



# General Assembly

Distr.: General  
17 May 2011

English/French/Spanish only

---

## Human Rights Council

Seventeenth session

Agenda item 3

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

### **Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo**

Addendum

**Communications to and from Governments\***

---

\* The present report is circulated as received.

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	3
II. Summary of communications on alleged human rights violations sent and responses received.....	6–104	4
A. Bangladesh.....	7–13	6
B. Czech Republic.....	14–23	7
C. Egypt.....	24–29	9
D. France.....	30–35	10
E. India.....	36–42	11
F. Malaysia.....	43–58	12
G. Nepal.....	59–65	15
H. Republic of Moldova.....	66–72	17
I. Spain.....	73–83	18
J. Thailand.....	84–88	20
K. United Arab Emirates.....	89–104	21

## I. Introduction

1. Pursuant to the Human Rights Council resolution 8/12, the Special Rapporteur is mandated to respond effectively to reliable information on alleged human rights violations with a view to protecting the human rights of actual or potential victims of trafficking. This addendum sets out summaries of communications sent by the Special Rapporteur from 1 April 2010 to 15 March 2011. It also includes summaries of Government replies received from 11 May 2010 to 1 May 2011.

2. For reasons of confidentiality, privacy and protection, most names of the victims appear only in initials in this report. The Special Rapporteur has also used initials for certain other persons concerned in order to minimise the risk of possible further victimization. Moreover, with a view to preserve the presumption of innocence, only initials are used for the names of alleged perpetrators.

3. During the period under review, a total of 10 communications were sent to 10 countries. The overview of these communications is provided in the table in Section II. 6 of the communications were sent jointly with other Special Procedures mandate holders, including: the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on contemporary forms of slavery, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on extrajudicial, summary or arbitrary executions. As of 1 May 2011, the Special Rapporteur received only 3 replies to the communications and regrets that she still has not received replies to the remaining 7 communications. The Special Rapporteur wishes to recall the obligations of the Governments under the Human Rights Council resolution 8/12 to provide her with all the necessary information related to the mandate to enable her to fulfill the mandate effectively, and urges the Governments concerned to submit replies to her communications in a timely manner.

4. In framing her interventions in these cases, the Special Rapporteur was guided by the legal framework and principles set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (“the Protocol”), international human rights instruments, and the Recommended Principles and Guidelines on Human Rights and Human Trafficking, issued by the Office of the High Commissioner for Human Rights in July 2002 (“Recommended Principles and Guidelines”).

5. She frequently recalled article 6, paragraph 3 of the Protocol, which is the key provision in guaranteeing that trafficked persons are provided with adequate assistance in their recovery and reintegration. It provides that: “Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities”. Further, the Special Rapporteur frequently cited principle 2 of the Recommended Principles and Guidelines, which provides that: “States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons”. In addition, the Special Rapporteur often stressed the

importance of cooperation and coordination between States and regions. In a few of the communications, she often recalled guideline 11, paragraphs 5 and 6 of the Recommended Principles and Guidelines, which respectively recommend States to consider: “developing cooperation arrangements to facilitate the rapid identification of trafficked persons including the sharing and exchange of information in relation to their nationality and right of residence” and “establishing mechanisms to facilitate the exchange of information concerning traffickers and their methods of operation”.

## **II. Summary of communications on alleged human rights violations sent and responses received**

6. The following table sets out the overview of the communications sent by the Special Rapporteur during the period under review:

<i>Date</i>	<i>Country</i>	<i>Type of Comm.</i>	<i>Individuals concerned</i>	<i>Alleged violations / Human rights issues</i>	<i>Government Reply</i>	<i>Date of Government response</i>
27/08/2010	Spain	AL	Ms. G.J.	Trafficking for the purpose of sexual exploitation; failure to provide the victim with medical and psychological assistance, failure to grant her a reflection and recovery period; summary deportation without a risk assessment.	No	
15/10/2010	India	JAL	Approximately 70,000 child bonded labourers	Trafficking, sale of children, use of children in bonded labour	No	
15/10/2010	Nepal	JAL	Approximately 70,000 child bonded labourers	Trafficking, sale of children, use of children in bonded labour	No	
15/10/2010	Bangladesh	JAL	Approximately 70,000 child bonded labourers	Trafficking, sale of children, use of children in bonded labour	No	
15/11/2010	Moldova	JUA	Ms. A.R.	Freedom of expression in issues concerning trafficking in persons; protection of a human rights defender.	Yes	03/01/2011
08/12/2010	Egypt	JUA	Approximately 260 migrants from Eritrea, Sudan and Ethiopia	Potential trafficking of migrants; summary execution and ill-treatment of the migrants; failure of the State to intervene and investigate	No	
10/12/2010	Malaysia	AL	Trafficked persons at large	Negative impact of amendments to the anti-trafficking legislation on the human rights of trafficked persons	Yes	08/02/2011
17/12/2010	Czech Republic	AL	Trafficked persons, civil society organizations and other actors providing services to trafficked persons	Negative impact of amendments to the Criminal Code on combating trafficking in persons	Yes	03/03/2011
15/02/2011	Thailand	JAL	Mr. K.K. and others	Trafficking of migrant workers from Myanmar and Cambodia for the purpose of labour exploitation on fishing boats	No	
25/3/2011	France	AL	Ms. K.M.	Trafficking for the purpose of sexual exploitation; failure to provide the trafficked person with regular residence status and necessary assistance for her recovery	No	

## **A. Bangladesh**

### **1. Communication of 15 October 2010**

7. On 15 October 2010, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on contemporary forms of slavery, and the Special Rapporteur on the human rights of migrants, sent a letter of allegation concerning an estimated 70,000 child bonded labourers who worked in the so-called « rat mines » of Jaintia Hills, which is located in the North Eastern State of Meghalaya, India.

8. According to the information received, an estimated 70,000 bonded child labourers from Nepal and Bangladesh worked at the so-called “rat mines” of Jaintia Hills, Meghalaya State, India. The mines were reportedly known as such, because of the narrow and crude holes dug into the hills where only children can pass. It was estimated that about 40,000 children from Bangladesh and 30,000 children from Nepal worked at the mines. In most cases, the children were allegedly purchased by middlemen or abducted or sold by gangs in Nepal and Bangladesh to the mining mafia in Meghalaya. The children were allegedly sent to the mines after their parents accepted money from middlemen engaged in child trafficking. The price for a child varied from 50 to 75 US dollars. It was claimed that everyday, trucks transporting coal to Bangladesh returned with children, who were lured into the mining industry with the promise of better wages and living conditions. The children were in debt bondage situations, as they were not paid for their work in some cases so that they repay with their labour the price for which they were bought. In other cases, the children were given half wage compared to adults, which left them with very little money to survive on as expenses for their good are deducted from their wages.

9. The working conditions at the mines were allegedly hazardous, unhygienic, cruel and inhuman. The children were threatened not to disclose their identity to anyone they meet and they had no freedom to move from the premises of the mines. The working hours were long and the children had no rest from the day break to the nightfall. They had no means to communicate with the outside world, let alone their families. The children were not provided with any safety equipment and were only given shovels or pickaxes to extract coal or limestone. Further, it appeared that deaths of children were common due to the unsafe working conditions at Jaintia Hills and often remained unreported. According to the information received, human skeletons were recovered beneath a pile of coal in the mine in Jaintia Hills and it was verified that they were the remains of children who lost their lives due to suffocation in the mine shafts or in other accidents during the mining operations.

10. The information received also suggested that the children lived in very poor conditions. They reportedly lived in huts made with plastic sheets and there were no proper sanitary facilities. There was a lack of safe drinking water and proper sewage system. Although many people fell ill due to the poor living conditions, there were no medical facilities available near the mines.

11. It was alleged that girls were also often bought by the owners of the “rat mines” and subject to sexual exploitation. They were exploited not only by mine owners, but also managers, other older workers and even truck drivers. There was also information suggesting that some children were trafficked further from the mines to the cities for sexual exploitation.

12. The Special Rapporteurs sought clarifications of the facts from the Government and requested information on: actions or investigations undertaken to identify the Bangladeshi children working at the “rat mines” and to verify their working conditions; investigations

carried out in relation to individuals who were implicated in trafficking or selling the Bangladeshi children to the “rat mines” and keeping them in bonded labour; policies and preventive and awareness-raising measures undertaken to prevent human trafficking, sale of children and sexual exploitation of children in Bangladesh; whether the victims or the families of the victims had access to adequate procedures of compensation for damages from those legally responsible for the trafficking in children, the sale of children, sexual exploitation of children, and the use of bonded labour; and any cooperation arrangements with the Indian authorities to facilitate the rapid identification of the Bangladeshi children working at the “rat mines”.

## **2. Response and observations**

13. On 29 October 2010, the Government informed that the contents of the communication had been duly noted and forwarded to the concerned authorities in Bangladesh for necessary inquiry and actions. Regrettably, the Special Rapporteur has not received any response since then. She calls upon the Government to provide her with responses on the questions raised in the communication as soon as possible.

## **B. Czech Republic**

### **1. Communication of 17 December 2010**

14. On 17 December 2010, the Special Rapporteur sent a letter of allegation to the Government concerning the possible negative impact of recent amendments to the Criminal Code on combating trafficking in persons.

15. According to the information received, section 368, paragraph 1 of the Criminal Code provides that any person who has received plausible information about another person having committed a crime and fails to report such a crime without delay to a prosecutor or a law enforcement body shall be liable to imprisonment for up to three years. This “duty to report” under section 368 applies to a wide range of crimes, including murder, grievous bodily injury, hostage taking, abuse of children for the production of pornographic material, currency counterfeiting and altering, development, production or possession of illegal military equipment, hijacking of an aircraft abroad, genocide, and apartheid or discrimination against a group of people. Pursuant to section 368, paragraph 3, there are two categories of professionals exempted from this “duty to report”. The first category is attorneys at law and their employees, who learned about the commission of the designated crimes in connection with legal practice or representation. The second category is priests of registered churches and religious societies, who learned about the commission of the designated crimes under the seal of the confessional or in the exercise of a similar right.

16. On 1 January 2010, section 368 of the Criminal Code was amended, so that the “duty to report” applies to the crime of human trafficking as defined under section 168 and the crime of depriving personal freedom as defined under section 170. However, non-governmental organizations (“NGO”) and other service providers assisting trafficked persons are not exempted from the “duty to report” under section 368.

17. It was alleged that these amendments may have a negative impact on the work of such NGOs and service providers, as they may be prevented from building a relationship of trust and confidence with trafficked persons, given the duty to report the crime of human trafficking to law enforcement authorities. In many cases, trafficked persons may not wish to have the crime reported to the authorities due to a variety of factors, such as distrust in the authorities, fear of reprisals by traffickers, or fear of being deported to their countries of origin or facing other sanctions. Thus, respect for confidentiality and privacy is a crucial

principle for NGOs and other service providers in reaching out to trafficked persons and providing them with necessary assistance.

18. Further, it was claimed that the “duty to report” may adversely affect relationships of trust with certain communities such as migrant communities or communities of sex workers, whose members may include trafficked persons or may be aware of potential cases of human trafficking. The information received suggested that possible cases of human trafficking were often reported to NGOs by third persons, particularly those from migrant communities. The “duty to report” may effectively discourage such third persons from reporting possible cases of human trafficking to NGOs, as they may wish to avoid contact with the law enforcement authorities for reasons related to their immigrant status.

19. In addition, it was alleged that the “duty to report” may jeopardize the safety and security of NGOs and service providers, as any person reporting a crime of human trafficking must provide his or her permanent address for the record. There was concern that NGOs and service providers and their family members may be exposed to risks of reprisals by traffickers, as the witness protection regime was allegedly inadequate in practice.

20. The Special Rapporteur sought clarifications of the amendments to the Criminal Code and requested information from the Government on: the rationale behind the amendments; whether or not their impact on the human rights of trafficked persons was fully considered prior to the introduction of the amendments; whether the Government intended to mitigate any negative impact by excluding the crime of human trafficking, or NGOs and service providers assisting trafficked persons, from the application of section 368; and measures undertaken by the Government to ensure that the duty to report a crime does not jeopardize the confidentiality and privacy of trafficked persons, and that NGOs, service providers or any other persons who report a potential case of human trafficking to the law enforcement authorities are protected from harm, threats or intimidation by traffickers and associated persons.

## **2. Response of the Government of 3 March 2011**

21. By letter dated 3 March 2011, the Government replied to the communication of 17 December 2010. The Government referred to the statement of the Legislative Security Unit concluding that it is possible to presume that social workers providing services to victims of trafficking or similar crimes will fall under the category of persons who are exempted from the “duty to report”, especially due to the nature of their work. The statement also added that the “duty to report” does not always arise when the person obtains only vague information or suspicions. In conclusion, the Government stressed that since the new Criminal Code came into effect, no single social worker has been prosecuted or even investigated pursuant to section 368 of the Criminal Code.

22. The Government also informed the Special Rapporteur that the Ministry of Interior implements a wide range of measures to ensure the protection of victims of trafficking in full compliance with international and regional standards. The Government referred to the Witness Protection Programme, the Programme for Support to Combat Illegal Migration, the Programme for voluntary returns, and the Programme that grants long-term residence permits to foreigners cooperating with law enforcement agencies whose presence is significant for prevention, detection or investigation of a serious crime.

## **3. Observations**

23. The Special Rapporteur appreciates the response provided by the Government. She remains concerned, however, that the exemption of NGOs and service providers assisting trafficked persons from the “duty to report” is still not spelt out in law and the Government



relies on the assumption that they would not be prosecuted. The Special Rapporteur encourages the Government to carefully review the potential impact of these provisions once again and to consider amending the provisions so that such service providers are legally exempted from the “duty to report”.

## **C. Egypt**

### **1. Communication of 8 December 2010**

24. On 8 December 2010, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the human rights of migrants, sent an urgent appeal to the Government concerning approximately 260 migrants from Eritrea, Sudan and Ethiopia who were held hostage by “traffickers” in Sinai and six of the Eritrean hostages who were murdered by the traffickers.

25. According to the information received, approximately 260 migrants from Eritrea, Sudan and Ethiopia had been held hostage for over a month in Sinai near the Israeli border. The information received suggested that the place of hostage was likely to be the city of Rafah near the Israeli border, and the migrants were reportedly held in purpose-built containers. The hostages were allegedly held in extremely degrading and inhumane conditions. It was reported that they were bound by chains around their ankles, deprived of adequate food and given salty water to drink, and subjected to beating and ill-treatment by extreme methods, including the use of electric shocks.

26. It was reported that the traffickers were demanding a payment of US\$8,000 per person as a condition of release and ongoing journey to Israel. On 28 November 2010, three Eritrean hostages were reportedly killed by gunshot, after their family members confirmed that they were unable to make the payment to the traffickers. On 29 November 2010, another three Eritrean hostages reportedly died after being beaten with sticks and tortured by the traffickers for attempting to escape. It was also alleged that nine hostages were seriously injured, ten suffered from serious diseases and there were several pregnant women among the hostages. It was alleged that while this case was reported to the police, they had not commenced any investigation or taken any action.

27. These allegations were reported in light of information suggesting that Sinai has become a major centre for people trafficking by highly organized crime syndicates. Reports indicated that migrants were often trafficked through Sinai desert to Israel, particularly for the purpose of commercial sexual exploitation. Migrants were also allegedly exploited in the hands of traffickers during their journey and subjected to violence and abuse, including rape, sexual assault, use of electric shocks, branding with hot metals and beatings. Concerns had been further raised that the migrants currently held hostage may include trafficked persons. In addition, it was of concern that despite the information indicating the existence of organized traffickers in Sinai, the law enforcement authorities allegedly failed to take any action to address this issue.

28. The Special Rapporteurs sought clarifications of the facts and requested information on any investigation carried out in relation to the migrants who were held hostages in Sinai; steps taken to ensure the safety of the hostages; any investigation carried out in relation to the alleged murder of the six Eritrean migrants; and any measures undertaken by the Government to combat and prevent crimes committed by traffickers in Sinai.

## **2. Observations**

29. The Special Rapporteur regrets that the Government has not provided a reply to the communication to date and calls upon the Government to provide the requested information as soon as possible.

## **D. France**

### **1. Communication du 25 mars 2011**

30. Le 25 mars 2011, la Rapporteuse spéciale sur la traite des personnes, en particulier les femmes et les enfants, a envoyé une lettre d'allégation au Gouvernement concernant la situation de Mlle Kate Moses, qui aurait été victime de traite des personnes à des fins d'exploitation sexuelle. Il était mentionné que Mlle Moses aurait été condamnée à plusieurs reprises pour séjour irrégulier en France et n'aurait reçu ni protection, ni assistance, au titre de victime de traite des personnes.

31. Selon les informations reçues, Mlle Moses serait une ressortissante du Sierra Léone, résidant actuellement à Bordeaux, en France. Elle serait née le 3 mars 1980 à Kenema, en Sierra Leone. En 2001, ses parents et sa sœur cadette auraient été tués au Sierra Leone par un groupe armé. Mlle Moses aurait alors fui en Guinée peu de temps après cet incident. En Guinée, elle aurait rencontré un homme dans une église qui l'aurait aidé à se rendre clandestinement en France par bateau en Octobre 2002. A son arrivée en France, Mlle Moses aurait rencontré une femme sur le port qui l'aurait emmené en train à Creil. A Creil, cette femme l'aurait accompagnée à la Croix Rouge Française où Mlle Moses a fait une demande d'asile le 15 octobre 2002. Ce même jour, Mlle Moses aurait fait la connaissance d'une femme nommée Eva qui l'aurait emmené à Bordeaux en train. Il était rapporté que Mlle Moses serait restée dans l'appartement de cette dénommée Eva qui l'aurait forcé de se prostituer à Bordeaux d'Octobre 2002 à la fin 2004. Mlle Moses aurait alors été forcée de donner pendant cette période tout l'argent qu'elle gagnait à Eva, soit environ 3800 euros par semaine. Il était estimé que Mlle Moses aurait ainsi donné à Eva environ 220 000 euros. Il était aussi rapporté que durant cette période elle aurait été victime de coups de la part du compagnon d'Eva. Selon les informations reçues, Mlle Moses ne pouvait pas fuir, car elle ne parlait pas français, elle ne connaissait personne en France, elle était toujours surveillée par Eva et elle n'avait pas de titre de séjour valable pour demeurer légalement en France.

32. La demande d'asile de Mlle Moses a été rejetée par la Commission des recours des réfugiés le 19 mars 2004 au motif qu'il ne résultait pas de l'instruction que Mlle Moses aurait été personnellement exposée à des persécutions pour l'un des motifs énumérés à l'article 1er, A, 2 de la Convention de Genève du 28 juillet 1951 relative au statut des réfugiés en cas de retour au Sierra Leone. Depuis 2005, Mlle Moses a été condamnée à plusieurs reprises pour séjour irrégulier. Le 24 juin 2005, elle a été condamnée par le Tribunal Correctionnel de Lyon à deux mois d'emprisonnement ainsi qu'à une interdiction du territoire national durant trois ans pour avoir omis de présenter à l'autorité administrative compétente les documents de voyage permettant l'exécution d'un arrêté d'expulsion ou d'une mesure de reconduite à la frontière ou d'avoir communiqué des renseignements inexacts sur son identité. Le 23 mai 2008, elle a été condamnée à trois mois d'emprisonnement pour les mêmes raisons. Le 4 septembre 2008, elle a été condamnée à trois mois d'emprisonnement et trois ans d'interdiction du territoire national pour séjour irrégulier en France en récidive et racolage public. Enfin, le 16 janvier 2009, Mlle Moses a été condamnée à un mois d'emprisonnement pour soustraction à l'exécution d'une mesure de reconduite à la frontière.

33. Il était rapporté que Mlle Moses aurait fait une demande de titre de séjour à la Préfecture de la Gironde. Sa demande fut rejetée le 27 décembre 2010 sur le fondement du

jugement du 4 septembre 2008. Aujourd'hui, Mlle Moses vivrait chez un ami et se trouverait dans une situation de très grande vulnérabilité, tant du point de vue psychologique que matériel. Toutefois, étant considéré comme une personne en situation irrégulière, elle ne recevrait aucune assistance de la part des autorités françaises.

34. La Rapporteuse spéciale a demandé au Gouvernement de lui faire part de ses observations concernant la véracité des informations telles que relatées, mais aussi concernant toute enquête, judiciaire ou autre, qui ont été faites en relation avec la situation de Mlle Moses et en particulier les efforts fournis par les autorités françaises afin de déterminer si Mlle Moses était victime ou non de traite des personnes, ainsi que concernant toute enquête, judiciaire ou autre, ayant été faite dans le but d'évaluer les responsabilités des auteurs présumés. La Rapporteuse spéciale a également demandé au Gouvernement de lui indiquer si Mlle Moses avait eu accès à des procédures adéquates de compensation pour les dommages subis de la part des responsables de la traite ainsi que pour les abus dont Mlle Moses a soufferts. Enfin, la Rapporteuse spéciale a demandé au Gouvernement de lui indiquer comment il protège et assiste les victimes de traite des personnes ainsi que les mesures d'assistance qui leurs sont fournies, incluant les abris, les conseils psychologiques et juridiques et les systèmes de réintégration et aussi quelles mesures il avait prises ou avait l'intention de prendre afin que les victimes de traites des personnes ne soient pas considérées comme des personnes en séjour irrégulier et qu'elles reçoivent la protection et l'assistance adéquates.

## **2. Observations**

35. The Special Rapporteur is still awaiting a response from the Government and encourages the Government to provide a response by 25 May 2011, as indicated in the communication.

## **E. India**

### **1. Communication of 15 October 2010**

36. On 15 October 2010, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on contemporary forms of slavery, and the Special Rapporteur on the human rights of migrants, sent a letter of allegation concerning an estimated 70,000 child bonded labourers who worked in the so-called « rat mines » of Jaintia Hills, which is located in the North Eastern State of Meghalaya, India.

37. According to the information received, an estimated 70,000 bonded child labourers from Nepal and Bangladesh worked at the so-called "rat mines" of Jaintia Hills, Meghalaya State, India. The mines were reportedly known as such, because of the narrow and crude holes dug into the hills where only children can pass. It was estimated that about 40,000 children from Bangladesh and 30,000 children from Nepal worked at the mines. In most cases, the children were allegedly purchased by middlemen or abducted or sold by gangs in Nepal and Bangladesh to the mining mafia in Meghalaya. The children were allegedly sent to the mines after their parents accepted money from middlemen engaged in child trafficking. The price for a child varied from 50 to 75 US dollars. It was claimed that everyday, trucks transporting coal to Bangladesh returned with children, who were lured into the mining industry with the promise of better wages and living conditions. The children were in debt bondage situations, as they were not paid for their work in some cases so that they repay with their labour the price for which they were bought. In other cases, the children were given half wage compared to adults, which left them with very little money to survive on as expenses for their food were deducted from their wages.

38. The working conditions at the mines were allegedly hazardous, unhygienic, cruel and inhuman. The children were threatened not to disclose their identity to anyone they met and they had no freedom to move from the premises of the mines. The working hours were long and the children had no rest from the day break to the nightfall. They had no means to communicate with the outside world, let alone their families. The children were not provided with any safety equipment and were only given shovels or pickaxes to extract coal or limestone. Further, it appeared that deaths of children were common due to the unsafe working conditions at Jaintia Hills and often remained unreported. According to the information received, human skeletons were recovered beneath a pile of coal in the mine in Jaintia Hills and it was verified that they were the remains of children who lost their lives due to suffocation in the mine shafts or in other accidents during the mining operations.

39. The information received also suggested that the children live in very poor conditions. They reportedly lived in huts made with plastic sheets and there are no proper sanitary facilities. There was a lack of safe drinking water and proper sewage system. Although many people fell ill due to the poor living conditions, there were no medical facilities available near the mines.

40. It was alleged that girls were also often bought by the owners of the “rat mines” and subject to sexual exploitation. They were exploited not only by mine owners, but also managers, other older workers and even truck drivers. There was also information suggesting that some children were trafficked further from the mines to the cities for sexual exploitation.

41. The Special Rapporteurs sought clarifications of the facts from the Government and requested information on: actions or investigations undertaken to identify the children working at the “rat mines” and to verify their working conditions; investigations carried out in relation to individuals who were implicated in trafficking or selling the children to the “rat mines” and keeping them in bonded labour; whether the Government of Meghalaya fully considered the use of child labour at the “rat mines” in drafting mining policies; policies and preventive and awareness-raising measures undertaken to combat human trafficking, sale of children and sexual exploitation of children in India; whether the victims or the families of the victims had access to adequate procedures of compensation for damages from those legally responsible for the trafficking in children, the sale of children, sexual exploitation of children, and the use of bonded labour; and any cooperation arrangements with the Nepalese or Bangladeshi authorities to facilitate the rapid identification of the children working at the “rat mines”.

## **2. Observations**

42. The Special Rapporteur regrets that the Government has not provided a reply to the communication to date and continues to receive information that a large number of children continue to be maintained in situations of bonded labour. The Special Rapporteur calls upon the Government to provide information on the questions raised in the communication as soon as possible and to immediately undertake appropriate measures to protect the rights of the children concerned.

## **F. Malaysia**

### **1. Communication of 13 December 2010**

43. On 13 December 2010, the Special Rapporteur sent a letter of allegation to the Government concerning amendments to the Anti-Trafficking in Persons Act 2007 (“ATIP Act”) approved by the Malaysian Parliament in August 2010.

44. According to the information received, clause 4 (g) of the Anti-Trafficking in Persons (Amendment) Act 2010 stated that trafficking in persons means “all actions involved in acquiring or maintaining the labour or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this Act”. This definition of trafficking in persons effectively limited the crime to those situations in which a person is exploited by means of “coercion”, defined in the ATIP Act essentially as threat of serious harm to or physical restraint against a person, or “the abuse of the legal process”.

45. The Anti-Trafficking in Persons (Amendment) Act 2010 also created Part IIIA and effectively incorporated provisions criminalizing the facilitation of irregular migrants in and out of Malaysia in Part III, which concerns the offence of trafficking in persons. Further, under section 41A of the amended ATIP Act, smuggled migrants were specifically excluded from protection or assistance available to trafficked persons under Part V of the ATIP Act, unless “the smuggled migrant is a trafficked person”.

46. Moreover, it was reported that the amended ATIP Act gave law enforcement authorities a wide power in investigating offences under the ATIP Act, such as arbitrarily detaining migrants, interrogating them about smuggling networks, and charging them with giving support to smugglers based on the fact that they paid for their own journeys. Furthermore, the amended ATIP Act contained no provisions ensuring that smuggled migrants are treated in accordance with international human rights law during interception, detention, and deportation proceedings. Finally, the anti-smuggling amendments to the ATIP Act did not recognize the specific protection needs of refugees and asylum seekers.

47. The Special Rapporteur sought clarifications of the amendments to the ATIP Act and asked the Government whether they had already entered into force. She requested information from the Government on: any measures that it had taken or intended to take to ensure that trafficked persons were not misidentified as irregular migrants and that they received appropriate protection and assistance under the ATIP Act; the ambit of the definition of trafficking in persons under the ATIP Act and the rationale behind the amendments introduced; any measures that it had taken or intended to take to protect persons who were trafficked by means of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and any measures that the Government had taken or intended to take to ensure the respect of the non-refoulement principle and to provide effective protection to those individuals seeking asylum.

## **2. Response of the Government of 8 February 2011**

48. By letter dated 8 February 2011, the Government replied to the communication of 13 December 2010. The Government informed that the amendments to the ATIP Act entered into force on 15 November 2010. In explaining the scope of the amendments, it stressed that the revised definition of trafficking in persons under section 2 of the ATIP Act should be read together with substantive provisions under Part III (sections 12 to 24) of the ATIP Act, which specifically criminalized trafficking in persons (section 12), aggravated trafficking in persons (section 13), trafficking in persons against children (section 14), profiting from exploitation of trafficked person (section 15) as well as various ancillary offences. The Government stated that reading these provisions together would demonstrate that the requirements under the Palermo Protocol have been satisfied.

49. The Government informed the Special Rapporteur that the rationale for the revised definition was to extend the scope of trafficking in persons to include forced labour and to streamline the definition with the existing definitions of “exploitation” and “coercion”, as well as the substantive criminalizing provision. In this regard, the Government noted that

“coercion” is separately defined in section 2 of the Act to mean: “(a) threat of serious harm to or physical restraint against any person; (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (c) the abuse or threatened abuse of the legal process”. Thus, the Government took the view that the term “coercion” as used in the definition of “trafficking in persons” actually encompasses all aspects of the definition of trafficking in persons under article 3 of the Palermo Protocol.

50. The Government stated that it is fully aware that the crime of trafficking in persons is substantively different from the crime of smuggling of migrants in that the former contains the element of exploitation; the non-requirement of illegal border crossing and the fact that victims of trafficking are treated as commodities. Smuggling of migrants is identified mainly from the non-existence of the element of exploitation; the involvement of illegal border crossing and the fact that the smuggled migrants have paid for the illegal passage and are considered clients of the smugglers.

51. The Government maintained that it had taken and will continue to take various measures to avoid the misidentification of trafficked persons as irregular migrants. Such measures included the initiative to conduct several training courses to equip relevant officers with knowledge of the differences between the crime of trafficking and the smuggling of migrants. The Government informed that the primary target of this training included the front line agencies such as the Immigration Department, the Royal Malaysia Police, the Malaysian Maritime Enforcement Agency, the Royal Malaysian Customs and the Malaysian Labour Department. The Government has also jointly conducted courses with the Australian Government to train prosecutors and enforcement agencies on trafficking in persons and migrant smuggling. Furthermore, the Government informed that Standard Operating Procedures have been prepared and implemented by respective enforcement agencies. Standard Operating Procedures are said to be aimed at minimizing the occurrence of misidentification of a trafficked person as a smuggled migrant and also at ensuring a better understanding of the difference between the crime of trafficking and the crime of people smuggling.

52. As for the protection accorded by the Government to trafficked persons, the Government stated that steps have been taken to provide for the necessary shelter homes, as provided under section 42 of the amended ATIP Act. According to the Government, it provides, among others, counseling and medical treatment to the victims. At the time of the reply, there were nine authorized public shelters, although only six of them were operational. The Government was also said to be working with NGOs to provide shelters, counseling and skill training for trafficked persons.

53. In response to the question as to what measures the Government had taken or intended to take to ensure the respect of the non-refoulement principle, the Government stated that despite its non-ratification of the United Nations Convention Relating to the Status of Refugees, the Government has morally fulfilled its international obligations to refugees through special arrangements with UNHCR on humanitarian grounds. However, the Government stated that there is no special legislation relating to refugees in Malaysia and the Immigration Act 1959/63 [Act 155] and the Immigration Regulation 1963 are the main legislation governing and regulating the entry and stay of foreigners into Malaysia. No distinction is made between refugees, asylum seekers and illegal immigrants. Thus, non-citizens who have entered Malaysia in non-compliance with Act 155 are regarded as illegal immigrants and are subject to prosecution.

54. Furthermore, the Government maintained that the State obligation towards non-refoulement only arises when the life or freedom of the refugee would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. The Government also noted that the principle does not apply to a refugee

if there are reasonable grounds for regarding him as a danger to the security of the country, or in the case of prosecutions genuinely arising from non-political crimes or acts contrary to the purposes and principles of the United Nations. Thus, the Government took the view that its decisions and policy in dealing with illegal immigrants rest, inter alia, on the need to protect the threat posed by them on the national interest, national security, public order and public health in Malaysia.

### **3. Observations**

55. The Special Rapporteur thanks the Government for its comprehensive response. The Special Rapporteur still does not fully appreciate the rationale behind the inclusion of the term “coercion” in the definition of trafficking in persons and is concerned that it may create unnecessary confusion. While section 13 of the ATIP Act does proscribe certain means of trafficking in persons in line with the Palermo Protocol, the two-tier definition of trafficking in persons may be difficult to apply in practice. The Special Rapporteur recommends that the Government clearly provides for a single, holistic definition of trafficking in persons in accordance with the Palermo Protocol.

56. The Special Rapporteur is encouraged by those initiatives that the Government has undertaken to enhance an understanding of relevant government officials of the differences between the crime of trafficking and the smuggling of migrants. In this regard, the Special Rapporteur invites the Government to provide her with a copy of the Standard Operating Procedures and information on the identification and referral procedures available to trafficked persons. Further, the Special Rapporteur invites the Government to provide further details of protection and support provided to trafficked persons.

57. The Special Rapporteur reiterates her concern about the lack of protection for refugees and asylum seekers, in view of the Government’s non-ratification of the 1951 Convention relating to the Status of Refugees and the information that no distinction is made between refugees, asylum seekers and irregular migrants. The Special Rapporteur wishes to point out that trafficked persons may qualify as refugees under the 1951 Convention in certain circumstances and thus should not be expelled or returned to their country of origin. Further, the Special Rapporteur wishes to recall that States have a non-derogable obligation under international customary law not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

58. The Special Rapporteur recommends that the Government reviews the ATIP Act in view of these concerns and remains ready to continue engaging with the Government on this matter.

## **G. Nepal**

### **1. Communication of 15 October 2010**

59. On 15 October 2010, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on contemporary forms of slavery, and the Special Rapporteur on the human rights of migrants, sent a letter of allegation concerning an estimated 70,000 child bonded labourers who worked in the so-called « rat mines » of Jaintia Hills, which is located in the North Eastern State of Meghalaya, India.

60. According to the information received, an estimated 70,000 bonded child labourers from Nepal and Bangladesh worked at the so-called “rat mines” of Jaintia Hills, Meghalaya State, India. The mines were reportedly known as such, because of the narrow and crude

holes dug into the hills where only children can pass. It was estimated that about 40,000 children from Bangladesh and 30,000 children from Nepal worked at the mines. In most cases, the children were allegedly purchased by middlemen or abducted or sold by gangs in Nepal and Bangladesh to the mining mafia in Meghalaya. The children were allegedly sent to the mines after their parents accepted money from middlemen engaged in child trafficking. The price for a child varied from 50 to 75 US dollars. It was claimed that everyday, trucks transporting coal to Bangladesh return with children, who were lured into the mining industry with the promise of better wages and living conditions. The children were in debt bondage situations, as they were not paid for their work in some cases so that they repay with their labour the price for which they were bought. In other cases, the children were given half wage compared to adults, which left them with very little money to survive on as expenses for their food were deducted from their wages.

61. The working conditions at the mines were allegedly hazardous, unhygienic, cruel and inhuman. The children were threatened not to disclose their identity to anyone they meet and they had no freedom to move from the premises of the mines. The working hours were long and the children had no rest from the day break to the nightfall. They had no means to communicate with the outside world, let alone their families. The children were not provided with any safety equipment and were only given shovels or pickaxes to extract coal or limestone. Further, it appeared that deaths of children were common due to the unsafe working conditions at Jaintia Hills and often remained unreported. According to the information received, human skeletons were recovered beneath a pile of coal in the mine in Jaintia Hills and it was verified that they were the remains of children who lost their lives due to suffocation in the mine shafts or in other accidents during the mining operations.

62. The information received also suggested that the children lived in very poor conditions. They reportedly lived in huts made with plastic sheets and there were no proper sanitary facilities. There was a lack of safe drinking water and proper sewage system. Although many people fell ill due to the poor living conditions, there were no medical facilities available near the mines.

63. It was alleged that girls were also often bought by the owners of the “rat mines” and subjected to sexual exploitation. They were exploited not only by mine owners, but also managers, other older workers and even truck drivers. There was also information suggesting that some children were trafficked further from the mines to the cities for sexual exploitation.

64. The Special Rapporteurs sought clarifications of the allegations from the Government and requested information on: actions or investigations undertaken to identify the Nepalese children working at the “rat mines” and to verify their working conditions; investigations carried out in relation to individuals who were implicated in trafficking or selling the Nepalese children to the “rat mines” and keeping them in bonded labour; policies and preventive and awareness-raising measures undertaken to prevent human trafficking, sale of children and sexual exploitation of children in Nepal; whether the victims or the families of the victims had access to adequate procedures of compensation for damages from those legally responsible for the trafficking in children, the sale of children, sexual exploitation of children, and the use of bonded labour; and any cooperation arrangements with the Indian authorities to facilitate the rapid identification of the Nepalese children working at the “rat mines”.

## **2. Observations**

65. The Special Rapporteur regrets that she has not received a reply from the Government and calls upon the Government to provide her with information on the questions raised in the communication as soon as possible.



## **H. Republic of Moldova**

### **1. Communication of 15 November 2010**

66. On 15 November 2010, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the situation of Ms. A.R., an award-winning investigative journalist and director of the independent investigative newspaper *Ziarul de Garda* (*The Guard* newspaper). Ms. A.R. is a member of the board of the International Association for Women in Radio and Television (IAWRT), the Moldovan Association of Independent TV Journalists and the South East European Media Organisation. Over the past few years, Ms. A.R. had been investigating various affairs in the fields of corruption, human trafficking, smuggling and human rights abuses in Moldova.

67. According to the information received, on 18 September 2010, a prosecuting officer of the Chisinau Police contacted Ms. A.R. in order to inform her that a request for prosecution against her was submitted. Reportedly, the request had been submitted by an individual whose name was revealed by Ms. A.R. in a series of newspaper articles entitled "Jail in the brothel" as a person accused of trafficking 17 young women.

68. On 21 September 2010, Ms. A.R. received a summon informing her that she should go to the Criminal Investigation Department for a hearing concerning the complaint filed against her. Reportedly, on 24 September 2010, Ms. A.R. and her lawyer went to the Criminal Investigation department where Ms. A.R. was interrogated. She was told by police that a criminal file against her would be opened.

69. It had been reported that over the past few months, Ms. A.R. had been receiving threats, including death threats, from people accused of trafficking in human beings. Concern was expressed that the threats and actual complaint filed against Ms. A.R. may be connected to her legitimate activities as an investigative journalist and human rights defender, in particular with her work documenting instances of human trafficking in the country.

70. The Special Rapporteurs sought clarifications of the facts and asked whether a complaint had been lodged by or on behalf of the alleged victim. They further requested the Government to provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to this case.

### **2. Response of the Government of 3 January 2011**

71. By letter dated 3 January 2011, the Government replied to the communication of 15 November 2010. The Government stated that the summon against Ms. A.R. was issued in accordance with national law and the police were obliged to examine the complaint. The authorities investigated the claim made against Ms. A.R. and concluded that the facts did not establish a ground for further investigation. Accordingly, the Prosecutor Office of the Municipality of Chisinau refused to initiate a criminal investigation against her. Further, the Government indicated that Ms. A.R. did not submit any complaints to the law enforcement authorities about the death threats she received. Nevertheless, the law enforcement authorities were investigating the cases in order to arrest and prosecute the perpetrators.

### **3. Observations**

72. The Special Rapporteur appreciates the reply provided by the Government. She is pleased to learn that the authorities duly investigated and dismissed the complaint against

Ms. A.R. The Special Rapporteur urges the Government to continue monitoring the situation to ensure that the rights and freedoms of journalists and human rights defenders working in the field of trafficking are respected and protected, which she considers as one of necessary conditions in raising public awareness of trafficking issues and preventing trafficking in persons.

## **I. Spain**

### **1. Carta de alegación de 27 de agosto 2010**

73. El día 27 de agosto 2011 la Relatora Especial sobre la trata de personas, especialmente las mujeres y los niños envió una carta de alegación señalando a la atención del Gobierno la información recibida en relación con una mujer nigeriana que fue deportada a Nigeria, a pesar de informaciones que indicaban que era una potencial víctima de trata de personas y que había recibido amenazas de muerte por parte de su tratante en Nigeria.

74. Según las informaciones recibidas la **Sra. G.J.**, una mujer nigeriana de Benin City, fue objeto de trata y trasladada a España para fines de explotación sexual por un hombre llamado Vito. Vito se acercó a la Sra. G.J. después que sus padres fueron asesinados por causa de su fe cristiana, afirmando que él era amigo de sus padres. Vito ofreció ayudarla a viajar a Europa para trabajar en servicios domésticos y para continuar sus estudios. Vito le dio dinero para viajar a España y la Sra. G.J. salió de Nigeria en octubre de 2006. A su llegada, la Sra. G.J. recibió llamadas telefónicas de Vito, quien argumentó que le debía veinte mil euros. Vito le dijo que tendría que trabajar como prostituta, dado que no poseía documentación legal para trabajar en España. Vito continuó llamándola por lo menos tres veces por semana, recordándole que tenía una deuda con él y que el incumplimiento de dicha deuda podía causar la muerte. La Sra. G.J. trabajó como prostituta en almacenes situados en Villaverde, Madrid y transfirió periódicamente sumas de dinero a Vito.

75. El 12 de junio de 2007, la Sra. G.J. fue detenida por la policía y se le emitió una orden de deportación, sin embargo ésta no fue ejecutada en ese momento y la Sra. G.J. permaneció en España. En febrero de 2010, la Sra. G.J. fue detenida nuevamente por la policía y su historial reveló la orden de deportación emitida en el 2007. La Sra. G.J. fue entonces enviada al Centro de Internamiento de Extranjeros en Madrid. A pesar de que en ese momento la Sra. G.J. estaba embarazada y que las autoridades supuestamente estaban enteradas de esto, se reportó que no recibió asistencia médica ni psicológica mientras permaneció detenida. Además, durante su detención, la Sra. G.J. supuestamente temía que iba a ser asesinada por Vito en caso de ser deportada a Nigeria, ya que sólo había pagado 10.000 euros de su deuda a Vito.

76. El 25 de febrero de 2010, la Sra. G.J. solicitó asilo argumentando persecución por motivos de género, como víctima de trata de personas y por persecución religiosa. El 2 de marzo de 2010, su solicitud de asilo fue rechazada a pesar de que la solicitud fuera apoyada por la Oficina del Alto Comisionado de Naciones Unidas para los Refugiados. Sus sucesivos recursos contra esta decisión también fueron rechazados.

77. A nombre de la Sra. G.J., el 12 de marzo de 2010, se presentaron solicitudes formales ante diversas autoridades españolas para que se le concediera un período de restablecimiento y reflexión de conformidad con el artículo 59 bis numeral 2 de la Ley Orgánica 4/2000, misma que prevé que “los órganos administrativos competentes para la instrucción del expediente sancionador, cuando estimen que existen motivos razonables para creer que una persona extranjera en situación irregular ha sido víctima de trata de seres humanos, informarán a la persona interesada sobre las previsiones del presente artículo y elevarán a la autoridad competente para su resolución la oportuna propuesta sobre la

concesión de un período de restablecimiento y reflexión, de acuerdo con el procedimiento previsto reglamentariamente.” El Artículo 59 bis numeral 2 especifica, además, que “dicho período de restablecimiento y reflexión tendrá una duración de, al menos, treinta días.”

78. De acuerdo con la información recibida, las solicitudes fueron hechas a las siguientes autoridades gubernamentales, dada la falta de claridad en la ley con respecto a quienes están facultados para conceder el periodo de restablecimiento y reflexión:

- Gobierno de la Delegación de Madrid, Unidad de Inmigración;
- Gobierno de la Delegación de Madrid, Unidad de Coordinación de Violencia contra la Mujer;
- Juzgado de Primera Instancia e Instrucción del municipio de Coslada, Madrid;
- Ministerio del Interior;
- Ministerio de Igualdad;
- Policía Nacional, Brigada de Documentación y Extranjería;
- Oficina Nacional del Defensor del Pueblo;
- Fiscal de Asuntos de Inmigración (Fiscalía de Extranjería) y
- Director del Centro de internamiento para los Extranjeros.

79. Adicionalmente, se presentó una solicitud de suspensión de la orden de deportación contra la Sra. G.J., con base en dos fundamentos. En primer lugar, se solicitó que se concediera un período de restablecimiento y reflexión a la Sra. G.J., como víctima de trata. En segundo lugar, se solicitó la suspensión de la expulsión de la señora G.J. en razón de su embarazo, de conformidad con el artículo 57 numeral 6 de la Ley Orgánica 4/2000 que establece que la expulsión no podrá ser ejecutada cuando ésta conculcase el principio de no devolución, o afecte a las mujeres embarazadas, cuando la medida pueda suponer un riesgo para la gestación o la salud de la madre.

80. La oficina del Defensor del Pueblo apoyó ambas solicitudes de conceder a la Sra. G.J. un periodo de restablecimiento y reflexión y de suspender la orden de deportación. La Fiscalía de Asuntos de Inmigración también apoyó la petición y buscó a través del magistrado investigador la liberación de la Sra. G.J. del centro de detención.

81. Sin embargo, la Sra. G.J. fue deportada el 17 de marzo de 2010 sin previo aviso a su representante legal. Sólo después de que la expulsión se llevó a cabo, la Delegación del Gobierno de Madrid notificó el 18 de marzo de 2010 a su representante legal, la decisión de negar la solicitud del período de restablecimiento y reflexión bajo el argumento de que había información insuficiente para establecer que la Sra. G.J. era una víctima de trata.

82. La Relatora Especial le pidió al Gobierno que clarifique los hechos mencionados en la carta de alegación y que transmita información adicional sobre los puntos siguientes: información relativa a las medidas adoptadas para garantizar la seguridad de las alegadas víctimas en el caso; detalles de las investigaciones judiciales o de otro tipo que se hubiesen llevado a cabo en relación con este caso; las razones por las cuales el representante legal de la Sra John no fue informado sobre el rechazo de la solicitud oficial a conceder un período de restablecimiento y recuperación y reflexión, así como de la orden de deportación de la Sra John; igual solicitó información sobre cual autoridad es responsable y cuales criterios se utilizan para la concesión del período de restablecimiento y reflexión; a las acciones tomadas para prevenir la repetición de situaciones similares a la alegada y, de existir, las medidas de compensación adoptadas y finalmente solicitó información sobre actividades que se hayan realizadas o planeadas para funcionarios de inmigración para hacer cumplir la ley.

## **2. Observations**

83. The Special Rapporteur regrets that she has not received a reply from the Government and urges the Government to provide information on the questions raised in the communication as soon as possible.

## **J. Thailand**

### **1. Communication of 15 February 2011**

84. On 15 February 2011, the Special Rapporteur, jointly with the Special Rapporteur on contemporary forms of slavery and the Special Rapporteur on the human rights of migrants, sent a letter of allegation to the Government concerning the alleged trafficking of migrant workers from Myanmar and Cambodia for the purpose of labour exploitation on fishing boats.

85. According to the information received, Mr. Kyaw Kyaw, a 25 year-old man from Pa An in Karen State, Myanmar, came to Mae Sot, Thailand in April 2009 to work in agriculture. In September 2009, he met a broker who offered him 8,000 baht (US\$266) in cash and recruited him for a job which would earn 5,000 baht (US\$166) a month. Mr. Kyaw Kyaw asked the broker about the nature of the work, but the broker did not answer him. Mr. Kyaw Kyaw was then sold to work in a fishing boat, which usually travelled in the Rayong sea area. He worked on the fishing boat for 10 months from November 2009 to August 2010. The conditions of work on the fishing boat were allegedly very harsh. He was required to catch fish every three or four hours all day and thus could not get any adequate rest. During these months, he did not receive any salary for his work. When the boat reached a harbor every 15 days, Mr. Kyaw Kyaw had to beg for 500 baht (US\$16) from the manager of the boat so that he could buy food. After working on the boat for 10 months, he asked the manager to give him 3,000 baht (US\$99) so that he could go to a karaoke bar. When the manager reluctantly gave him the money, he managed to run away from the boat.

86. In addition to Mr. Kyaw Kyaw's case, the Special Rapporteurs received a number of cases which pointed to a pattern of trafficking of migrant workers for labour exploitation in the fishing industry, particularly in a coastal town of Mahachai in the Samut Sakhon province. The migrant workers reportedly entered Thailand for the purpose of employment with the help of brokers, only to realize that their job in Thailand was different from what they were promised. The migrants were often forced to work on fishing boats under debt-bondage conditions, as they owed their brokers fees for finding employment in Thailand and money for a variety of expenses, such as costs of transportation to Thailand. Deceptive and unfair payment practices, including non-payment of wages were a common feature in many cases. The migrants were further reported to perform long working hours without rest and in a hazardous environment which put their health, safety and life at risk. They were also submitted to physical abuse if they complained to their employers.

87. The Special Rapporteurs sought clarifications of the facts and requested information on: any investigation, judicial or other inquiries which may have been carried out in relation to Mr. Kyaw Kyaw and other migrants from Myanmar and Cambodia who were trafficked to work on fishing boats in Thailand for the purpose of labour exploitation; the existence and use of a labour inspection system in properly identifying victims of trafficking on fishing boats in Thailand; any cooperation arrangements with the authorities in Myanmar and Cambodia to prosecute and punish brokers who facilitate trafficking of migrant workers from Myanmar and Cambodia for the purpose of labour exploitation; and whether the victims or the families of the victims had access to adequate procedures of compensation for damages from those legally responsible for the crime of trafficking and other exploitative practices.

## 2. Observations

88. The Special Rapporteur regrets that the Government has not provided a reply to the communication to date and calls upon the Government to provide information on the questions raised in the communication as soon as possible.

## K. United Arab Emirates

### 1. Response of the Government to the communication of 16 November 2009

89. On 23 April 2010, the Government responded to the communication of 16 November 2009 concerning the case of Ms. Fatima Zahra Moussa. Details of this communication are reported in the Special Rapporteur's previous communications report (A/HRC/14/32/Add.1).

90. The Government informed that Ms. Moussa was appointed by the Emirates Center for Strategic Studies and Research ("ECSSR") as an editor / media monitor on 9 September 2005, not on 25 July 2005 as claimed. The Government stated that the ECSSR found her to be somewhat nervous, aggressive and opinionated, and that she complained frequently to the administration about her colleagues. The Government also stated that Ms. Moussa later attended a clinic for psychological disorders at the Zayyid Military Hospital, complaining, inter alia, of depression, fits of crying, loss of appetite and severe anxiety.

91. In response to the allegation that Ms. Moussa was forced to renew her employment contract with ECSSR, the Government stated that this is a complete fabrication and maintained that Ms. Moussa voluntarily renewed the contract, noting in writing that she appreciated the high degree of professionalism demonstrated by the managers in general and the ECSSR as a whole.

92. In response to the allegation that the ECSSR cancelled Ms. Moussa's visa and sought to evict her from the ECSSR's accommodation after she submitted a letter of resignation on 16 January 2007, the Government explained that the ECSSR gave her 15 days until 31 January 2007 to vacate the apartment. When she refused, the ECSSR made an urgent application to the Abu Dhabi Federal Court of First Instance seeking her eviction. The Court granted an eviction order on 29 May 2007 and the ECSSR took possession of the apartment on 7 August 2007.

93. With respect to Ms. Moussa's complaint against the Dubai Chamber of Commerce and Industry (DCCI), the Government stated that Ms. Moussa was dismissed in accordance with clause 6 of the employment contract, which allows DCCI to terminate Ms. Moussa's employment without reasons at any time during the six-month probation period. The Director of Information and Publishing at DCCI described Ms. Moussa's performance as very weak and gave her a rating of one out of ten for rapport-building, team-work and comprehension skills in her performance appraisal of 27 June 2007. Ms. Moussa's employment was terminated on 18 July 2007, when another performance appraisal of 15 July 2007 indicated that she had made no improvement. DCCI owed Ms. Moussa an outstanding salary in the amount of 2,250.94 dirham and issued a cheque to her in the same amount. However, it had not been possible to contact her after she had been separated from DCCI.

94. The Government also added that Ms. Moussa filed a legal proceeding against DCCI to claim compensation of approximately 160,000 dirhams in respect of her period of employment. However, her case was withdrawn, as Ms. Moussa travelled abroad and her lawyer considered that there was no legal basis for her complaint. The Government informed DCCI's view that the disputes between Ms. Moussa and DCCI do not concern trafficking in persons at all and DCCI deals with its staff in a civil and fair manner.

## 2. Observations

95. The Special Rapporteur thanks the Government for providing a detailed response. The Special Rapporteur regrets, however, that the reply did not provide any information on the role of the National Committee to Combat Human Trafficking and how the Committee dealt with Ms. Moussa's case. The Special Rapporteur recognizes the importance of a complaint mechanism at the national level in ensuring that trafficked persons have access to remedies. Thus, she urges the Government to provide information on how the Committee addressed Ms. Moussa's complaint, regardless of its merit.

## 3. Response of the Government to the communication of 9 February 2010

96. On 3 August 2010, the Government responded to the communication of 9 February 2010 concerning 988 Pakistani child camel jockeys who were previously trafficked to the United Arab Emirates and who had not been provided with compensation to date. Details of this communication are reported in the Special Rapporteur's previous communications report (A/HRC/14/32/Add.1).

97. The Government's response contained extensive information on the compensation process. It contained a report by the follow-up committee on compensation for former child camel jockeys on action taken by the Government in respect of former camel jockeys. The report stated that the United Arab Emirates had taken necessary and appropriate measures to repatriate all former child camel jockeys in the United Arab Emirates who are nationals of the countries concerned (Pakistan, the Sudan, Mauritania and Bangladesh). All those who were entitled to it received compensation, and rehabilitation and social reinsertion programmes were established for them in their home countries. Moreover, laws had been formulated and actions and measures had been taken to prevent groups such as this from taking part in camel races in the United Arab Emirates in the future. In addition, the report by the follow-up committee included the following efforts made by the United Arab Emirates:

(a) The adoption of Federal Act No. 15 of 2005 which prohibits the participation of children under 18 years of age in camel races, and accompanying penalties.

(b) Measures taken to implement Federal Act No. 15 of 2005:

- the establishment of executive monitoring and follow-up mechanisms under a special committee;
- the establishment of a field operations unit which stipulates entry permit requirements for jockeys in accordance with the relevant Federal Act; undertakes surveillance and monitoring of all camel race tracks, in coordination with the national camel-racing federation; coordinates with relevant authorities in order to check the actual age of each camel jockey, against the information entered on their passports; implements an awareness raising campaign to encourage all camel owners to use robotic jockeys and to inform them of Federal Act No. 15 of 2005 and the penalties prescribed for violations, namely, a term of up to 3 years' imprisonment and a fine of not less than 50,000 UAE dirhams (Dh).

(c) Steps taken to implement the agreement with UNICEF and memorandums of understanding with the States concerned:

- In accordance with the two-phase agreement signed by the United Arab Emirates and UNICEF covering the period 2007–2008 and 2008–2009, the Deputy Prime Minister and Minister of Interior issued a decision establishing a special follow-up committee on implementation of the agreement and compensation procedures and the establishment of rehabilitation and social reintegration programmes for the children concerned.

- The special committee formed joint committees, two thirds of the members of which represented the States concerned. In line with the memorandums of understanding signed by the Ministry of Interior of the United Arab Emirates with the Governments of these States, these joint committees considered all the claims that were submitted to them. The special committee followed up on the implementation of rehabilitation and social reintegration programmes, in coordination with UNICEF and other partners.
- The compensation committee also made repeated visits to all the States concerned in order to ensure that the process whereby compensation cheques were distributed to children there was conducted satisfactorily. The final announcement that the compensations process had concluded in Pakistan was made on 22 January 2010. The conclusion of the compensation process in the Sudan was announced on 4 April 2010, at a joint press conference with the Sudanese Ministry of Interior which was attended by local and foreign media.

(d) Consideration of claims:

- Claims were received or rejected following close scrutiny and careful consideration by local committees which, as mentioned above, were composed of three members, two from the States concerned and one from the United Arab Emirates special committee. The subcommittees consulted medical and legal advisers and the compensation protocol in order to help them with their work.
- Furthermore, the subcommittees were fully empowered to conduct investigations, ask questions and assess the compensation amounts in the light of the protocol drawn up by an adviser to the special committee. In some cases where fatalities had occurred, 30,000 United States dollars (\$) was paid in compensation. All those children who were entitled to it received compensation once the claims submitted in the States concerned had been considered. The subcommittees did not reject any claim where the claimant was entitled to compensation. The total compensation awarded to the children in the aforesaid States amounted to \$11,082,750 and the full amount was transferred in coordination with the subcommittees and officials in these States. Data on the children who received compensation, the number of claims filed and the number that were rejected are set out below.

	<i>Number of claims</i>	<i>Children compensated</i>	<i>Claims rejected</i>
Pakistan	1 400	1 303	97
The Sudan	2 553	2 079	474
Bangladesh	906	879	27
Mauritania	479	467	12

(e) Efforts to rehabilitate and reintegrate children into their societies:

- Following the promulgation of Federal Act No. 15 of 2005, the Government brought together child camel jockeys from all over the United Arab Emirates, placed them in shelters, took care of their affairs and started to return them promptly to their countries of origin. This initiative, taken in coordination with UNICEF, cost Dh 10 million.
- The Government also allocated Dh 30 million to help fund rehabilitation and social reintegration programmes for children. This amount was transferred to UNICEF in order to implement the programmes that had been established in coordination with officials in each State. The main committee visited the four States concerned

(Pakistan, the Sudan, Mauritania and Bangladesh) and also made continuous visits to the representatives of each State in order to ensure that the compensation process was conducted according to the protocol and that the children's rehabilitation and social reintegration programmes continued to be implemented. More than 50 such visits were made in 2008, 2009 and 2010, punctuated by support coordination programmes with UNICEF and the other authorities concerned.

- The United Arab Emirates has implemented with care and attention the agreements concluded with UNICEF and the memorandums of understanding concluded with the Governments of the States concerned. For that purpose, it established a budget of Dh 100 million to cover the costs of returning, repatriating and compensating children and establishing rehabilitation and social reintegration programmes for them.

(f) Publicization of the programme:

- The United Arab Emirates provided sufficient funding to cover the subcommittees' administrative costs, equip their offices and meet their other needs. It also provided funding for media and medical committees and the costs of advisers and other support staff. The subcommittees ran intensive advertising campaigns on television and radio and in the press to publicize the programme in all the children's home countries.
- Public announcements on the receipt of claims were run for a sufficient period of time (from the signature of memorandums of understanding with the States concerned in 2007 to the end of 2008). In some States, claims continued to be received until early 2009. The States concerned announced the following deadlines for the receipt of claims:

- Pakistan, 31 December 2008
- The Sudan, 21 December 2008
- Bangladesh, 15 February 2009
- Mauritania, 10 January 2009

(g) Receipt of compensation by children:

- The sums determined by the subcommittees in the four States concerned were delivered to all the children, and the conclusion of the compensation programme was announced once the mechanism had completed its work and the subcommittees had issued cheques in the names of the children. In Pakistan, cheques for the children were delivered to His Excellency Mr. Rehman Malik, Interior Minister of the Islamic Republic of Pakistan, in the presence of the United Arab Emirates Ambassador to Islamabad, His Excellency Mr. Ali Saif al-Awani and a representative of the Pakistan joint committee. The Pakistani Ministry of Interior wrote to inform us of this event, which was covered by the Pakistani press.
- The Pakistan subcommittee considered all the claims submitted to it and awarded compensation to 1,303 Pakistani children. No valid claim for compensation was rejected. The main committee reviewed each case file in detail, including the decision of the subcommittee. The funds for compensating minors were delivered to the authorities concerned, namely, mother and child protection boards, government authorities and non-governmental institutions. These authorities deposited the money in banks in order to ensure the interest could be spent on the children. This arrangement was verified by the special committee when it visited these States.



- As mentioned above, funds were transferred through UNICEF to support programmes for the rehabilitation and social reintegration of the children. The funds amounted to Dh 30 million, of which Pakistan received Dh 7.34 million to establish rehabilitation and social reintegration programmes and to improve the children's living conditions. The States concerned and numerous international organizations have commended the United Arab Emirates humanitarian programme.

98. The report stated that the United Arab Emirates seeks to act in the interest of the children concerned and to provide them with compensation, in keeping with the approach and policy pursued nationally. The report refuted the estimate of an international NGO that approximately 15,000 children had been trafficked from Pakistan. The precise figures which the United Arab Emirates, in partnership with the competent authorities in the States concerned produced, based on available data and information, indicated that 4,728 children from Pakistan, the Sudan, Mauritania and Bangladesh were trafficked and that there were none from any other State.

99. With regard to reports that most of the children were sold to human traffickers by their impoverished parents and that some were kidnapped and sold to human trafficking rings, the report underscored that these allegations are unfounded and have no connection with the situation of former child camel jockeys in the United Arab Emirates. Most of the children involved in camel racing were present by choice and with the consent of those who exercised parental authority over them, who also accompanied them. They worked for salaries that were considered generous and were well-treated by their employers – contrary to the allegations claiming that they were kept in farms in poor living conditions, not fed, subject to abuse, beatings and electric shocks, and other such far-fetched allegations. Such acts, if committed, are punishable by law. Part 7 of the Criminal Code promulgated by Federal Act No. 3 of 1987, as amended, concerns all offences against the person, in particular offences that endanger human life and limb, infringe liberty and endanger or threaten persons. Federal Act No. 51 on the suppression of human trafficking is a special law enacted to combat offences such as intimidation, abduction, fraud, deception, abuse of authority, exploitation of a situation of vulnerability, and other acts involving sexual exploitation, bonded labour, slavery or forced labour. Moreover, the law prescribes a penalty of life imprisonment, if the victim is a child, a woman or a person with a disability. Offenders are brought to the Office of the Prosecutor and before the competent court, as the United Arab Emirates respects human rights principles and abides by all the conventions, treaties and protocols that it has ratified.

#### **4. Observations**

100. The Special Rapporteur appreciates the detailed response provided by the Government. She duly notes the Government's statements that the committee responsible for reviewing claims for compensation did not reject any valid claims and that the compensation was delivered to the authorities concerned, namely, mothers and child protection boards, government authorities and non-governmental institutions. However, the Government did not provide a specific response to the allegation that the compensation mechanism was closed as of 31 March 2009 without providing compensation to the 988 claimants concerned in the communication. The Special Rapporteur invites the Government to provide any supplementary information on the questions raised in the communication.

#### **5. Response of the Government to the communication of 12 March 2010**

101. On 11 June 2010, the Government responded to the communication of 12 March 2010 concerning the situation of S.M., who is the founder of a nongovernmental organization aimed at protecting women subjected to violence including rape, human

trafficking, domestic violence, sexual abuse, and incest, as well as women domestic workers who suffered abuse in the United Arab Emirates. Details of this communication are reported in the Special Rapporteur's previous communications report (A/HRC/14/32/Add.1).

102. The Government stated that the allegation that the authorities closed down the shelter run by S.M. was untrue and that the shelter went through a difficult period which prevented it from continuing its work without assistance of the local authorities. The Government explained that since 2006, the authorities received a variety of reports from members of the public against S.M., including that she beat one of the women staying at the shelter, she abducted a girl, she was complicit in forging an official document, and she had a criminal record and is wanted by Al-Rifaa police station. Due to these reports, S.M. left the United Arab Emirates in 2008, leaving behind a number of outstanding financial claims by the owner of the shelter and the Dubai Electricity and Water Authority. As a result, the Dubai Foundation for Women and Children intervened in the situation and transferred all the women to its headquarters.

103. On 12 July 2010, the Government submitted further information concerning the criminal case against S.M. According to the Government, on 15 May 2008, the General Department of State Security received information that S.M. sold a newborn child of a Russian woman named I.G. to another woman. The Public Prosecution issued a surveillance warrant for S.M.'s telephones, which revealed connection between S.M. and an American national who was suspected of perjury and forgery of official documents in her attempt to secure custody and care of the child. The American national was subsequently sentenced to 3 month imprisonment in respect of these charges. The Government stated that S.M. is a fugitive and remains wanted for criminal investigation.

## **6. Observations**

104. The Special Rapporteur appreciates the response provided by the Government. It would be of interest to the Special Rapporteur to know whether the authorities conducted any investigation of the complaints made against S.M. before she left the country and whether they were substantiated. Further, the Special Rapporteur invites the Government to provide information on partnerships and cooperation with civil society organizations that the Government may have in ensuring the adequate provision of protection and assistance to trafficked persons.

---