of the Hong Kong police.

80. The Government further notes that Indonesian workers in Hong Kong are perhaps the best organized and have strong influence compared with other host countries and that this helps ensure that they are not treated unfairly.

81. The Government also provided information regarding various actions taken at the national and international level to promote an end to violence and abuse of Indonesian migrant workers living and working abroad and informed that as it was particularly concerned about the vulnerable position of female migrant workers the laws on migrant workers have been reviewed in the recent past. The government states that it is determined to do its utmost to ensure that migrant workers enjoy protection in foreign countries and that they live and work without fear that they will be physically or mentally abused.

Observations

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

Israel

Communications sent to the Government

83. By letter dated 23 May 2005, sent jointly with the Special Rapporteur on trafficking especially women and children, the Special Rapporteur on violence against women, including its causes and consequences, and the Special Rapporteur on sale of children, child prostitution and child pornography, the Special Rapporteur notified the Government that she had received information alleging that female victims of human trafficking feel pressured to testify in court because certain benefits are being tied to their giving testimony. Reportedly, a legal counsel is only provided to those victims who agree to testify. Many victims do not even receive a simple briefing about their rights. Secondly, it is police officers, not social workers, who decide who is referred to the state-run shelter Ma'agan. As a result, reportedly the facilities would only be made available to victims of human trafficking who agree to testify. This reportedly occurs in contravention of a Government decision that the state shelter shall be open to all victims. Furthermore, access to health institutions is reportedly only granted to victims staying at the shelter. As a consequence, access to health benefits would also depend on the victims' willingness to cooperate with the law enforcement authorities.

84. Moreover, the prominent role of police officers in making referrals to the shelter coupled with stiff, yet not properly explained, shelter procedures (particularly with regard to options to leave the shelter temporarily), reportedly lead many victims to assume that they have committed a crime and that they are facing criminal prosecution. Police officers reportedly threatened a victim from Belarus telling her that if she did not testify she would be arrested and prosecuted by the authorities in her home country.

85. Furthermore, protection of victims during their trials is somewhat wanting. Courts allegedly do not make use of certain legal provisions, such as those found under The Prior Testimony in Trafficking of Women Law Act, which allow for the better protection of the victims by, for example, either allowing the victims to give evidence outside of court prior to their hearing, or in court without the perpetrator being physically present or in such a way that they cannot be seen.

86. According to the information received, when the criminal verdict against traffickers requires them to provide compensation to their victims, the money awarded is deposited with the court and can only be withdrawn by a legal resident holding a bank account. As a consequence, victims who have already been deported to their countries of origin cannot receive the awarded amount. In one reported case, the accused were sentenced to pay 25,000 NIS in compensation to the victims. Since the victims had already returned to their countries of origin, they designated a non-Governmental organization, the name of which is known to the Special Rapporteurs, to receive the money on their behalf. The court denied the request holding that the wording of the relevant statute does not provide for the disbursal of awarded compensation to designated representatives. The common practice of immediately deporting victims after they testify against their traffickers also denies victims the possibility to file a civil suit against the perpetrators who are convicted as a result of their testimony.

87. By letter dated 21 September 2005, the Special Rapporteur notified the Government regarding information he had received concerning the ill-treatment suffered by two construction workers of Chinese nationality.

88. According to the information received, on 22 August 2005, a group of 28 Chinese construction workers sought the assistance of Kav la Oved, a non-Governmental organization working on the protection of workers' rights and in particular the rights of migrant workers. The workers complained for not having being paid their salary for the month of July. Kav la Oved wrote a letter on their behalf asking the manpower agency, named Dor Amal, and the construction company, named Nidar Building and Development Company INC., to pay the workers. All workers were then paid with the exception of two of them, Mr. Lin Shan Xi, aged 43, and Mr. Wang Jin Mo, aged 42, who seem to have been the group leaders of the complaining workers. When the field manager of the construction company heard that the two workers were planning to seek again the assistance of Kav la Oved, he threatened them not to do so. As the workers nonetheless went to take the bus to Tel Aviv on 29 August, the manager sent a Turkish man to beat them up. The incident happened in Modein. When the two workers reached Kav la Oved, they were badly beaten and bleeding. Kav la Oved together with the two workers went to the police station to file a complaint against the field manager of Nidar Building and Development Company. No further information was received on any investigation that might have been undertaken on this matter.

89. By letter dated 11 November 2005, the Special Rapporteur notified the Government concerning information he had received relating to alleged abuses and illegal acts committed by recruitment agencies in Israel.

90. According to reports received that a number of recruitment agencies, also known as manpower companies, habitually charge migrant workers extremely high mediation fees in order to find them employment and work permits in Israel. Charging such commissions is reported to be illegal in Israel. In order to be able to hire new workers from whom a new mediation fee can be charged, companies allegedly often refuse to help migrant workers already in the country to find new employers when their permits expire, and may even denounce migrants who attempt to change employers to the authorities for "running away". Persons in such situations are liable to detention and expulsion.

91. The Special Rapporteur referred to information he had received concerning eight individual cases which illustrate such practices. He noted with satisfaction that, in a number of these cases, at least partial solutions have been found by the authorities to the difficult individual situations that resulted from the alleged action of these companies. However, due to the number of complaints regarding the practices of recruitment agencies in Israel, he requested specific information on the conclusions of investigations into reports of illegal practices by such agencies as well as regarding legal measure+s taken against any companies found to have acted illegally.

92. He further requested general information regarding legislation regulating recruitment or manpower companies and existing mechanisms for monitoring such companies.

93. The Special Rapporteur brought to the Government's attention the following cases:

94. Mr. Sumongkol

95. According to the information received, Mr. Sumongkol, a migrant worker from Thailand, moved to Israel in August of 2004, after obtaining a valid work permit in agriculture, for which he paid a 7000 \$ illegal mediation fee to the F. manpower agency. Although he was issued a permit to work in agriculture, his employer set him to work as a carpenter. On 21 October 2004, while working in the carpentry shop, he had an accident. Though he had been badly injured he was only sent to the hospital two days after the accident, where his leg was operated and placed in plaster.

96. On 22 December 2004, when the plaster was taken off, Mr. Sumongkol was ordered by his doctors to rest for another month. However his employer made him return to work on the next day. Being ignorant of Israeli laws, he did not inform Israeli Social Security about his work accident and neither did his employer, possibly because he was employing Mr. Sumongkol as a carpenter without a permit. The harsh work conditions led to a deterioration of his health, but his employer refused to take him to the hospital. However, the village doctor noticed the gravity of his condition, and sent him to the hospital, where his leg was again operated on 26 January 2005.

97. After resting for a month, Mr. Sumongkol started working again, this time in agriculture. However because of his continuing bad physical condition he was persuaded to seek medical help.

98. Though his medical situation improved his financial situation became difficult. The interest on the loan he had taken Thailand in order to pay for the illegal mediation fee rose as he was unable to return the money. Additionally, as the accident had not been reported to the Social Security Service, he did not receive any money for the whole period of his illness. He also owed his employer money for the advance he had received to be able to buy food while he was sick.

99. On 22 March 2005, a letter was allegedly set to the Labor Ministry on his behalf describing the circumstances of the incident and asking for their intervention against Mr. Sumongkol's employer.

100. Mr. Edgar Tagyamon

101. According to the information received, Mr. Edgar Tagyamon, a migrant worker from the Philippines, arrived in Israel in 2001. At the time of his arrival he received a permit as a caregiver, for which he had paid a 4000 \$ illegal mediation fee to a manpower agency in the Philippines as well as another 3000\$ on his arrival in Israel to the manpower agency G..C. Although Mr. Tagyamon's visa was registered under a certain employer's name, he was told by the manpower agency, that his job was already taken by another worker and that he would have to find a new employer on his own. Mr. Tagyamon thus lost his work and residence permit and found himself in an irregular situation.

102. Over the next few years, Mr. Tagyamon first worked as a caregiver for an employer who never arranged for a new permit and then found an employer who regularized his situation. The last being deceased in 2004, Mr. Tagyamon was sent by the manpower agency, "Loten", to work for another employer with whom he worked for 3 months under the impression that his situation was being regularized. However, Mr. Tagyamon then discovered that no new permit had been arranged for him and that the manpower agency had used him as a temporary replacement worker in order to be able to charge a mediation fee from a new worker.

103. He then turned to new manpower agency which was unable to assist him due to restrictions decided by the office in Afula.

104. Mr. Tagyamon obtained legal representation and, on 9 December 2004, a letter explaining his circumstances and requesting a working visa validation was sent to the Ministry of Interior. Having received no reply from the Ministry of Interior, on 9 January 2005, Mr. Tagyamon signed a petition to be submitted to the Nazereth district court against the Ministry of Interior.

105. On the same day, after the petition was signed and sent to the court, he was arrested by the Migration Police. He was held in custody until the court ordered his release on bail on 13 January 2005. Two weeks later, the attorney's office ordered the Ministry of Interior to grant Mr. Tagyamon a working visa.

106. Ms. Liliana Filip

107. According to the information received, Ms. Liliana Filip, a migrant worker from Romania, arrived in Israel on 18 January 2005, having obtained a work permit as a caregiver after having paid a 3000\$ illegal mediation fee to an Israeli mediator. On the day after her arrival, when she presented herself at her employer's house, she was told that her monthly wage would be of 550\$ while the minimum wage for a caregiver in Israel is 950\$ and that she would have to work 7 days a week caring of her employer who was badly disabled. Due to the harsh and illegal working conditions, Ms. Filip decided to leave her employer. On the same day, 19 January 2005, a representative of the G. P. manpower agency, confiscated her passport and told her she should go to the Ministry of Interior on the following day in order to settle her status. The next day, 20 January 2005, while on her way to the Ministry of Interior, she was arrested by the Migration Police at the request of a Ministry of Interior representative and was informed that she had been accused of "running away" by the G. P. manpower agency. She was sent to a detention center to await a possible expulsion.

108. On 23 January 2005, after a petition was filed to the district court, she was released on bail after having been detained for three days.

109. On 10 March 2005, the court accepted the petition, the expulsion order was cancelled and the Ministry of Interior was ordered to permit Ms. Filip to find a new employer.

110. Case of five Romanian nationals

111. According to the information received, Neamt Ilieana, Popescu Mariana, Varga Melania, Mois Mariana and Tatarasanu Rodica all reportedly paid illegal mediation fees to the H. mediation company.

112. Neamt Ilieana, Popescu Mariana, Varga Melania and Mois Mariana were allegedly charged a 3,500 \$ mediation fee by the H. company before leaving Romania to work in Israel in 2005. As only Popescu Mariana could afford the fee, the three others took out a loan by mortgaging their home to a family member of the manager of the H. company in Romania.

113. Once in Israel, the four workers were received by a Mr. Z.G. and his wife and were placed in a job where they were paid well below the minimum wage.

114. After consulting with a local NGO, Varga Melania, who was responsible for paying back the loan, was advised to file a complaint with the police and to resign from her job in order to prevent Mr. Z.G. from collecting the money at her employer's house. Consequently, Mr. Z.G. threatened that she would be denounced to the police by her employer and accused of having stolen her jewels and running away. Though no such complaint was ever made to the police, a letter recounting this accusation was sent to her home town where it was published causing her great distress.

115. The fifth Romanian national, Tatarasanu Rodica, had arrived in Israel in August of 2002, to work as a caregiver. In 2005, after the death of her employer, she contacted Mr. Z.G. of the H. mediation company to help her find another job and was charged a 800\$ mediation fee for their services. However, she was not placed in a permanent position but was sent to replace other

caregivers who were on vacation. Finally, after several months working as a substitute her permit expired and she found herself in an irregular situation.

116. It is further reported that the Israeli migration police took a statement from the workers regarding their complaints and that Cluj's police has opened an investigation of the H. recruitment agency.

Observations

117. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of the Israel regarding the communications sent in 2005. He would also like to reiterate his interest in receiving a reply to cases sent in previous years to which he has not yet received a response. The Special Rapporteur would like to note that since 2002, 8 communications have been transmitted to the Government of Israel and that, to date, no substantive replies have been received.

Italy

Communications sent to the Government

118. By letter dated 7 June 2005, the Special Rapporteur notified the Government that he had received information regarding the forcible return of some 180 persons to Libya, where they may be at risk of ill treatment and torture, and the possible return of over 1,000 other persons. It was reported that the United Nations High Commissioner for Refugees (UNHCR) was not allowed access to the detainees when requested and that apparently those deported were not given adequate opportunity to apply for asylum.

119. According to the information received, since 13 March 2005, over 1,000 people of various nationalities landed by boat on the island of Lampedusa. All are believed to have set off from Libya, and have been detained on arrival and held at a temporary holding centre for foreign nationals. Up to 400 were then reportedly transferred from the Lampedusa centre, intended to hold a maximum of 190 people, to a centre in Crotone, on the southern Italian mainland. On 17 March, 180 persons were allegedly removed from the Lampedusa centre and flown to the Libyan capital, Tripoli, under Italian police escort and without properly considering each individual's situation. According to reports, non-Libyan nationals risk detention on charges including illegal entry into and exit from Libya.

120. It is further alleged that Libyan officials were in Lampedusa and were allowed into a holding centre to collaborate with the Italian authorities in identifying people-traffickers/smugglers. Concerns were raised that if there were any Libyan asylum seekers in the group, such a practice would run counter to basic refugee protection principles.

121. According to reports, the majority of those reported are claimed to be Egyptian and the Libyan Government will repatriate these to Egypt. The announcement has allegedly been made by the Egyptian Embassy in Tripoli.

Communications received from the Government

122. By letter dated 16 August, the Government transmitted the following information concerning expulsions from Lampedusa to Libya.

123. From 13 to 15 March, 1,170 foreigners had reached Lampedusa in seven different boat landings. All foreigners received adequate medical and personal assistance. Due to the severe overcrowding in the island's detention centre the UNHCR was temporarily denied access to the centre. As soon as the situation was normalized, visits were promptly authorized. According to the usual procedure, during the identification process all foreigners were allowed to provide information on the personal situations in their countries of origin and those who manifested a desire to demand asylum were transferred to national shelters. As for the others, 656 were transferred to the Centre of Crotone (608) and Caltenissetta (48) in order to solve the problem of overcrowding.

124. Investigations revealed that the boats in which the foreigners arrived came from Libya, though a few originated from other countries. Therefore, two different initiatives were undertaken. In the first, a Libyan delegation, composed of investigators, visited Lampedusa to cooperate with the Italian authorities in order to identify the criminal organizations involved in the clandestine immigration from Libya to Italy.

125. As for the second, in respect for human rights and the dignity of the persons concerned, the foreigners were expelled to Libya. On 17 March a charter flight was organized to take 180 alleged Egyptian nationals back to Libya. In fact, during interviews their nationalities were revealed to be the following: Palestinian (135), Iraqi (43), Jordanian (1), and Egyptian (1). The expulsion was not a collective expulsion as each foreigner was the object of an individual measure of "refoulement". The latter is a measure provided by law, adopted in cases of foreigners arriving in Italy by bypassing border controls and who are arrested at the moment of entry or immediately after, or who are admitted into the territory in order to provide urgent assistance. A judicial appeal can be made against this measure which can also be presented at Italian representations in foreign countries.

126. It is underscored that though Libya has not ratified the 1951 Convention Relating to the Status of Refugees that country ratified the 1969 Organization of African Unity Convention governing the Specific Aspects of Refugee Problems in Africa, which recognizes the 1951 Convention as a fundamental and universal instrument and which provides the obligation for member states to cooperate with the United Nations High Commissioner for Refugees.

127. The persons expelled to Libya, according to their own declarations had already spent some time in that country before travelling to Italy and that it is frequent that such persons attempt the trip more than once.

128. In view of the above, the Italian Government excluded that the authorities from Tripoli have inflicted inhuman or degrading treatments to the persons expelled.

Observations

129. The Special Rapporteur would like to thank the Government of Italy for its prompt reply. He would like to refer to the press release issued by the United Nations High Commissioner for Refugees on 18 March 2005, regarding the situation referred to above. He would also like to refer to the concerns expressed and recommendations made by the Human Rights Committee on this issue (CCPR/C/ITA/CO/5, 28 October 2005, para 15). He would appreciate being kept informed on the results of any inquiries that may have been made into the matter as well as receiving further information on the expulsion procedures applied to each of the individuals concerned.

Japan

Communications sent to the Government

130. By letter dated 28 April 2005, the Special Rapporteur notified the Government that she had received information regarding conditions of detention of foreign nationals in Japan and alleging that detained foreign nationals in immigration detention centres are often not informed adequately about their rights. In particular, they do not always have prompt access to a lawyer or advice in a language they understand. Concerns have also been raised that undocumented foreign nationals including asylum-seekers face the risk of increasingly long detention periods. For example, the average detention period at the East Japan Immigration Center in Ushiku City is now reported to be of 15 months, twice as long as reported in a previous survey of 7.4 months. Persons detained allegedly include children and persons who are ill.

131. It is further reported that asylum-seekers have often had their requests for asylum rejected with no or inadequate consideration of the risk to their lives they face on deportation and that asylum seekers have been denied access to a fair and satisfactory asylum procedures; and that they are frequently not allowed access to interpreters and lawyers.

132. Many of those detained are reportedly in deteriorating mental and physical health. In particular, medical care of detainees is said to be inadequate. Many detainees are reported to suffer from severe depression and some have allegedly attempted suicide. Numerous detainees allegedly suffer from discopathy and loss of spatial and temporal senses in consequence of the limited space in which they are held and inadequate physical activity. Cases of forced deportation allegedly involving violence or the administration of tranquilizers have also been reported.

Communications received from the Government

133. By letter dated 23 June 2005, the Government provided detailed information regarding deportation procedures, immigration detention, and refugee protection in the country.

134. According to the information received, deportation of foreign nationals from Japan is implemented in accordance with the Immigration Control and Refugee Recognition Act (hereafter Immigration Act). Detention is provided for in Chapter 5 of that act on the grounds detailed in Article 24. According to that act, a written order must be shown to the foreigner at the moment of detention by an immigration control who must deliver him or her to an immigration

inspector within 48 hours. The inspector must then promptly examine whether the person comes, under the law, under the person to be deported category. Even if the inspector finds that the person does, the foreigner has the right to request a hearing with a special inquiry officer who may either confirm the earlier findings or order the person's release. If the person in question does not accept the findings of the special inquiry officer he or she can file an objection with the Minister of Justice.

135. Detention is mandatory throughout this entire process unless it is deemed necessary, according to the circumstances of a particular case, to release the detainee. Detainees can challenge the legality of a written deportation order in court pursuant to the Protection of Personal Liberty Act of the Administrative Case Litigation Law.

136. Compulsory deportation is never carried out before these procedures are concluded and every foreign national who is to undergo deportation is informed of these rights without fail. Foreigners are guaranteed participation in these procedures and are able to present arguments and evidence. There are no provisions in the Immigration Control and Refugee Recognition Act guaranteeing interpretation in a language the foreigner can understand. However, in practice the Immigration Bureau guarantees interpretation either by its own officers or by employing external interpreter.

137. Article 61-7, para. 6 of the Immigration Act establishes that detainees should be given maximum liberty to the extent that this does not interfere with security requirements of detention facilities. Detainees are thus permitted to send and receive correspondence, meet with relatives, acquaintances and defence counsel, purchase goods, and engage in religious activities. They also have opportunities to engage in physical exercise. Furthermore, meals are provided taking into account the customs, traditions and religions of detainees while nutritionists calculate the calories in meals to ensure a good nutritional balance. Every effort to manage the health of detainees is made. Hygiene standards are maintained. Directors of immigration detention facilities take great care to understand the situation by listening to the opinion of the detainees and inspecting the places of detention.

138. Medical care by a doctor and counselling by a clinical psychologist are provided. Full-time doctors and nurses work in the three immigration centers nationwide and the detention facilities of the main regional immigration bureaus provide the detainees with medical care. Concerning right to access outside person, detainees are able to have anyone they want visit during visiting hours and are able to telephone freely to their relatives, lawyers, NGOs, and others without being monitored by officials. In the case of children, to the greatest extent possible children are not detained and are, when possible protected in child consultation centers. When detention of children is unavoidable as when there is no one to care for them, detention periods are carefully monitored so as to ensure they are as short as possible.

139. As for refugees, Japan amended its refugee recognition system by the Amended Immigration Control and Refugee Recognition Act passed on May 27, 2004 and which entered into force on May 15, 2005. Under the Amended Act, the legal status of illegal foreign residents who have filed applications for recognition of refugee status have been stabilised. Under the new system the Ministry of Justice will grant permission for provisional stay provided that: 1) an application for refugee status is filed within six months from the date the person in question

entered Japan; 2) the person entered Japan directly from a territory where he or she had a well founded fear of persecution; 3) the person has not been sentenced after entering Japan, to imprisonment for a crime provided for under the Penal Code and other laws. Moreover, persons who do not satisfy the above criteria or have not been recognized as refugees may be granted special permission to stay in Japan when there are special grounds.

Observations

140. The Special Rapporteur would like to thank the Government of Japan for its reply.

Jordan/Bangladesh (see also Bangladesh)

Communications sent to the Government

141. By letters dated 10 June 2005, the Special Rapporteur notified the Governments of Bangladesh and Jordan that she had received information regarding the situation of 115 Bangladeshi migrant workers in Jordan who have reportedly been submitted by their employer in that country to working conditions amounting to forced labour and to ill-treatment.

142. According to the information received, the 115 migrant workers were employed by the Al Shahed Apparels Textile, Ramta, Jordan through a Bangladeshi manpower recruiting agency named Golden View International operating in Dhaka. It is reported that the workers are forced to work extremely long hours of up to 16 hours a day, and are denied wages due to them in accordance with their employment contract. It is further alleged that they are not provided with enough food and water and that the 115 workers were all lodged together in a four room compound. When the workers demanded their wages they were reportedly severely beaten by their employer. Subsequently they were confined to the Apparels compound for ten days. During their detention they were allegedly denied food and water and the telephone line was cut.

143. Five of the workers were reportedly sent back to Bangladesh where, on 4 April 2005, they held a press conference to denounce their treatment as well that of their colleagues. The migrant workers have allegedly contacted the Bangladeshi Embassy in Jordan regarding their situation but have received no support. Those remaining in Jordan reportedly wish to return to Bangladesh.

Communications received from the Government

144. By letter dated 18 July, the Government informed the Special Rapporteur that the contents of the communication had been transmitted to the appropriate authorities for investigation with a view to preparing a response.

Observations

145. The Special Rapporteur would like to thank the Government of Jordan for keeping him informed on the status of its response. He would also like to reiterate his interest in receiving the reply of the Government of Jordan to these allegations.

Kuwait/United States of America (see also United States of America)

Communications sent to the Government

146. By letters dated 3 May 2005, sent jointly with the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur notified the Governments of Kuwait and the United States of America regarding information received concerning Ms. Vishranthamma, a domestic worker from India.

147. According to the information received, Ms. Vishranthamma was trafficked and abused by her employer, a Kuwaiti Mission representative to the United Nations in New York. For four years, Ms. Vishranthamma was forced to work for her employer as a nanny and housekeeper. Her passport was confiscated. She worked seven days a week, up to 18-hours a day. She was subjected to physical and sexual abuse, threatened with physical force and verbally assaulted. On one occasion her employer bit her in the face and on another the employer threw a suitcase at her. She was kept in near isolation. Her employers required her to keep her eyes on the ground when she was taken out of the house so as to avoid making eye contact or speaking with anyone. Her employers also limited her contact with her family and locked her in a room when visitors came to the apartment. They threatened her that the police would arrest her if she left the home alone. Though some money was sent to her family intermittently as compensation for Ms. Vishranthamma's work, the amount of payment her family received was about one tenth the amount the employers had agreed to pay her and was drastically below the minimum wage under U.S. law. It is also alleged that Ms. Vishranthamma's employers prevented her from practicing her religion. Though Ms. Vishranthamma feared retaliation from her employers, after four years of abuse she finally escaped from their home.

148. Ms. Vishranthamma found legal representation and filed suit against her employers seeking restitution for the abuses she suffered. She sought the wages to which she was entitled under U. S. law. In March 2004, she testified before a federal U.S. court about the abuse and exploitation she experienced. She waited almost three years while her case moved through the legal process; but her case was ultimately recommended for dismissal because her employers were diplomats immune to civil suit. As a result, Ms. Vishranthamma is foreclosed from seeking judicial remedy and she is now trying alternate avenues of redress.

Communications received from the Government

149. By letter dated, 15 July 2005, the Government provided the following information regarding the case of Ms. Vishranthamma. The diplomat against whom these allegations have been brought is a person of good reputation and high moral standing. This is attested by the fact that Ms. Vishranthamma worked for him and his family in Kuwait for six years and that she herself urged the diplomat's wife to take her with them to New York.

150. Ms. Vishranthamma was granted all her rights as regards leave and health care. Although she had suffered from tuberculosis since childhood, she kept her condition hidden from her employers. In spite of this, the diplomat promised the health authorities in Kuwait that he would assume responsibility for her care and, indeed, she was treated for her condition by one of the most eminent specialists in New York. On humanitarian grounds, the diplomat incurred

enormous expense for her treatment (documents attached) and faced the risk of transmission of this infectious disease to his children.

151. Ms. Vishranthamma was informed each time her monthly salary was remitted to her country. The fact that her name and account number are registered with the Bank of India in Park Avenue, New York, disproves her claim that the diplomat did not pay her salary. Indeed, the payments into her account were made by the diplomat himself.

152. As for the allegation that she was prevented from practising her religion, the diplomat's wife encouraged her to go to church, but she demurred on the grounds that she was unfamiliar with churches in the United States. The diplomat's family was obliged to go to church with her on a number of occasions in order to encourage her to attend services. Ms. Vishranthamma brought this suit in 2002, i.e. two years after leaving her employment. If she had been beaten and underpaid, why did she not bring her case immediately after leaving her job?

153. The State of Kuwait affirms that Ms. Vishranthamma's claims are misleading and false, particularly in view of the benefits, rights and special care which she received during her employment and it reiterates its respect for all the rights embodied in international human rights instruments and for all international standards and mechanisms designed to guarantee protection, impartiality and justice. As a party to these instruments, Kuwait has taken all appropriate measures to give effect to the rights enshrined therein, thus ensuring the realization of the aims and purposes of these same instruments.

Observations

154. The Special Rapporteur would like to thank the Government of Kuwait for its reply.

Libyan Arab Jamahiriya

Communications sent to the Government

155. By letter dated 7 June 2005, the Special Rapporteur notified the Government that she had received the following information regarding the situation of undocumented migrants and asylum seekers in Libya.

156. According to the information received numerous issues are a matter of serious concern including: 1) the regular expulsions of large numbers of undocumented migrants with no attention paid to protection needs; 2) the existence of allegations of ill-treatment by many detainees alongside reports that conditions of detention of undocumented immigrants are deplorable; 3) the alleged absence of an adequate asylum policy and a legal protection framework for refugees which reportedly results in such person often being treated as undocumented migrants.

157. Widespread arrests of individuals from sub-Saharan Africa, including possible asylum seekers have been reported.

158. On 27 August 2004, the Libyan authorities reportedly attempted to forcibly return to Eritrea 76 Eritrean nationals, including six children. Some of the Eritreans allegedly hijacked the plane that was carrying them and forced it to land in the Sudanese capital, Khartoum, where they all applied for asylum. Testimonies of some of the deported Eritreans who are currently in Sudan reportedly confirmed regular testimonies of ill-treatment in Libya; detention without charge; no access to a lawyer; no opportunity to seek asylum; confiscation of belongings.

159. On 21 July 2004, it is reported that the authorities forcibly returned over 110 individuals detained in Libya to Eritrea. On arrival in Eritrea, they were allegedly detained and held incommunicado in a secret prison.

160. Seven Eritrean nationals who were allegedly detained for prolonged period after the expiry of their three-month prison sentences for illegal entry into Libya in 2002. They were released at the end of 2004. They had fled from Eritrea to Libya via Sudan and were reportedly arrested in 2002 as they attempted to travel by boat to Italy where they planned to seek asylum.

Communication received from the Government

161. By letter dated 3 October 2005, the Government transmitted the following information. Act. N°6 of 1987 and its implementing regulation issued pursuant to General People's Committee (Office of the Prime Minister) Decree N° 125 of 2005, together with Act N° 2 of 2004 amending the aforementioned Act which regulate the entry, residence and departure of aliens from Libya

162. Entry into the territory of the Jamahiriya must be affected at legally-approved entry point. All aliens must be in possession of a passport and a valid entry visa. Everyone departing from the territory of the Jamahiriya for another State must leave from an approved land, air or sea port in accordance with the established procedures relating, in particular, to the possession of an entry visa for the country of destination, unless the traveller is exempt from this requirement under the terms of an existing agreement. The traveller must also be in possession of a valid passport.

163. Anyone who fails to comply with the aforementioned conditions and enters the Jamahiriya covertly or without a passport or visa or departs from the country by a method that contravenes the regulations laid down by law shall be deemed to have committed an offence that is punishable by law. The legal penalties range from imprisonment to a fine. In addition, aliens who break the law shall be expelled and banned from re-entering the Great Jamahiriya.

164. It follows that all the cases mentioned in the report refer to persons who were apprehended and expelled by the authorities of the Jamahiriya for breaching the aforementioned legal regulations on entry into the territory of the Jamahiriya. The majority, if not all, of the arrests and deportations were of persons who had infiltrated the Jamahiriya with a view to migrating to Europe. They were caught in flagrante delicto while heading for Europe by sea or were close to the shore while attempting to leave the country. They had entered the Jamahiriya for economic reasons, intending to migrate to Europe in order to find better employment opportunities, to earn more money, and to attain a better standard of living. The Jamahiriya has not received any applications for political asylum from the migrants who were apprehended, nor have those persons provided any information suggesting that they had fled their countries for political reasons or asking for the Jamahiriya's protection.

165. The fact that the Jamahiriya does not have a law on refugees can be ascribed to the fact that there was no need for such a law until now. The Jamahiriya is not the only State that does not have such a law. Many countries of the world simply establish general principles on this matter, such as constitutional provisions or the provisions of other instruments which indicate that it is not permissible to expel political refugees or asylum-seekers who are fleeing repression or discrimination on grounds of race, religion or political conviction. This provision was included in the constitutional proclamation issued after the revolution of Great September. However, the Great Jamahiriya has granted hundreds of persons, such as holders of Somali passports, the right to political asylum.

166. Regarding repatriation procedures the Government provided the following information. There are two types of repatriation procedures: voluntary repatriation and repatriation by a passports inspector.

167. Voluntary repatriation is the normal repatriation procedure, which is based on an application being filed by a person who entered the country illegally, either by infiltrating the territory or coming in without a visa. The procedure is designed to help the person to return to his or her country of origin. The authorities contact and work with the embassy of the person concerned to procure a document that will enable him or her to go back home. In such cases, the person is not detained, but is asked to report to the General Passports Department until such time as his or her situation has been resolved and he or she embarks on his journey overland or by sea.

168. Repatriation by a passports inspector refers to cases where individuals enter the country illegally in order to migrate to Europe and are apprehended at sea or at the coast. In all cases, once the identity of each person has been verified, the relevant embassy is contacted so that it can provide documents that will allow the person to be returned to his or her country of origin. The return is organized in coordination with the consuls of the relevant embassies. The individuals are repatriated, overland or by sea, at the expense of the Jamahiriya. Indeed, the Jamahiriya gives each individual a sum of from \$100 to \$150 as a repatriation grant.

169. The policy which the Great Jamahiriya pursues when dealing with the phenomenon of migration is based on humanitarian considerations and guarantees the human rights recognized by international law. This policy is far more humane than the policies of expulsion, repatriation and detention being pursued by many other countries. The Great Jamahiriya is not the cause of this phenomenon, but a victim of it. It has spent tens of millions in hard currency on such persons and affords them much better treatment than they would receive in many other countries, insofar as it offers them adequate food, health care and suitable accommodation until the procedures for return to their country of origin have been completed.

170. The Jamahiriya cannot be the only one to bear the burden of a global problem which requires radical solutions, beginning in the sending country, where migrants must be assured stability through the establishment of investment programmes and improvement of the economic situation that obtains in the African countries from which the migrants come. This is something that the Great Jamahiriya has affirmed on more than one occasion and it is a permanent strategy which the Jamahiriya pursues on this issue. There is no doubt that international and regional cooperation could also yield the desired results in this domain.

Observations

171. The Special Rapporteur would like to thank the Government of the Libyan Arab Jamahiriya for its prompt reply. He would appreciate receiving further information regarding the individual procedures applied to the persons mentioned in the communication transmitted and which led to their deportation. The Special Rapporteur would also like to encourage the Government to ratify the 1951 Convention relating to the Status of Refugees.

Malaysia

Communication received from the Government in response to the request for information of 7 December 2004

172. By letter dated 11 March 2005, the Government responded to the Urgent Appeal sent on 7 December 2004 (E/CN.4/2005/85/Add.1, para.,128-131) providing the following information. All aliens that enter Malaysia through other than the approved entry points and without valid travel documents issued by the Malaysian Immigration Department are considered as illegal migrants. Moreover, those who enter legally may become illegal by overstaying their visas. Many persons choose to enter the country illegally, most of whom are not victims of trafficking but economic migrants. The presence of illegal migrants has caused serious concerns as many of these have engaged in undesirable activities leading to crime, social health, and security problems. The Immigration (Amendment) Act of 2002 provides for heavy fines including canning for illegal migrants. Employers who employed six or more illegal migrants can be sentenced to jail terms and a maximum six strokes of the cane. The Amnesty of 31 January 2005, for illegal immigrants to leave the country has not been extended and about 382,082 persons took advantage of it and left the country. They will be allowed to return on regularizing their status.

173. Beginning 1 March 2005 the Government proceeded with expulsion process including by arresting the illegal migrants, charging them in court and deporting them to their home countries. Canning of convicted immigrants is not mandatory but at the discretion of the courts. Court records show that the number of immigrants canded was small, normally those who had repeatedly committed the offence or been involved in crimes. Malaysia accords humanitarian treatment to illegal migrants and exercises due care in dealing with them. Many illegal migrants (about 70%) particularly those from Indonesia, detained by the authorities had never been prosecuted.

174. In the detention of the migrants, the Government has engaged in the assistance of civilian members of the Rukun Tetangga and Rela who have been provided with adequate training and information in accordance to the law. The Ministry of Home Affairs in collaboration with the Ministry of Internal Security have taken adequate measures to ensure that detention centres throughout the country have enough places to house the migrants before their deportation. Moreover, the Government has cooperated with the UNHCR in the matter of persons seeking refuge.

Communications sent to the Government

175. By letter dated 8 July 2005 the Special Rapporteur transmitted an Allegation Letter as a follow up to the Urgent Appeal sent on December 2004, regarding the alleged mass expulsion of migrants from Malaysia. The Special Rapporteur thanked the Government of Malaysia for its prompt and detailed response, in which the Government has offered assurances that Malaysia accords humanitarian treatment to illegal immigrants and exercises due care in dealing with them. She noted that reports received thus far had highlighted that the current operation is a step forward in terms of human rights protection to that of 2002, as a number of steps had allegedly been adopted to remedy some of the problems that had been raised during the previous expulsion operation.

176. Nevertheless, there have still been reports that police officers arbitrarily beat migrants held in detention centres prior to their deportation. Reports have also been received that police officers routinely confiscate the personal properties of migrants upon their arrest and do not return them when the migrants are eventually deported.

177. The information received, indicates that male migrants who are convicted of illegally entering the country are frequently also caned. According to reports, on March 14, 2005 alone, at least 45 migrants from Indonesia, India, Bangladesh, Thailand and China were convicted of illegally entering the country and sentenced to receive one or two lashes of the rattan cane.

178. It is further reported that as of 27 June 2005, 83 persons of concern (POC) to UNHCR were sentenced under the Immigration Act. Out of those, 23 POC were allegedly sentenced and caned and in two cases, the first instance sentence to caning was overturned upon appeal. The UNHCR had reportedly registered a total of 320 pending court cases concerning POC. Among those, 13 POC were sentenced to caning and an appeal is pending before the High Court.

179. At the end of May, the detention figure allegedly stood at 975 POC and by 27 June, the detention figures could have reached 1,100 POC. Once a POC is sentenced under the Immigration Act and caned, he/she is usually not released, but reportedly transferred into an immigration detention depot. I am very pleased to note that, as a result of good cooperation between the authorities and UNHCR, over 600 people of concern to UNHCR were reportedly released from detention during the crackdown period.

180. Finally, the Special Rapporteur referred to information received concerning the inhuman, degrading and punishment of Mangal Bahadur Gurun, a Nepalese national. According to reports, Mr. Mangal came to Malaysia in September 2003 as a regular, documented migrant with a work permit. On March 6, 2004, Mr. Mangal was arrested in an operation conducted by the private group Rela that assists your Excellency's Government in the crackdown operations. Since Mr. Mangal's employer, with whom he had labor dispute about non-paid wages, retained his passport, he had only photocopies of his passport and letters from the labor department on him. On March 23, Mr. Mangal was taken to the Petaling Jaya magistrate's court where he was charged with one count of entering Malaysia without a valid permit. Mr. Mangal, who speaks Malay only haltingly, was not given an interpreter and was therefore unable to defend himself. The court convicted Mr. Mangal on the one charge and sentenced him to 10 months of detention and one stroke of the rattan cane. Shortly after he was sentenced, Mr. Mangal was brought to

Kajang prison, where he was detained. On April 22, 2005 the prison authorities executed the caning. Only on May 12, 2005 – 51 days after his conviction – was he released following an order of the High Court of Malaysia.

Communications received from the Government

181. By letter dated 24 January 2006 the Government informed the Special Rapporteur that the request for information of 8 July 2005 had been transmitted to the relevant authorities and that their reply would be communicated in due course.

Observations

182. The Special Rapporteur would like to thank the Government of Malaysia for its prompt and detailed response to the Urgent Appeal sent on 7 December of 2004. He would also like to thank the Government for keeping him informed as to the status of its reply to the follow up Allegation Letter sent on 8 July of 2005.

Maldives

Communications received from the Government

183. By letter dated 29 November 2004, the Government responded to the Allegation Letter sent jointly with the Special Rapporteur on Torture on 10 June 2004. The Government stated that there were inconsistencies in the alleged facts. Mr. Saravanan was taken to Maafushi Jail on 19 August 2002, and the jail office was informed that he had attempted suicide twice while he was under interrogation. Based on this information he was handcuffed and kept alone in a cell. The two other Indians were taken to jail and kept in single cells and were handcuffed. On 8 April 2003 at around 10.30 p.m., the Quick Reaction Force in Maafushi Island informed the police headquarters that one of the prisoners was found hanging in his cell. A team of doctors from the N.S.S. Medical Centre and a team of investigators were dispatched. The team found Mr. Saravanan hanging at the rear side of the cell by his bed sheet, which he wound into a cord. A medical examination showed that there were injuries to the front and right side of his neck and that the probable cause of death was strangulation. His family was informed of his death and he was buried. With regard to the allegation that the defendants were not provided with a translator, during the investigation their statements were read to them in Tamil and were signed and finger printed with their understanding and consent. Their trials are open, they are entitled to legal advice, and consular officials are informed of the hearings.

Observations

184. The Special Rapporteur would like to thank the Government of the Maldives for its reply.

Malta

Communications sent to the Government

185. By letter dated 22 April 2004, the Special Rapporteur notified the Government that he had received information relating to mandatory immigration detention in the country for foreigners without visas and the violent repression, on 13 January 2005, of a demonstration by detainees protesting their prolonged detention, resulting in numerous injuries.

186. According to reports, all foreign persons who arrive in Malta without a visa or whose visas have expired have been subjected to mandatory immigration detention. Such persons are placed in camps, including military barracks, military housing, and sometimes, at periods of strong influx, tents. Persons are allegedly often kept in detention for prolonged periods. It is further reported that there is no legal basis setting out the general conditions of incarceration in these camps and no regulation defining how they are to be operated. Conditions of detention are alleged to be below international standards, with reports of overcrowding, inadequate sanitary conditions and difficulties in accessing medical care. Members of the armed forces and police, in charge of running the detention facilities reportedly do not receive adequate training.

187. Vulnerable persons, such as unaccompanied children, elderly persons are allegedly also subjected to mandatory detention. It is further reported that asylum seekers in detention have complained about severe delays in procedures regarding asylum applications; lack of transparency in the appeals process; failures to keep them informed of their rights and the progress of their application and inadequate access to legal counsel.

188. The Special Rapporteur referred to reports received regarding the violent repression by members of the Maltese armed forces of a peaceful demonstration carried out by asylum-seekers and unauthorized migrants on 13 January 2005, and which allegedly resulted in numerous injuries. According to the information received, on the morning of 13 January 2005, over 90 inmates of a detention facility for aliens at Safi army barracks conducted a peaceful protest, refusing to re-enter the centre at the end of an exercise period. The inmates, some of whom had allegedly been detained for over 18 months, were protesting about the length of their detention; lack of information about the progress of their applications for refugee status or humanitarian protection and, in the case of those whose applications for asylum had already been rejected, lack of information regarding their future.

189. It was further reported that after the protestors refused an order to return to the barracks, soldiers, armed with batons and shields, charged the peaceful protestors and subjected them to excessive force. It is also alleged that several persons were injured, and some 26 were transferred to hospital for treatment.

Communications received from the Government

190. By letter dated 22 April 2005, the Government responded to the Special Rapporteur's communication and provided the following information. The allegation that all persons without a valid visa are placed in mandatory detention is incorrect as regular arrivals without proper documentation are kept at the port of entry and when possible sent back on the same carrier.

Reports transmitted to the Government refer mainly to boat people arriving in a clandestine manner. Persons found to be staying in Malta without leave from the Principal Immigration Officer are regarded as prohibited immigrants in accordance with the relevant provisions of the Immigration Act and can be placed in detention through an administrative decision. A person is placed in detention for entering Malta illegally and only those who claim asylum after being detained by police are kept in detention on grounds of illegal entry. Such detention does not necessarily result in the individual's removal from the country and figures show that Malta has a 53% acceptance rate of protection, one of the highest in Europe.

191. Allegations that in placing persons in detention no consideration is given to age, sex, and vulnerability, is also incorrect. It is established policy that women and children, minors, and vulnerable persons are released from detention once preliminary identification and health and screening is completed. Minors are placed under a Child Care Order on equal footing as Maltese children under such custody.

192. Regarding conditions of detention in centers holding such persons, the primary responsibility of cleaning and general upkeep lies with those sheltered in these centers. Despite the severe strain this represents to the country's resources every effort is made to provide basic necessities. Various costly development projects are currently being carried out on three new accommodation buildings in order to ensure significant improvements in accommodations. Nevertheless, the country has limited resources with which to address a complex situation and is being faced with a relatively high number of arrivals. In emergency situations, it has therefore sometimes been necessary to resort to housing persons in tents.

193. Regarding the psychological impact of detention, every effort is being made to ensure that the duration of the asylum determination procedure is kept at a minimum. Determinations on requests for asylum are currently made within 3 to 4 months thus no one is kept in detention for over 18 months on grounds that their asylum application has not yet been determined. Legislative amendments permit foreigners to submit a request for release to the Immigration Appeals Board. The centers are visited and monitored by social workers, doctors and NGOs on a regular basis.

194. As for the concerns regarding asylum procedures, foreigners are informed of their rights on being placed in the centers in a language they understand and are given an asylum application form and assisted in filling it out. Legal aid is provided to those wishing to appeal from the decision of the Refugee Commissioner. Access to NGOs and lawyers are never denied. All applicants are informed regarding the following issues: the confidentiality of information provided; their right to assistance from a lawyer; their right to contact the UNHCR; their right to present their cases fully to the Refugee Commissioner. Rejected applicants are informed of: their right to lodge an appeal to the Refugee Appeals Board; the delay, form of such appeal as well as their right to consult the UNHCR and to free legal aid and the possibility of contacting the center's administration for assistance.

195. Regarding events of 13 January 2005, the matter is still the object of an inquiry and thus no comments may be made at this stage.

196. The Government provided further details regarding asylum procedures, including the participation of the UNHCR in procedures, and the practice in line with European Court on

Human Rights Jurisprudence, of generally holding hearings in camera except in certain cases at the Board's discretion. Regarding complaints concerning maximum period of detention, nothing stops detainees from appealing to the Courts of Justice and several such cases have occurred. New amendments to the Immigration Act also permit appeals to the Immigrations Appeals Board. The Board is subject to judicial review. Current policy is of 18 months maximum detention for cases that cannot be concluded earlier.

197. Malta is a small country with limited resources located in one of the principle migration routes between Africa and the European continent that has been left to address this serious issue practically on its own. The Government states its readiness to cooperate fully with the Special Rapporteur.

Observations

198. The Special Rapporteur would like to thank the Government of Malta for its prompt and detailed response.

Morocco/Spain (see also Spain/Morocco)

Communications envoyés au gouvernement

199. Par lettre du 07 octobre 2005, envoyé conjointement avec le Rapporteur Spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, le Rapporteur spécial a informé le gouvernement qu'il avait reçu des renseignements relatives à une série d'incidents au cours desquels plusieurs migrants d'origine subsaharienne seraient morts suite à des blessures par balle ou des mauvais traitements infligés par les forces de l'ordre que surveillent les frontières entre Ceuta et Melilla avec le Maroc depuis le mois d'août 2005.

200. Selon les informations reçues, le 29 août 2005, vers les 2 heures du matin un groupe d'environ cinquante migrants aurait tenté de traverser clandestinement la frontière qui sépare le Maroc et la ville autonome de Melilla (Espagne) en se divisant en trois groupes d'environ 16 personnes. La tentative aurait été violemment repoussée par des membres de la garde civile espagnole qui aurait utilisé du matériel anti-émeute. Cependant, huit membres du groupe auraient réussi à traverser la frontière.

201. Selon les rapports reçus, des agents de la garde civile espagnole auraient battu les migrants restants avec la crosse de leurs fusils et avec des matraques électriques avant de les renvoyer en territoire marocain par une porte de service située entre les points « A7 » et « A8 » sur la frontière entre Melilla et le Maroc. Joseph Abunaw Ayukabang, un camerounais de 17 ans, aurait été transporté par ses compagnons vers un bosquet où il serait décédé à la suite des coups reçus.

202. Un d'entre eux, soutenu par d'autres membres du groupe, serait mort peu après son retour sur le territoire marocain. Le migrant mort aurait été identifié comme étant Joseph Abunaw Ayukabang, un citoyen camerounais de 17 ans. Le jeune aurait été victime de coups répétés au ventre infligés par un des membres de la garde civile, avant d'être expulsé par la porte de service de la frontière.

203. Des témoins auraient indiqué qu'ils auraient vu le corps sans vie de l'autre migrant blessé près de la barrière et que le cadavre aurait été récupéré par des membres de la gendarmerie marocaine. Cependant, ils n'auraient pas réussi à s'approcher suffisamment du corps pour l'identifier.

204. D'après les informations reçues, les autorités de l'hôpital de Nador auraient émis un communiqué confirmant l'existence d'un seul corps.

205. Le Rapporteur a également fait référence à des renseignements reçus concernant la mort, survenue le 12 septembre 2005 à l'hôpital communal de Melilla, d'un migrant d'origine subsaharienne qui aurait été blessé par des agents des forces de l'ordre marocains le 8 septembre 2005. D'autres sources indiquent cependant que le migrant se serait blessé accidentellement le même jour.

206. Il a aussi porté à l'attention du gouvernement des informations sur la mort d'un migrant d'origine subsaharienne qui aurait été blessé à la gorge puis transféré le 15 septembre 2005 à l'hôpital communal de Melilla,

207. Enfin, il se réfère à des informations selon lesquelles cinq personnes seraient décédées à la suite de blessures par balle lors de la tentative de quelques 500 à 600 migrants de traverser en masse la frontière entre le Maroc et la ville de Ceuta le 29 septembre 2005. Par ailleurs, huit personnes auraient été transportées à l'hôpital de Tétouan pour des blessures par balles en caoutchouc, matériel anti-émeute qui serait utilisé par la garde civile espagnole. Il semble que lors de cet incident, des membres des forces de l'ordre marocaines se seraient alignées devant la frontière et auraient tiré sur les migrants avec des fusils.

Morocco

Communications envoyés au gouvernement

208. Le 14 octobre 2005, le Rapporteur spéciale envoya un appel urgent aux autorités marocaines concernant des informations reçues sur des déportations forcées collectives d'immigrants et demandeurs d'asile d'origine subsaharienne. Des centaines des migrants auraient été amenés dans des régions désertiques dans des conditions que mettraient leurs vies en péril.

209. Selon les informations reçues, le 17 septembre 2005, vers quatre heures du matin, des membres des forces de sécurité marocaines auraient effectué une action dans le quartier de Ayn à Rabat visant la déportation de nombreuses personnes d'origine subsaharienne qui habiteraient dans la région. D'après lesdites informations, l'action des forces de l'ordre aurait été particulièrement violente, laissant plusieurs blessés. Comme résultat de l'action, quelques 400 personnes auraient été déportées dans dix autobus qui les auraient transportées à la frontière avec l'Algérie. Une des personnes transportées, aurait été gravement blessée et saignait copieusement d'une blessure à la tête pendant son transport.

210. Les personnes déportées incluraient une cinquantaine de demandeurs d'asile originaires de la République Démocratique du Congo et un nombre indéterminé de demandeurs d'asile ivoiriens et nigériens. Quelques 42 des personnes déportées auraient été enregistrées auprès du Haut Commissariat des Nations Unies pour les Réfugiés et 25 autres auraient demandé un rendez-vous pour une interview.

211. Toujours selon les informations reçues, depuis le début du mois d'octobre des déportations massives de migrants et de demandeurs d'asile d'origine subsaharienne ont lieu de manière régulière. Au moins 800 personnes, y compris des femmes enceintes et des enfants, auraient été abandonnées dans des régions désertiques sans eau ni nourriture. Plusieurs d'entre elles seraient des migrants d'origine sub-saharienne détenus près de la frontière du Maroc avec Ceuta et Melilla. Le 3 octobre 2005, environ 240 migrants auraient été déportés vers la Mauritanie à bord de quatre autobus contenant une soixantaine de personnes chacun. La région de la frontière du Maroc avec la Mauritanie étant particulièrement aride ceci engendrerait des risques graves pour les personnes expulsées. Certaines personnes seraient expulsées vers l'Algérie dans la région du désert, sans l'accord du gouvernement de ce pays, sans eau ni nourriture, entraînant un grand risque pour leur santé. Les informations indiquent qu'un certain nombre de ces personnes aurait été trouvées et soignées par des organisations humanitaires. Le sort des autres personnes demeure inconnu.

212. Finalement, plus de 1000 migrants, y compris certaines personnes qui avaient auparavant été amenées dans des régions désertiques et qui auraient besoin de soins médicaux urgents, auraient été déplacées dans des installations militaires à Guleimin en vue de leur expulsion imminente en bus et en avion. L'accès à ces personnes par des organisations extérieures aurait été restreint.

Communications reçues du gouvernement

213. By letter dated 9 February 2006, the Government provided the following response to the Urgent Appeal sent on 14 October 2005. Morocco is situated in a strategic position between the continents of Europe and Africa, which engenders a number of human, economic and security problems. Such problems have been increasing.

214. As to the facts alleged, an investigation was carried out which revealed the allegations to be inaccurate. Morocco is aware of the existence of the difficulties to be faced with the influx of clandestine migrants. Meanwhile Morocco took the responsibility of coping with this situation and protecting migrants from the international criminal networks responsible for smuggling and trafficking in persons. Morocco worked on specific legislative and administrative instructions to provide clandestine migrants with all legal guarantees, including deportation to their countries of origin.

215. Investigations carried out by the government into the allegations of forced collective deportation of migrants in a manner that risk their personal integrity revealed these to be false and that the process was carried out in a normal manner. The process resulted in the deportation of 3675 persons of 11 different nationalities. The expulsions were carried out through 23 flights, 22 of which were carried out by the Royal Moroccan Airlines in a normal manner and in full respect of the migrants' rights. In addition, the International Organization for Migration (IOM), carried out one flight on which occasion its representatives observed the full compliance of

Morocco of the rights of the clandestine migrants. All were voluntary returns and the Moroccan government provided them with adequate supplies and equipment before their deportation. It should be noted that no petition alleging a fear of violence or of torture from any of the migrants was received.

216. In accordance to Morocco's obligation to comply with international human rights treaties and with the International Convention for the Protection of All Migrant Workers and Members of their Families ratified 14 June 1993, Morocco harmonized its domestic legislation with adoption of law N° 02-03 which notably establishes the primacy of international law as well as judicial guarantees such as the right of persons to petition the President of the Administrative Court to suspend an expulsion as well as their right to interpretation and to being assisted by a lawyer. The Government provided further details of the guarantees provided in said law.

217. Expulsion procedures can only be carried out to the country of origin, a country having issued valid travel documents; or to a country having allowed the person legal entry. In case the foreigner cannot be returned to his or her country of origin or any other country the administration can induce the foreigner to reside in any place the administration specifies. Expulsions are always carried out through official transport in the presence of a diplomatic representative for the country of origin. Necessary assistance is provided before the expulsions are carried out. Regarding request for political asylum, Morocco is acting in accordance with the 1951 Convention relating to the Status of Refugees and its protocol.

Observations

218. Suite à la communication du 7 octobre 2005, le Rapporteur spécial a reçu des informations alléguant que 6 autres personnes seraient mortes à la frontière entre le Maroc et les enclaves de Ceuta et Melilla le 6 octobre 2005. Ces événements, ainsi que les allégations d'expulsions collectives et d'abandon des migrants dans le désert sans eau ni nourriture ont fait l'objet d'un communiqué de presse publié le 12 octobre 2005.

219. Le Rapporteur spécial remercie le gouvernement Marocain pour sa réponse à l'appel urgent envoyé le 14 octobre 2005. Il aimerait recevoir plus d'informations sur les procédures légales et/ou administratives individuelles suivies dans l'examen de chaque cas d'expulsions des migrants. Il apprécierait aussi de recevoir des informations détaillées à propos des enquêtes menées sur les allégations d'abandon des migrants dans le désert sans eau ni nourriture, notamment quelle autorité a réalisé l'enquête et les éléments de preuve qui ont mené aux conclusions annoncées, ainsi que le détail de ces dernières.

220. Finalement, le Rapporteur Spécial aimerait réitérer son intérêt de recevoir la réponse du gouvernement du Maroc aux allégations transmises concernant la mort de plusieurs migrants d'origine subsaharienne par résultat de l'action des forces de l'ordre qui surveillent les frontières entre Ceuta et Melilla avec le Maroc. Il apprécierait que les informations concernent l'ensemble de ces très graves incidents ayant eu lieu entre août et octobre 2005. Tenant compte du nombre de plaintes reçues sur la situation à la frontière entre Ceuta et Melilla avec le Maroc, il serait également reconnaissant que les informations fournies par les autorités incluent des renseignements sur les mesures adoptés pour assurer le non- renouvellement de tels actes.

Myanmar

Communications sent to the Government

221. By letter dated 16 June 2005, sent jointly with the Special Rapporteur on trafficking especially women and children, the Special Rapporteur on violence against women, including its causes and consequences, and the Special Rapporteur on sale of children, child prostitution and child pornography, the Special Rapporteur notified the Government that she had received information according to which, all citizens need to identify themselves with Government-issued national registration cards to pass police and military checkpoints set up along the main roads. The lack of a national identification card reportedly makes it impossible to obtain a travel pass to cross the border into China. The alleged requirements reportedly make young women and girls in various ways vulnerable to become victims of trafficking and sexual exploitation.

222. Firstly, human traffickers reportedly take advantage of the existence of checkpoints controlling national registration cards by taking their victims' national identification cards away, so that the victims can no longer pass the checkpoints and become unable to return home to their families. This would make the victims completely dependent on their traffickers and hence more vulnerable to be exploited.

223. Secondly, traffickers reportedly also profit from rampant corruption among those officials responsible for issuing national registration cards. Although national law requires that a national registration card is issued to every citizen, reports indicate that it is in practice difficult for citizens living in Kachin state and northern Shan state to obtain these documents because local officials routinely demand the payment of significant bribes (around 10,000 kyat) before they issue a national registration card. Many young women and girls, we are informed, cannot afford or are unwilling to pay these bribes and remain without a national registration card. Due to a reported lack of employment and education opportunities in Kachin state and Shan state, these women and girls nevertheless feel compelled to migrate and find better opportunities elsewhere. As a result, they could be easily lured by traffickers who reportedly promise their victims that they can facilitate travel past the checkpoints even without national registration cards by either bribing checkpoint officials or posing as their relatives or guardians.

224. Thirdly, many Myanmar citizens from Kachin and Shan state reportedly want to find employment and education opportunities in China. However, without a national registration card, we are informed, they cannot obtain a travel pass to cross the border lawfully. Traffickers exploit this fact by convincing young women and girls to cross the Chinese border clandestinely before selling them as wives or forcing them into prostitution in China. The victims are reportedly afraid to denounce the abuses to state enforcement authorities because they have to fear arrest and deportation by the Chinese authorities for illegal entry without proper travel documents followed by punishment by the Myanmar authorities for illegally leaving the country.

225. Fourthly, the alleged corruption in the national registration card system reportedly also helps traffickers to avoid prosecution, since they reportedly often manage to bribe officials that provide them with several national registration cards under different names.

226. Fifthly, we have been informed that no one may participate in high school final exams in Myanmar without having a national registration card. Reportedly, this is an important factor why some young women and girls fall for the false promises of human traffickers to provide them with educational opportunities in China.

Observations

227. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of the Myanmar regarding these allegations. He would also like to reiterate his interest in receiving a response to past communications transmitted to the Government in 2002 (E/CN.4/2003/85/Add.1, 116-118).

Netherlands

Communications sent to the Government

228. By letter dated 5 December 2005 the Special Rapporteur notified the Government that he had received relating to the deaths of eleven migrants and injury to fifteen others during a fire in a temporary detention centre at Amsterdam's Schiphol airport on 27 October 2005.

229. According to the information received, approximately 350 prisoners were being held in the temporary detention centre at Amsterdam's Schiphol complex when the fire broke out in the early hours of 27 October. It is estimated that about 43 persons were being held in the wing where allegedly 12 cells caught fire.

230. The centre, which hosts both prisoners and irregular migrants, had reportedly caught fire on two prior occasions, in 2003 and in 2004. Concerns were raised regarding allegations that earlier recommendations by fire prevention officials may not have been carried out and that this may have resulted in a delayed response on behalf of personnel to cries for help from detainees. Efforts to rescue the persons trapped in the cells were also allegedly hampered by the fact that their doors could not be opened centrally, but had to be opened one at a time by prison guards. Additionally, the alleged lack of fireproof doors in the centre allowed the fire to spread more quickly.

231. It is further claimed that there have been reports that rejected asylum seekers who were held in the Schiphol airport detention centre were detained in the same area as persons convicted of criminal offences and that men and women were held in the same area and not in separate parts of the premises.

232. Moreover, following the fire, lawyers representing survivors of the fire were allegedly not given adequate information regarding their clients' whereabouts and reported insufficient access to their clients.

233. According to the information, survivors of the fire have been transferred to new detention facilities. Nevertheless, the District Court of Amsterdam, reportedly ordered, in two separate cases, that survivors be transferred to alternative accommodation as they had not received adequate treatment to cope with their experience.

234. Finally, it is reported that on 10 November 2005, the Minister for Immigration and Integration Affairs announced that the government would soon initiate expulsions of the survivors of the fire who are still in detention. This decision was reportedly supported by Parliament.

Observations

235. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of the Netherlands.

Pakistan/Sudan (see also Sudan/Pakistan)

Communications sent to the Government

236. By letter dated 27 September 2005, sent jointly with the Special Rapporteur on trafficking especially women and children, the Special Rapporteur notified the Government that he had received information concerning allegations that a high ranking government official had been accused of being complicit to the trafficking of 58 young Pakistani men to Bageer (Sudan), where they were held in a forced labour situation.

237. According to information received, each of the 58 men, who are mainly from the Kashmir region, paid between 60,000 and 100,000 rupees to the employment agency K.O. in Rawalpindi, which is allegedly owned by the government official in question. The employment agency promised to organize resident visas and well-paid work in the Sudanese oil industry for the men. However, the men were only provided with tourist visas. Upon their arrival in Khartoum on 27 March 2005, the men were handed over to an Indian middle man named R.R., who allegedly organized their confinement in a camp of the X Oil Company in Bageer near Khartoum. With armed guards preventing their escape, the men were forced to do harsh manual labour while receiving little food and only rusty water. Since their arrival they have not received any payment. Six of the men, Ramzan Ashraf, Mohammed Iqbal, Shamsher Hussain Shahid, Mohammed Ijaz, Mohammed Ayaz Khan and Jannat Hussain, were not given access to medical assistance despite being in a critical medical condition.

238. After a non-Governmental organization informed the general public as well as representatives of the Government of Pakistan about the case, all men were allowed to leave the labour camp. However, as of 20 September 2005, 37 of the men were allegedly still awaiting their safe repatriation to Pakistan.

239. The following men were reportedly held at the X Oil Company Camp in Bageer:

240. Javed Khadim, Shamsher Hussain Shahid, Ramzan Ashraf, Arshad Mehmud, Kashif Maqbool, Ejaz Mohammed Hussain, Tariq Aziz, Imran Saleem, Mohammed Ayaz Khan, Haroon Parvez, Zafar Iqbal, Tousif Khaliq, Abbas Ishaq, Mohammed Jamil Hussain, Mohammed Atiq, Mohammed Basharat, Mohammed Khalil, Abdul Rehman, Mohammed Nadeem Khan, Jannat Hussain, Mohammed Yaqub Khan, Dilshan, Mohammed Bashir, Mohammed Shehzad, Amjad Khan, Aslam Khan, Iftikhar Hussain, Liaqat Hussain, Nazeer Hussain, Saghar Abbasi,

Mohammed Rasheed Khan, Yasir Gulzar Abbasi, Mohammed Ashfaq Khan, Arshad Khan, Raja Khaliq Ahmed, Wajid Mumtaz, Basharat Abbasi, Raja Ejaz Khan, Raja Nisar Khan, Mohammed Shabbir Khan, Mohammed Irshad Khan, Zakir Mehmood, Mohammed Mumtaz Hussain, Mohammed Ijaz, Khalid Hussain, Khalid Mehmood, Kashif Fazal, Mohammed Ishaq Khan, Zakaullah, Nasrullah Khan, Nisa Tanaz Khan, Mohammed Iqbal, Mureed Abbas, Umer Hayat, Mohammed Sarfaraz Khan, Ziaullah, Samiullah and Zaheer Abbas.

Communications received from the Government

241. By letter dated 2 December 2005, the Government transmitted the following information relating to the communication of 27 September 2005. On being apprised of the situation of these Pakistani workers the Government took immediate measures to repatriate them and to ensure they obtained redress for their grievances. As a result of these efforts, all of the workers have been repatriated. The Government is continuing to investigate the incident.

Observations

242. The Special Rapporteur would like to thank the Government of Pakistan for its prompt reply. He would appreciate receiving further information regarding the investigations carried out into this incident as well as of their results.

Peru

Comunicaciones enviadas al Gobierno

243. Por carta con fecha 11 de enero 2005, la Relatora especial expresó su profunda preocupación respecto de la situación de los reclusos extranjeros con quien tuvo la oportunidad de reunirse durante mi visita a Perú. Sus consideraciones generales relativas a la situación de estas personas constaron en su informe sobre su visita al país. Sin embargo, la Relatora consideró necesario llevar a cabo un seguimiento individualizado de la situación de cada una de las personas mencionadas en los documentos que figuran en los anexos a la presente, por lo que solicitó información sobre la situación actual de estas personas.

Observaciones

244. El Relator Especial quisiera reiterar su interés en recibir la respuesta del Gobierno de Perú.

Philippines

Communications received from the Government

245. By letter dated 6 December 2004 the Government, responded to the request for information sent by the on 29 October 2004, and transmitted the following information regarding measures adopted relative to the recommendations contained in the Special Rapporteur's report (E/CN.4/2003/85/Add.4) on her visit to the Philippines in May 2002.

246. Action taken by the Overseas Workers Welfare Administration (OWWA) in order to further strengthen the Government's protection of overseas workers include the deployment of social workers and medical doctors in selected job sites to address their needs. In addition the Pre-Departure Orientation Seminar has been revised in order to render it more efficient. A Migrant Workers Loan Guarantee Fund as provide under Section 21 of RA 8042 has been established covering pre-departure and family assistance loans.

247. The Education and Training Benefits for the member overseas workers and their dependents have been enhances under the new OWWA Omnibus Policies per Board Resolution N° 038 Series of 2003. Measures have also been adopted to improve information gathering and information exchange regarding overseas workers.

248. Assistance to victims of deportation, including transportation, food, medical, have been enhanced by the Department of Social Welfare and Development (DSWD). The

249. Action of the Bureau of Immigration an Deportation (BID) includes, among others, ordering a review of cases of foreign detainees; entering agreements with local and Government units in order regarding monitoring of foreigners n order to prevent transnational crimes such as human smuggling and trafficking, terrorism, drug smuggling; a number of other anti-smuggling and anti-terror measures.

250. In 2003 the Anti-Trafficking in Persons Act (Republic Act 9208) was signed into law. A number of additional rules and regulations regarding this issue have also been adopted, in particular the Implementing Rules and Regulations of RA 9208 of January 2004, which provides in Section 17 that victims of trafficking shall not be penalized for crimes directly related to acts of trafficking or in obedience to the order made by the trafficker.

251. The Government further informed on the enactment of an Overseas Absentee Voting Law; the creation of a Presidential Anti-illegal Recruitment Task Force (PAIRTF); the conclusion of bilateral labour agreements with 12 host countries; continued inter-Agency Coordination under RA 8042; and the Office of the Undersecretary for Migrant Workers Affairs (OUMWA)'s strengthening of its capabilities in assisting nationals.

252. Finally, the Government provided information on its continuing efforts made with host Governments for the protection of migrant workers, though a number of bilateral initiatives such as meetings, labour agreements, the establishment of Joint Commissions or Joint Labour Committees; the development of standard employment contracts for domestic workers; improving coordination between of the various Government agencies concerned; as well and pre-employment orientation, skill development programs for migrant workers and reintegration programs for returning migrants.

Observations

253. The Special Rapporteur would like to thank the Government of the Philippines for its prompt and detailed reply. He would like to express his appreciation for the measures and efforts reported in the response to provide protection to the migrant population living abroad.

Saudi Arabia

Communications sent to the Government

254. On 13 April 2005, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions sent an urgent appeal regarding three Sri Lankan migrant workers – Mr. Edirisinghe Jayasooriyage Victor Corea, Mr. Ranjith de Silva and Mr. Sanath Pushpakumara – who were all reportedly sentenced to death on charges of possession of illegal firearms and attempted robbery by the Saudi Arabian High Court. They were involved in a robbery and arrested by the Riyadh police on 10 March 2004. Reports indicate that they are all currently detained at Al Nayad Prison, in Riyadh.

255. An appeal for mercy was pending before His Excellency, the King of Saudi Arabia, King Fahd Bin Abdul Aziz, and that if this appeal failed the accused would be liable to imminent execution.

256. According to the reports received, the three men were sentenced to death after trials that appear to have fallen short of international fair trial standards. It is reported that they did not have any legal representation during their trials, although a translator was provided. The translation of proceedings is no substitute for adequate legal representation as required by international standards. In addition, it is alleged that after their trial, the three men were asked to sign a document in Arabic, stating their acceptance of the death sentence which only Mr. Silva reportedly refused to sign.

Observations

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

Spain

Comunicación recibida del Gobierno en respuesta al pedido de información del 29 de octubre 2004

258. Por carta con fecha de 24 de enero de 2005, el Gobierno transmitió la información siguiente con relación a la solicitud de información enviada el 29 de octubre 2004, sobre las medidas adoptadas para llevar a cabo las recomendaciones incluidas en el informe enviado por la Relatora especial (E/CN.4/2004/76/Add.2).

259. El Gobierno agradece el informe y constata con satisfacción que la Relatora es consciente de los esfuerzos realizados por España para cumplir con las obligaciones derivadas de su situación geográfica como frontera exterior de la Unión Europea. La cuestión de la compatibilidad del refuerzo de los sistemas de control de la inmigración con las medidas de reagrupación familiar y de integración de los inmigrantes subrayada por la Relatora ha sido objeto de desarrollo específico en el Real Decreto 2393/2004, de 30 de diciembre de 2004 por el que se aprueba el Reglamento de la Ley Orgánica 4/2000 sobre derechos y libertades de los

extranjeros en España y su integración social, publicado en el Boletín Oficial del Estado de 7 de enero de 2005.

260. En consideración del riesgo de posibles discrepancias en las políticas de control de la inmigración a cargo del Ministerio del Interior y las políticas de integración de los inmigrantes a cargo del Ministerio de Trabajo y asuntos Sociales, se adoptó el Real Decreto 553/2004 de 17 de abril de 2004 en el que se atribuye a este último el desarrollo de la política del Gobierno en materia de extranjería e inmigración a través de la Secretaría General de Estado de Inmigración y Emigración (Real Decreto 1600/2004 de 2 de julio de 2004).

261. En relación con la sobrecarga de trabajo de la Oficina de Extranjeros y los retrasos en los procedimientos, se aprobó y aplicó por el Gobierno, a partir de junio de 2004, el Plan de medidas urgentes en materia de extranjería para mejorar los procedimientos y tramitar un mayor número de expedientes.

262. El Gobierno niega con rotundidad que los inmigrantes desconozcan las garantías y derechos de los cuales son titulares y la posibilidad de que dicho desconocimiento origine casos de arbitrariedad y violaciones.

263. El Gobierno proporciona información sobre los acuerdos bilaterales de regulación y ordenación de los flujos migratorios y de las negociaciones existentes.

264. El Gobierno siguiendo el orden establecido en el informe, procede al análisis de las recomendaciones:

265. La ratificación del Convenio Internacional sobre la Protección de los Trabajadores Migrantes y sus Familiares no se estima asumible por el momento dado que según el Tratado de Ámsterdam, establece la competencia del Consejo de la Unión Europea en asuntos de inmigración.

266. No son necesarias modificaciones normativas para asegurar que los derechos de los inmigrantes no son menoscabados dado que a través del reconocimiento por la Constitución (artículo 13.1) y por la Ley Orgánica 4/2000 (artículo 3.1) los extranjeros se sitúan, con carácter general, en igualdad de condiciones legales que los españoles en el ejercicio de sus derechos y deberes.

267. Además, el texto del Real Decreto 2393/2004 incluye un proceso de normalización para la contratación legal de los extranjeros que se encuentren en España en situación irregular.

268. La formación de los funcionarios responsables de aplicar la normativa vigente se incrementará con la entrada en vigor de la Ley Orgánica.

269. Las medidas para asegurar que los inmigrantes disfruten en la práctica del derecho a letrado e intérprete existen y en caso de violación, los Juzgados y Tribunales competentes podrán investigar los mismos

270. Como esfuerzo para asegurar la coordinación, el 17 de abril de 2004 se creó la Secretaría de Estado de Inmigración y Emigración en el seno del Ministerio de Trabajo y Asuntos Sociales que está dirigida hacia dos grandes objetivos: el control y la gestión de los flujos de inmigrantes y las políticas de integración que por primera vez serán responsabilidad de centros directivos dependientes directamente del mismo Órgano superior. Las competencias de ejecución corresponden a las Fuerzas y Cuerpos de Seguridad del Estado.

271. Respecto a la participación y diálogo con las ONG, el Gobierno reconoce la importante tarea desarrollada por las ONG y ha anunciado que propondrá un Pacto de Estado sobre la Inmigración, convocando a las fuerzas políticas, Comunidades Autónomas, Ayuntamientos y agentes sociales para poner en común los puntos de vista sobre el tratamiento de la inmigración. El proceso participativo de adopción de la Ley Orgánica 4/2000 es una prueba de esta voluntad.

272. En referente a campañas de información y concienciación, el Gobierno está trasladando a la sociedad española su consideración que la inmigración es un factor positivo en términos demográficos, económicos y sociales para el país.

273. En relación con el incremento de recursos y la aceleración de los procedimientos, el nuevo reglamento de la Ley Orgánica 4/2000 y la aplicación del Plan de medidas urgentes supondrán la mejora de los procedimientos y la tramitación de un número muy importante de expedientes (unos 400.000). A lo largo de la legislatura, el Gobierno va a perseguir mediante un nuevo modelo de atención personalizada a extranjeros, que las solicitudes estén resueltas en el plazo de un mes.

274. En cuanto al incremento de recursos y la adaptación de los Consulados españoles en el extranjero, la Ley Orgánica 4/2000 simplifica los procedimientos y suprime trámites innecesarios.

275. En cuanto a la flexibilización del contingente, el nuevo reglamento desarrolla la figura de los visados de búsqueda de empleo. La figura del contingente anual de trabajadores extranjeros permitirá la contratación programada de trabajadores.

276. La plena y efectiva implementación de la legislación de menores es asegurada en particular en los casos de reintegración familiar, prevaleciendo siempre el interés superior del menor.

277. Las políticas de fomento de alquileres de viviendas a la población inmigrante se realizan en concertación con las Comunidades Autónomas y Ayuntamientos. Para evitar todo tipo de actos y manifestaciones de racismo y xenofobia, el artículo 70 de la Ley Orgánica 4/2000 otorga al Gobierno el mandato de constituir el Observatorio Español del Racismo y la Xenofobia, previsible en 2005 y del Consejo para la promoción de la Igualdad de Trato y no Discriminación de las Personas por su Origen Racial o Étnico.

278. Para la protección las personas que hayan sido víctimas de las redes de tráfico de seres humanos, el nuevo reglamento regula la posibilidad de conceder una autorización de residencia temporal por colaboración con la Justicia.

279. Sobre la presencia del ACNUR, el procedimiento de asilo otorga al ACNUR un protagonismo muy importante en los casos de solicitudes presentadas en puestos fronterizos, a través de la realización de entrevistas personales a los solicitantes y de su participación como miembro con voz en la Comisión interministerial de Asilo y Refugio (CIAR).

280. A modo de conclusión, de las medidas recomendadas para su adopción por la Relatora Especial únicamente no es asumible la formulada en el epígrafe a) mientras que de las restantes, unas ya están siendo aplicables en ejecución de la nueva política migratoria y las otras se implementarán a partir de la entrada en vigor del nuevo Reglamento de la Ley Orgánica 4/2000.

Comunicaciones enviadas al Gobierno

281. Por carta enviada el 21 de septiembre 2005, el Relator Especial transmitió una comunicación en la que se comunicó al Gobierno que había recibido informaciones relativas a casos que habrían ocurrido en su país, relativo al uso excesivo de la fuerza y malos tratos durante expulsiones de migrantes de origen subsahariana en Melilla.

282. Segundo la información recibida, el día 23 de junio de 2005, sobre las 02:00 horas, un grupo de unos 30 a 60 inmigrantes subsaharianos intentó saltar la valla fronteriza por la zona de Marihuari. La Guardia Civil habría respondido con dureza intentando evitar la entrada empleando material antidisturbios y quedando muchos subsaharianos heridos entre las dos vallas. Algunos de los migrantes habrían logrado acceder a la parte española. En las inmediaciones del lugar se habría encontraba un numeroso grupo de militares de la Legión realizando algún tipo de maniobras o marchas nocturnas. Los militares habrían intervenido para apoyar a la Guardia Civil empleándose también con gran dureza.

283. De acuerdo con la información recibida, según las declaraciones coincidentes de los migrantes heridos, tanto militares como Guardias Civiles les rompían a golpes las piernas y los brazos aún estando detenidos o en el suelo con el fin de inmovilizarlos.

284. Una vez practicadas las detenciones, la Guardia Civil habría entablado negociaciones con las Fuerzas Auxiliares Marroquíes de servicio al otro lado de la frontera para devolver a los migrantes por las puertas de servicio de la valla. En consecuencia, las Fuerzas Auxiliares habrían aceptaron la entrega de los subsaharianos que no estaban heridos, pero no de los que estaban heridos.

285. Los otros migrantes heridos habrían sido entonces recogidos y trasladados al Hospital de Nador por organizaciones humanitarias. Las siguientes personas heridas habrían sido entrevistadas en el hospital: Otto Meoselly, nacional del Camerún, Zeba Rachidou, nacional del Camerún, Lowa Lucien, nacional del Camerún, Salif George, nacional del Camerún, Djakou Fabrice, nacional del Camerún y Achilles Irak, nacional del Camerún y Djoubi Appolain nacional del Togo.

Comunicaciones recibidas del Gobierno

286. Por carta con fecha de 25 de noviembre de 2005, la representación permanente de España ante las organizaciones internacionales, transmitió la siguiente información con relación a la comunicación del 21 de Septiembre de 2005.

287. Según las informaciones de las que dispone el Ministerio del Interior, basadas en los informes emitidos por la Comandancia de Melilla y por la Dirección General de la Guardia Civil, los hechos referidos no son exactos.

288. En la madrugada del 23 de junio de 2005, unos 230 inmigrantes subsaharianos distribuidos en grupos de 20 o 30 personas asaltaron la frontera por diferentes puntos del vallado de manera sincronizada y oponiendo gran resistencia y violencia a los guardias civiles que trataban de impedir que accedieran irregularmente al territorio español. Diez Guardias civiles resultaron con lesiones leves.

289. La intervención de la Guardia Civil, con el apoyo de efectivos militares del Tercio de la Legión, que, casualmente se encontraba haciendo maniobras nocturnas en el perímetro fronterizo, permitió para la entrada ilegal de unos 190 inmigrantes.

290. Durante los incidentes, los agentes de la Guardia Civil se vieron obligados a utilizar material antidisturbios (defensas reglamentarias y lanzamiento de unas 100 pelotas de goma) para disuadir a los inmigrantes. Se estima que lograron acceder irregularmente a Melilla entre 30 y 40 inmigrantes.

291. Uno de los asaltantes fue localizado en territorio nacional, muy cerca del vallado perimetral, caído en el suelo y herido en la cabeza, con posible fractura en una pierna y fue trasladado al Hospital Comarcal de Melilla en cumplimiento de la práctica habitual ante la existencia de heridos en la frontera. Durante los seis primeros meses de 2005 han sido trasladados 25 inmigrantes subsaharianos a Centros hospitalarios de Melilla. No se tiene constancia de ningún caso en que las fuerzas de la Guardia Civil hayan rehusado hacerse cargo de los heridos o que los hayan entregado a las fuerzas de seguridad marroquíes.

292. En relación con el posible origen de las heridas que hayan presentado algunos de estos inmigrantes, según los informes de que dispone el Ministerio del Interior, estas lesiones no corresponden al uso de material antidisturbios, ni fueron el resultado de malos tratos ni derivadas del uso de la fuerza en el momento de la detención. Se trataría en realidad, de fracturas o contusiones en brazos y piernas, más propias de caídas en altura.

293. Las autoridades españolas carecen de la competencia para pronunciarse sobre las actuaciones de las autoridades marroquíes.

294. No ha sido presentada denuncia ni por los inmigrantes que participaron en los hechos ni en su nombre razón por la cual no existe procedimiento penal. A falta de elementos sobre una posible actuación irregular por parte de los miembros de la Guardia Civil, no existe procedimiento disciplinario.

295. Únicamente el Defensor del Pueblo de conformidad con la Ley Orgánica 3/1981 y como consecuencia de una queja presentada por el Presidente de la Asociación Pro Derechos de la Infancia, se dirigió el 18 de agosto al Ministerio del Interior, solicitando información. El 19 de septiembre, la Secretaría de Estado de Seguridad le envió el previo informe de la Dirección General de la Guardia Civil.

Spain/Morocco

Comunicaciones enviadas al Gobierno

296. Por carta con fecha 7 de octubre 2005, enviada conjuntamente con el Relator Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias y el Relator Especial sobre la tortura, el Relator Especial comunicó al gobierno que durante el mes de septiembre de 2005, había recibido diversas denuncias relativas a una serie de incidentes en los cuales varios migrantes de origen subsahariano habrían resultado muertos, sea como consecuencia de disparos o de maltratos por parte de las fuerzas de seguridad que vigilan la frontera española con Marruecos en Ceuta y Melilla.

297. Según las informaciones recibidas, el 29 de agosto de 2005, a las 02:00 horas, unos cincuenta migrantes habrían intentado traspasar la valla fronteriza en Melilla. Se habrían dividido en tres grupos, uno de ellos compuesto por unas 16 personas. Este grupo habría sido visto por miembros de la Guardia Civil española, quienes habrían utilizado material anti-disturbio. De este grupo de 16, ocho personas habrían logrado atravesar las dos vallas que separan territorio marroquí de territorio español.

298. Se alega que agentes de la Guardia Civil habrían golpeado con la culata de sus fusiles y con porras eléctricas a los otros ocho migrantes que habían quedado atrás, antes de re-enviarles a territorio marroquí por una puerta de servicio de la frontera situada entre los puntos "A7" y "A8", entre Melilla y Marruecos. Joseph Abunaw Ayukabang, un camerunés de 17 años, fue trasladado por sus compañeros hacia un bosque donde falleció, según se alega, a consecuencia de los golpes recibidos.

299. Se informa también que el cadáver de otro migrante también herido durante el incidente habría sido recogido por efectivos de la Gendarmería real marroquí. Sin embargo, el Hospital de Nador habría confirmado solamente haber recibido un solo cadáver.

300. El 12 de Septiembre de 2005, el cuerpo de un migrante de origen sub.-sahariano habría sido trasladado al Hospital Comarcal de la ciudad de Melilla. Registraba heridas, supuestamente imputables a las fuerzas de seguridad marroquíes, ocasionadas cuando intentaba cruzar la frontera el 8 de septiembre de 2005. No obstante, otras informaciones indican que esta persona habría sido herida accidentalmente ese mismo día en territorio marroquí.

301. Las informaciones recibidas hacen también referencia a la muerte de otro migrante el 15 de Septiembre 2005, quien también habría sido trasladado al Hospital Comarcal. Su cuerpo presentaba una herida de bala de caucho en la garganta disparada supuestamente por elementos de las fuerzas de seguridad que vigilan la frontera hispano-marroquí.

302. Los relatores han recibido también informaciones según las cuales otras cinco personas habrían sido mortalmente heridas de bala al tratar de cruzar la valla fronteriza en Ceuta conjuntamente con otros 500 o 600 migrantes el 29 de septiembre de 2005. Sus cadáveres fueron encontrados en ambos lados de la frontera. Otras ocho personas fueron trasladadas al hospital de Tetuán por heridas provocadas por impacto de balas de caucho, material antidisturbios al parecer utilizado por la Guardia Civil española encargada de vigilar la frontera.

303. Algunas informaciones hacen mención que elementos de las fuerzas de orden marroquíes se habrían colocado en línea delante de la valla fronteriza y habrían disparado con fusiles.

Comunicaciones recibidas del Gobierno

304. Por carta con fecha de 25 de noviembre de 2005, la representación permanente de España ante las organizaciones internacionales, transmitió la siguiente información con relación a la comunicación del 7 de octubre de 2005:

305. La oficina de derechos humanos del Ministerio de asuntos exteriores establece los hechos y las actuaciones sobre los incidentes ocurridos los días 29 de agosto, 12 de septiembre, 15 de septiembre y 29 de septiembre.

306. 29 de agosto de 2005.

307. Como consecuencia del asalto protagonizado por aproximadamente 300 inmigrantes de origen subsahariano el 28 de agosto de 2005, resultaron heridos leves diez agentes de la Guardia Civil de fronteras y cinco inmigrantes que fueron trasladados a un centro médico. Ese día, los Guardias civiles no observaron la existencia de otras personas heridas.

308. El 29 de agosto, un grupo de unos 50 inmigrantes en territorio marroquí se acercó a la zona fronteriza y entregó a los agentes de las Fuerzas Auxiliares de Marruecos (Mehaznia) el cadáver de una persona envuelto en una manta. Hasta entonces, los agentes de la Guardia Civil, no habían tenido conocimiento de que se hubiese producido una muerte. A través de la Mehaznia, los agentes españoles supieron que los inmigrantes atribuían la causa del fallecimiento al asalto masivo del día anterior.

309. Se abrió de oficio una investigación interna cuyas únicas fuentes de información son la información aportada por las autoridades marroquíes y la visión de las cintas de grabación del asalto a la valla.

310. Resulta de una reunión con los mandos de la Gendarmería Real Marroquí que practicó las diligencias de reconocimiento y tomó declaración a los inmigrantes, que la supuesta responsabilidad de los agentes españoles se basa sobre la manifestación de un testigo, según el cual un guardia civil habría disparado a bocajarro con balas de caucho y habría devuelto el cadáver a territorio marroquí por una de las puertas de las vallas. Sin embargo por varios motivos las autoridades españolas rechazan la credibilidad del testigo, entre ellos, el hecho de que la grabación del asalto no recoge ninguno de estos hechos, que ningún otro inmigrante corroboró este relato de los hechos, que existen contradicciones en la declaración del testigo, que el arma

supuesta y las contusiones que presentaba el fallecido son incompatibles, que la inspección ocular de la zona no advirtió restos de sangre o indicios.

311. Se señala que las fuerzas y cuerpos de seguridad españoles tienen prohibida la tenencia y el uso de porras eléctricas. En los registros de los depósitos de armas nunca se han encontrado estas armas ilegales. Asimismo los supuestos golpes con la culata del arma no son coherentes con el hecho de que el cuerpo del fallecido presentara una única contusión necrótica.

312. 12 de septiembre

313. El 8 de septiembre, la Guardia civil de fronteras detectó la presencia de unos 100 inmigrantes en la zona de los acantilados de Aguadú que avanzaban hacia la línea fronteriza. Ante la presencia de la Guardia Civil volvieron sobre sus pasos, dejando en el lugar a seis personas. Sospechando que pudieran estar heridas los agentes se aproximaron y procedieron a su evacuación. Cuatro de los heridos fueron trasladados al centro de salud de la ciudad y dados de alta el mismo día. Los otros dos fueron conducidos al Hospital Comarcal. Uno de ellos, ingresó en estado de coma y falleció el 12 de septiembre.

314. El 8 de septiembre se inició una investigación sobre las causas de las lesiones, en poder de la autoridad judicial, en la que consta que los acompañantes del fallecido declararon que había sufrido una caída desde un barranco cuando trataba evitar de ser alcanzado por las autoridades marroquíes. Debido al secreto de la instrucción judicial, estos son los únicos datos disponibles por el momento.

315. 15 de septiembre

316. En la madrugada del 15 de septiembre, los agentes de la Guardia civil introdujeron en territorio español a un hombre que solicitaba atención médica al que trasladaron en ambulancia al Hospital comarcal donde falleció el mismo día. Por la tarde, la persona que lo acompañaba se acercó a la valla con agentes de las Fuerzas auxiliares de Marruecos. A solicitud de los agentes españoles, entró en España para declarar como testigo. Todo lo anterior fue grabado por la cámara de seguridad.

317. Existe un proceso judicial en fase de instrucción y una investigación interna ya cerrada en la que constan las declaraciones del testigo y la de los agentes. El testigo declaró que su compañero era de Ghana, que lo había encontrado en la localidad de Farhana en estado crítico con una herida en la nuca, de la que desconocía el origen, y lo había llevado a la valla. En la investigación interna se descartó cualquier relación entre el asalto a la valla y el fallecimiento del inmigrante. El proceso judicial sigue su curso.

318. 29 de septiembre

319. En la madrugada del 29 de septiembre, un grupo de 500 o 600 personas asaltó la frontera entre Marruecos y Ceuta falleciendo dos personas. El proceso judicial fue iniciado inmediatamente por la comunicación de los agentes de la Guardia Civil al Juez de Guardia.

320. Fue iniciado de oficio un proceso interno de investigación que puso de manifiesto que los cuerpos de las personas fallecidas presentaban impactos de bala de armas de fuego largas que fueron la causa de su muerte. El examen balístico de la policía científica reveló que ni la munición ni el tipo de armas corresponde a las que utiliza la Guardia Civil. Otras constataciones confirmaron las declaraciones de los agentes españoles quienes escucharon disparos procedentes del otro lado de la frontera y avisaron a la Mehaznia del peligro que ello suponía tanto para los inmigrantes como para ellos. Todo ello es coherente con el hecho de que los agentes del puesto fronterizo no están autorizados para la tenencia o uso de armas de fuego real.

321. En conclusión de lo expuesto sobre los cuatro casos se excluye la posibilidad de contemplar compensaciones a las familias de las víctimas que exigirían petición previa y declaración de la responsabilidad de las autoridades españolas.

322. Se adjuntó un informe completo del 7 de noviembre de 2005 sobre las medidas urgentes tomadas por el Ministerio de Trabajo y de Asuntos Sociales, a cargo de los centros de estancia temporal de Inmigrantes para reforzar la capacidad de acogida como consecuencia de la entrada masiva de inmigrantes en el perímetro fronterizo de Ceuta y Melilla.

Observaciones

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

324. En relación a la comunicación enviada el 7 de octubre, el Relator Especial agradecería ser mantenido informado de los resultados de las investigaciones y de los procedimientos en curso. Quisiera también recordar que el 12 de octubre 2005, publicó un comunicado de prensa sobre estos incidentes y también el incidente del 6 de octubre, en el cual seis otras personas habrían muerto. Por ello, agradecería también al Gobierno proporcionar información sobre cualquier investigación realizada sobre la muerte de estas seis otras personas.

325. Sin que ello implique, en modo alguno, una conclusión sobre la veracidad de los hechos, el Relator Especial quisiera expresar su gran preocupación por la cantidad y la gravedad de la información recibida alegando la ocurrencia de muertes y/o uso excesivo de la fuerza que habrían sucedido en la frontera de Ceuta y Melilla con Marruecos y apreciaría recibir información sobre las medidas que habrían sido adoptadas para asegurar la no repetición de tales hechos.

Serbia and Montenegro

Communications received from the Government

326. By letter dated 25 February 2005, the government assured the Special Rapporteur of its general support for the activities of special mechanisms of the Commission of Human rights and in particular in regards the Autonomous Province of Kosovo and Mehohija. The government noted that United Nations Security Council Resolution 1244 (1999) the Autonomous Province of Kosovo and Metohija is and integral part of Serbia and Montenegro. The government also noted that the Special Rapporteur's report titled Communications with Governments

(E/CN.4/2005/85/Add.1) includes a communication transmitted to the United Nations Interim Administration Mission in Kosovo, which cannot be considered a communication with a government and requested that the corresponding corrections be made to the report.

Observations

327. The Special Rapporteur regrets that due to the date of receipt of the communication above no modifications could be made to the report referred to. Nevertheless, he has taken note of the Government's observations, which will be reflected in any future communications and reports.

Sudan/Pakistan

Communications sent to the Government

328. By letter dated 27 September 2004, sent jointly with the Special Rapporteur on trafficking especially women and children, the Special Rapporteur notified the Government that he had received information concerning allegations of the trafficking of 58 young Pakistani men to Bageer (Sudan), where they were held in a forced labour situation.

329. According to information received, each of the 58 men, who are mainly from the Kashmir region, paid between 60,000 and 100,000 rupees to the employment agency K.O. in Rawalpindi, which is allegedly owned by this government. The employment agency promised to organize resident visas and well-paid work in the Sudanese oil industry for the men. However, the men were only provided with tourist visas. Upon their arrival in Khartoum on 27 March 2005, the men were handed over to an Indian middle man named R.R., who allegedly organized their confinement in a camp of the X Oil Company in Bageer near Khartoum. With armed guards preventing their escape, the men were forced to do harsh manual labour while receiving little food and only rusty water. Since their arrival they have not received any payment. Six of the men, Ramzan Ashraf, Mohammed Iqbal, Shamsheer Hussain Shahid, Mohammed Ijaz, Mohammed Ayaz Khan and Jannat Hussain, were not given access to medical assistance despite being in a critical medical condition.

330. After a non-Governmental organization informed the general public as well as Government representatives about the case, all men were allowed to leave the labour camp. However, as of 20 September 2005, 37 of the men were allegedly still awaiting their safe repatriation to Pakistan.

331. The following men were reportedly held at the X Oil Company Camp in Bageer:

332. Javed Khadim, Shamsheer Hussain Shahid, Ramzan Ashraf, Arshad Mehmud, Kashif Maqbool, Ejaz Mohammed Hussain, Tariq Aziz, Imran Saleem, Mohammed Ayaz Khan, Haroon Parvez, Zafar Iqbal, Tousif Khaliq, Abbas Ishaq, Mohammed Jamil Hussain, Mohammed Atiq, Mohammed Basharat, Mohammed Khalil, Abdul Rehman, Mohammed Nadeem Khan, Jannat Hussain, Mohammed Yaqub Khan, Dilshan, Mohammed Bashir, Mohammed Shehzad, Amjad Khan, Aslam Khan, Iftikhar Hussain, Liaqat Hussain, Nazeer Hussain, Saghar Abbasi, Mohammed Rasheed Khan, Yasir Gulzar Abbasi, Mohammed Ashfaq Khan, Arshad Khan, Raja

Khaliq Ahmed, Wajid Mumtaz, Basharat Abbasi, Raja Ejaz Khan, Raja Nisar Khan, Mohammed Shabbir Khan, Mohammed Irshad Khan, Zakir Mehmood, Mohammed Mumtaz Hussain, Mohammed Ijaz, Khalid Hussain, Khalid Mehmood, Kashif Fazal, Mohammed Ishaq Khan, Zakaullah, Nasrullah Khan, Nisa Tanaz Khan, Mohammed Iqbal, Mureed Abbas, Umer Hayat, Mohammed Sarfaraz Khan, Ziaullah, Samiullah, and Zaheer Abbas.

Observations

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

Thailand

Communications sent to the Government

334. By letter dated 9 March 2005, the Special Rapporteur notified the Government concerning information she had received relating to the existence of serious problems in rendering assistance to migrant workers nationals of Myanmar and their families during relief operations following the tsunami.

335. According to the information received, many thousands of migrant workers nationals of Myanmar were killed or are missing in the Thai provinces of Ranong, Phangnga, Phuket, Krabi, Satun and Trang due to the Tsunami. However, affected migrant workers were reportedly marginalized by the authorities carrying out relief operations. According to reports, the Thai authorities had announced that compensation would be paid for persons killed; that, in accordance with Thai labour law, aid would be given to unemployed migrant workers, and that DNA tests would be carried out to find missing relatives. However, it is alleged that, in the great majority of the cases, no action was taken. Moreover, it is reported that the authorities had declared that only migrant workers who have valid work permits would be allowed to access humanitarian aid.

336. It has been further reported, that in the aftermath of the Tsunami, Thai authorities began to crack down on migrant workers from Myanmar in the six affected provinces and to forcibly deport them to Myanmar. Subsequently, such deportations are said to have been suspended.

337. Nevertheless, due to the reported lack of a clear official policy on this issue, many Myanmar nationals were said to be still too afraid to seek humanitarian aid. According to the information received, many have thus received no aid and are said to be suffering from hunger and poor health. It is further alleged that many migrants did come forward to list the missing and identify the bodies of the dead in fear of deportation.

338. Furthermore, numerous complaints have been reported regarding delays and inefficiency in the process of re-registration of migrant workers allegedly due to, among other, lack of adequate structures to inform migrants of such procedures such as information desks, online database systems, and interpretation services. The registration of migrants is said to be of crucial importance in ensuring both security and access to health and social services.

339. By letter dated 26 April 2005, sent jointly the Special Rapporteur on violence against women, including its causes and consequences, the Special Rapporteur notified the Government of information she had received regarding a delay in proceedings against the alleged perpetrators of the murder of Ma Suu in 2002. Information regarding this case was sent to the Government on 7 November 2002, a summary of which, as well as the Government's reply appeared in the Special Rapporteur's 2003 report on Communications (see E/CN.4/2003/85/Add.1, paras. 218-219 and 229)

340. According to the information received, the trial of the persons accused of being responsible for the death of Ma Suu, a Burmese migrant worker who died after being beaten and set on fire by her employers, Suchart and Yuwadee Akkavibul in July 2002, is being delayed. The accused, a Thai airforce officer and his wife have reportedly not yet been tried because of the officer's influence and position of authority

341. According to the reports received, on June 25 2004, the provincial police station in the capital of Uthaithanee province issued a summons for the arrest of the three persons suspected of participating in the crime. Suchart Akkavibul and his wife allegedly appeared in court, and were granted bail on the grounds that he is a state officer, although the prosecutor opposed bail. It is also reported that the third accused has agreed to appear as a witness in the case against the other two, and may escape prosecution.

342. Hearings were reportedly held to collect evidence twice on 26 July and 4 August 2004. After hearing a number of witnesses and obtaining solid evidence, the public prosecutor charged the accused, Suchart and Yuwadee, with murder, confinement and harbouring an illegal alien, and the case went to the full court on 1 November 2004 (Black No. 1089/2547 at Uthaithanee Provincial Court).

343. However, the court has allegedly delayed the trial by setting the next hearing for January 2006 stating that the court needed to handle pending cases before new ones. Ma Suu's lawyer has reportedly expressed the concern that the case will be weakened by this delay as it is not certain that witnesses will be available at the convenience of the court more than a year from now.

Communications received from the Government

344. By letter dated 27 July 2005, the Government transmitted the following information regarding the case of Ma Suu. The allegation that the Thai court delayed the trial by setting the next hearing for January 2006 is not true. On 1 March 2005, the state attorney filed a motion to the court to reschedule the date for examining with the plaintiff on 18, 19, and 25 October and 23-25 November 2005 and rescheduled the date with the defendant for 8-9 December 2005. There is therefore no delay in the proceedings, which are expected to be finalized during said period. Regarding the release on bail of the alleged perpetrators, the Provincial Court of Uthaithanee Province ruled that the decision had been taken according to law as the state attorney did not oppose bail; both of the alleged perpetrators are permanent residents and one of them having turned himself in.

345. Thailand attaches importance to the promotion and protection of the fundamental human rights and freedoms of migrant workers. The Thai Government has attempted to ensure basic protection through a regularisation scheme. Thailand also supports and promotes gender equality and non discriminatory practices and firmly objects to violence against women in all forms.

Communications sent to the Government

346. By letter dated 21 September 2005, the Special Rapporteur notified the Government relating to information he received regarding the forced deportation of 232 migrant workers from Myanmar, from Daechapanich fishing net factory in the Khon Kaen province in north-east Thailand.

347. According to the information received, the workers wanted to complain about their working conditions and had approached a local NGO for advice and the local Welfare Protection Office to mediate their dispute with their employer. It is alleged that the migrants worked 12 hour shifts without a break; received only 102 Baht (US \$ 2.50) per day in hand as 28 Baht were deducted to cover their food and accommodation costs; and were allowed only four days leave per month.

348. Through the mediation of a Labour Protection officer, an agreement regarding working and living conditions was reportedly reached. On 1 September 2005, the agreement, providing for shorter working days (ten and a half hours), an increase in wages to 140 Baht (US \$ 3.50) per day, and public holidays off was signed. The workers had also requested that a Labour Committee representative be present in the factory, but the employer refused this request. However, the improved conditions for the workers allegedly lasted only one shift.

349. It is reported that, the next day, at the end of their shift, the workers discovered that the bus to take them home would not be coming. As they were walking back to their living quarters they passed on the street a group of workers from the next shift on their way to work. The local authorities, including border soldiers and police officers, apparently assuming that the group intended to conduct a demonstration against the factory, surrounded the workers and detained them. On 4 September 2005, the workers were forced to board buses and deported to Myanmar.

350. It is further alleged that on the following day, 5 September 2005, twelve of the migrant workers who had been deported after being transported back from Khon Kaen to Mae Sot, crossed the border legally with border passes in order to lodge a complaint regarding their deportation. On the way from the border, two men allegedly forced them into their car, confiscated their border passes, and took them to a community workers' centre. The men allegedly entered the community workers' centre and proceeded to assault one of the workers before leaving in their car, license plate number Bor Khor 5760. A formal complaint regarding the abduction was made by the NGO assisting the workers to the police in Mae Sot and two police officers were reportedly assigned to investigate the incident.

351. However, the workers were taken to a police station where they were detained awaiting deportation. The following day, a source indicated that the car which had been used for

abducting the workers belonged to local police officers. That evening the police station once again deported the 12 workers back to Myanmar.

352. According to the information, the workers at the Daechapanich fishing net factory had been legally registered, having paid 3,800 Baht for their work permits issued by the Government.

353. It is also alleged that the forced deportation of the workers does not comply with the Thai Government policy on migrant labour since this policy allows workers to change employers anytime within the one year registered period and that the employer, the Labour Protection Office, and police in Khon Kaen disregarded the procedure for migrant workers to change employer.

354. According to the information, continued restrictions on travel for migrant workers and the lack of appropriate community housing services results in workers' continued vulnerability to abuse, in spite of an official policy allowing them to change employment.

Observations

355. The Special Rapporteur would like to thank the Government of Thailand for its prompt reply to the communication sent on 26 April 2005. He would like to reiterate his interest in receiving a reply to allegations he has not yet received a response to.

United States of America /Kuwait

Communications sent to the Government

356. By letters dated 3 May 2005, sent jointly with the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur notified the Governments of Kuwait and the United States of America regarding information received concerning Ms. Vishranthamma, a domestic worker from India.

357. According to the information received, Ms. Vishranthamma was trafficked and abused by her employer, a Kuwaiti Mission representative to the United Nations in New York. For four years, Ms. Vishranthamma was forced to work for her employer as a nanny and housekeeper. Her passport was confiscated. She worked seven days a week, up to 18-hours a day. She was subjected to physical and sexual abuse, threatened with physical force and verbally assaulted. On one occasion her employer bit her in the face and on another the employer threw a suitcase at her. She was kept in near isolation. Her employers required her to keep her eyes on the ground when she was taken out of the house so as to avoid making eye contact or speaking with anyone. Her employers also limited her contact with her family and locked her in a room when visitors came to the apartment. They threatened her that the police would arrest her if she left the home alone. Though some money was sent to her family intermittently as compensation for Ms. Vishranthamma's work, the amount of payment her family received was about one tenth the amount the employers had agreed to pay her and was drastically below the minimum wage under U.S. law. It is also alleged that Ms. Vishranthamma's employers prevented her from practicing her religion. Though Ms. Vishranthamma feared retaliation from her employers, after four years of abuse she finally escaped from their home.

358. Ms. Vishranthamma found legal representation and filed suit against her employers seeking restitution for the abuses she suffered. She sought the wages to which she was entitled under U. S. law. In March 2004, she testified before a federal U.S. court about the abuse and exploitation she experienced. She waited almost three years while her case moved through the legal process; but her case was ultimately recommended for dismissal because her employers were diplomats immune to civil suit. As a result, Ms. Vishranthamma is foreclosed from seeking judicial remedy and she is now trying alternate avenues of redress.

Communications received from the Government

359. By letter dated 27 July 2005, the Government transmitted the following information relative to the case of Ms. Vishranthamma and regarding measures taken by the United States of America regarding fair and humane treatment of domestic employees for the foreign diplomatic community in the United States.

360. The United States became aware of this matter in the fall of 2004 when a court inquired about the status of the defendant in a civil suit filed by Ms. Vishranthamma in the spring of 2002. At the time the defendant, a diplomat at the Kuwait Mission to the United Nations and his wife had already left the country. In response to the court's inquiry, the United States confirmed that the diplomat and his wife were entitled to immunity from the civil jurisdiction of the court in accordance with the provisions of the UN Headquarters Agreement and the Convention on Privileges and Immunities of the United Nations for the period of their diplomatic tour, September 1995 to July 2004. The lawsuit was dismissed without prejudice, which means that it may be re-filed by the plaintiff. The departed diplomat and his wife no longer enjoy immunity in the United States, but have residual immunity for official acts.

361. The United States has taken several steps with UN diplomatic community (and with diplomats posted at their embassies and consulates in the United State) in an effort to ensure that the domestic workers are treated fairly and lawfully. Under existing U.S. Government guidelines circulated to all foreign missions in the United States and internal department instructions, the diplomat employer and the prospective domestic worker must sign a contract, in English and a language understood by the worker, before a visa can be issued to the domestic worker to enter the United States. The contract includes, among other things, a description of duties, hours of work, the required wage to be paid for every hour worked, and other terms of employment. the domestic worker is provided with a "Message from the Government of the United States of America", which advises the workers of their rights, including a hot line phone number to call if they believe that their rights are not being observed. The United States Mission sends a circular diplomatic note on a regular basis to all UN missions reminding them of their obligations and responsibilities as employers of domestic workers. The Department of State sends a similar circular note to bilateral diplomatic missions in Washington.

362. In appropriate cases, the United States Government uses its good offices to try to arrange a settlement or resolution of a dispute. Cases of alleged unfair or unlawful treatment that come to the Government's attention are also referred for federal law enforcement investigation. The Government attached copies of the guidelines, the "Message from the Government of the United States and circular note to bilateral missions.

Observations

363. The Special Rapporteur would like to thank the Government of the United States of America for its prompt and detailed reply. He welcomes the fact that the reply contains information of general interest regarding certain measures adopted to protect domestic migrant workers of diplomatic staff that can be considered as an example of best practices. He would also like to reiterate his interest in receiving information on communications to which he has not yet received a response.

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