



**General Assembly**

Distr.  
GENERAL

A/HRC/11/8/Add.1  
18 May 2009

ENGLISH/FRENCH/  
SPANISH ONLY

---

HUMAN RIGHTS COUNCIL  
Eleventh session  
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,  
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,  
INCLUDING THE RIGHT TO DEVELOPMENT**

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

**Addendum\***

**COMMUNICATIONS SENT TO AND REPLIES RECEIVED  
FROM GOVERNMENTS**

---

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

**CONTENTS**

	<i>Page</i>
I. INTRODUCTION.....	3
II. COMMUNICATIONS SENT AND REPLIES FROM GOVERNMENTS.....	4
Brazil.....	4
China.....	6
France (on behalf of the European Union) .....	7
Guinea-Bissau .....	15
India .....	16
Italy .....	17
Iran (Islamic Republic of).....	22
Japan .....	23
Malaysia.....	28
Pakistan.....	29
Philippines .....	30
Saudi Arabia .....	33
Slovakia .....	34
Uganda.....	36
Zimbabwe .....	37

## I. INTRODUCTION

1. The present addendum to the report of the Special Rapporteur on the right to education contains, on a country-by-country basis, summaries of general and individual letters of allegations and urgent appeals transmitted to Governments between 1st March 2008 and 15 March 2009, as well as replies received between 15 April 2008 and 30 April 2009. Observations made by the Special Rapporteur have also been included where applicable. Letter of allegations and urgent appeals sent after 15 March 2009 as well as Government replies received after 30 April 2009 will be included in the Special Rapporteur's next communications report.
2. The Special Rapporteur receives information alleging violations of the right to education and related rights from national, regional and international non-governmental organizations, as well as intergovernmental organizations. The Special Rapporteur responds to information received and considered to be reliable on alleged violations of the right to education, by writing to the Government and others actors concerned, either together with other special procedure mandates or independently, inviting comment on the allegation, seeking clarification, reminding them of their obligations under international law in relation to the right to education and requesting information, where relevant, on steps being taken by the authorities to redress the situation in question. The Special Rapporteur urges all Governments and other actors to respond promptly to his communications and, in appropriate cases, to take all steps necessary to redress situations involving the violation of the right to education.
3. The Special Rapporteur recalls that in transmitting allegations and urgent appeals, he does not make any judgement concerning the merits of the cases, nor does he support the opinion of the persons on behalf of whom he intervenes. The Special Rapporteur draws attention to the fact that the issues reflected in this addendum are not representative of the wide range of issues encompassed by the right to education.
4. Owing to restrictions on the length of documents, the Special Rapporteur has considerably reduced the details of communications sent and received. To the extent that his limited resources permit, the Special Rapporteur continues to follow up on communications sent and to monitor the situation where no reply has been received or where questions remain outstanding.
5. During the period under review, the Special Rapporteur transmitted 16 communications to the Governments of 15 countries: Brazil, China, France (on behalf of the European Union), Guinea-Bissau, India, Iran (Islamic Republic of), Italy, Japan, Malaysia, Pakistan, Philippines, Saudi Arabia, Slovakia, Uganda and Zimbabwe.
6. Eleven responses to these communications were received and one reply to a communication transmitted by the Special Rapporteur in the previous year. The Special Rapporteur regrets that some Governments failed to respond and thanks those which took the time and made the effort to provide replies, which are reflected in the present report.

## II. COMMUNICATIONS SENT AND REPLIES FROM GOVERNMENTS

### Brazil

#### Communication sent

7. On **7 April 2008**, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a communication regarding legal constraints imposed upon the freedom of expression of teachers and professors of the state of São Paulo which could be interfering with the full realization of the right to education. Allegedly, this is a consequence of the Statute of the Civil Servants of the State of São Paulo, 1968 (Estatuto dos Servidores Cíveis do Estado de São Paulo, 1968), Decree No. 7.510 of 29 January 1976 (Decreto N° 7.510, de 29 de janeiro de 1976), and Resolution SE No. 170 of 25 July 1990 (Resolução SE N° 170, de 25 de julho de 1990).

8. According to the information received, some parts of the mentioned legislation would be contrary to international obligations that arise from international treaties that Brazil has subscribed. Regarding the Statute of the Civil Servants of the State of São Paulo, which dates from 1968, there are two articles that have reportedly prevented civil servants working in the education sector from freely articulating their opinion on matters related to the education system.

9. It was mentioned that Article 241 of the referred Statute provides for strict confidentiality of all subjects and decisions of the public division, a provision that would contradict the principle of transparency and publicity that guides the Public Administration. Moreover, Article 242 of the Statute prohibits civil servants from publically referring in a disparaging manner to the authorities and acts of the Administration. It was also reported in the information received that journalists in Brazil have been denouncing the fact that teachers constantly refuse to provide information on educational policies to the media for fear of repressive measures. In addition, Article 131, II, 1) of the Decree No. 7.510 and Article 1 of the Resolution SE No. 170 proclaim that civil servants need special authorization from the Secretary of Education in order to give interviews to the media regarding subjects of the division they are allocated to. These provisions could discourage education professionals from taking initiatives towards the improvement and adjustment of certain sectors of the educational system to the changing needs of society and students. Such discouragement could negatively affect the right to quality education.

10. It was recalled that freedom of expression plays a vital role in all democratic systems, especially to promote public accountability. In particular, it is of great importance that the opinions of teachers are taken into consideration in the public debate about the educational system. Teachers are a trustworthy source of information on education issues because they can provide a description of the advantages and disadvantages of the educational system based on their practical experience. It is also important that public authorities jointly with teachers and members of the civil society engage in a constructive dialogue in order to discuss effective measures for the improvement of the educational system, which, as a consequence, could lead to the proper fulfilment of the right to education.

### **Communication received**

11. On 11 September 2008, the Government responded to the communication sent by the Special Rapporteurs and provided the following remarks:

12. The Government mentioned the question of whether there is any legal constraints imposed upon the freedom of expression of teachers and professors of the State of São Paulo as a consequence of the Statute of the Civil Servants of the State of Sao Paulo, 1968 (Estatuto dos Servidores Civis do Estado de São Paulo, 1968), Decree No. 7.510 of 29 January 1976 (Decreto N° 7.510, de 29 de janeiro de 1976), and Resolution SE No. 170 of 25 July 1990 (Resolução SE N° 170, de 25 de julho de 1990). With regard to the Statute of the Civil Servants of the State of Sao Paulo, it is worth clarifying that its objective has not been interpreted as to prevent civil servants from freely articulating their opinion when they are not doing so in their capacity as civil servants, but only when they express their opinion in the performance of their function or under the justification of carrying out their functions, thus implicating the State itself. Therefore, this legislation is not aimed at hampering the freedom of expression of civil servants, who are free to express their personal opinions. Its objective is to ensure uniformity of the public authority when it is requested in the name of a public agency and with the aim of avoiding irreparable damages to the public interest. It is worth stressing in this context that the State, as legal entity, does not possess a will or opinion; its will and action are expressed through its agents, to the extent that they hold such authority. In this way, what the agent expresses in his functional quality is intended to be the expression of the State, on the basis of a relationship of direct imputation of the acts of State agents.

13. With regard to the Resolution SE No. 170 of 25 July 1990, it should be noted that it was revoked on 21 August 2008, by means of Resolution SE No. 63 of 20 August 2008, due to “the need to revoke expressly or tacitly any act either in disuse or already revoked expressly or tacitly, though never nominated”, among other reasons, in accordance to the exposition of motives. According to the Secretary of Education, surveys are being carried out on the reorganization of its structure, attributions and competencies, which indicate the revocation of the Decree No. 7.510 of 29 January 1976.

14. The Government hopes to have answered the questions raised by the Rapporteurs. In addition, it is worth communicating that the Secretary of Education informed that it did not deny any request of interviews to teachers or directors since it considers this to be their decision, thus showing that the above mentioned legislation is in disuse. In this sense, it informed that the current management of the Department did not punish any teacher for having been interviewed and that it is fully favorable to the freedom of expression of professors and of any other person.

### **Observations**

15. The Special Rapporteur would like to thank the Government for its reply.

## China

### Communication sent

16. On **23 July 2008**, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders sent a communication concerning the alleged exclusion of two children of schooling age, Yang Tiance and Yang Tianjiao, from access to education.

17. The two children are the son and daughter of Guo Feixiong (also known as Yang Maodong), currently imprisoned. Guo Feixiong has been detained since 14 September 2006. Prior to his detention, Guo Feixiong allegedly published a book on government corruption in Shenyang City, Liaoning Province. He also provided legal assistance to peasants from the village of Taishu in Guadong in their campaign against corruption.

18. According to the information received, Yang Tiance was allegedly registered for enrollment at the appropriate school, Hua Kang primary school, to commence his first year of elementary school in 2007. However, his registration was refused in 2007 and Yang Tiance has already missed his first year of school.

19. His sister, Yang Tianjiao, completed her elementary schooling at Hua Kang primary school and was about to enter the next phase of her schooling at the appropriate school. However Yang Tianjiao has been restricted from enrolling in the elementary school system. She has been allegedly told by her affiliated elementary school No. 47 Middle School that she cannot enroll in the school because it is full. Similarly, it is alleged that Yang Tianjiao was not allowed to enroll in another middle school further away because it was stated that the school only accepted students from the local area. It is further reported that there has been no review of these decisions to block access to the appropriate school or any attempt to find an alternative mode of schooling.

20. Concern has been raised that the current restrictions on registration at school of the children of Guo Feixiong, were directly related to their father's human rights related activities in contravention of international law. It was also mentioned that the restrictions on the right to education may have lasting cognitive, social and psychological effect on their development as children as well as preclude these children from making a valuable contribution to society in the future. All efforts should be made by the authorities to ensure that all individuals have basic access to education. It was finally recalled that the Compulsory Education Law was adopted in order to grant access to education for all children in the country, in compliance with the principles of non-discrimination and equality as mandated by international law.

### Communication received

21. By letter dated 30 September 2008, the Government replied to the communication sent by the Special Rapporteur on 23 July 2008 together with the Special Rapporteur on the situation of human rights defenders.

22. The Chinese Government considers the situation referred to in this letter to be of great importance; immediately after its receipt, the letter was transmitted to the Ministry of Education and the Ministry of Public Security for clarification. Both ministries made numerous inquiries, but as the letter contained no clear indication of the location of Yang Tiance and Yang Tianjiao,

and as the names of the schools lacked any element indicating their location, the inquiries made by the Ministry of Education yielded no results. The Government further mentioned that China's population is vast, and there are a great many people who have the same name, and the Ministry of Public Security has no way of producing useful information solely on the basis of a person's family and given names.

23. Finally, the Chinese Government requested that the Special Rapporteurs supply the name of the province and town where the two children mentioned are located as well as detailed names of the schools so that further inquiries can be made with a view to a reply.

### **Observations**

24. The Special Rapporteur would like to thank the Government for its reply.

### **France (on behalf of the European Union)**

#### **Communication envoyée**

25. Le **16 juillet 2008**, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de travail sur la détention arbitraire, la Rapporteuse spéciale sur la vente d'enfants, la prostitution des enfants et la pornographie mettant en scène des enfants, la Rapporteuse spéciale sur la liberté de religion ou de conviction, le Rapporteur spécial sur l'Indépendance des juges et des avocats, le Rapporteur spécial sur la situation des droits de l'homme des migrants, le Rapporteur spécial sur les formes contemporaines de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y est associé, l'Expert indépendant chargé d'examiner les effets de la dette extérieure et des obligations financières internationales connexes des Etats sur le plein exercice de tous les Droits de l'Homme, en particulier des droits économiques, sociaux et culturels, la Rapporteuse spéciale sur la violence contre les femmes, ses causes et ses conséquences et l'Expert indépendant nommé par le Secrétaire général sur la situation des Droits de l'Homme en Haïti a envoyé une communication au Gouvernement exerçant la Présidence du Conseil de l'Union européenne au sujet de la Directive 2008/.../EC du Parlement européen et du Conseil sur les normes et procédures communes applicables dans les Etats membres au retour des ressortissants de pays tiers en séjour irrégulier (COM (2005) 0391 – C6-0266/2005 – 2005/0167 (COD) (la « Directive de retour »). Cette directive fut adoptée par le Parlement européen le 18 juin 2008.

26. Il fut mentionné que la Directive de retour pouvait être considérée comme un effort visant à mettre en place des normes communes en matière de retour de ressortissants de pays tiers en séjour irrégulier; et à renforcer les mécanismes de protection dans certains Etats membres de l'Union. Le texte et le préambule de la Directive font référence aux normes et standards internationaux et européens des Droits de l'Homme ainsi que l'obligation de fournir une assistance légale aux ressortissants d'un pays tiers en situation irrégulière envisagée dans l'article 13. Néanmoins, les Experts des Droits de l'Homme ont relevé plusieurs sujets de préoccupation concernant la Directive.

27. Un des principaux sujets de préoccupation est lié au régime de détention pendant la procédure de retour ou d'éloignement des ressortissants des pays tiers en situation irrégulière, y compris des mineurs non-accompagnés et d'autres personnes vulnérables, comme prévu dans les articles 15 et 17 de la Directive.

28. L'article 15 de la Directive de retour établit qu'en règle générale, la période de détention ne devrait pas excéder six mois, pourvu que des mesures suffisantes mais moins coercitives ne puissent être appliquées effectivement et qu'il existe un risque de fuite ou que le ressortissant d'un pays tiers évite ou empêche la préparation du procès de retour ou d'éloignement. Toutefois, dans les cas particuliers, cette période peut être prolongée par les Etats membres jusqu'à un maximum de 12 mois additionnels. L'article 17 de la Directive permet aux Etats membres la détention de mineurs non-accompagnés se trouvant en situation particulièrement vulnérable.

*Proportionnalité de la détention (article 15)*

29. Il fut mentionné que les migrants en situation irrégulière ne sont pas des délinquants. En règle générale, les migrants ne devraient pas être sujets à la détention. Les Etats membres doivent recourir à la détention uniquement en dernier recours, conformément à l'application stricte du principe de proportionnalité. Le considérant 16 et l'article 15, paragraphe 1, de la Directive tiens compte de ce principe. Cependant, l'obligation des Etats membres de considérer l'application de mesures moins coercitives devrait être expressément établie, ainsi que l'obligation de réaliser une évaluation exhaustive de la possibilité d'appliquer ces mesures. Aussi, l'article 15, paragraphe 1, ne fournit pas une liste exhaustive de motifs concrets de détention. De ce fait, il est à craindre que les Etats membres aient recours à la détention de manière excessive et considèrent celle-ci comme une règle et non pas une exception.

30. De plus, les Etats membres ont l'obligation d'assurer que les personnes victimes de trafic ne soient pas poursuivies pour la violation de lois d'immigration ou pour des activités réalisées en conséquence directe de leur situation de victime de trafic. Ces personnes ne doivent pas être placées dans des centres de détention de migrants ou maintenues sous quelque autre forme de privation de liberté. Nous suggérons que la Directive de retour soit révisée afin d'y inclure cette garantie, ainsi que tout autre dispositions relatives à la protection des personnes victimes de trafic, conformément aux Principes et Directives concernant les Droits de l'Homme et la traite des êtres humains (E/2002/68/Add.1) élaborée par l'Office du Haut-commissariat des Nations Unies aux Droits de l'Homme.

*Période maximum de détention (article 15)*

31. Les Experts ont aussi signalé que la durée de 18 mois de période maximale de détention leur paraissait excessive. En particulier lorsque les obstacles à la préparation du retour ou à l'éloignement ne sont pas imputables à la sphère de responsabilité du migrant, par exemple lorsqu'il est difficile d'obtenir la documentation nécessaire du pays d'origine ou du pays de destination. La proposition originale de la Commission européenne établissait une période maximale de détention de six mois (COM/2005/391 final, article 14, paragraphe 4).



*Détention et retour de mineurs non-accompagnés (articles 10, 14 et 17)*

32. Les Experts ont aussi demandé si les Etats membres pouvaient indiquer dans quelles circonstances la détention des mineurs non-accompagnés pouvait être justifiable. L'article 17, paragraphe 1, de la Directive de Retour transcrit simplement les termes de l'article 37, lit. (b) clause 2 de la Convention des Droits de l'Enfant. A leur avis, la Directive n'établit pas de garanties légales et de procédures suffisantes concernant les mineurs non-accompagnés. Ils ont aussi demandé de recevoir des informations sur les conditions nécessaires pour que la structure d'accueil pour mineurs non-accompagnés dans l'Etat de retour soit considérée comme « adéquat » (article 10, paragraphe 2).

33. Des préoccupations concernant l'abaissement des normes relatives au droit à l'éducation, particulièrement les opportunités éducatives pour les mineurs, ont aussi été exprimées. La proposition originale de la Commission européenne incluse dans l'article 6, paragraphe 4, interdit aux Etats membres d'expulser des mineurs sans considérer leur droit à l'éducation. Le texte actuel requiert simplement aux Etats membres de prendre en considération dans la mesure du possible l'accès des mineurs au système d'éducation basique dépendant de l'autorisation de séjour (article 14, paragraphe 1). Une disposition similaire est contenue dans l'article 17, paragraphe 3, qui établit que les mineurs en détention auront accès à l'éducation dépendant uniquement de la durée de leur séjour.

*Révision judiciaire de la légalité de la détention administrative (article 15)*

34. Les experts ont souhaité voir les garanties légales relative à la révision judiciaire de la légalité de la détention administrative incluse dans l'article 15 de la Directive développées davantage afin d'obliger les Etats membres à définir la limite des délais plutôt que d'indiquer que ces réexamen doivent être « accélérés » et à « intervalles raisonnables ».

*Situations d'urgence (article 18)*

35. De plus, indépendamment du fait que les Etats membres puissent invoquer l'existence de situations d'urgence permettant la dérogation des limites maximales pour la révision judiciaire, déjà assez imprécises, et adopter des mesures d'urgence conformément à l'article 18 de la Directive, les circonstances peuvent être au-delà du contexte du ressortissant d'un pays tiers passible de retour. Il fut rappelé aux Etats membres que le recours à la révision judiciaire sans délai de la légalité de la détention n'est pas un privilège mais un droit fondamental. C'est un droit qui ne peut être dérogé sauf en cas de danger public exceptionnel conformément à l'article 4, paragraphe 1, du Pacte international de Droits civils et politiques (voir l'observation générale n. 29 du Comité des droits de l'homme, CCPR/C/21/Rev.1/Add.11). De même, l'article 13, paragraphe 2, de la Directive de retour n'établit pas un effet suspensif aux recours d'appel contre les décisions de retour ou d'éloignement ni contre les décisions d'interdiction d'entrer, donnant lieu à une préoccupation qui généralise le « fait accompli ».

*Interdiction d'entrée (article 11)*

36. La possibilité que la décision de retour ou d'éloignement comporte une interdiction d'entrée d'une durée de cinq ans au maximum, telle qu'établie par l'article 11 de la Directive de retour, pourrait violer le principe de non-refoulement, considérant que la situation dans un pays

donné peut se détériorer dramatiquement pendant cette période. Afin d'assurer que le principe de non-refoulement soit pleinement respecté conformément à l'article 4, paragraphe 4, il fut demandé que la Directive soit plus précise sur les critères spécifiques à prendre en compte lors de sa mise en œuvre (voir article 5 lit. (c)).

37. L'introduction de cette interdiction d'entrée pourrait créer des conditions dans lesquelles des migrants chercheraient à revenir irrégulièrement dans l'Union européenne, en augmentant le risque de trafic. En conséquence, la Directive pourrait accroître la vulnérabilité des migrants à devenir des victimes de trafics. La garantie établit dans la Directive que les victimes de trafic ayant obtenu un permis de résidence « ne feront pas l'objet d'une interdiction d'entrée » paraît insuffisante. La prompt et adéquate identification des victimes de trafic est un problème répandu dans plusieurs pays laissant par conséquent, un groupe substantiel de victimes mal identifiées sans droits de protection et d'assistance.

#### *Groupes vulnérables (article 14)*

38. Les experts ont noté avec satisfaction que l'article 14 de la Directive comprend une clause reconnaissant la nécessité de prendre en compte les besoins particuliers des personnes vulnérables et que ces besoins spéciaux seront pris en considération, ainsi que l'article 3 lit. (i) de la Directive contienne une définition du terme « personnes vulnérables ». Néanmoins, il fut mentionné l'importance de la protection et des garanties spécifiques pour ces groupes vulnérables. Il fut également mentionné l'importance que les victimes de sévères formes de violence psychologique, physique et sexuelle, incluant les victimes de violation sexuelle, soient traitées avec une sensibilité particulière pendant la détermination de leur cas et la période de retour volontaire ou involontaire.

39. Malgré que la majorité des ressortissants des pays tiers affectés par la Directive n'aient pas demandé l'asile politique ou le refuge dans des pays de l'Union européenne, les normes existantes relatives à la détermination des cas d'asile peuvent être utiles, par analogie, pour l'application de la Directive de retour et en particulier de son article 14. Les experts ont suggéré qu'au moment de décider le retour ou l'éloignement d'un ressortissant d'un pays tiers, que les Etats membres prennent en considération que la violation ou autre forme de violence sexuelle (ainsi qu'en cas de trafics ou de violence domestique) pour des motifs de race, religion, nationalité, opinion politique ou d'appartenance à un groupe social particulier, soit considérée comme persécution sous la définition de « réfugié » contenus dans la Convention relative au statut des réfugiés de 1951.

40. La Directive devrait être révisée afin d'y inclure des garanties spécifiques pour les victimes de violations des droits de l'homme, y compris hommes, femmes et enfants ayant fait l'objet de trafiqués pour leur exploitation sexuelle ou de travail. La Directive devrait garantir l'accès aux recours pour les victimes de trafic, avant qu'une décision sur leur expulsion soit prise. La prompt identification des victimes de trafic est essentielle ; les Etats membres doivent développer des procédures et directives pour les autorités pertinentes chargées de détecter des migrants irréguliers et permettant l'identification prompt et fiable des victimes de trafic.

41. Les experts ont indiqué que la Directive ne reflète pas de manière adéquate certaines dispositions et garanties pour les victimes de trafic contenues dans la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains entrée en vigueur en février 2008. La

Directive devrait également refléter et conformer aux Principes et Directives concernant les Droits de l'Homme et la traite des êtres humains élaborée en 2002 par l'Office du Haut-commissariat des Nations Unies aux Droits de l'Homme.

42. Les experts ont finalement demandé aux Etats membres à travers le Gouvernement exerçant la Présidence du Conseil de l'Union européenne la révision de la Directive de retour. En suivant l'accord du Parlement européen du 5 juin et avant l'adoption de l'accord du Conseil de l'Union européenne prévu pour les 24 et 25 juillet 2008, ils ont considéré qu'il est de la plus haute importance que cette Directive soient en conformité avec toutes les normes et les standards internationaux des Droits de l'Homme applicables et prennent pleinement en considération les obligations des Etats en tant que pays receveur, transit et origine des migrants.

### **Communication reçue**

43. Le 4 septembre 2008, le Gouvernement exerçant la présidence de l'Union européenne envoya une réponse à la communication envoyée conjointement le 16 juillet 2008 concernant le texte de la directive

« Relative aux normes et procédures communes applicables dans les Etats membres au retour des ressortissants de pays tiers en séjour irrégulier ».

44. En qualité de représentant de la présidence en exercice, il fut mentionné les éléments de réponse suivants :

*L'Union européenne est une communauté fondée sur le droit :*

45. Des règles de droit fixent ainsi les conditions d'entrée, de séjour et de résidence des ressortissants de pays tiers dans les pays de l'Union. L'efficacité de la politique d'admission suppose également la mise en œuvre d'une politique d'éloignement à l'encontre des personnes qui ne respecteraient pas ou plus les réglementations relatives à l'entrée ou au séjour. Nul ne conteste à cet égard aux Etats la faculté de mettre en œuvre une politique d'éloignement.

46. Le Conseil européen a invité à définir des normes communes pour la mise en œuvre de leur politique d'éloignement par les Etats membres. Tel est précisément l'objet de la directive « relative aux normes et procédures communes applicables dans les Etats membres au retour des ressortissants de pays tiers en séjour irrégulier ». Ce texte a fait l'objet d'un accord politique au Conseil (JAIS des 5-6 juin 2008), avant d'être adopté en première lecture par le Parlement européen le 18 juin dernier, mettant ainsi un terme à une négociation engagée en septembre 2005. L'adoption de ce texte constitue en soi une avancée significative. Comme le relevait en effet la Commission dans les documents présentés en appui de sa Proposition Initiale, la situation qui prévaut, dans l'attente de la transposition de la directive, se caractérise par une très grande diversité des régimes applicables, qu'il s'agisse de la définition même des notions en cause ou des règles et procédures mises en œuvre. La directive vise ainsi à harmoniser et à rendre obligatoires des règles communes pour tous les Etats membres, y compris en matière de garanties procédurales et juridiques. Le respect de ces normes pourra le cas échéant être contrôlé par la Commission et par le juge européen, conformément aux procédures pertinentes prévues par le traité CE.

47. Naturellement, la directive ne fait pas obstacle à l'adoption ou à l'application de normes plus favorables (article 4 paragraphe 3). Cette directive est également sans préjudice aux règles applicables en matière d'asile.

La directive précise explicitement que les règles qu'elle contient doivent être mises en œuvre dans le respect des droits de l'homme et des libertés fondamentales des personnes concernées.

48. L'Union européenne s'est toujours fortement engagée en faveur des droits de l'Homme, qu'elle défend et promeut, en son sein et partout dans le monde. En accord avec les valeurs et les principes fondamentaux qui sont les siens, l'Union européenne place ainsi au rang de ses premières préoccupations la garantie du respect des droits de l'Homme de tous les immigrants, ainsi que la lutte contre le racisme, la xénophobie, et la traite des êtres humains, tout particulièrement dans le cadre de sa politique migratoire.

49. En tout état de cause, il appartiendra aux Etats membres d'appliquer l'ensemble des dispositions de la directive dans le respect de l'acquis communautaire en matière de droits de l'Homme, d'immigration et d'asile, et des conventions internationales ratifiées par les Etats membres en la matière.

50. Il est à noter à cet égard que plusieurs dispositions dans le texte de la directive s'inspirent des dispositions pertinentes de la Convention Européenne des Droits de l'Homme.

La directive « relative aux normes et procédures communes applicables dans les Etats membres au retour des ressortissants de pays tiers en séjour irrégulier » ne constitue que l'un des volets de l'action de l'Union en matière migratoire.

51. Dans le cadre de la mise en œuvre des programmes de Tampere (1999) et de La Haye (2004), l'Union européenne a progressivement développé une politique et des instruments communs dans le domaine de l'immigration et de l'asile.

52. En décembre 2005, une « Approche globale des migrations » a été définie, qui vise, par une collaboration accrue entre pays de départ, de transit et de destination, à promouvoir une gestion intégrée et équilibrée des questions migratoires comprenant des politiques destinées, en coopération avec les pays tiers, à tirer parti des avantages de la migration légale et à lutter contre l'immigration illégale. Le champ géographique de cette approche, initialement orienté vers l'Afrique et à la Méditerranée, a été étendu à l'Europe orientale et du sud-est par le Conseil européen de juin 2007.

53. L'Union européenne s'applique aujourd'hui à mettre en œuvre les instruments nécessaires à la réalisation de cette Approche globale, en coopération avec les pays tiers d'origine et de transit, notamment en matière d'organisation de la migration régulière et professionnelle ou de migration circulaire.

54. De fait, l'Europe *largo sensu* s'avère aujourd'hui la première destination des migrants internationaux, loin devant l'Asie et l'Amérique du nord. L'Union européenne accueille aujourd'hui quelque 18,5 millions de ressortissants en provenance de pays tiers.

S'agissant plus précisément des questions soulevées dans la correspondance, concernant la proportionnalité de la rétention :

55. Le texte de la directive ne tend pas à privilégier la voie de la rétention, mais bien celle du départ volontaire.

56. Le considérant (16) rappelle que « le recours à la rétention aux fins d'éloignement devrait être limité et subordonné au respect du principe de proportionnalité en ce qui concerne les moyens utilisés et les objectifs poursuivis. La rétention n'est justifiée que pour préparer le retour ou procéder à l'éloignement et si l'application de mesures moins coercitives ne suffirait pas ».

57. Précisément, l'article 15 prévoit que la rétention d'un ressortissant de pays tiers en séjour irrégulier est appliquée à la seule fin de préparer le retour et/ou de procéder à l'éloignement, en particulier lorsque ce migrant présente un risque de fuite ou lorsqu'il fait obstacle à la procédure de retour ou d'éloignement.

58. Dans tous les cas, les Etats membres ont l'obligation d'envisager en priorité l'application de solutions moins coercitives, conformément à l'article 15 paragraphe 1. Cette disposition vise précisément à inciter au retour volontaire des ressortissants en séjour irrégulier. Le considérant (10) rappelle aussi que « lorsqu'il n'a pas lieu de craindre que l'effet utile d'une décision de retour s'en trouve compromis, il convient de privilégier le retour volontaire par rapport au retour forcé et d'accorder à cet effet un délai de départ ».

59. De façon générale, il convient de noter que le considérant (6) rappelle que « les décisions prises en vertu de la présente directive devraient l'être au cas par cas, en tenant compte de critères objectifs, ce qui implique que l'on prenne en considération d'autres facteurs que le simple fait d'être en séjour irrégulier ». En particulier, le texte de la directive inclut des dispositions spécifiques concernant les personnes vulnérables au sens de son article 3 (i), conformément à l'article 14 paragraphe 1.

*Concernant la période maximum de rétention :*

60. Il importe de rappeler que, conformément à l'article 15 paragraphe 5, la durée maximale de rétention est fixée à six mois. Si le texte de la directive ouvre la faculté d'étendre cette durée de rétention, cette extension constitue une exception, limitée à douze mois supplémentaires et strictement conditionnée, conformément aux dispositions du paragraphe 6.

61. Ces dispositions doivent être appréciées à l'aune des régimes actuellement appliqués à titre national par les Etats membres (et aussi par des pays hors de l'Union européenne). Aujourd'hui, dans plusieurs d'entre eux, la durée de rétention s'avère en effet supérieure à six mois ou peut même être illimitée.

62. Le texte de la directive introduit ainsi une innovation significative. En la matière, le texte de la directive permet également le maintien d'un dispositif plus favorable dans les Etats membres qui appliqueraient aujourd'hui une durée de rétention plus courte.

*Concernant la rétention et le retour de mineurs non-accompagnés :*

63. De façon générale, il importe de rappeler que le texte de la directive ne crée aucune obligation en matière de rétention et d'éloignement des mineurs. En revanche, il impose aux Etats membres qui en décideraient de respecter un ensemble de normes minimales en la matière.

64. Le considérant (22) rappelle que « conformément à la Convention des Nations Unies relatives aux droits de l'enfant (1989), "l'intérêt supérieur de l'enfant" devrait constituer une considération primordiale pour les États membres lorsqu'ils transposent les dispositions de la présente directive ». L'article 5 fait précisément obligation aux États membres, lorsqu'ils transposent la directive, de tenir dûment compte de l'intérêt supérieur de l'enfant (ainsi d'ailleurs que de la vie familiale).

65. Ce principe d'application générale trouve plusieurs déclinaisons dans le corps de la directive, notamment au titre de l'article 10 et plus généralement des garanties procédurales visées notamment aux articles 14 (accès des mineurs au système éducatif de base) et 17 (conditions de rétention des mineurs).

66. Ces dispositions s'appliquent sans préjudice des dispositions plus favorables prévues dans les droits nationaux ou dans des accords bilatéraux ou multilatéraux, telle la convention des Nations Unies relative aux droits de l'enfant, déjà mentionnée.

*Concernant la révision judiciaire de la légalité de la rétention administrative :*

67. Il convient de noter que le texte de la directive introduit des dispositions importantes concernant les garanties procédurales, s'agissant en particulier de l'assistance judiciaire. Le texte de la directive suit en la matière les dispositions pertinentes de la CEDH ainsi le principe directeur n° 8 des vingt principes directeurs sur le retour forcé adoptés par le Conseil des Ministres du Conseil de l'Europe le 4 mai 2005.

*Concernant les situations d'urgence :*

68. Les dérogations prévues pour les délais de contrôle juridictionnel et les conditions de rétention sont limitées aux situations d'urgence, lorsqu'une charge lourde et imprévue pèse sur la capacité des centres de rétention d'un État membre. Dans le cas où un État membre décide de recourir à ces mesures exceptionnelles, il a l'obligation d'informer la Commission de sa décision et de la fin de ces mesures dérogatoires, dès que les motifs justifiant leur application ont disparu.

*Concernant l'interdiction d'entrée :*

69. Il convient de rappeler que, conformément à l'article 11 paragraphe 1, une interdiction d'entrée n'est de droit que dans deux cas particuliers: si aucun délai n'a été accordé pour le départ volontaire (notamment dans les cas visés à l'article 7 paragraphe 4) ou si l'obligation de retour n'a pas été respectée. La possibilité d'assortir une décision de retour d'une interdiction d'entrée constitue autrement une simple faculté. En tout état de cause, la durée d'une telle interdiction ne peut dépasser cinq ans, sauf cas exceptionnels (menace à l'ordre du public par exemple). Cette durée maximale doit être appréciée à l'aune des pratiques aujourd'hui suivies par plusieurs États membres (et aussi par des pays hors de l'Union européenne).

70. En tout état de cause, des dérogations sont prévues par le texte de la directive : les États membres ne peuvent appliquer l'interdiction d'entrée aux personnes victimes de la traite des êtres humains (article 11 paragraphe 3) ; ils peuvent s'abstenir d'imposer, lever ou suspendre une interdiction d'entrée, pour des raisons humanitaires (ibidem) ou, pour certaines catégories de cas, pour d'autres raisons (ibidem).

71. Les dispositions concernant une éventuelle interdiction d'entrée doivent être comprises également comme une incitation au départ volontaire.
72. De façon plus générale, les décisions d'interdiction d'entrée sont assorties de garanties procédurales, conformément aux dispositions des articles 12 et 13 (décisions rendues par écrit, motivation en fait et en droit, informations relatives aux voies de recours disponibles.).
73. Au-delà, le texte de la directive ménage la possibilité pour les Etats membres de moduler la durée d'interdiction d'entrée, voire, au cas par cas la possibilité de lever une telle interdiction (article 11 paragraphe 3).

*Concernant les groupes vulnérables :*

74. Le texte de la directive vise à prendre dûment en compte les besoins particuliers des personnes vulnérables notamment en ce qui concerne les garanties assurées dans l'attente du retour (article 14), conditions de rétention et l'accès aux soins médicaux (article 16, paragraphe 3). A noter que la définition des « populations vulnérables » s'avère relativement large, aux termes de l'article 3 (i).
75. De façon plus générale, l'encadrement des mesures concernant ces groupes vulnérables a été significativement renforcé à la faveur de la négociation du projet de directive.

**Observations**

76. Le Rapporteur spécial tient à remercier le Gouvernement de la France exerçant la présidence de l'Union Européenne, pour sa réponse détaillée aux questions soulevées dans la communication conjointe des experts indépendants du Conseil des droits de l'homme.

**Guinea-Bissau**

**Communication sent**

77. On **24 December 2008**, the Special Rapporteur sent a communication concerning the delaying of the 2008-2009 schoolyear, initially set to resume in October 2008, but which had not started yet.
78. According to the information received, it is alleged that students and pupils in Guinea-Bissau are being denied their right to education, as a general teacher strike over salary arrears prevented the school year to resume on time in October 2008, resulting in schools not having reopened. It is also alleged that poor material conditions have been affecting schools and universities throughout the country in the past.
79. It is reported that the teachers launched a strike on 5 December 2008 over salary arrears, which allegedly amounted to four months of wages. According to the President of the Teachers Union of Guinea-Bissau, the union has stated the teachers will continue to strike until they receive full payment of their back wages. It is also alleged that the transitional Government in place recognized it is unable to pay their salaries.

80. It is further reported that Guinea-Bissauan teachers earn US\$ 73 per month, making them some of the lowest-paid teachers in West Africa. It is finally alleged that many of the teachers in the country are untrained, some having even never completed primary school.

### **Observations**

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

## **India**

### **Communication sent**

82. On **27 November 2008**, the Special Rapporteur sent a communication concerning the conflict in India's Chhattisgarh state between the Maoist rebels (Naxalites), anti-Maoist vigilante groups (known as Salwa Judum), and government security forces.

83. According to information received, it is alleged that the conflict in India's Chhattisgarh state between the Maoist rebels (Naxalites), allegedly state-supported anti-Maoist vigilante groups (known as Salwa Judum), and government security forces have recruited children in different capacities that expose them to the risk of injury and death. The dramatic escalation of the conflict since mid-2005 has also caused massive displacement, resulted in the destruction of dozens of schools, and severely impacted children's access to education.

84. It is reported that neither the Naxalites nor the authorities have taken effective steps to end the use of children in armed hostilities. The armed movement by Maoist groups, often called Naxalites, allegedly recruit children between ages six and twelve into children's associations called bal sangams, where children are trained in Maoist ideology, used as informers, and taught to fight with non-lethal weapons (sticks). It is also alleged that recruitment and use of children from age 16 is part of the Maoist rebels' policy and acknowledged practice.

85. Although Chhattisgarh police officials allegedly claim that underage Special Police Officers (SPOs) have been removed from SPO ranks, it is reported that villagers and members of the SPOs have confirmed that children continue to function as SPOs. Neither the Indian central government nor the Chhattisgarh state government is said to have a plan for the rehabilitation of such children, whether from the ranks of the SPOs, or from the Naxalites. It is also alleged that the Chhattisgarh police arbitrarily detain and torture suspected child Naxalites.

86. It is further alleged that this conflict has severely impacted children's access to education, as it has prevented many of them in affected areas from continuing their education. The chaos generated by the conflict coupled with the violence has forced some parents to stop sending their children to school. Government security forces have allegedly used many school buildings for military purposes, leading Naxalites to destroy many of them in the area.

87. The Chhattisgarh government has reportedly merged or relocated many residential schools to locations in or around government-run Salwa Judum camps. The shift of residential schools from interior locations to camps has, in some cases, forced children to break or limit contact with their families living in interior areas. Despite the consolidation of schools in the camps, an estimated 40 per cent of children residing in the camps still do not attend school.



88. Children of families that fled to Andhra Pradesh state are said to face a language barrier to education. These children were educated in Hindi in Chhattisgarh and now face an alien medium of education (Telugu) in the government schools of Andhra Pradesh. As a result, local NGOs report high dropout rates among displaced children of school-going age. Despite being aware of this problem, the Andhra Pradesh authorities have yet to address it.

89. Finally, it is reported that the Indian National Commission for Protection of Children's Rights (NCPCR), recognizing schools as a critical element in ensuring the protection of children's rights, has recommended to all parties that schools should be recognized as "zones of peace". This would include non-use of schools for any other than educational purposes, separation of schools from the camps, and introduction of programmes addressing the psychosocial needs of the children delivered within the school environment with appropriate training of teachers.

### **Observations**

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

## **Italy**

### **Communication sent**

91. On **22 December 2008**, the Special Rapporteur sent a communication concerning the Conversion Law No. 169 adopted by the Chamber of Deputies on 30 October 2008 (also known as "Legge Gelmini") which contains urgent provisions allegedly undermining the right to education, as well as Law No. 133 adopted on 6 August 2008.

92. According to the information received, on 30 October 2008, the Chamber of Deputies of the Italian Parliament voted to adopt Law No. 169 entitled "Conversion into law, with amendments, of Decree Law No. 137 of 1 September 2008, containing urgent provisions relating to education and universities" (the Law). This Law was published in the Official Gazette, No. 256 of 31 October 2008, and came into effect the day after its publication. It is alleged that the Law will seriously undermine the right to education, with significant decreases in resources at the primary level, and will also allegedly in particular affect children and adolescents with disabilities, foreign children and Roma children.

93. According to the information received, the Law will seriously undermine the right to education at the primary level, with significant cuts being made in personnel as 87,000 teaching staff and 47,000 auxiliary personnel are reportedly to lose their posts. This would result in a single teacher per class, not being able to deal with and resolve alone the complexity of appropriate education, and difficult situations that arise in the class.

94. Concern has also been expressed about the conditions of school buildings, because it is reported that the Law will undermine the provisions of the extraordinary plan for ensuring the safety of school buildings, contained in Law No. 289/2002 and subsequent amendments, which set aside an amount of no less than 5 per cent of the resources allocated for the programme for strategic infrastructures, as this clause stating that such funding would be guaranteed until the

full completion of the extraordinary plan has been eliminated in the Law. This provision allocated resources for the immediate repairs for safety reasons of at least a hundred buildings in particularly critical conditions, especially in earthquake areas.

95. Furthermore, concerns have been expressed concerning the right to education for children and adolescents with disabilities who allegedly numbered 161,686 in the school year 2007/2008, as the Law has reportedly provided for the stabilization of only 70 per cent of the present number of support teachers for the next three years. It is alleged that the right for each child with a disability to receive adequate support and have access to all of the necessary facilities and opportunities will be undermined and that the Law goes against the objective of inclusive education.

96. It is also reported that the Law will affect the right to education of foreign children, who represented 6.4 per cent of the total number of children in the school year 2007-2008, as the Government has announced its intention to review the system of access to education of foreign students at every level and to establish separate "integration classes" which may contradict the principle of non-discrimination and the right of access to quality education for everyone. In order to ensure appropriate integration of foreign children into the school system it would be allegedly better to have them attend regular classes and provide intensive learning of Italian with specialist teachers and/or with the support of cultural mediators, without placing them in these separate "integration classes".

97. Furthermore, it is also alleged that the Law will affect the right to education of Roma children and adolescents, whether Italian or foreign, as this group of students is particularly vulnerable and presents a high rate of drop-out in the primary and secondary levels and a very low enrolment in universities and institutes of higher education.

98. Concerns have been raised that the Education Bill, as adopted, could be inconsistent with Italy's international obligations, which require State authorities to enforce the right to education rather than impose considerable cuts in budget and resources.

99. Finally, it is also reported that article 16 of Law No. 133 adopted by the Chamber of Deputies on 6 August 2008, allegedly allows public universities through their respective Academic Senates to transform themselves into foundations governed by private laws, which would then become solely responsible for their own respective budget and finances. Concerns have been raised that this article may result in a significant increase in tuition and other related fees for students at universities governed as private foundations and constitute a barrier for access to superior education and thus undermine the right to education.

### **Communication received**

100. By letter dated 2 January 2009, the Government replied to the communication sent on 22 December 2008. From a general point of view, Italy strongly challenges the facts and the conclusions outlined in the letter, as the Italian Government is actively committed to streamlining and improving the overall educational system, considering the increasingly poor learning performances of Italian students, as shown by statistics. Moreover, it is worth recalling that Italy has a longstanding tradition in upholding and promoting the principles of culture and education, as recognized worldwide.

*Identification of the correct legal framework and of its content*

101. Decree Law No.137/08, converted by Law 169 of 2008, provides for a number of measures aimed at improving the quality of the educational system. In particular, article 4 of the Decree provides for the institution of a “single or main teacher” in the primary school. This teaching pattern - which will apply only to first class from 1 September 2009 - will offer an option to households between a 24 and a 27 hours weekly schedule, and even a 30 hours should staff resources so allow. If the “single or main teacher” is not skilled in all subjects, he will be supported by other teachers qualified in foreign languages and in religion. This is a choice widely used in Europe (Great Britain, France and Finland) and it was also successfully adopted by Italy in the past.

102. Moreover, the new legislation confirms the option for families for a full time schedule (40 hours a week) for their children, at least to the extent it is currently provided. Therefore, the additional resources possibly freed by the abolition of “coexistence” (of more teachers), are therefore available for upgrading the educational offer.

103. With reference to the planned measures of staff reduction, this issue is regulated by Law 133/2008 and not by Decree Law No. 137/08, which demands an active containment of expenditure in all sectors of the Public Administration, due to budgetary constraints made more stringent by the current international crisis. However these measures will not affect the quality of education, as they streamline the use of available human resources which would be employed, for instance, to increase the offer of full time (in primary school) and extended time (in secondary school) schedules.

*Possible privatization of Public Universities*

104. Law 133/2008 stipulates that Public Universities may decide to transform themselves into foundations governed by private law. It is a free choice that Universities can make as part of their autonomy. The option is therefore a mere legal tool allowing Universities that so decide, to gather external financial resources more easily (including from the private sector), while enhancing networking at local and international level and with the business sector.

105. However, this provision does not impinge on the institutional tasks which legally bind all Universities or on the engagement of the State to provide financial resources to these Universities which do not opt to change their (current) legal status. It is worth mentioning that, according to the new legislation and in order to warrant the implementation of article 33 of the Italian Constitution, the State retains the power of supervision and control also on the possible new academic foundations.

106. Moreover, it must be pointed out that, based on the new “Guidelines for University” - which have been approved by the Government and will be translated into law in the next months - an increase in the academic fees can be ruled out; on the contrary, a “strong system of financial support through scholarships and other means” will be guaranteed and further developed. It can be useful to underline that other European countries (Portugal, Great Britain) have a far more detailed set of rules in this regard.

*Access to the right to education and universal access to education*

107. Based on the above and on the underlying principles of the Italian system, the adopted legislation confirms the universal access of all children to a quality education provided by a qualified and adequate teaching staff. As a matter of fact, in spite of the expected cutbacks, which however will be largely re-absorbed by retirements, the average student/class ratio will remain at 21 students per class (currently 20.6), well below the European average. Moreover, also the student/teacher ratio is much lower in Italy than in other countries: at the primary and secondary school level, this ratio is respectively 10.6 and 10.7 pupils per teacher, against an average of 16.7 and 13.4 in the OECD area (source: OECD - "Education at a Glance" report - 2007).

*Adequate measures for school buildings*

108. According to the Italian legal framework, competence in terms of school building (including supply of equipment, ordinary and extraordinary maintenance and repairs of over 42 thousand public school buildings, as well as their adaptation and renovation to comply with the rules and the safety standards), and jurisdiction, is shared between various institutional levels, with an important and prevailing role played by local authorities.

109. The Italian Government considers school building and its adaptation to safety rules a priority, above all because of large earthquake zones existing in various regions of the country. To this end, here is an outline of the most recent measures undertaken:

- Implementation of the triennial plan 2007-2009, aimed at upgrading school buildings safety
- Inclusion, in the Framework Program for Strategic Infrastructures worked out by the Ministry for Infrastructures and Transports, of an "Extraordinary plan for the upgrading of school buildings safety, in particular of those located in potential earthquake areas"
- Law 169/2008 (which converted Decree Law 7:37/2008), has made the funding of such measures more structural and stable in the years, providing for the setting aside of an amount of no less than 5 per cent of the resources allocated for the Framework Program for Strategic Infrastructures
- The same Law has also provided for urgent interventions to ensure the safety of some 100 schools located in potential earthquake areas
- Allocation of 480 million Euros, drawn from underutilized funds available from different sectors, to implement infrastructural projects in the school setting, including school building

*Protection of children with disabilities*

110. The legislation in force on the right to education for children with disabilities has not been modified, thus confirming the right to integration, which has always been a distinctive feature of the Italian school policy.

111. Previous provisions regulating this subject (Law No. 244 of 24 December 2007, article 1, paragraph 414) have been confirmed. They provided for the intake of support teachers at a rate equal to 70 per cent of the overall support positions made available for the school year 2006/2007, thus passing from the previous figure of 48,400 to 63,000 regular teachers. The remaining 30 per cent of the available positions has been covered with teachers on temporary staff. The average ratio of one teacher for every two children with disabilities has also been confirmed - the same as in the past - as well as the maximum of 20 pupils-per class, as a rule, in classes with a child carrying disabilities.

*Access to education for foreign children*

112. A distinctive feature of the Italian school is to be open to all and welcoming. The right to education is thoroughly protected. Everyone can enroll in a school, even without a regular residence permit. The National Observatory for the integration of foreign pupils and for intercultural education, established in December 2006, has elaborated a document which constitutes a reference for school integration policies.

113. This document draws its inspiration from four general principles: universalism, common school, centrality of the person and inter-cultural dialogue. In particular, with reference to the principle of “common school”, it states that “the Italian school has tended to include non-Italian pupils in normal school classes from the very first stages of education, thus avoiding putting up separate learning places”.

114. As indicated also in several parliamentary motions, the Government and the Parliament are firmly committed to keeping free access to school, while offering children without a sufficient knowledge of the Italian language the opportunity to acquire a minimum skill that is needed to make headway in their studies. This, however, will not occur through the establishment of ad hoc classes, but through specific teaching modules, in addition to regular school subjects.

115. Therefore, the parliamentary decisions referred to in the document above-mentioned do not undermine the principle of integration, but rather favor its more effective implementation, through the adoption of organizational measures, limited in time and aimed at eliminating the linguistic difficulties that foreign pupils experience at first, when joining the Italian school.

116. In conclusion, the above mentioned provisions aim at favoring foreign children, as an adequate knowledge of the Italian language is a prerequisite for their integration and learning process.

*Access to education for Roma children*

117. About 36,000 Roma children and adolescents in the age-group of compulsory schooling are estimated to live in Italy, only a third of which are enrolled in school. All principles of inclusion in ordinary classes apply to Roma children, as to any foreign child.

118. The real challenge is to have Roma children, both Italian and foreign, who do not follow the compulsory schooling, joining school. The Ministry for Education is actively engaged in the

implementation of a plan, coordinated by the Home Ministry, addressing the situation of nomads from all standpoints (logistic, sanitary, educational, social, etc). The top priority remains the full integration of Roma children and adolescents into ordinary school.

119. Moreover, to address cases where full integration faces overwhelming obstacles due to logistic problems and to Roma culture, not always inclined to schooling, the Government is working out a plan based on the possibility of establishing “open classes” within Roma communities, with the participation of linguistic mediators offered by local institutions. The plan would allow to start a process aimed at progressively overcoming the cultural resistance and, at the same time it would enable teachers and social operators to have a real picture of the situation in terms of numbers and educational needs. This solution should only be a “bridge” towards the progressive inclusion of Roma children and adolescents into common classes, thus avoiding cases of permanent confinement to a ghetto that do not belong to the Italian culture of integration.

### **Observations**

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

### **Iran (Islamic Republic of)**

#### **Communication sent**

121. On **23 September 2008**, the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the human rights of migrants sent a communication concerning Dr. **Mehdi Zakerian**, a scholar of international relations and international law, chair of the *International Studies Association of Iran (ISAI)*, also known by its French name and acronym *Association iranienne des études internationales (AIEI)*, an independent body aimed at promoting teaching, research and debate on international relations.

122. According to the information received, Dr. Zakerian, was arrested on or around 15 August 2008. The exact circumstances of his arrest and the place of detention where he is being held are not known. His family has been permitted to meet him only once, on 6 or 7 September, at Branch 12 of the Revolutionary Court in Tehran under the supervision of court officials. Since then Dr. Zakerian has not been in contact with them. It is unclear whether this meeting was meant as an official courtroom appearance, since Dr. Zakerian has been accused of offences relating to national security including espionage, but has not formally been charged. During the meeting Dr. Zakerian appeared to be weak.

123. It is believed that Dr. Zakerian’s detention might be an attempt to prevent him from travelling to the United States of America to take up a new post at the University of Pennsylvania as he was awaiting his visa when he was detained. Dr. Zakerian used to be an assistant professor at the Islamic Azad University in Tehran until September 2007, when he was dismissed from the post without explanation. He had taught for more than 10 years, holding posts at a number of important Iranian universities, and has written numerous articles.

124. In view of Dr. Zakerian's reported incommunicado detention at an undisclosed place of detention, grave concern is expressed as regards his physical and mental integrity. Further concerns are expressed that his detention might be solely connected to his reportedly peaceful exercise of his right to freedom of opinion and expression, which includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and of his right to freely leave any country, including his own.

### **Observations**

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

## **Japan**

### **Communication sent**

126. On **19 February 2009**, the Special Rapporteur, together with the Special Rapporteur on the human rights of migrants sent a communication regarding Noriko Calderon, a 13 year-old girl child born and raised in Japan, whose rights are alleged to be under serious threat, given an alleged risk of deportation of her parents, Ms. Sarah Calderon and Mr. Alan Calderon, irregular migrants of Filipino origin.

127. According to information received, Noriko Calderon is a 13 year-old girl, born on July 4, 1995 in Kawaguchi, Japan. She currently pursues studies at Warabi Dai-ichi Middle School, in the city of Warabi, Saitama Prefecture, Japan. She has been raised in Japan as an ordinary child would and has developed the social relationships inherent to that in Japan from her birth 13 years ago. She has always lived in Japan, never visited the Philippines, does not speak Tagalog and is a native speaker of Japanese, the only language she knows.

128. Her father, Mr. Alan Calderon came to Japan as an irregular migrant in 1992. Her mother, Ms. Sarah Calderon, also entered and remained irregularly in Japan from 1993 until July 13, 2006 when she was detained by Immigration authorities who issued a deportation order for the couple in November 2006. Immigration authorities have extended on a number of occasions a temporary permission for the family to stay in Japanese territory and the date of February 27, 2009 has been given as the last possible extension for the parents, or for the whole family, to depart from Japan. Immigration authorities have informed the parents that it may be possible to issue a special permission for the residence of the girl only.

### **Communication received**

129. By letter dated 18 March 2009, the Government replied to the communication sent on 19 February 2009 and acknowledged that Noriko Calderon is a 13 year-old girl child, born on July 4, 1995 in Kawaguchi, Japan. She currently pursues studies at Warabi Dai-ichi Middle School, in the city of Warabi, Saitama Prefecture, Japan. With regard to the allegation that she has been raised in Japan as an ordinary child would and has developed the social relationships inherent to that in Japan from her birth 13 years ago, the Government also recognized the following part, "she has been raised in Japan from her birth 13 years ago" to be true.

130. Noriko Calderon parents entered Japan illegally using the passports of other persons, and she herself has been overstaying without acquisition of the status of residence stipulated in the Immigration Control and Refugee Recognition Act (hereinafter referred to as the “Immigration Control Act”). Both she and her parents have been staying illegally in Japan.

131. With regard to the following part, “she has always lived in Japan, never visited the Philippines, does not speak Tagalog and is a native speaker of Japanese, the only language she knows”, the Government recognizes the following part, “she has always lived in Japan, never visited the Philippines” to be true. She has been educated in Japanese and understands Japanese, but it is impossible to confirm whether or not she speaks Tagalog.

132. Regarding the part, “her father Mr. Alan Calderon came to Japan as an irregular migrant in 1992”, he illegally entered Japan on May 12, 1993. As for her mother, she also entered and remained irregularly in Japan from 1993 until July 13, 2006 when she was detained by Immigration authorities who issued a deportation order for the couple in November 2006. The Government further confirms that she illegally entered Japan on April 1, 1992 and she was arrested by the police on July 13, 2006 for violation of the Immigration Control Act. On September 28 of the same year, after being rendered a sentence by the Saitama District Court of two years and six months imprisonment suspended for four years, she was released by the court but detained by the Immigration Bureau. The Immigration Bureau proceeded with deportation procedures in accordance with the stipulations of the Immigration Control Act and issued a deportation order on November 20, 2006.

133. Regarding the temporary permission for the family to stay in Japanese territory, it was given to the three family members after the deportation order was issued, to allow them to prepare for their departure. The permission was extended 22 times and was valid until March 9, 2009 (as of March 5, 2009). Deportation procedures stipulate that the suspect should be taken into custody: The permission of provisional release is to provisionally release from custody because of reasons such as health problems or preparation for departure, therefore it is not the permission for legally staying in Japan.

134. The Government further informs that although the Immigration Bureau issued all three family members with deportation orders in 2006 under which they are to be deported back to their country, the Immigration Bureau has told them that if in accordance with the free will of all three family members, Noriko Calderon wishes to continue her studies under an appropriate custodian such as relatives other than her parents, they will consider granting special permission to stay to Noriko Calderon through favorable reexamination of the results of the decision. (Note: three close relatives, namely an older sister of the father, a younger brother and a younger sister of the mother are currently staying in Japan with a status of residence such as “permanent residence”.)

135. The Government also informed that in 2006, deportation procedures were carried out for the family because of their illegal entry and illegal stay, and on November 20th of the same year, deportation orders were issued for them. The Japanese deportation procedures start with an investigation into the violation conducted by an immigration control officer and has three procedural stages which are: examination by an immigration inspector, a hearing by a special inquiry officer and the decision of the Minister of Justice. In the procedures, preliminary procedures such as notification, a hearing and introduction of exculpatory evidence are



stipulated. Therefore, there are procedures in place to guarantee the rights of foreign nationals who are subject to deportation. Further, the authority over the procedures is given to different organs; (1) investigation into violations and enforcement of detention orders and deportation orders are conducted by immigration control officers, (2) the authority over violation examination is given to immigration inspectors, (3) the authority over the hearing is given to special inquiry officers, (4) the authority over the decision of objection and granting special permission to stay to the Minister of Justice and (5) the authority over issuing detention orders and deportation orders to supervising immigration inspectors.

136. Through this process, due consideration is given to ensuring that a checking mechanism is in place between the organs for protection of foreign nationals' rights.

137. Regarding the case of Noriko Calderon's family, the determination of the immigration inspector and the finding of the special inquiry officer were provided through a detailed hearing of their circumstances and necessary investigation into their situation in the deportation procedures. They also filed an objection with the Minister of Justice requesting to stay in Japan, however they were not granted special permission to stay and their deportation orders were issued.

138. The family filed an appeal with the Court for withdrawal of the measure of issuing deportation orders etc. by objecting to the measure. The Tokyo District Court and the Tokyo High Court ruled in favor of the State because they recognized that there was no illegality in the country's decision and measures. Their appeal and request for their appeal to be accepted, which had been filed with the Supreme Court, were dismissed and the said judgment was finalized in September 2008.

139. Concerning the right to education of the child, the Government informed that in cases where foreigners wish to enroll their children in public schools for compulsory schooling, those public schools accept foreign children free-of-charge just as they do Japanese schoolchildren. Thus, Noriko Calderon attends public junior high school free-of-charge now.

140. The Government further informed that Japanese deportation procedures stipulate that the suspect should be taken into custody and school children are no exception to this stipulation. However, the Immigration Bureau generally tries to avoid detention, by utilizing the provisional release on the same day as the commencement of detention when the Immigration Bureau is to enforce a detention order or deportation order for a school child. The Immigration Bureau gives due consideration so that the deportation procedures do not become an obstacle to their school attendance by allowing the parents to act as the child's proxy when children must appear for provisional release or in the investigation and examination into violation. In the said case, deportation procedures were taken without Noriko Calderon's detention since the start of the procedures in August 2006, by conducting an investigation into the violation while allowing her to stay in her house with her parents, and permitting provisional release after issuing a detention order and deportation order.

141. Finally, the Government mentioned that with regards to the inquiry concerning immigration control for a foreign national, a child who is born from foreign national parents remains under the Immigration Control Act a foreign national because the basic concept of the Japanese Nationality Act is one's blood lineage (*jus sanguinis*). In the case of a child born from

foreign national parents in Japan, regardless of whether they are staying legally or illegally in Japan, the child can apply for acquisition of a status of residence to the Minister of Justice within 30 days of the child's date of birth if the foreign national child wishes to stay in Japan for over 60 days in accordance with Article 22-2 of the Immigration Control Act. If one parent is staying legally, in accordance with Article 22-2 of the Immigration Control Act, the Minister of Justice will decide the child's status of residence depending on the parents' status of residence and will grant a stay. If the foreign national parents are staying illegally, in accordance with Article 50 of the Immigration Control Act, the Minister of Justice will decide whether or not to grant special permission to stay, comprehensively taking into consideration the said foreign national's personal circumstances such as the reason he or she wishes to stay in Japan, the life situation and family situation as well as domestic and international situation.

142. Children living in Japan are subject of the Child Welfare Act regardless of their nationality. In addition, even if parents are staying Japan illegally under the Immigration Control Law, the child living in Japan will experience no difference in term of enforcement of the Child Welfare Act.

### **Observations**

143. The Special Rapporteur would like to thank the Government for its extensive and informative reply.

### **Communication sent**

144. On **6 March 2009**, the Special Rapporteur, together with the Special Rapporteur on the human rights of migrants sent a follow up communication on the case brought to the attention of the Government on 19 February 2009 with new information regarding Noriko Calderon, a 13 year-old girl born and raised in Japan, whose rights are alleged to be under serious threat, given the immigration situation of irregularity of her parents for more than 14 years.

145. According to information received on February 27, 2009, upon reporting to the Tokyo Immigration Bureau at 9:00 a.m., the parents of Noriko Calderon were allegedly informed that their provisional release is extended until 9 March 2009 when they would have to make a decision in relation to the two options originally offered to the family which are: either for all the family members to leave Japan or, for the parents leave the Japanese territory, leaving Noriko Calderon behind, otherwise they will be detained indefinitely. Noriko Calderon has stated publicly that she wishes to remain in Japan.

### **Communication received**

146. By letter dated 9 April 2009, the Government informed that on 27 February, 2009, upon reporting to the Tokyo Immigration Bureau at 9:00 a.m., the parents of Noriko Calderon had been informed that their provisional release was extended until 9 March 2009. The Immigration Bureau issued all three family members with deportation orders in 2006 and they are to be deported back to their country. However the Immigration Bureau has told them that if, in accordance with the free will of all three family members, Noriko Calderon wishes to continue her studies under an appropriate custodian such as relatives other than her parents; the Immigration Bureau will consider granting special permission to stay to through favourable

re-examination of the results of the decision. In this regard, the Immigration Bureau has told the parents that they will not be granted further provisional release in the event they do not make a decision by 9 March. There are no stipulations concerning the time limit for detention under a deportation order, however a person who has been issued with a deportation order shall be deported promptly in accordance with the Immigration Control Act. Thus, they will not be “detained indefinitely”.

147. The Government further informed that there are sufficient opportunities for Noriko Calderon to express her views freely in the deportation procedures and judicial proceedings. In fact, both a handwritten statement and a DVD in which she herself appears expressing her views were submitted, and moreover her opinion was heard from her parents who are her statutory agents. Furthermore, documents including her written opinion were submitted by her lawyer who is acting as her representative.

148. With regard to the three family members, the Minister of Justice made its decision with due consideration of the best interest of the daughter Noriko Calderon, and then finally issued the deportation orders. The decision and action on the part of the state were deemed legal by the national judiciary. At the same time, although all three family members were to be deported, the Immigration Bureau also told them that if, in accordance with the free will of all three family members, they wished for their daughter to continue her studies while under the care of an appropriate custodian, the Immigration Bureau would consider granting special permission for her to stay. Consideration is also given with regard to the case for their daughter in that, on the condition that she was granted special permission to stay, the Bureau also told her parents that it would consider allowing the parents to re-enter Japanese territory after a set period of time following their deportation if they wished to see their daughter.

149. Thus, the Government of Japan considers that this case does not include any discrimination as outlined in paragraph 2 of article 2 of the Convention of the Rights of the Child. The Government of Japan has also been providing social security support to the family in light of article 23 of the International Covenant on Civil and Political Rights and article 10 of the International Covenant on Economic, Social and Cultural Rights, which stipulate that the right to enjoy the widest possible protection and assistance be accorded to the family, which is the natural and fundamental unit of society.

150. In addition, as mentioned above, although a deportation order was issued for Noriko Calderon herself, the Immigration Bureau told the family that if, in accordance with the free will of all three family members, they wished for their daughter to continue her studies while under the care of an appropriate custodian, it would consider granting special permission to Noriko Calderon to stay, taking into account the fact that she was born in Japan and finished public elementary school there. Thus, careful consideration was paid to the family environment for the full and harmonious development of the child’s personality. Such measures are consistent with paragraph 21 of the Vienna Declaration and Programme of Action, as well as give due consideration to the right of education of Noriko Calderon, who was born and raised in Japan.

151. In any case, these measures were not adopted to urge the family to separate and leave the daughter behind in Japan, or for all the family members to be forced to leave the Japanese territory. The Government of Japan also implemented a series of measures with due consideration of the best interest of Noriko Calderon, including her right of education.

152. The Government further informed that according to the principle of customary international law, whether foreign persons are accepted in another state or meet the criteria for being accepted in a non-discriminatory manner is left entirely to the discretion of the legislative policies of each state. The International Covenant on Civil and Political Rights takes this principle as its premise and does not change the fundamental basis. It is owing to their illegal stay that deportation procedures for the three Calderon family members are being carried out, and the decision of whether or not to grant them special permission to stay was made with overall consideration being given to a number of factors including the necessity for humanitarian consideration.

153. The Government finally informed that on 13 March 2009, the family reported their decision that Noriko Calderon continue her studies under the custody and care of her relatives who hold residence status, although her parents would go back to their country by 13 April. Accordingly, on 16 March, the Minister of Justice granted Noriko Calderon special permission to stay for one year with the purpose of her studies, after confirming various conditions such as the will of her relatives. Noriko Calderon now stays in Japan as a legal resident and will be allowed extension of the period of stay.

### **Observations**

154. The Special Rapporteur would like to thank the Government for its extensive and informative reply.

## **Malaysia**

### **Communication sent**

155. On **20 November 2008**, the Special Rapporteur together with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on violence against women, its causes and consequences sent a communication regarding sexual abuses against girls from the Penan Community in the Baram area, Sarawak.

156. According to the information received, since the arrival in the 1990s of logging companies in areas inhabited by the Penan community, workers from Malaysian companies, in particular Interhill and Samling, have been reported to harass and rape Penan women and girls. While informed of other forms of abuses against Penan women, they would like to draw the Government's attention to abuses against Penan girls on their way to school.

157. Before logging started in Penan settlements, Penan children went to school on foot or by boat. Today, due to logging activities, many streams and rivers are no longer navigable as they were dried up or filled to create loading roads for logging companies. On foot it can now take children up to a week to walk from their settlements to their school in Long Lama; while travelling with the vehicles of logging companies, the journey only takes three to six hours. As private transport is not affordable to Penan families, the Penans have thus become dependent on company vehicles for accessing areas outside their settlements, including schools.

158. Penan girls hitching rides to school and back are susceptible to abuses during their journey by logging companies' workers. In some cases, they may have to take more than one vehicle

before they can reach home, or in other cases they may have to wait at the side of logging roads or walk for hours to another village to get a ride with another company vehicle, thereby increasing their vulnerability. There have also been cases of female students being driven to logging camps and raped when using transportation provided by the companies. In other cases, the transport operated by company vehicles were arranged in such a way that the girls had to stay overnight at a logging camp, where they were subject to abuses by workers.

159. In recent years, at least a dozen cases of sexual abuses have been reported to the police, although it is alleged that most of them have not resulted in convictions, thereby undermining trust in the police. In addition, it is said that the majority of cases remain unreported.

### **Observations**

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

## **Pakistan**

### **Communication sent**

161. On **7 July 2008**, the Special Rapporteur, together with the Special Rapporteur on freedom of religion or belief sent a communication concerning the suspension of the following 23 Ahmadi students at Punjab Medical College in Faisalabad: Ms. Mariam Mubarik, Ms. Suna Nisar, Ms. Nabila Qudsia, Ms. Rabia Shafique, Ms. Hamaira Sadid', Ms. Mansooraa Samar, Ms. Kanwal Rohman Qaisrani, Ms. Bina Munawar Bajwa, Ms. Rabina Aslam, Ms. Shamamu Tul Amber, Ms. Zabda Nasir, Ms. Nosheen Zufar, Ms. Hiba Tul Qadoor, Ms. Hiba Tul Hameed, Ms. Mansooraa Ismail, Mr. Anas, Mr. Haroon, Mr. Hisan, Mr. Hussan, Mr. Zaka Ulluh, Mr. Dawood, Mr. Zeeshan and Mr. Kashil.

162. According to the information received, on 6 June 2008, the above-mentioned 23 Ahmadi students were expelled ("rusticated") from Punjab Medical College in Faisalabad allegedly due to a "religious dispute and hate material distribution". The expulsion followed a report from a disciplinary committee of the college after rumors that Ahmadi students were preaching their religion in the college. On the night of 4 June 2008, a local cleric, Mr. Allama Junaid, allegedly gave a sermon in the college mosque instigating students against Ahmadis, following which four Ahmadi students were brought from the hostel and taken to a room where they were insulted and badly mistreated by fellow students. Subsequently, 15 Ahmadi students were told to evacuate the hostel in the middle of the night.

163. On 5 June 2008, a mob surrounded the Principal's office demanding that all Ahmadi students be expelled from the college. The Principal convened a disciplinary committee, which reportedly did not allow the Ahmadi students to provide any clarifications. On 6 June 2008, the Principal issued a notification for the rustication of the above-mentioned 23 Ahmadi students from the college, which was converted on 10 June 2008, by the college administration, into a ten day suspension.

164. However, the above-mentioned 23 Ahmadi students have not been permitted to return to the Punjab Medical College on 21 June 2008 and remain suspended. Furthermore, a college

committee asked them to provide written statements on their religion and warned them of being legally responsible for what they write. Punjab Medical College, an institution of the Government of Punjab, reportedly requires applicants to declare themselves either Muslim or Non-Muslim in its admission form. Those Ahmadi students who in accordance with their belief had indicated in the admission forms that they were Muslims may face legal problems since section 298C of the Pakistan Penal Code prohibits Ahmadis to refer to their faith as Islam.

### **Communication received**

165. By letter dated 8 July 2008, the Government indicated that the communication sent on 7 July 2008 had been sent to Islamabad for serious consideration and an early response, and that the Government would provide a reply as soon as a response is received.

### **Observations**

166. The Special Rapporteur looks forward receiving a reply from the Government regarding the allegations of the above-mentioned communication.

## **Philippines**

### **Communication sent**

167. On **9 June 2008**, the Special Rapporteur, together with the Special Rapporteur on the right to food, and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people sent a communication concerning allegations about the impact of the military operations taking place in the regions of Caraga and Davao in Mindanao, on the right to food, adequate housing, education and other human rights of members of the Lumad indigenous communities. These operations have taken place from November 2007 up to December 2007 in Caraga and from January 2008 up to the present in Davao.

168. According to the information received, in the context of the military activities against the New People's Army (NPA) in the province of Surigao del Sur, Caraga Region, around 500 military personnel from the 58th Infantry Battalion have been stationed since 4 November 2007 in the area where the Lumad indigenous communities live. It is alleged that the Lumad indigenous peoples have been accused of being NPA supporters by the army.

169. It appears that in April and May 2005, counter-insurgency activities conducted by the Philippine Army had resulted in the forced displacement of 11 Lumad communities, comprising some 1200 individuals, while five other communities were held under food and economic blockades. Civilians were also allegedly physically assaulted and interrogated as to the whereabouts of members of the NPA, and forest areas and crops were strafed and bombarded.

170. It is reported that the Philippine Army stationed in civilian areas has used civilians as human shields against attacks. Moreover, they have allegedly transformed schools and other buildings into military barracks, thus disrupting schooling. It is also reported that children have been interrogated on their family members' possible involvement in the NPA, that community members were denied access to their fields that families were forced to seek shelter in temporary evacuation centres, and that individuals were forcibly enrolled as military guides.

171. According to the information received, on 5 and 10 November 2007, groups of soldiers arrived at Simowao community where they requested to use the Simowao Tribal School as sleeping accommodation. On 11 November 2007, a group of around 100 soldiers reportedly set up a camp close to the homes of the residents of the Emerald community where they converted a sari-sari store into a military hub. It is alleged that some of the soldiers also used the houses of local residents to sleep, while at Manluy-a, some 100 soldiers stayed in the local school and in the homes of local residents, with as many as four to ten military personnel stationed in each house. On 15 November 2007, a number of soldiers transformed both the cottage and the adjoining Lumad Community School into a military camp in the Lumad community of Kabulahan, San Agustin. As a consequence, classes have been disrupted.

172. It is reported that on 13 November 2007, the military stationed at Emerald community warned local residents, school children and teachers at the nearby Simowao Tribal School, that in the event that the army was attacked, they would harm civilians whom they accused of supporting the NPA.

173. On 4 November 2007, soldiers allegedly questioned two teachers at the Manluy-a Tribal Filipino Community School and members residing close to the school. On 5 November 2007, children aged between seven and ten arriving at the Simowao Tribal School were reportedly interrogated. The soldiers allegedly questioned the teachers at the same school on several occasions. It is also reported that military personnel stationed in the community members' houses have frequently asked children about their involvement in NPA activities and if they had elder brothers or sisters who are members of the NPA.

174. The reports received also claim that in areas under military occupation community members have only been able to eat one meal a day due to restrictions imposed by the army on community members' access to their crops. It appears that checkpoints have been established at several locations, including around Simowao and Emerald. It was reported that on 17 November 2007 the military called a community assembly in Kubuluhan, San Agustin, where community members were ordered not to go to their farmlands and refused their requests to leave their area of residence.

175. On 17 November 2007, 62 families from communities living in the remote areas of Barangay Buhisan reportedly escaped the military operations and left behind livestock and belongings in an attempt to seek refuge in makeshift evacuation centres. In addition, on 17 November 2007 more than 40 households from Magkahunao, municipality of San Agustin, reportedly fled to Janipaan Elementary School fearing military attacks. Also, on 21 November more than one thousand Lumad indigenous people from nine other communities and settlers were allegedly allowed to leave, in order to try and reach the evacuation centre of Diatagon, Lianga, where they joined some 48 families who had fled the hinterland communities of San Agustin on 17 November 2007. On 25 November 2007, food stocks in the evacuation centre of Diatagon were reported increasingly reduced and at that time, there remained two sacks of rice for some 2000 evacuees. It appears that at that time in the centre there were also 12 pregnant women needing special care and 30 babies under the age of one. There was also allegedly a shortage of sleeping mats, blankets, milk and medicines.

176. According to the information received, on 12 November 2007, a 19 year old boy from San Isidro, municipality of Lianga, was arrested by the military while harvesting. He was then

forced to serve as a guide for four days until he was freed after his family petitioned the battalion's commander. It is reported that youths who were not attending school may have also been recruited to support military activities. Furthermore it is alleged that classes in seven primary Lumad literacy schools and in the Lumad High School in barangay Diatagon, municipality of Lianga, and in the municipality of San Agustin became irregular in attendance and ran a risk of being suspended because of ongoing military operations.

177. Following established practice, the government declared a unilateral ceasefire from 16 December until 5 January 2008 during the Christmas period. Reports claim that the 2,883 evacuees from Surigao del Sur deemed it safe to return back to their respective communities on 20 December 2007. It is reported that the evacuees found their houses, the classrooms, the teachers' cottages, cooperative and private stores ransacked. They also found their personal belongings damaged. The affected communities also faced food shortages upon their return since they were not able to harvest anything because of their farmlands being left unattended during evacuation.

178. Concern has also been expressed about the indigenous people's areas being turned into conflict zones as information was received according to which at least 410 Lumad families or 2,500 people from several towns in the province of Davao Oriental, Davao Region, were allegedly forced to leave their homes by the beginning of February 2008 following intensified government operations against the New People's Army, which involved aerial bombings and shellings. Further forced evacuations of Lumad families in at least 17 villages in Talaingod, Davao del Norte, are reported due to the massive military operations being conducted by the 73rd Infantry Battalion since January 2008.

179. The reports received further assert that on 6 April 2008 combined forces from the 28th, 30th, 72nd, 67th Infantry Battalions, Scout Ranger Regiment and Special Forces conducted military operations in the Lumad-populated barangays of Manurigao, municipality of New Bataan, and barangay Ngan, municipality of Compostela, in the province of Compostela Valley. Some soldiers allegedly started encamping in one primary school in Barangay Ngan on 6 April 2008. This subsequently led to the disruption of the educational activities of the children.

180. On 8 April 2008, 40 families - 240 individuals, comprising 158 women and children - from Barangay Manurigao were reportedly evacuated from their homes after the military conducted a meeting during which the families were prohibited to go to their farms and were told the road from Barangay Manurigao to New Bataan would be only open from 7 a.m. to 3 p.m. On 6 and 13 April 2008, another 64 families - 332 individuals, comprising 266 women and children - left their homes following the ongoing massive military operations.

181. Additionally, it was alleged that on 12 April 2008 some soldiers encamped in the Living Word of God chapel in Barangay Ngan until 18 April 2008, thus disrupting the religious activities of the community.

182. The Davao and Caraga regions have been reportedly declared as the country's primary source of timber by the Government. The Davao region is reportedly the region's mining hub because of its abundance in mineral deposits such as nickel, chromite, gold, silver and copper as well as silica, magnesite and dimension stones. It was reported that within the militarized areas, the mining and logging ventures are threatened by growing opposition from the local indigenous



and farming communities who want to protect their lands from large-scale mining and other development projects. Reports thus claimed that aside from counter-insurgency operations, military troop deployment in these regions is aimed at securing the foreign-funded large-scale mining operations and logging investments.

### **Communications received**

183. By letter dated 3 July 2008, the Government informed that the same allegation was referred by the World Organization Against Torture (OMCT) sometime in December 2007. In February 2008, the Case Monitoring Division (CMD) of the Directorate for Investigation management Division (DIMD) of the Philippine National Police reported that there were no formal complaints lodged by the so-called victims before the local police during the period mentioned in the report. As a standing policy, every Police Regional Office (PRO) is mandated to immediately submit an investigation report of every incident or crime transpiring within its area of responsibility to CMD, DIDM.

184. The Government further informed that concerned authorities had been asked for an update on the said issue and that any information in this regard will be forwarded when received.

### **Observations**

185. The Special Rapporteur looks forward receiving an updated reply from the Government regarding the allegations of the above-mentioned communication.

## **Saudi Arabia**

### **Communication sent**

186. On **1 April 2008**, the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Rapporteur on the human rights of migrants sent a communication regarding **Mahmoud Badr Hozbor**, born in Al-Ghoutah al-Sharquia in Syria and resident of Sekaka (Al-Jouf).

187. According to the allegations received, on 3 July 2003, he was arrested by the security services (Al-Mabahit al-Aama) when he was on his way to Syria together with his wife and four children. He was ordered to stop his car, forced to get out, was beaten and taken to an unknown place. He was held in solitary confinement for several months. During this period, Mr. Hozbor was repeatedly beaten on different parts of his body, suspended from his wrists, deprived of sleep and threatened with being killed.

188. For six months after his arrest, in spite of many attempts to find out from the Saudi authorities, his family had no information about his whereabouts. They later learned that he was held at the prison of Al-Hayr, not far from Riyadh.

189. Mr. Hozbor was taken out of his cell in the middle of the night and transferred to an office where several persons were present for what appeared to be a trial. One of them, to whom he

mentioned that he had been ill-treated, told him to shut up and said that he would merit hanging. This person, presumably the judge, sentenced him to 18 months' imprisonment. After sentencing, he was transferred to the detention centre in Al-Jouf.

190. No one has been able to visit Mr. Hozbor. He has not had access to any lawyer. Despite the fact that his prison term ended on 3 January 2005, Mr. Hozbor has not been released. It is reported that he was again transferred to another unknown location. It is also reported that since Mr. Hozbor's arrest, his four children have not been allowed to attend school, and the family has been deprived of access to certain basic services.

### **Communications received**

191. On 30 January 2009, the Government replied to the communication sent on 1 April 2008 and indicated that, according to the competent authorities in the Kingdom of Saudi Arabia, the above-mentioned person was detained on a security-related charge which necessitated his remand in custody for purposes of investigation in order to determine the legal action to be taken against him. Throughout the period of his detention he has been treated in accordance with the Kingdom's judicial regulations and the international standards for a fair trial.

### **Observations**

192. The Special Rapporteur would like to thank the Government for its reply.

## **Slovakia**

### **Communication sent**

193. On **27 May 2008**, the Special Rapporteur, together with the Independent Expert on Minority Issues sent a communication concerning the education of Roma children in Slovakia and issues relating to the closing down of the Lucenec high school, reportedly a high school for the Roma community.

194. According to the information received, on 11 April 2008, the assembly of the Banska Bystrica self-governing region, central Slovakia, approved the closing down of the high school for low-income students, seated in Lucenec, reportedly the country's only high school for Roma, also including dormitories for students coming from other regions. Reportedly this high-school was established four years ago as a pilot project aiming to enhance the education needs of the Roma community in Slovakia. The high school's operation was financed from the European Social Fund for the first three years. Its operation is to end due to the alleged lack of money and shortcomings in local teaching methods.

195. The regional Governor of Banska Bystrica allegedly said in a television interview that "the school has only a few pupils, therefore it receives little money," and that extra subsidies would mean discrimination against other schools. The regional assembly reportedly decided that the Governor should ask the Central Education Ministry to abolish the school in June 2008. Until then, the region would negotiate with the Central Government on the possible preservation of the school under certain conditions. If the negotiations were to be successful, the assembly could revoke its decision.

196. It is further reported that the planned closure of the school has been criticized by Deputy Prime Minister Dusan Caplovic, who allotted the budget of 6 million crowns to it last year.

### **Communication received**

197. By letter dated 25 July 2008, the Government replied to the communication sent on 27 May 2008 and the following information concerning the Lucenec Grammar School and the evaluation of its activities and projects.

198. With effect from 1 September 2004, the Grammar School, Gemersk'a cesta 1, 984 01 Lucenec was included in a network of secondary schools of the Ministry of Education of the Slovak Republic as the Grammar School, Sokolsk'a 107, 960 01 Zvolen, an eight-year grammar school specialised in IT science and foreign languages (first change of the address to Môt'ovská cesta 5, Zvolen - by a decision of the Education Ministry of 2005; second change to the current address - by a decision of the Education Ministry of 2007.)

199. The inclusion to the network was requested by the Office of the Banská Bystrica Self-Governing Region (BBSK Office). Pursuant to Act No. 596/2003 of 5 November 2003 on state administration in education system and school self-administration and amendments to certain acts, as amended, the founding competence of a self-governing region within the transferred execution of the state administration in the education sector covers safeguarding an educational and training process in terms of funds, personnel, material and premises, operation of schools and resolving emergencies at such schools.

200. The Education Ministry school facility network also includes dormitory, school canteen and school kitchen.

201. The Government provided a breakdown on enrolment of the number of students for the 2007/2008 school year as at 1 April 2008 to be as follows:

1st grade:	5 students
2nd grade:	10 students
3rd grade:	9 students
4th grade:	19 students
Total:	43 students

202. Pursuant to § 17(1)(a) of Act No. 596/2003 Coll. on state administration in education system and school self-administration and amendments to certain acts, as amended, the Education and Human Resources Department of the BBSK Office has submitted a proposal to the BBSK Council to exclude the Grammar School, Gemerská cesta 1, 984 01 Lucenec from the network of schools and school facilities of the Slovak Republic with effect as of 30 June 2008. The proposal is grounded on long-term grave shortcomings in the quality of education and training activities and financial management, and a continuous decline in the number of students.

203. By its resolution No. 408/2008 of 10 April 2008, the BBSK Council approved the exclusion of the Grammar School, including its facilities - dormitory, school canteen and school kitchen - from the network, and requested the BBSK chairman to submit a respective written proposal to that effect in June.

204. Since then, various possibilities have been discussed, including at minister meetings held on 17 April 2008, 20 May 2008, 3 June 2008 and 19 June 2008, as well as at a working meeting of the Education Ministry, BBSK, the Banská Bystrica Regional School Office (KSIJ BB) and the Grammar School on 27 May 2008.

205. The Education Ministry has registered the proposal by the Grammar School founder to exclude this school from the network and later in July 2008 decided to exclude Lucenec Grammar school from the network of schools and school facilities. Also, it saw to it that the Lucenec Grammar school students were placed in other elementary or secondary schools. All students now attend appropriate schools. To secure appropriate education in Roma language in the region, a new eight-year grammar school was established in Kremnica and the Ministry of Education decided in July 2008 to include the Private Eight-Year Grammar School in Kremnica, along with the private dormitory in Kremnica, in the network of schools and school facilities. The first year will open in the school year 2008/2009, for students who have so far attended the private elementary school in Kremnica and for Roma students from other elementary schools in Slovakia. The director of this school in Kremnica is Mr. Ján Hero, who is also a vice-chairman of the Council of Europe Committee of Experts on Roma and Travelers MG-S-ROM.

206. The Government also provided additional detailed information regarding funding, interim inspection report and projects from the Ministry of Education to the Lucenec grammar School funded with the assistance of the European Social Fund.

### **Observations**

207. The Special Rapporteur would like to thank the Government for its extensive and informative reply.

## **Uganda**

### **Communication sent**

208. On **16 May 2008**, the Special Rapporteur sent a communication concerning the Education Bill that has been adopted by Uganda's Parliament, which includes the provision of criminal sanctions against parents for failing to enroll their children in primary school.

209. According to the information received, on 14 May 2008, Uganda's Parliament apparently approved the Education Bill, after a third reading. The Act is now pending transmission to the President for assent. This Bill - as passed in Parliament - includes the provision on criminal sanctions for failure to enroll children in primary education. This Education Bill, was originally submitted by the Executive in 2007, with the objective of giving legislative effect to the Government's education policies, including a policy of ensuring universal primary education. The Bill as submitted by the Education Ministry to Parliament in 2007 and as adopted by Parliament, retains certain costs to be borne by parents/children in primary education. As an

example, Section 3(2)(b) allows the Education Minister to issue statutory instruments regarding Universal Primary Education (UPE), including on “school charges”; while an amended provision requires parents to participate in “community support” to schools, and cover indirect costs such as school children’s clothing, feeding, and transport. The Bill’s proponents rely largely on the Ugandan Constitution, which provides (section 34.2) that “A child is entitled to basic education which shall be the responsibility of the State and the parents of the child”.

210. It is also reported that the Parliament’s Social Services Committee (with jurisdiction over education issues) has inserted a new provision; imposing criminal sanctions against parents/guardians who fail to enroll children for UPE (penalties include warnings, community service, a fine, or imprisonment). Its proponents (in Parliament) argue this would make UPE compulsory. Allegedly, part of the background / motivation for the Bill is that although Uganda witnessed a substantial increase in UPE enrollment when “free” education was announced 10 years ago, drop-out rates (and questions about the quality of UPE education) have increased in recent years. The Bill is therefore seeking ways to keep children enrolled in school.

211. Concerns have been raised that the Education Bill, as adopted, could be inconsistent with Uganda’s international obligations, which require States authorities to enforce the right to education through positive incentives and not through punitive measures of a criminal nature. Concerns are indeed expressed that the Bill would criminalize parents/guardians who fail to enroll children for Universal Primary Education but would not address appropriately the broader issue of universal access to primary education.

## **Observations**

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

## **Zimbabwe**

### **Communication sent**

213. On **27 October 2008**, the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a communication regarding demonstrations organised by the *Zimbabwe National Students Union (ZINASU)* and *Women of Zimbabwe Arise (WOZA)*.

214. Previous communications had been sent by several mandate-holders regarding ZINASU on 15 May 2006, 19 February 2007, 20 March 2007 and 20 July 2007. Responses from Government were received on 21 May 2004, 5 August 2004, and 12 October 2007. Several communications had also been sent regarding WOZA.

215. According to information received, on 14 October 2008, at approximately 2.15 p.m., over 500 demonstrators gathered outside August House to present a petition to the Government of Zimbabwe in defence of their right to education. The petition reportedly addressed sanitation problems in colleges, uninhabitable student residences, educational materials, access to

education and quality of education, academic freedom and institutional autonomy, and the closure of schools in Zimbabwe. The demonstrations included a reportedly peaceful march which was disrupted four times by armed riot police from the Zimbabwe Republic Police (ZRP). The President of the ZINASU, Mr. Clever Bere; the Secretary General, Mr. Lovemore Chinoputsa; the Legal and Social Affairs Secretary, Mr. Courage Ngwarai; a General Councillor, Ms. Edwina Burira; and a Youth Forum member, Mr. Tawanda Mutema, were all arrested. Some demonstrators were also hospitalized because of police violence. The Gender and Human Rights Secretary, Ms. Privilege Mutanga was assaulted, sustaining head injuries and a swollen arm. Mr. Obert Masaraura, a General Councillor from Midlands State University, sustained serious head injuries.

216. On 16 October 2008, another peaceful demonstration was organized by WOZA to call for food to be provided for all Zimbabweans. Police reportedly used force against demonstrators, including the Co-leader of WOZA, Ms. Magodonga Mahlangu, breaking one woman's finger with batons and causing bruises to another two women. Nine arrests were made in total. Seven protesters, who had been arrested before the demonstrations began, were released on the same day without charge after the intervention of a lawyer. However, Ms. Jenni Williams, the National Coordinator of WOZA, and Ms. Magodonga Mahlangu were detained in Bulawayo Central police station overnight and were moved to a remand prison on 17 October 2008. They were remanded in custody until their bail hearing on 21 October 2008. Neither of the women was present for the bail hearing because, according to the State, there was no transport available to take them there. They were charged with "disturbing the peace, security or order of the public" under Section 371(a) of the Criminal Law (Codification and Reform) Act. They are reportedly being held at Bulawayo Remand Prison. It is unclear whether they have had access to a lawyer.

217. Serious concern was expressed that the action taken against the demonstrators mentioned above may be directly related to their legitimate activities in the defence of human rights, in particular the right to education. Further concern is expressed for the physical and psychological integrity of Ms. Jenni Williams and Ms. Magodonga Mahlangu, as well as both groups of demonstrators. It was feared that the described incidents form part of an ongoing pattern of harassments against demonstrators petitioning to defend human rights in Zimbabwe.

### **Communication received**

218. By letter dated 13 May 2008, the Government replied to the communication sent on 26 February 2008 ( A/HRC/8/10/Add.1, pars.117-121) by the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on violence against women, its causes and consequences and Special Representative of the Secretary-General on the situation of human rights defenders.

219. The Government seeks to put on record the correct facts pertaining to allegation of harassment, assault and human rights abuses of members of the Progressive Teachers Union of Zimbabwe (PTUZ) as highlighted in the communication sent on 26 February 2008. The correct facts are that Raymond Majongwe, Bwanderika (39), Janat Hillary (35), Takavarika Zhou (40), Bernard Zhou (52), Levicuos Ziunde (38), Harrison Mudzuri (36) Oswald Madziva (38) Linda Fumaphanda (31) are indeed members of the Progressive Teachers Association of Zimbabwe (PTUZ).

220. On 19 February 2008 the Progressive Teachers Association of Zimbabwe members went to ZANU PF Harare Provincial Headquarters where they threw flyers within the party premises. The flyers contained abusive political messages and this did not go down well with the ZANU PF youths who were at the party headquarters. Subsequently a skirmish ensued between the ZANU PF youths and members of the teachers association who were led by Raymond Majongwe. The Police got wind of the disturbances and upon arrival at the party headquarters, arrested nine members of the teachers association and two ZANU PF youths.

221. Observations made by the Police during the time of arrest were that indeed some of the members of the Progressive Teacher's Association had sustained injuries as a result of the scuffle. All the suspects were taken to the police station where initial documentation was done and arrangements made for the injured to be taken to hospital. At no time were the suspects subjected to any form of ill-treatment. It was important for suspects to be taken to a Government hospital first, to facilitate obtaining of a medical report that would be acceptable in court since the injuries were as a result of an assault that was subject to investigation.

222. The Government claims that it is therefore not true that they were assaulted by unidentified youths. Two ZANU PF youths Trymore Chikupula (33) and Cleopes Gutsa (26) are facing assault charges; it is also not true that the injured were denied access to medical attention, as it is the Police who ferried the suspects in a Police vehicle to a government hospital. It is unfair to suggest that the delay in attending to the suspects at the hospital is attributable to the Police which does not run hospitals but Police stations. The Police did its part by taking them to the hospital. In Zimbabwe most operation vehicles are pick-ups and to infer that more comfortable vehicle should have been used is also misplaced. It is also a blatant lie that the accused were released without any charge.

223. All were discharged from the Avenues Clinic and appeared in court on the 5th of March 2008. Members of the Progressive Teachers Association were charged for contravening Chapter 46 of the Criminal Codification Reform Act Chapter 9:23, Criminal nuisance, and were released on 50 million Zimbabwe dollars bail each while the 2 ZANU PF youth were also released on the same bail conditions. The matter is still pending at Court, under Harare Central Crime Register number 387/02/08.

### **Observations**

224. The Special Rapporteur thanks the Government for its reply, but nevertheless expresses concern that the arrest and detention as well as the assault and ill-treatment of the persons mentioned in the two communications sent to Zimbabwe may be linked to their peaceful and legitimate activities in defence of human rights.

-----