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

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*

Addendum

**Summary of communications sent and replies received from
governments and other actors**

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

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I. Introduction

1. In the context of his mandate, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health receives a large number of communications alleging violations of the right to the highest attainable standard of physical and mental health and related rights worldwide. Such communications are received from national, regional and international non-governmental organizations, as well as intergovernmental organizations and other United Nations procedures concerned with the protection of human rights.

2. The present annual report of the Special Rapporteur contains, on a country-by-country basis, summaries of communications sent by the Special Rapporteur to States, responses received from States, observations of the Special Rapporteur, and follow-up communications and activities relating to earlier communications, from the period of 16 March 2009 to 15 March 2010 and replies received for the period of 2 May 2009 to 1 May 2010.

3. Where appropriate, the Special Rapporteur has sent joint urgent appeals or letters with one or more special procedures of the Human Rights Council, where the allegations raised concerned the right to the highest attainable standard of physical and mental health as well as rights addressed under other mandates.

4. During the period under review, the Special Rapporteur sent a total of 64 communications concerning the right to the highest attainable standard of physical and mental health to 34 States and to the Palestinian Authority, and to Newmont Ghana Gold Limited, Addax Petroleum Development, Chevron Nigeria Limited, Conoco Phillips, Hardy Oil Nigeria Limited, Mobil Producing Nigeria, Nexen Petroleum Nigeria Offshore, Philips Oil Co. (Nigeria) Limited, Shell Petroleum Development Company of Nigeria Limited, Statoil Hydro Statoil Nigeria Ltd, Texaco (Nigeria) Plc, and Total E&P Nigeria Limited. Of these 64 communications transmitted, 14 responses were received from Governments, including three replies received in response to communications summarized in the previous communications report (A/HRC/11/12/Add.1), and five responses from other actors.

5. The Special Rapporteur appreciates and thanks the concerned States for these replies. He regrets, however, that many Governments have failed to respond. When Governments have responded, he regrets the selective approach, which does not respond to all the questions arising from the communication. Many communications remain outstanding and the Special Rapporteur encourages Governments to respond to every communication and to all concerns raised in each communication.

6. The Special Rapporteur notes with concern the reports that the mandate continues to receive with regard to threats, harassment and imprisonment of human rights defenders, community representatives and activists working on the right to the highest attainable standard of physical and mental health.

7. The Special Rapporteur believes in the importance of engaging in a constructive dialogue with States aimed at implementing and realizing the right to the highest attainable standard of physical and mental health. The communications sent by the Special Rapporteur should be understood in this context. In a spirit of cooperation, the Special Rapporteur urges all States and other actors to respond promptly to the communications, to immediately take appropriate measures, to investigate allegations of the violation of the right to the highest attainable standard of physical and mental health and related rights, and to take all steps necessary to redress the situation.

8. To the extent that resources available to the mandate permit, the Special Rapporteur continues to follow up on communications sent and monitor situations where no reply has been received, where the reply received was not considered satisfactory or where questions remain outstanding. The Special Rapporteur also invites the sources that have reported the alleged cases of violations, to review cases and responses included in this report, and send, when appropriate, follow-up information for further consideration of the cases.

II. Governments

Azerbaijan

Communication sent

9. On **4 August 2009**, the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of Azerbaijan regarding Mr. Novruzali Mammadov, Head of the Talysh Cultural Centre and Talysh language expert. Mr. Mammadov was the subject of an earlier communication, sent to the Government on 26 August 2008. A response to that communication was received on 13 March 2009.

10. According to new information received, in June 2009, Mr. Novruzali Mammadov was diagnosed with several serious medical conditions by a doctor in Prison Colony No. 15, including cataracts, prostate cancer and thyroid problems. On 28 July 2009, Mr. Mammadov was transferred from Prison Colony to the central hospital for the penitentiary system, which is run by the Ministry of Justice. Mr. Mammadov is allegedly not receiving adequate medical care in the hospital, where his health has further deteriorated. Reports claim that he has been denied pain relief by the hospital staff and has received no treatment for his conditions yet. Concern was expressed that the health of Mr. Novruzali Mammadov may further deteriorate if he does not receive adequate medical care and urgent attention.

Observation

11. The Special Rapporteur thanks the Government for its reply received on 6 October 2009 and awaits its translation by the United Nations Conference Services.

Burundi

Communication sent

12. Le **3 avril 2009**, le Rapporteur spécial sur le droit à toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, conjointement avec l'Expert indépendant sur la situation des droits de l'homme au Burundi et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent au Gouvernement du Burundi concernant une disposition du projet de code pénal qui criminalisait l'homosexualité et punissait tout acte sexuel entre des personnes du même sexe consentantes d'une peine allant jusqu'à deux ans d'emprisonnement. De sérieuses préoccupations avaient déjà été exprimées au sujet de ce projet de loi dans un appel urgent en date du 5 décembre 2008.

13. Selon les nouvelles informations reçues, le 17 février 2009, le Sénat aurait largement rejeté la disposition dans le projet de code pénal qui criminalisait l'homosexualité.

Cependant, l'Assemblée Nationale aurait par la suite voté la restauration de cette disposition dans le projet de code pénal. Une commission parlementaire, composée de membres de l'Assemblée Nationale et du Sénat, aurait été mandatée pour produire un rapport sur cette question et aurait entériné ce vote. Le projet de code pénal serait actuellement entre les mains du Président du Burundi pour promulgation.

14. La criminalisation de l'homosexualité aurait un effet préjudiciable sur les efforts du Burundi dans sa lutte contre le VIH/SIDA. Les politiques de la santé publique concernant l'épidémie du VIH/SIDA démontrent clairement que la décriminalisation de l'homosexualité combinée avec des efforts visant à lutter contre la discrimination des homosexuels, lesbiennes, bisexuels et transsexuels, représentent une mesure substantielle pour restreindre la propagation du virus. De plus, si le projet de code en question entre en vigueur, celui-ci aurait pour effet d'entraver l'accès à information, aux soins et aux traitements des personnes homosexuelles, atteintes de VIH/SIDA au Burundi, et par conséquent pourrait compromettre la réponse nationale dans la lutte contre le VIH/SIDA.

15. Ce projet de loi aurait également un effet néfaste sur la situation des défenseurs des droits de l'homme qui œuvrent pour la promotion et la protection des droits des homosexuels, bisexuels et transsexuels. En effet, cette loi mettrait ces défenseurs dans une situation de vulnérabilité accrue car ils seraient potentiellement la cible d'attaques et d'actes d'intimidation de la part des autorités et de la population.

16. Lors de l'examen périodique universel du Burundi en date du 2 décembre 2008, le Gouvernement de Votre Excellence a été interpellé sur cette question de la criminalisation de l'homosexualité et qu'il a demandé à disposer de plus de temps pour y répondre convenablement.

17. La Rapporteuse spéciale, l'Expert indépendant sur la situation des droits de l'homme au Burundi et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme exhortent le Président du Burundi à ne pas promulguer le projet de code pénal dans son état actuel, en conformité avec les obligations internationales du pays en matière de droits de l'homme énoncées précédemment dans la lettre du 5 décembre 2008.

Observation

18. Le Rapporteur spécial regrette, au moment de la finalisation du présent rapport, l'absence de réponse aux communications en date du 3 avril 2009. Il considère la réponse à son communication comme partie intégrante de la coopération des gouvernements avec son mandat. Il exhorte le Gouvernement à répondre au plus vite aux craintes exprimées dans celle-ci.

Communication sent

19. On **14 September 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Burundi to call attention to information received concerning the draft East African Community (EAC) Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations, which aims to harmonize anti-counterfeiting laws in EAC countries (Burundi, Kenya, Rwanda, Tanzania and Uganda). This proposed policy promotes standards of intellectual property enforcement extending beyond the obligations of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and threatens the progressive realization of the right to health in the EAC countries.

20. According to the information received, Government of Burundi is assisting the drafting of a policy, which, if adopted, would hinder expeditious access to essential and affordable medical products in both EAC countries and neighbouring countries. Allegedly,

this proposed policy envisages a complete harmonization of IP enforcement laws among EAC countries, including legal definitions of counterfeiting, investigative procedures, border control measures, seizure and warehousing, destruction of materials, judicial proceedings, and penalties. It is alleged that the proposed definition of counterfeiting is exceptionally broad in its inclusion of patented products, going beyond the territoriality principle of intellectual property law.

21. Moreover, in allegedly criminalizing patent violations, the policy goes beyond traditional standards for patent law. Unlike trademark and copyright law, patent law is not generally amenable to criminal procedure given that the grant of a patent is never conclusive; traditionally a patent may be challenged until the last year of its protection. Similarly, it is alleged that the policy proposes expanding border controls to include exports and in-transit products, in addition to imports, which are TRIPS-plus enforcement standards that minimize the potential usefulness of TRIPS flexibilities. Mechanisms proposed in the policy allegedly do not recognize flexibilities such as transitional periods for the Least Developed Countries (including most EAC countries), parallel importation, Bolar provisions and compulsory licensing. Such a policy would have the potential to compromise access to affordable medical products among the EAC and neighbouring countries and could hamper the development of local generic industries.

22. Furthermore, it is alleged that public interest groups, including generic medicine consumers and affected individuals have already expressed serious concerns in response to recent anti-counterfeit legislation in Kenya and the proposed anti-counterfeit bill in Uganda. Allegedly, the proposed policy further strengthens these approaches to intellectual property rights enforcement by harmonizing the national legal frameworks.

23. Lastly, the allegations claim that there is no evidence from the medicine regulation authorities regarding the counterfeiting of medicines, which might justify the closure of any pharmaceutical plants in the region. Rather, it is alleged that, contrary to the stated facts, the entry of genuine high quality generic medicines has fostered competition and enhanced the reduction of prices to ensure affordability, which the draft policy would hinder.

Observation

24. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Cambodia

Communication sent

25. On **15 July 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context sent an urgent appeal to the Government of Cambodia concerning the alleged eviction of families affected by and living with HIV from the “green shed” location (as it was commonly known) in the Borei Keila community in Phnom Penh to the relocation site of Toul Sambor, Dangkor district.

26. According to the information received, due to the particular status of Borei Keila (recognized as a “social land concession” in 2003) an agreement was concluded in 2003 between a private developer, the Municipality of Phnom Penh and the residents of Borei Keila. Reportedly, it was decided that 2.6 hectares of this land would be given to the private developer in exchange for the construction of new housing for the original residents (over 1,700 families). By virtue of this agreement, which also recognized the eligibility of long-

term renters to flats, a number of families living with HIV and residing in Borei Keila were reportedly eligible for flats.

27. In March 2007, 31 families living with HIV were reportedly resettled in temporary metal shelters – the “green shed” – to make way for the construction of the new residential buildings. Following requests by families for some support, the Municipality of Phnom Penh allegedly offered all 31 families living in the “green shed” a plot of land in Toul Sambor.

28. In May 2009, the local screening committee called only 12 among the 31 families for an interview. Eleven families ultimately were found eligible for a flat *in situ*. On 18 June 2009, law enforcement officials reportedly evicted 20 families affected by and living with HIV from their homes in the “green shed”.

29. On 21 June 2009, the remaining 11 HIV families from the Borei Keila community – the ones deemed eligible for new flats at Borei Keila – allegedly were also evicted. Reportedly, the Municipality was planning to relocate to Toul Sambor another 24 families living elsewhere in Borei Keila and also affected by or living with HIV. The families relocated at Toul Sambor have no adequate housing and limited access to basic services, such as clean drinking water, primary health care and antiretroviral treatment. It was also alleged that relocation has resulted in families losing their employment.

30. In addition to comments on the accuracy of the allegations, the Special Rapporteurs requested further information on the measures taken to ensure that the people in Toul Sambor living with HIV have access to affordable primary health care, and are guaranteed immediate, uninterrupted, long-term access to antiretroviral treatment; on the measures taken to improve the housing infrastructure in Toul Sambor in order to guarantee adequate housing to the families; on the measures taken to provide the families relocated from Borei Keila to Toul Sambo with flats similar of those of families living in the buildings next to them; on the measures taken to ensure that families living with HIV were not stigmatized and discriminated against at Toul Sambor; on the reasons why the evicted families allegedly have not been considered eligible for flats in the new buildings currently under construction at Borei Keila; if the families could participate in an adequate screening process like all the other inhabitants of Borei Keila; and on the situation of the remaining 11 families living with HIV, and if they had been given written confirmation of the date and location of their respective flats.

Observation

31. The Special Rapporteur regrets that at the time of the finalization of this report, the Government has not transmitted yet any reply to his communication.

Communication sent

32. On **27 August 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, sent a follow-up allegation letter to the Government of Cambodia concerning additional information received with respect to the alleged eviction of families affected by and living with HIV from the “green shed” location in the Borei Keila community in Phnom Penh.

33. According to the information received, another 20 families living in Borei Keila, and also affected by or living with HIV, had been evicted to Toul Sambor on 23 July 2009. Previous concerns raised with the Government regarding the living conditions and access to health services for the families in the Tuol Sambor settlement had not been addressed yet, and the limited access to health care and sub-optimal conditions reportedly have persisted.

The relocation of the 20 additional families on 23 July may have further hindered efforts to improve the housing conditions of the families evicted on 18 June and reinforced the perception that the metal sheds in Toul Sambor are used as an HIV colony.

34. In addition to comments on the accuracy of the alleged facts, the Special Rapporteurs requested further information on the measures taken for people in Toul Sambor with regard to the lack of adequate sanitation, drinking water, nutrition and adequate heating of the buildings, and to improve the housing infrastructure; on the measures taken to prevent eviction and discrimination of more families from Borei Keila on the basis of HIV status; and on the measures taken to ensure that families living with HIV were not stigmatized and discriminated against.

Observation

35. The Special Rapporteur regrets that at the time of the finalization of this report, the Government has not transmitted any reply to these communications.

Communication sent

36. On **19 January 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Cambodia to call attention to information received concerning the alleged forced testing of unproven medication on people who use drugs.

37. According to information received, Ben Tre Fataco General Import-Export and Trading Service Co., a private company based in Ho Chi Minh City, Vietnam, had approached the National Authority for Combating Drugs and its Secretariat-General, as well as the Ministry of Health in Phnom Penh, Cambodia, aggressively promoting a medicine called “Bong Sen,” marketed as a traditional herb medication with the brand name “Lotus,” to detoxify people who use drugs, especially opiate-dependent people.

38. According to the information received, the Cambodian authorities had agreed to a request for the medication to be tested on people who use drugs in Cambodia, and that four doctors associated with the private company promoting the use of the drug in Cambodia needed to complete their work within the following 7-10 days before having to return to Vietnam.

39. Reportedly, under the National Authority for Combating Drugs and with the consent of the Ministry of Health, the first attempts to test this medication were made on individuals detained in My Chance (Oksas Knyom), a compulsory drug treatment facility, but no one detained there tested positive for opiates. The National Authority for Combating Drugs then contacted two non-governmental organizations dealing with harm reduction to request that they involve their participants in the trial of the medicine.

40. According to the information received, both non-governmental organizations refused to participate in the trial until they received information about the registration of the medicine in Cambodia and proof of phase 1 and phase 2 trials. They also asked that informed and voluntary consent be required in writing from any person who wished to be involved in the activity. These conditions allegedly were not accepted, and officials insisted that the trials needed to begin immediately because the Vietnamese doctors were only in town for a short time.

41. Reportedly, no information existed as to the efficacy of “Lotus” for the detoxification of opiate-dependent people, or to its side effects or interactions with other drugs. Furthermore, the Ministry of Health had not registered “Lotus” for use in Cambodia, and no ethical review had been undertaken in Cambodia regarding any form of related research. Concerns had been raised about the acquiescence by the Ministry of Health to the

demands of the National Authority for Combating Drugs to allow use of a non-registered drug on Cambodian citizens and to use NGO cooperation to facilitate such illegal practices.

42. It was also alleged that, between 10 and 14 December 2009, the National Authority for Combating Drugs had arrested 21 people who use drugs on the street and has taken them to My Chance for mandatory treatment with "Lotus." At least one of those arrested was known to be living with HIV.

Observations

43. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Chile

Communication sent

44. El **3 de agosto de 2009**, el Relator Especial sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental junto con el Relator Especial sobre la cuestión de la tortura envió un llamamiento urgente al Gobierno de Chile en referencia al caso de Mireya Figueroa. Según las informaciones recibidas, la salud de Mireya Figueroa, quien se encuentra detenida en la cárcel de Angol, ha empeorado considerablemente. La Sra. Figueroa sufre de cáncer de mama, el cual se ha desarrollado rápidamente con la aparición de cuatro nuevos tumores con metástasis. La cárcel de Angol no cuenta con la atención médica urgente que ella necesita, por lo que no ha sido atendida por un oncólogo.

Response received

45. Mediante carta de fecha **12 de agosto de 2009**, el Gobierno indicó que la Sra. Mireya Figueroa se encuentra formalizada por el Ministerio Público debido a su eventual participación en el delito de incendio terrorista ocurrido en 2001. El primer juicio se realizó en 2004 y resultaron condenadas varias personas a la pena de 10 años y un día de cárcel.

46. La Sra. Figueroa no se presentó al citado juicio y durante cinco años permaneció rebelde en la causa. El 2 de julio de 2009 fue detenida y trasladada a la ciudad Angol, donde se celebró la audiencia de revisión de su prisión preventiva. El Tribunal Oral en lo Penal celebró una audiencia sobre la prisión preventiva y la mantuvo debido al peligro de fuga concreto de la Sra. Figueroa.

47. El Tribunal, tomando en especial consideración el estado de salud de la Sra. Figueroa, ordenó a la Gendarmería de Chile que tomara todos los resguardos necesarios con el fin de proteger las necesidades médicas de la Sra. Figueroa. El informe de salud elaborado por el Servicio Médico Legal de Angol, del 20 de julio, concluye que la Sra. Figueroa es portadora de un cáncer mamario avanzado, patología que es terminal e irreversible. Además sufre de hipertensión arterial, diabetes mellitas y dislipidemia en tratamiento.

48. El 4 de agosto se revisó nuevamente la prisión preventiva y se mantuvo por los mismos argumentos. El Ministerio Público solicitó una ampliación del Informe del Servicio Médico con el objetivo de determinar si la Sra. Figueroa puede estar presente en su juicio y ejercer sus derechos.

49. El 7 de agosto la Sra. Figueroa fue trasladada al hospital de Angol, pero fue dada de alta debido a una solicitud escrita de la misma. El juicio oral está fijado para el 25 de agosto. Su presencia y la decisión judicial sobre el mismo se encuentran pendientes debido a su estado de salud.

China (People's Republic of)

Communication sent

50. On **14 July 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health together with the Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of China regarding the situation of Mr. Zhou Xiangyang, who was sentenced to nine years in prison in May 2003 for allegedly refusing to give up his belief in Falun Gong.

51. Reportedly, Mr. Zhou Xiangyang was tortured brutally and locked in solitary confinement for four months in the winter. At Gangbei Prison, Mr. Zhou was abused verbally and physically, and was detained in isolation numerous times.

52. In February 2009, the guard captain at Gangbei Prison reported that Mr. Zhou was being force-fed five times per day and that he could die at any moment. When his family visited him two months later, four prisoners had to carry Mr. Zhou out of his cell as he was too weak to walk by himself. During the visit, the other prisoners monitored his conversation and would kick him as a warning to change the subject when they had the impression that he was disclosing information about the treatment he had experienced in prison.

53. In April and mid-May 2009, Mr. Zhou was taken to the Police Hospital for emergency treatment, including intravenous injections. Mr. Zhou's family requested his release on bail for medical treatment, but this was refused by the Gangbei Prison. The prison authorities allegedly indicated that he had to renounce his beliefs before he could be released for medical treatment.

Response received

54. The Special Rapporteur thanks the Government for its reply received on 4 September 2009 and awaits its translation by the United Nations Conference Services.

Communication sent

55. On **30 July 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Chairperson 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 human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of China, regarding the detention of Mr. Huang Qi. Mr. Huang Qi is the head of the human rights organization Tianwang Human Rights Service and founder of the human rights website 64tianwang. He also has advocated on behalf of parents whose children were killed when their school buildings collapsed in the Sichuan earthquake in May 2008 (See E/CN.4/2004/56/Add.1, para. 363).

56. According to the information received, in spite of deteriorating health conditions, Mr. Huang Qi allegedly has been denied medical treatment while in detention. Mr. Huang Qi suffers from headaches and insomnia, has an irregular heartbeat and has recently discovered four lumps on his chest and abdomen. He has not been permitted access to any medical care.

57. Mr. Mo Shaping, the lawyer for Mr. Huang Qi, submitted an application for bail following a meeting with Mr. Huang Qi on 26 May 2009, in which he relayed his health concerns. However, the Chinese authorities have not yet responded to this request. Mr. Huang Qi's family also has been denied visitation rights since he was first arrested and detained on 10 June 2008.

58. On 18 July 2008, Mr. Huang Qi was formally charged with "illegal possession of state secrets," having been previously detained for over a month without charge. His detention is believed to be connected to articles posted on his website 64 tianwang, regarding allegations that the buildings that collapsed in the Sichuan earthquake in May 2008, and which resulted in the deaths of many children, were structurally faulty.

59. Concern was expressed that the continued detention of Mr. Huang Qi, and the refusal to provide him with necessary medical attention, are related to his work in the defence of human rights.

Response received

60. The Special Rapporteur thanks the Government for its reply received on 7 December 2009 and awaits its translation by the United Nations Conference Services.

Communication sent

61. On **4 September 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of China to bring attention to information received concerning the situation of children living with HIV and equal access to diagnosis and treatment services, as well as fair compensation for injurious practices.

62. According to the information received, it appeared that gaps existed in the "Four Free, One Care" policy that allegedly aimed to benefit all individuals living with HIV by impeding the access of children living with HIV to the healthcare they ought to be afforded by this free programme. This would include alleged inadequate access to paediatric formulations, lack of access to second-line anti-retrovirals (ARVs), and inadequate or otherwise excessively cumbersome procedures to obtain coverage for expensive associated medical costs, such as treatment for opportunistic infections. The most conservative estimates allegedly foresaw that thousands of children living with HIV required treatment. Official reports in 2007, however, indicated that only 805 children were receiving ARV treatment. It was further alleged that widespread discrimination against and stigmatization of children living with HIV have in many cases resulted in refusal of treatment by hospitals and doctors, as well as unequal treatment in schools. Children living with HIV reportedly have a high risk of abandonment and isolation by family and friends, resulting in widespread psychological trauma. Moreover, it was alleged that difficult registration procedures and other barriers prevent relevant NGOs from providing support to families affected by HIV.

63. In addition, it was alleged that children living in rural areas would not receive proper care due to geographic barriers and insufficient training of healthcare workers on paediatric HIV diagnosis and treatment. The allegations claimed that HIV testing practices, particularly in the realm of early infant diagnosis, would be inadequate. These testing practices reportedly contained disincentives for parents, such as lack of confidentiality, as well as disincentives for local authorities in determining actual HIV prevalence rates, which would create a situation in which many children living with HIV and in need of treatment would remain undiagnosed.

64. The allegations further stated China would have not made use of its right under World Trade Organization (WTO) regulations to issue compulsory licenses to facilitate

immediate domestic production of second-line and paediatric ARV treatment, despite the existing public health need presented by the disproportionately high number of children in need of treatment who are resistant to first-line medicines for HIV.

65. Lastly, the allegations claimed that thousands of children would have been infected with HIV due to unsafe blood transfusions, and most would have neither received proper compensation from the responsible hospitals nor adequate opportunity to demand compensation.

Observations

66. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Communication sent

67. On **31 December 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders sent a joint allegation letter to the Government of China to bring attention to information received concerning the transmission of HIV through contaminated blood transfusions, and the situation of Ms. Zhao Fengxia and Ms. Cao Lanying, two women living with HIV that have been detained reportedly for their HIV-related advocacy activities.

68. According to the information received, Ms. Zhao Fengxia and Ms. Cao Lanying, both residents of Ningling City, Shangqiu District in Henan Province, reportedly were infected with HIV by contaminated blood transfusions in Ningling City Maternal and Child Health Hospital. Ms. Li Xige, an AIDS advocate from Ningling City, Shangqiu District in Henan Province, also reportedly was infected with HIV by contaminated blood at the same hospital during delivery by a Caesarean section. Ms. Zhao Fengxia is a 34-year-old Han Chinese farmer residing in Huangzhuang Village of Huangpu Township, Ningling City, Shangqiu District of Henan Province in China. Ms. Cao Lanying is a 39-year-old Han Chinese farmer residing in Caozhuang Village of Huangpu Township, Ningling City, Shangqiu District of Henan Province in China.

69. On 29 July, Ms. Zhao and Ms. Cao, together with a group of seven people, travelled to Beijing for the sixth time to submit a petition demanding that the national government compel the local government of Ningling City to recognize that people have been infected with HIV by blood transfusions, and to request that the local government take measures to address economic difficulties faced by families affected by HIV and AIDS. The protesters also demanded that the state investigate responsibility for the contaminated blood transfusions and compensate affected persons according to the law.

70. Upon their return to Henan on 11 August 2009, the Ningling City Public Security Bureau reportedly arrested Ms. Zhao and Ms. Cao with a warrant approved by the Procuratorate on charges of extortion. They were currently in custody at the Ningling City Detention Center. According to the information received, Ms. Cao's husband had been unable to visit his wife and confirmed that she would need medical treatment.

71. It was reported further that the police frequently responded to peaceful protests with arrest and sometimes with charges of extortion. It was alleged that authorities have attempted repeatedly to silence those demanding redress for the HIV transmission cases by blood transfusion by shutting down independent AIDS groups, and threatening and beating journalists and AIDS activists. Reportedly, AIDS advocates wrote to the Ministry of Justice regarding Ms. Zhao and Ms. Cao, but have received no reply.

Observations

72. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Colombia

Communication sent

73. On **2 July 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Colombia regarding the decision of the Colombian Ministry of Social Protection not to declare access to the HIV/AIDS anti-retroviral (ARV) Kaletra (Lopinavir and Ritonavir) a matter of public interest, despite its inclusion in Colombia's Compulsory Health Plan list of medicines.

74. According to the information received, the Government would not be declaring the ARV Kaletra (manufactured by pharmaceutical company Abbott) to be of public interest, thereby leaving the current patent on the product intact in Colombia until 2016. Such a decision allegedly would prohibit competition from a generic version of the drug, allowing Abbott a monopoly in the market. Reportedly, Colombia's medicine regulator, INVIMA, rejected applications from Ranbaxy and Focus Pharmaceuticals to register generic versions of the same ARV, citing Abbott's existing patent as justification. It is alleged that the Government, in its response to concerns raised by different stakeholders, determined that public interest is not at stake as all patients requiring Kaletra are, in theory, able to access it through health insurance.

75. However, the allegations claimed that due to systemic administrative and coverage failures of health insurance providers, many patients encountered delays in accessing the ARV. According to UNAIDS figures, about 4.1 per cent of persons living with HIV remained uninsured, and these individuals are among the most vulnerable and impoverished. Allegedly, when these patients find that purchasing Kaletra on their own is the only option available, the high price (protected by lack of competition from generics) makes the ARV inaccessible.

76. The allegations further contended that although the Government did set a price ceiling for the product, it did not include civil society groups or HIV/AIDS patients in any negotiations. The allegations maintained that Kaletra's high price passes on unnecessary costs to consumers and taxpayers, and results in diversion of healthcare investments from critical priorities, such as access to other essential medicines and universal HIV/AIDS coverage efforts. Allegedly, according to Colombia's UNGASS 2007 Progress Report, 28 per cent of patients in need of an ARV have not received treatment. Additionally, it has been alleged that the prohibitively high price of ARVs, like Kaletra, serves as a disincentive for insurance companies to encourage HIV testing.

Observations

77. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Dominican Republic

Communication sent

78. On **9 September 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of the Dominican Republic regarding a proposal to amend Article 30 of the Constitution of the Dominican Republic.

79. The proposed constitutional amendment would make abortion punishable as an illegal act in all circumstances, and was scheduled for a review in Congress on 9 September 2009. Concerns were raised that the proposed amendment would constitute an act of discrimination against women in the Dominican Republic and violate their human rights, most importantly their right to life and health. Moreover, the proposed amendment allegedly would undermine women's access to contraceptive methods that are essential to prevent unwanted and unplanned pregnancies.

80. The criminalization of abortion particularly in all circumstances may result in significant, potentially fatal, health risks for women, who because of medical reasons require a safe abortion. According to the information received, unsafe abortions are the third cause of maternal mortality and the second cause of death in young women 15 to 24 years old. According to estimates, 82,000 abortions occur every year, the majority under unsafe and clandestine conditions.

81. Furthermore, it is alleged that a wide range of stakeholders, including members of the medical profession, the media, youth, academia and civil society broadly, have expressed objections to the proposed constitutional amendment. The public opposition to such an amendment is demonstrated in the results of a recent poll, in which 80 per cent expressed support for the decriminalization of abortion for medical reasons and 73 per cent believed that the issue of abortion should not be a part of the constitutional reform taking place in the Dominican Republic.

Observation

82. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Democratic Republic of the Congo

Communication sent

83. Le **9 février 2009**, le Rapporteur spécial sur le droit à toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint a envoyé un appel urgent au Gouvernement du Congo concernant la situation de l'état de santé de deux citoyens norvégiens emprisonnés à Kisangani, depuis le mois de mai 2009.

84. Selon les informations reçues, Monsieur Joshua French et Monsieur Tjostolv Moland auraient été reconnus coupables de meurtre et condamnés à la peine de mort lors de leurs deux procès respectifs. Les deux prisonniers seraient tombés malades à plusieurs reprises en raison des conditions de leur détention et d'un manque d'accès à des soins médicaux appropriés.

85. Apparemment, Monsieur French et Monsieur Moland seraient tombés malades à plusieurs reprises et auraient souffert de dysenterie, fièvre typhoïde, pneumonie et paludisme. En outre, Monsieur Moland aurait prétendument attrapé le neuropoludisme, maladie pour laquelle il aurait été traité (avec un retard significatif) avec de la quinine par

voie intraveineuse. Il serait allégué que Monsieur Moland aurait reçu un surdosage de quinine qui aurait donné lieu à un épisode psychotique. Monsieur Moland aurait été en état de psychose active pendant toute la durée de son deuxième procès pour meurtre (avec des symptômes comprenant des grimaces et des crises d'agressivité) ; il aurait par la suite été hospitalisé et des médicaments antipsychotiques lui auraient été administrés. Lorsque le procès a recommencé, bien qu'il soit rétabli de son épisode psychotique, Monsieur Moland aurait été gravement malade et aurait été atteint de gastrite ainsi que de vomissements. Le procès se serait poursuivi pendant le reste de la semaine, malgré sa maladie.

86. Les deux prisonniers auraient prétendument rencontré des difficultés répétées à accéder aux soins nécessaires, qui auraient été dues à la complexité du processus nécessaire pour obtenir l'autorisation de la visite d'un médecin. Il serait allégué que les prisonniers auraient été tenus de communiquer avec un assistant (généralement, un représentant du Département des Affaires étrangères), qui cherchait alors l'autorisation du commandant militaire en chef pour qu'une visite ait lieu. Monsieur French aurait également souffert de paludisme au cours de sa détention, et aurait connu un retard dans le traitement de 2 à 3 jours parce que le représentant du Département des Affaires étrangères aurait été incapable d'entrer en contact avec le commandant militaire en chef. Il aurait été également allégué que les médecins ayant tenté d'accéder directement aux prisonniers se seraient vu refuser l'autorisation pour un laps de temps significatif, apparemment en raison de craintes que les prisonniers ne soient empoisonnés.

87. Il aurait été également allégué que les conditions dans la prison soient insalubres, avec des champignons et de l'humidité constatée sur les murs, ainsi que des installations sanitaires inadéquates. Apparemment, le mauvais état des cellules d'origine aurait amené à ce que les deux prisonniers contractent une pneumonie.

Observation

88. Le Rapporteur spécial regrette que le Gouvernement n'ait pas transmis de réponse à sa communication au moment de la finalisation du rapport.

Egypt

Communication sent

89. On **5 June 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Chairperson of the Working Group on Arbitrary Detention sent a joint urgent appeal to the Government of Egypt regarding Mr. Fares Barakat, aged 43, residing at Damanhour, Beheira Governorate in Lower Egypt.

90. Reportedly, on the evening of 17 May 2009, Mr. Barakat was at a friend's apartment in Damanhour. Officers from the State Security Investigations (SSI) and Ministry of Interior dressed in civilian clothing came to the apartment, searched it and arrested some of those present. When Mr. Barakat asked for the arrest warrant, he was pushed toward the balcony. As he tried to resist, an SSI officer allegedly ordered "to throw this man from the balcony." Mr. Barakat was thrown from the balcony on the fourth floor, sustained serious injuries and is now in critical condition. The injuries he suffered include a fracture of his right leg, hip and shoulder, three pelvic fractures, a fractured nose, fracture of three vertebrae, facial injuries, blood accumulation in the stomach and around the liver, concussion and difficulty in breathing due to the upward pressure of abdominal blood collection. However, he has not been transferred to a proper hospital and is not receiving adequate medical care.

91. Mr. Barakat later was arrested and is now detained in the National Medical Institute in Damanhour. He is handcuffed to his bed and remains under strict police surveillance. A formal request has been filed with the Prosecutor for him to be transferred to a suitable hospital, as the National Medical Institute has inadequate healthcare facilities. This request has been refused.

92. Mr. Barakat's case is part of a larger case of 24 other individuals subsequently arrested on 17 May 2009 that, along with Mr. Barakat, are accused of being members of the banned Muslim Brotherhood.

Observation

93. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Ghana

Communication sent

94. On **19 June 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Special Rapporteur on the right to food, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, and the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights sent a joint allegation letter to the Government of Ghana regarding the potential impacts that the establishment of an open-pit gold mine in Akyem, more precisely within the Ajenua-Bepo Forest Reserve in the Birim North District of Ghana's Eastern Region, may have on the enjoyment of economic, social and cultural rights of the affected communities. According to the information received, permits for the mine in Akyem have been issued already.

95. Reportedly, Newmont Ghana Gold Limited (NGGL) is a branch of the U.S.-based Newmont Mining Corporation, one of the biggest gold mining companies in the world. In 2006, Newmont Mining Corporation's application to exploit the Akyem site was turned down reportedly by the Environmental Protection Agency, which expressed concern about the serious impact that mine's rock dump waste could have on the biodiversity of the forest. Despite this, in early 2009 the Ministry of Mines, Land and Forestry of Ghana reportedly granted a permit to the NGGL. According to the information received, despite a decision in February 2009 to postpone the commencement of works, NGGL was planning to start operations.

96. The allegations received claim that, in addition to considerable environmental damage within the forest reserve, the project could have severe impacts on the livelihood of an estimated 7,900 to 10,000 people. Up to 1,500 persons, most of them small-scale farmers, may be evicted and no plans have been developed either by the company or the authorities to ensure a fair and equitable process.

97. According to information received, farmer would not be provided with alternative land on which to resume their agricultural activities and would not receive adequate compensation. Moreover, by losing access to the forest reserve for hunting and fruit picking, the local communities would lose a significant part of their food supplies.

98. Reports also indicate that dust generated by the exploitation of the mine may affect the production of crops and that the digging of pits and dams, and their subsequent

exploitation, are expected to have a severe impact on the local population to access water from rivers and streams.

99. Moreover, the environmental impact assessment allegedly was not carried out in conformity with international standards, and that local communities were not involved adequately in the decision-making process affecting them. There are allegations that during 2008 NGGL may have enticed fraudulently local village elders into acquiescing to the projects by paying them large amounts of money.

100. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on whether any study on social, environmental and health impact of the open mine project was implemented; on the measures taken to ensure the open mine project does not have disproportionate negative impacts on the environment and on the livelihoods of neighbouring communities; on the measures taken to ensure that water resources will be protected from risks of leakages, and to ensure that mining wastes will be disposed of appropriately; if the concerned communities were allowed to participate in the planning to open the mine; if the land subject to expropriation was duly evaluated; if measures of compensation were put in place for all concerned persons, with a due assessment of the loss of their farming activity; on the measures taken to ensure that those who may lose their land are offered alternative sustainable means to access sufficient and adequate food; if there was any consultation with the persons threatened with eviction; on the measures foreseen to ensure that the persons threatened with eviction will not become homeless; and on the measures foreseen in terms of relocation.

Responses received

101. On **14 August 2009** and **25 August 2009**, the Government of Ghana replied to the joint allegation letter of 19 June 2009. The Government informed that Newmont Ghana Gold Limited carried out an Environmental Impact Assessment (EIA) and an Environmental Impact Statement, which were accepted and led to the issuance of an Environmental Permit to the company.

102. Newmont Ghana Gold Limited also was required to prepare and submit an Environmental Management Plan within eighteen months after commencement of mining operations for approval and thereafter every three years. The conclusions of the studies stated that the company followed the EIA process; that appropriate consultations were held with the public and with government institution; that mitigation actions had been identified to address the significant impacts; that the most substantial long-term environmental effect of the project would be the presence of an open pit and the company proposed to place waste rock in the open pit to fill approximately half of this void; that the company has been active in continuing dialogue with project-affected people since 2003; and that the broader impact of the project is anticipated to be beneficial to the economy of the local area.

103. With regard to the disproportionate negative impacts on the environment and livelihood of neighbouring communities, according to the information received, to ensure judicious exploitation of the mineral resources in the production forest reserves, the Government of Ghana produced the Environmental Guidelines for Mining in Production Forest Reserves, which recommend the establishment of a Liaison Group to evaluate Environmental Impact Statements of projects located in forest reserves and also monitor and enforce environmental compliance.

104. With regard to measures to ensure that water resources will be protected from risks of leakages and that mining wastes will be disposed of appropriately, the Government replied that a combination of an under-drain piping network, a collection basin, and pump-back systems were established to collect seepages. Regarding community participation, the

affected people had been informed adequately and were aware of the project. A number of stakeholder consultations were held with community engagement.

105. With regard to compensation, affected persons are considered eligible for resettlement assistance, and Newmont Ghana Gold Limited proposed a broad range of compensation and assistance. The company will also implement a range of programmes to assist affected population to continue engaging in agricultural activities, and to provide training opportunities and businesses when no land is available.

106. As for relocation, an estimated 242 households and 25 businesses would be displaced physically by the project. In addition to the compensation measures stated above, the company reportedly has developed the “Guide to Land Acquisition and Compensation” for its project development activities. The Environmental Protection Agency has also requested the company to submit a Resettlement Action Plan containing the specific commitments, procedures and actions that would be taken to resettle and compensate people.

107. Finally, the company conducted a Health Impact Assessment to identify the activities associated with the operation, which may affect community health and safety as well as to record baseline conditions associated with individual health, health trends, and infrastructure and healthcare capacity in the area.

Guinea Bissau

Communication sent

108. Le **30 juillet 2009**, le Rapporteur spécial sur le droit à toute personne de jouir du meilleur état de santé physique et mentale susceptible d’être atteint, conjointement avec le Président- Rapporteur du Groupe de travail sur la détention arbitraire et le Rapporteur spécial chargé d’examiner les questions se rapportant à la torture, a envoyé une communication au Gouvernement concernant l’arrestation et la détention de l’ancien Premier Ministre, M. Faustino Imbali, ainsi que de M. Domingos Brosca.

109. Selon les informations reçues, M. Imbali, avec trois autres personnes, aurait été arrêté et détenu par les forces armées le 7 juillet 2009, en relation avec un coup d’état présumé qui a eu lieu les 4 et 5 juin 2009, bien que les forces armées n’aient pas la compétence d’effectuer des arrestations. Les quatre personnes soupçonnées auraient ensuite été transférées au bureau du Procureur Général et présentées devant un magistrat. Deux personnes auraient été libérées suite à cette audience, mais M. Imbali et M. Brosca, seraient toujours en détention préventive au quartier général de l’armée.

110. M. Imbali, ayant souffert des traitements inhumains pendant l’arrestation, aurait de toute urgence besoin d’un traitement médical. Une demande formelle aurait été soumise au magistrat à cet effet, ainsi que pour obtenir la libération de M. Imbali pour lui permettre d’être traité en dehors du pays, comme recommandé dans un certificat médical.

Observation

111. Le Rapporteur spécial regrette que le Gouvernement n’ait pas transmis de réponse à sa communication au moment de la finalisation du rapport.

India

Communication sent

112. On **8 June 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of India regarding Mr. Roy Varghese, 51 years old.

113. Reportedly, Mr. Varghese was sentenced to ten years imprisonment for drug trafficking in 1992. In 2001, he was admitted to a psychiatric hospital and diagnosed with schizophrenia. Although he completed his sentence, he was not released from the hospital because he needed additional treatment.

114. In 2003, Mr. Varghese allegedly set two patients on fire, causing their deaths. He was charged with murder, but was pronounced unfit to stand trial. Since then, he has been held in solitary confinement in Central Jail in Jaipur, Rajasthan. He also has been deprived of necessary medical treatment.

115. On 9 February 2009, a complaint was filed with the Director General of Prisons, calling for a report on the case, but no response has yet been received.

Observation

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

Indonesia

Communication sent

117. On **4 August 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Special Rapporteur on the right on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, and the Representative of the Secretary General on the human rights of internally displaced persons sent a joint allegation letter to the Government of Indonesia concerning violations of the right to health, the right to adequate housing and other human rights of victims of the ongoing mudflow disaster in Sidoarjo, Indonesia.

118. According to information received, in the aftermath of a gas eruption at a drilling site operated by PT Lapindo Brantas on 28 May 2006, at least 60,000 people lost their homes. Many of the currently estimated 15,000 affected households were victims of the first mudflow in May 2006 and of the dam break built to retain the mudflow in March 2009.

119. According to information received, 573 families have sought refuge in Pasar Porong, where they were either housed in small windowless shops or in open halls. Essential services reportedly have been discontinued, which has resulted in forced second relocations. The mudflow allegedly led to large-scale pollution of the ground water and the air. Reportedly, a Presidential decree in 2007 ordered a compensation scheme to benefit those affected by the initial mudflow of May 2006.

120. People from the submerged area holding valid property documents were deemed eligible for compensation from PT Lapindo Brantas. However, this scheme reportedly had yet to be fully implemented. A second Presidential decree, issued in 2008 after a dam break submerged three villages, allegedly had not been fully implemented.

121. In addition to comments on the accuracy of the alleged facts, the Special Rapporteurs requested further information on the steps taken in the interim to improve the health and living conditions of the affected persons; on the steps taken to improve the safety and security of those persons living in areas, and whether a monitoring and early warning system was set up; on the steps taken in the long term to ensure permanent relocation and alternative livelihoods for displaced persons; on the measures put in place as alternatives to the mud dumping in the River Porong; on the measures taken to ensure that the compensation schemes for displaced people, ordered by Presidential decrees, are realized to their full potential; and if similar compensation schemes were foreseen for mudflow victims of areas not covered by existing schemes.

Observation

122. The Special Rapporteur regrets that at the time of the finalization of this report, the Government has not transmitted any reply to his communication.

Communication sent

123. On **14 August 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Special Rapporteur on the right to food, the Special Rapporteur on the right on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, and the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment on human rights sent a joint allegation letter to the Government of Indonesia regarding the potential impacts that gold and copper mining activities in Lembata, East Nusa Tenggara, Indonesia, may have on the enjoyment of the right human rights of Lembata communities.

124. According to the information received, in 2005 the local government permitted the Indonesian mining company PT Merukh Lembata Copper to carry out exploration activities for gold and copper in Lembata. The company reportedly holds exploration rights for at least two-thirds of the island. This planned mining project would concern as much as 75 per cent of the entire island, and would result in the forced eviction of at least 60,000 people.

125. Reportedly, the local government has not shared any information concerning a possible relocation plan. Allegedly, the agreement between the Regent of Lembata and PT Merukh Lembata Copper was signed without any discussion or consultation with the concerned communities. Moreover, no environmental impact assessment was carried out in conformity with international standards and local communities were not adequately involved in the decision-making process affecting them.

126. In addition to comments on the accuracy of the alleged facts, the Special Rapporteurs requested further information on whether a study on social, environmental and health impacts of the open mine project was conducted; on the measures taken to ensure that the mining project does not have disproportionate negative impacts on the environment and on the livelihoods of neighbouring communities; if the concerned communities were allowed to participate in decision-making; if compensation measures were instituted; on the measures taken to ensure that those who may lose their land are offered alternative sustainable means to access sufficient and adequate food; if any consultation took place with the affected persons; on the measures foreseen in terms of relocation; if sites were designated for their relocation; and on the measures foreseen in terms of compensation.

Observation

127. The Special Rapporteur regrets that at the time of the finalization of this report, the Government has not transmitted any reply to his communication.

Communication sent

128. On **22 January 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Indonesia to bring attention to information received concerning the so-called “Narcotics Law” passed in Parliament on 15 September 2009 and its possible effect to the enjoyment of the right to health of people who use drugs in Indonesia.

129. According to the information received, the Narcotics Law criminalizes people for consuming narcotics (article 127), identifying as abusers those who unrightfully and unlawfully consume narcotics, with imprisonment between one and four years. The Law stipulates that narcotics shall only be consumed for the interest of health and/or science and technology development (article 7), thus raising concerns that the criminalization of narcotics drug use will deter drug users from accessing life-saving health services, including harm reduction services in the context of HIV prevention, treatment, care and support. Furthermore, individuals and organizations providing health services to people who use drugs may be obligated to provide information and evidence on those accessing the services, thereby compromising their ability to provide services and deterring those in need from accessing them. This may produce a negative effect on the health, and specifically the HIV response, of people who use drugs.

130. In addition, the Narcotics Law requires parents and guardians of narcotics addicts (defined as those who consume or abuse narcotics, and dependent on narcotics either physically or psychologically) under the age of consent to report the drug use to a public health centre, hospital, and/or medical and social rehabilitation facility appointed by the Government to obtain therapy and/or treatment through medical rehabilitation and social rehabilitation (article 55). Intentionally not reporting “addicts” under the age of consent is punishable with imprisonment or a fine of one million rupiah (article 128).

131. It was also alleged that the Narcotics Law imposes mandatory medical and social rehabilitation on narcotics addicts and victims of narcotics abuse (article 54). Criminalization and mandatory treatment may exacerbate concerns related to drug use and may not contribute to the achievement of the objective of the Law.

Observation

132. The Special Rapporteur regrets that at the time of the finalization of this report, the Government has not transmitted any reply to his communication.

Iran (Islamic Republic of)

Follow-up to earlier cases

133. By letter dated **10 July 2009**, the Government of Iran presented clarifications regarding the communication sent on 25 January 2008 by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on human rights defenders (see A/HRC/11/12/Add.1, paras. 81-82). The judicial authorities of the Islamic Republic of Iran responded to the urgent appeal as follows:

134. “Mr. Mahmoud Salehi was arrested under the charge of acting against the national security of the country and having relation with the notorious terrorist group of Koumeleh. The group has been involved in numerous acts of terrorism in Iran, in the past thirty years. Blocking of roads, kidnapping, assassinations and extensive bombing operations have been amongst the activities of the terrorist group. He was arrested in May 2004 in the city of Saghez and following the required legal proceedings, he was sentenced to three years of imprisonment, i.e. one year imprisonment and two years suspended imprisonment. As a result of repetition of the same offense during the probationary period of the suspended sentence, his case was opened again in the pertinent court and he was arrested and kept under remand custody. His bail-out was accepted, on the basis of humane considerations, and he was released in 7/4/2007. His case is currently in Sanandaj Criminal Court.

135. It is noteworthy that during the court hearing he had access to lawyers to represent him in the court proceeding and to health and medical services of the prison. Since he had been suffering from his both kidneys’ malfunctioning, prior to his imprisonment, he had regular access to kidney dialysis in the prison.

136. He is currently free and he is working in a cooperative store.”

Communication sent

137. On **20 May 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health together with the Chairperson of the Working Group on Arbitrary Detention, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on human rights defenders, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of Iran regarding Mr. Mansour Ossanlu, head and founding member of the Syndicate of Bus Operators of Tehran and Suburbs (Sandikaye Kargarane Sherkat-e Vahed), a union that campaigns for the rights of workers.

138. Reportedly, Mr. Ossanlu was currently serving a five-year prison sentence after being charged with “acting against national security.”

139. Mr. Ossanlu’s professional activities consisted of organizing labour unions, including defending of the rights of his co-workers. He has campaigned consistently for government recognition of the right to form independent unions and he has been targeted repeatedly as a leader of the workers’ rights campaign in Iran. It was reported that events organized by his Syndicate have been attacked, during which members have been seriously injured.

140. Since his detention and the extension of his prison term, he allegedly has suffered from serious physical and mental ailments. In addition to eye ailments and open-heart surgery, two of his arteries are clogged. He has undergone several surgeries but allegedly is denied routine specialist healthcare inside the prison. Due to his health condition, the Government reportedly appointed a medical examiner. The latter has twice ordered an end to his imprisonment; the judicial authorities, however, have refused.

Observation

141. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Communication sent

142. On **3 June 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the

Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of Iran regarding Ayatollah Sayed Hossein Kazemeyni Boroujerdi (see also A/HRC/7/3/Add.1, paras. 87 and 105).

143. Reportedly, Ayatollah Sayed Hossein Kazemeyni Boroujerdi was sentenced to 11 years imprisonment in 2007. He reportedly has been subjected to torture and ill treatment since his arrest and denied adequate treatment for Parkinson's disease, diabetes, high blood pressure, kidney disease, asthma and a heart condition. He has been held in solitary confinement since 27 January 2009.

144. Ayatollah Sayed Hossein Kazemeyni Boroujerdi advocates for democratic elections in Iran. On 1 May 2009, he wrote a letter to the United Nations Secretary General, Ban Ki-Moon, requesting that international observers be sent to Iran in an effort to assist the Iranian people in holding an open referendum. As a result, he was subjected to beatings on 5 May 2009 and began a hunger strike. Since that day, he has been deprived of family visits, phone calls and communication with his lawyer.

Observation

145. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Iraq

Communication sent

146. On **7 August 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of Iraq regarding the 37 residents of Camp Ashraf. At the time of sending the appeal, all of them were being held at the police station in Al-Khalis, Diyala province.

147. Reportedly, on 28 July 2009, the police arrested 37 residents of Ashraf camp, when they protested the establishment of a police station in the camp. At least 32 of them were transferred to the police station in Al-Khalis, where they allegedly were beaten by the police with wooden truncheons and metal cables on their chests, heads and hands that resulted in seven people being seriously injured (broken arms, hands and fingers, and fractures of back and head bones). They were later taken to the Iraqi army battalion compound just outside Ashraf, where they were put in a cell of 12 square metres.

148. During the transfer, one of the men, Ebrahim Malaipol, attempted to enter the back of a pickup truck and allegedly was hit on his head by an officer of the Scorpion Special Force. As a result, he sustained a head injury and is in urgent need of medical treatment. Overall, medical doctors have determined that at least seven people require hospitalization, but they remain without adequate medical treatment.

Observation

149. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Communication sent

150. On **1 October 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of Iraq to call attention to information received regarding the alleged excessive use of force by Iraqi security forces during an operation on 28 and 29 July 2009 in Camp Ashraf, resulting in the death of 11 residents of Camp Ashraf and the wounding of over 200.

151. According to the information received, on 28 and 29 July, hundreds of Iraqi army soldiers and police officers conducted an operation in Camp Ashraf with the goal of establishing a police station within the camp. Humvees and bulldozers were used to destroy fences and walls surrounding the camp. It was reported that the Iraqi armed forces also drove recklessly at high speeds through gathered crowds, running over some of the individuals. When the Iraqi security forces tried to enter the camp, they clashed with hundreds of unarmed residents, who had formed a human chain. They subsequently clashed with camp residents within the camp. The Iraqi security forces made use of different means in order to disperse the crowd, including water canons, batons, batons with nails, metal rods, cricket bats, chains, sickles, axes, teargas and sound grenades. It was reported that the Iraqi security forces also made use of firearms against the camp residents and that the shooting was targeted.

152. The operation resulted in the death of 11 camp residents, including six by gunshot and the wounding of several hundred, some of who sustained grave injuries. Those injured included 23 individuals with gunshot wounds and 25 individuals with injuries sustained from being hit or run over by vehicles. It was reported that some of the dead were killed intentionally, having been struck by a single bullet to the head or chest.

153. The security forces allegedly prevented Iraqi doctors from entering Camp Ashraf during the operation and for several days afterwards. Multinational forces were allowed only to evacuate the wounded on the third day. The Camp Ashraf ambulance also was shot at several times during the attack, as doctors present in the camp were trying to take wounded residents to Camp Ashraf hospital. It was reported that lack of timely access to medical treatment may have contributed to the death of some of the 11 camp residents.

154. Furthermore, Iraqi armed forces allegedly took a large number of goods belonging to the residents including generators, fans, tables, chairs and cars.

155. Some 800 to 1000 members of the Iraqi security forces participated in the operation. They reportedly originate from various units, including army units based around Camp Ashraf and from Baghdad, police units from Diyala province, and Iraqi Army Special Forces.

Observation

156. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Communication sent

157. On **1 October 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health together with the Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a

joint urgent appeal to the Government of Iraq regarding the persons continuously held at a police station in the town of Al-Khalis, Diyala Province, north of Baghdad, despite a release order issued by the investigative judge of the criminal court of Diyala Province. The investigative judge confirmed on 16 September 2009 his previous ruling of 24 August 2009, ordering the release of these persons on the grounds that they had no charges to answer.

158. Reportedly, the public prosecutor, who had appealed the investigative judge's first ruling, is said to have had no objection to their release without charge. However, for unknown reasons, the local police authorities in the town of Al-Khalis continued to refuse to release the detainees. Police authorities have not provided any reason or legal justification for the continued detention of these persons.

159. Fears have been expressed concerning a possible forcible return of these Iranian nationals to Iran in circumstances where they may be at risk of serious human rights violations, including execution and torture.

160. The above-referred persons were: Jalil Gholamzadeh Golmarzi Hossein, born on 10 July 1964; Azizollah Gholamizadeh; born on 18 November 1955; Homaun Dayhim, born on 5 May 1956; Mohammad Ali Tatai, born on 2 February 1954; Mohammad Reza Ghasemzadeh, born on 12 December 1956; Iraj Ahmadi Jihonabadi, born on 18 February 1954; Jamshid Kargarfar, born on 2 February 1956; Ebrahim Komarizadeh, born on 18 December 1959; Javad Gougerdi, born on 5 March 1950; Mehrban Balaaee, born on 10 April 1963; Hamid Ashtari, born on 21 March 1962; Mehdi Zare, born on 25 March 1967; Mehdi Abdorrahimi, born on 10 June 1963; Hossein Sarveezad, born on 22 July 1960; Hossein Farsy, born on 20 June 1964; Ali Tolammy Moghaddam, born on 28 December 1960; Seyyed Hossein Ahmadi Djehon Abadi, born on 15 November 1956; Karim Mohammadi, born on 1 April 1961; Mir Rahim Ghorayshy Danaloo, born on 14 April 1964; Asad Shahbazi, born on 9 September 1958; Moshfegh Kongi, born on 21 March 1963; Ahmad Tajgardan, born on 25 January 1963; Jalil Forghany, born on 13 September 1964; Ebrahim Malaipol, born on 21 March 1967; Gholam-Reza Khorrami, born on 25 November 1955; Mohsen Shojaee, born on 15 April 1963; Omid Ghadermazi, born on 5 March 1968; Manouchehr Majidi, born on 19 February 1977; Hassan Besharati, born on 26 May 1962; Ezat Latifi, born on 1 September 1981; Mostafa Sanaie, born on 27 March 1955; Habib Ghorab, born on 24 March 1952; Rahman Haydari, born on 1 December 1962; Mohammad Reza Hoshmand, born on 7 December 1957; Abbas Mohammadi, born on 20 June 1960; Gholamreza Mohammadzadeh, born on 27 December 1953; and Abbas Hussein Fili, aged 39.

161. It was said further that most of these persons are in a poor state of health and have been denied adequate medical treatment. Concern was expressed for their physical and mental integrity.

Observation

162. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Ireland

Communication sent

163. On **16 November 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Ireland to call attention to information received

concerning the conditional release of people with mental disabilities detained under the Criminal Law (Insanity) Act 2006 and the availability of step-down hostel facilities.

164. According to the information received, Section 13 of the 2006 Act stipulates that the Mental Health (Criminal Law) Review Board can impose conditions for outpatient treatment and/or the supervision on the discharge of certain persons detained under the 2006 Act. However, the Act gives the Board neither the power to enforce such conditions of discharge nor to recall any patient who has breached them. Consequently, the Board reportedly has refused to discharge a number of patients whom it considered to be fit for conditional discharge. According to the information received, the Board will continue to do so until the Act is amended to give it the power to recall patients released conditionally, where necessary.

165. This state of affairs allegedly has resulted in the continued detention of at least ten residents in the Central Mental Hospital in Dundrum, Dublin, despite the fact that they reportedly are fit for conditional discharge. The continued detention of these persons is an obstacle to their full recovery, preventing them from rebuilding their lives in the community. According to the information received, this situation has been ongoing for almost three years. Despite initial steps to review the existing Act, the new draft legislation has not been made public yet, as repeatedly demanded by civil society.

166. It was also alleged that there would be an insufficient number of step-down hostel facilities, which provides space for residents to prepare to return to life in the community as their condition improves. Consequently, a number of residents would need to be placed on waiting lists for the existing hostels. The inadequate number of step-down hostel facilities and the Board's alleged refusal to discharge residents fit for conditional discharge reportedly have resulted in a growing backlog of patients on the waiting list to be admitted to the Central Mental Hospital. Allegedly there were ten people on this waiting list as of 24 August 2009.

Observation

167. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Kenya

Communication sent

168. On **14 September 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Kenya to call attention to information received concerning the Draft East African Community (EAC) Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations, which aims to harmonize anti-counterfeiting laws in EAC countries (Burundi, Kenya, Rwanda, Tanzania and Uganda). This proposed policy promotes standards of intellectual property enforcement extending beyond the obligations of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and threatens the progressive realization of the right to health in the EAC countries.

169. According to the information received, the Government is assisting the drafting of a policy, which, if adopted, would hinder expeditious access to essential and affordable medical products in both EAC countries and neighbouring countries. Allegedly, this proposed policy envisages a complete harmonization of intellectual property enforcement laws among the EAC countries, including legal definitions of counterfeiting, investigative procedures, border control measures, seizure and warehousing, destruction of materials,

judicial proceedings, and penalties. It was alleged that the proposed definition of counterfeiting is exceptionally broad in its inclusion of patented products, going beyond the territoriality principle of intellectual property law.

170. Moreover, in allegedly criminalizing patent violations, the policy goes beyond traditional standards for patent law. Unlike trademark and copyright law, patent law is not generally amenable to criminal procedure given that the grant of a patent is never conclusive; a patent traditionally may be challenged until the last year of its protection. Similarly, it was alleged that the policy proposes expanding border controls to include exports and in-transit products, in addition to imports, which are TRIPS-plus enforcement standards that minimize the potential usefulness of TRIPS flexibilities. Mechanisms proposed in the policy allegedly would not recognize flexibilities such as transitional periods for the Least Developed Countries (including most EAC countries), parallel importation, Bolar provisions and compulsory licensing. Such a policy would have the potential to compromise access to affordable medical products between the EAC and neighbouring countries, and could hamper the development of local generic industries.

171. Furthermore, it was alleged that public interest groups, including generic medicine consumers and affected individuals already have expressed serious concerns in response to recent anti-counterfeit legislation in Kenya and the proposed anti-counterfeit bill in Uganda. Allegedly, the proposed policy further strengthens these approaches to intellectual property rights enforcement by harmonizing the national legal frameworks.

172. Lastly, the allegations claimed that there is no evidence from the medicine regulation authorities regarding the counterfeiting of medicines that might justify the closure of any pharmaceutical plants in the region. Rather, it was alleged that, contrary to the stated facts, the entry of genuine high-quality generic medicines would have fostered competition and enhanced the reduction of prices to ensure affordability, which the draft policy would hinder.

Observation

173. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Moldova (Republic of)

Communication sent

174. On **23 April 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on violence against women, its causes and consequences sent a joint allegation letter to the Government of Moldova to call attention to information received concerning Ms. Lucia Sudureac, a young woman charged with intentional and premeditated murder after having performed an abortion at home.

175. According to the information received, Ms. Sudureac reported becoming pregnant in autumn 2005 as a result of a rape. In May 2006, Ms. Sudureac performed an abortion at her home during her 27th week of pregnancy. She was rushed to the local hospital after suffering severe blood loss. The diagnosis report upon her release was “late term abortion outside the hospital, hemorrhagic shock.” The doctors reported her to the police, who subsequently detained her.

176. After her arrest, Ms. Sudureac was taken to the Remand Centre Glodeni, where she was reportedly subjected to degrading treatment, including body searches by two male

guards, insults (calling her a “whore”) and threats, and denied post-abortion care (she suffered bleeding and stomach pains) while in pre-trial detention.

177. Although Moldovan legislation does not criminalize abortions except in certain situations – none of which are pertinent in the present case – Ms. Sudureac was sentenced on 29 December 2006 to 20 years of imprisonment for intentional and premeditated murder with aggravating circumstances.

178. On 17 January 2007, Ms. Sudureac appealed the court’s decision and complained about several irregularities during the criminal proceedings. On the same day, the Court rejected her appeal without considering any of her statements, including her declaration that she was raped and unwillingly terminated her pregnancy with the help of the rapist. On 2 July 2007, Ms. Sudureac filed a second appeal with the Supreme Court of Justice of the Republic of Moldova, which was declared inadmissible on 12 December 2007.

179. Information received describe alleged violations with respect to Ms. Sudureac’s right to due process, including the lack of appropriate consideration of evidence, the existence of gender bias and sex discrimination, and lack of effective legal assistance. Reportedly, key evidence from her medical files confirming that she was treated for a self-induced abortion (rather than complications from a live birth) were not professionally examined, and existing Moldovan law on the concepts of “birth”, the “new born”, the “person”, and “foetus” were disregarded.

180. The lack of effective legal counsel reportedly was also manifest throughout the court proceedings, and authorities did not intervene to remedy the situation. For example the court asked the defendant to provide her own statement and continued the hearing despite the fact that neither her appointed lawyer nor the prosecution appeared for the final hearing, where she was sentence to 20 years imprisonment. In her appeal the irregularities in the previous stage of the criminal process and her declaration that she was raped also were not taken into consideration. Gender bias and discriminatory statements made/used during the criminal proceedings also were highlighted, including the written closing statements by the prosecution and a character witness form by the town mayor. At the time of the joint allegation letter, no law enforcement authority had taken measures with respect to the reported rape.

181. The Special Rapporteurs expressed concern regarding the circumstances surrounding Ms. Sudureac’s case, the legal grounds for her conviction on premeditated murder and the 20 -year prison sentence.

Response received

182. By letter dated **5 June 2009**, the Government of Moldova presented clarifications regarding the communication concerning the case of Ms. Lucia Sudureac. The Government of Moldova noted that Ms. Sudureac, a Moldovan citizen, was found guilty and convicted for having committed criminal actions for which criminal liability ensued as set forth in article 145 para. (3)(a), (b) and (h) of the Criminal Code of the Republic of Moldova, in accordance with the sentence of the Glodeni sector court as of 29 December 2006. Ms. Sudureac was convicted to 20 years imprisonment.

183. The Government presented clarifications regarding the merits of the case. Reportedly, Ms. Sudureac had been convicted for the crime committed on 12 May 2006 in her home village Fundurii Vechi, Glodeni district. In a state of advanced pregnancy, which she was hiding even from close kin, she gave birth alone to two viable male babies in the household garden of her parents. With the aim to kill her newborn babies, and taking advantage of their state of helplessness, she hit both babies in the head with particular cruelty with help of a spade causing serious injuries dangerous for their lives. Both babies died as the result of closed cranio-cerebral trauma with multiple brain bone fractures. In

order to hide the crime, Ms. Sudureac buried her newborn babies in the garden, keeping their recent birth a secret until the bodies of the newborn babies were discovered.

184. With regard to the legal proceeding, the Government referred to the above-mentioned sentence, appealed on 17 January 2007. The appeal of Ms. Sudureac was rejected by Criminal Chamber of Court of Appeal in Balti on 20 June 2007, and the same sentence delivered by the court of first instance was preserved.

185. The Government informed that Ms. Sudureac and her attorney Mr. O. Dzicovschi appealed the previous judgments to the Supreme Court. The appeal was rejected by Criminal Chamber of the Supreme Court on 12 December 2007, and declared it inadmissible on the grounds of its unfounded nature.

Myanmar

Communication sent

186. On **16 October 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Chairperson 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 human rights defenders, the Special Rapporteur on the situation of human rights in Myanmar, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of Myanmar regarding Mr. Hla Myo Naung, who was, at that moment, at serious risk of total blindness unless he received specialist medical treatment without further delay.

187. Reportedly, 42 year-old Hla Myo Naung was a prominent member of the movement called "88 Generation Students," led by Min Ko Naing. Mr. Hla Myo Naung has played a leading role in political events in Myanmar since 1988, which led to his first term of imprisonment. He participated in the demonstrations against the fuel price hike in August 2007 and, after the arrest of many of his colleagues during that month, he became the main spokesperson for the "88 Generation Students". He was arrested on 10 October 2007, when he came out of hiding to seek treatment for his deteriorating eyesight. In November 2008, he was sentenced to a prison term of 65 years and 6 months, and was transferred to the remote Myitkyina prison shortly afterwards.

188. An unsuccessful eye surgery was conducted while he was in detention on 12 October 2007, which led to the loss of vision in one of his eyes. He later began to experience the same symptoms in his functional eye that had led to blindness in the other eye. He is known to be suffering from keratitis and corneal opacity. Without immediate specialist treatment, Mr. Hla Myo Naung faces total blindness.

189. It was requested that Mr. Hla Myo Naung be immediately transferred to Insein prison in Yangon, and to arrange specialist medical care for him without further delay. Myitkyina prison in Kachin State, Myanmar, where he is currently being held, is over 900 miles from Yangon where his wife lives.

Observation

190. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Namibia

Communication sent

191. On **21 October 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on violence against women, its causes and consequences sent a joint allegation letter to the Government of Namibia regarding the forced sterilization of women living with HIV in government-run hospitals in Namibia.

192. According to the information received, from a sample of 230 women living with HIV participating in related research, 40 women indicated that they were subjected to forced or coerced sterilization. Thirteen of the 40 cases are documented in detail and all suggest that informed consent to the procedure was compromised. In some cases, allegedly coercion was used in obtaining the consent for the sterilization procedure, while in other cases women apparently were unaware that the sterilization procedure was being conducted, and were only informed after completion of the surgery.

193. In at least six cases, medical personnel reportedly obtained consent under duress. Women were asked to sign consent forms while in labour or on their way to the operating theatre, or were told or given the impression that they had to consent to sterilization in order to obtain another medical procedure, such as an abortion or caesarean section. In other instances, it appears that women were asked to sign a consent form for sterilization without being informed of the form's contents. In all of these cases, it is alleged that medical personnel failed to provide the women with a full description of the nature of the procedure, its benefits, risks and alternatives. Furthermore, it is reported that medical personnel did not inform the women of the procedure's irreversibility and its potential side effects, or provided information on alternative forms of birth control and family planning.

194. According to the information received, six of the women subjected to coerced or forced sterilization filed cases before the High Court alleging violations of their right to life, human dignity and equality, and the right to be free from cruel, inhuman and degrading treatment. Court dates have been set for October and November 2009. It is also reported that on 15 July 2008, when documentation of the 13 cases was submitted to the Deputy Minister of Health and Social Services, she indicated that the Ministry would issue circulars to the healthcare facilities stating that if forced and coerced sterilizations were occurring at hospitals they should be halted. However, according to information received, the circulars were not distributed to the healthcare facilities and the Minister of Health has denied that involuntary sterilizations of HIV-positive women have taken place in hospitals.

195. One of the women concerned reported that during a routine exam her physician stated that all HIV-positive women are sterilized when they have a caesarean section, which suggests that forced and coerced sterilization may be systematic and part of a larger strategy to prevent mother-to-child transmissions of HIV.

Observation

196. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Nigeria

Communication sent

197. On **4 September 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health together with the Special Rapporteur on the right to food, the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, and the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment on human rights sent a joint allegation letter to the Government of Nigeria regarding the possible negative impacts that the petroleum industry in the Niger Delta may have had and would likely continue to have on the full enjoyment of economic, social and cultural rights of the affected communities.

198. It was alleged that both governmental and private sector activities of the petroleum industry in the Niger Delta have had widespread negative impacts on the environment. Over 60 per cent of the region's population were said to depend on their natural surroundings for their livelihood and many viewed their cultural identity as being closely related to the ecosystem of the delta. Hence, the affected communities were particularly vulnerable to potential environmental pollution that the petroleum industry can engender.

199. Pollution attributed both directly and indirectly to the petroleum industry included damage to fisheries, farmlands and crops, pollution of water bodies and the release of gas, oil and other pollutants into the air. This pollution allegedly was the result of oil spills, waste dumping, dredging and other environmentally harmful activities by the petroleum industry. For example, information received suggested that an oil spill occurred at Bodo Creek on 28 August 2008, following a failure by the responsible multinational company to repair or replace an evidently aged and ruptured pipeline. The consequent release of crude oil into Bodo Creek over many weeks allegedly had resulted in irreparable damage to food species and significantly weakened the mangroves in the region.

200. More specifically, according to information received, the people of the Niger Delta suffered from a range of preventable health problems. Many people continued to rely on natural waterways for drinking water and also used these rivers and creeks for bathing and other domestic purposes. Community consultation reflected widespread concern about the health implications of contaminated waterways, yet systematic monitoring of water quality did not appear to take place. Companies supplied emergency water supplies to communities in the immediate aftermath of an oil spill. However, this supply was often delayed and only temporary, and reportedly did not reach affected communities beyond the immediate spill vicinity.

201. Furthermore, according to information received, efforts by those actors at the source of the problem to clean up and remediate the land after an oil spill were often inadequate or even non-existent. Health problems reportedly experienced in relation to oil spills included skin rashes, breathing problems, nausea and headaches. Yet, corresponding medical data had not been collected. An additional health concern was posed by gas flares. These were said to create noise pollution, expose local communities to permanent light, produce black oil dust that settled on clothes, homes and food, and possibly result in acid rain.

202. There were also concerns relating to the food safety and security of the population of the Niger Delta. Both soil and groundwater resources allegedly presented contents of heavy metals, such as lead, mercury, cadmium, manganese and nickel that are above the normal level. Heavy metals build up inside living organisms, and exposure to large amounts of these metals may lead to severe long-term effects, including cancer and damage to the nervous, digestive, reproductive and respiratory systems. Therefore, they posed a significant health risk. Despite complaints by local residents of unpleasant odours and taste

in fish, indicating contamination of this food source, no action appeared to have been taken by the oil industry to address the matter.

203. Allegations of ecosystem changes following oil spills, such as a reported reduction in the shellfish population of the region, also did not appear to have been followed up on. The long-term effects of a petroleum-polluted environment include a reduction in the agricultural potential of farmland and fisheries. This was of particular concern in the Niger Delta as the population of this region is highly dependent upon the environment as a source of food and income.

204. In addition, according to the information received, the current planning and operating methods of actors involved in the Niger Delta oil industry were of concern as they failed to sufficiently take into consideration the needs and desires of local communities. Petroleum-related infrastructure included the laying of pipes, construction of roads and the carrying out of seismic surveys. Current governmental licenses and leases allegedly permitted companies to complete such projects without consulting affected communities and without conducting extensive environmental impact assessments. Road construction without adequate bridges and drains, as had allegedly been the case for the Gbarain link built for SPDC in 1990, had reportedly resulted in deforestation. Where the natural flow of water was altered, damage to local fisheries was often also reported. In this process, communities apparently were not consulted.

205. Furthermore, in most cases, the compensation to which they were entitled under both Nigerian and international law was either not paid or insufficient. For instance, an oil spill in the village of Kira Tai in Ogoniland on 12 May 2007 had been attributed to a corroded section of pipeline that destroyed both crops and fish. A year after the incident, the affected community reportedly was still awaiting compensation, as well as adequate clean up measures.

206. The Government was informed that this information would be communicated to major multinational oil companies active in the Niger Delta, which is included in the “Other Actors” section of the present report.

Observation

207. The Special Rapporteur regrets that at the time of the finalization of this report, the Government has not transmitted any reply to his communication.

Palestinian Authority

Communication sent

208. On **24 July 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health together with the Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Palestinian Authority regarding Mr. Mohammad Abu Alkhair, a Palestinian national, born on 11 May 1971.

209. Reportedly, Mr. Abu Alkhair was arrested on 23 April 2009 by officials from the Palestinian Preventive Security Service (PSS), the General Intelligence Forces, as well as other unidentified armed men, without a warrant or judicial order and taken to the PSS local compound in the West Bank.

210. Despite a decision of the Palestinian High Court of Justice, dated 12 July 2009, ordering his release, he still remains in detention.

211. According to his family and media reports Mr. Abu Alkhair continues to be detained in solitary confinement and reports about torture or ill treatment have been received. Recently, a prison guard threatened to transfer Mr. Abu Alkhair into another cell with even harsher conditions. His relatives allegedly are allowed visits only for very limited periods of time and under the supervision of the authorities.

212. Mr. Abu Alkhair suffers from diabetes, has heart perturbations and is in need of special nutrition and continuous medical treatment. His family have sent medication to the prison authorities and requested that they be forwarded to Mr. Abu Alkhair, but it is not known whether he is receiving them or if his special dietary needs are observed.

213. Currently, the state of his health, both mental and physical, is rapidly deteriorating. Due to his psychological condition Mr. Abu Alkhair has not been able to communicate with his family during their rare visits.

Observation

214. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Philippines

Communication sent

215. On **23 April 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health together with the Special Rapporteur on violence against women, its causes and consequences sent a joint allegation letter to the Government of Philippines to reiterate their concerns already expressed through the communication letter sent on 8 December 2006, and to bring to the Government's attention new information received concerning the implementation of Executive Order No. 003 (EO), issued in 2000 and its consequences on the rights of the Philippine population, and especially women and children in Manila city.

216. Allegedly, the EO had resulted in a ban on modern contraceptives from all Manila public health facilities and denial of any information or referral services for family planning. Reportedly, the EO has resulted in unwanted pregnancies, unsafe abortion, maternal mortality and morbidity amongst women, especially in rural areas.

217. It was also reported that, even though the EO was issued on 29 February 2000 with a view to "promote responsible parenthood and uphold natural family planning (NFP)," after its issuance, the Manila City government withdrew all supplies of modern contraceptives from city public health facilities and has denied women from receiving any referrals or information on family planning services. Allegedly, since the issuance of the EO, city public health facilities have promoted NFP as the only acceptable contraceptive method.

218. The Office of the Mayor and the City Health Department have denied residents of Manila City access to modern contraceptives, including those listed on the World Health Organization Model list of essential medicines. Testimonies allegedly also revealed that health workers have refused to provide information, counselling or referrals on modern contraceptives, and have misinformed some women as to the safety of contraceptives. The withdrawal of modern contraceptives from clinics funded by the local government in Manila City left many women without access to their main source of family planning services. According to a 2007 study,¹ the impact of the EO on the lives and health of

¹ Imposing Misery, The impact of Manila's Contraception Ban on Women and Families, 2007,

Filipino women is pervasive, with particularly dire economic, social, physical and psychological consequences for often uneducated women of low economic status in Manila City. Some of the pervasive effects of the EO include unwanted pregnancies, unsafe abortions, maternal mortality and morbidity, lack of education and employment, hunger and poverty.

219. Regrettably, a reproductive health bill that would require government hospitals to include contraceptives amongst the supplies they purchase and would make reproductive health education mandatory in schools reportedly has been pending for more than four years.

Observation

220. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Russian Federation

Follow-up to earlier case

221. By letter dated **17 April 2009**, the Government of the Russian Federation responded to the letter sent 23 February 2009 by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (see A/HRC/11/12/Add.1, paragraphs 181-183) regarding Mr. Zubair Isaevich Zubairae, an ethnic Chechen, who was detained in Colony No. 9 in Volgograd at the time of the communication.

222. According to the information submitted by the Russian Federation, Mr. Zubairae, born in 1978, was sentenced under article 222, part 2, and article 317 of the Criminal Code of the Russian Federation, in accordance with article 64 and article 69, paragraph 3, to five years deprivation of liberty, to be served in a strict-regime colony, from 4 June 2007 to 3 June 2012.

223. In accordance with article 73, paragraph 4, of the Penal Enforcement Code, persons convicted of offences under article 317 of the Criminal Code are sent to serve their sentences in correctional institutions at sites designated by a federal agency of the penal correction system. In accordance with directive No. 10/12/6-166 of 10 October 2007 issued by the Federal Penal Correction Service (FSIN), Mr. Zubairae was sent to remand centre No. 2 of the FSIN Department for the Chechen Republic by order of the Central FSIN Authority for Volgograd province.

224. According to the Russian Federation, the rights and lawful interests of Mr. Zubairae have been upheld within the penal correction system in accordance with international legal standards and Russian federal laws. Mr. Zubairae has not been subjected to physical force or special measures.

225. To protect his interests, Mr. Zubairae has been accorded the right to submit suggestions, claims or complaints not only to the Russian State bodies (the courts, the Procurator's Office and public associations), but also to intergovernmental human rights bodies, of which right he has fully availed himself.

Reproductive Health, Rights and Ethics Center for Studies and Training, and the Center for Reproductive Rights.

226. While serving his sentence, Mr. ZubairaeV has been afforded seven visits of short and long duration from relatives and 26 visits from lawyers, representatives of civil society organizations and other individuals, in accordance with the procedure established by law. He has received nine hand-delivered packages and seven letters (two letters from Italy on 25 February 2009 and 12 March 2009, two from the United Kingdom on 2 March 2009 and 5 March 2009, one from Germany on 12 March 2009 and one from France on 12 March 2009), as well as one letter by registered post from Frolovo Inter-District Investigation Unit of the Investigative Department of the Investigative Committee attached to the Office of the Procurator for Volgograd province. He has had 53 telephone conversations and sent two letters (one addressed to Ms. Z.A. ZubairaeVa on 7 November 2008 and one to Ms. M.I. ZubairaeVa on 11 February 2009). Mr. ZubairaeV has not lodged any complaints or claims of beatings by prison officers, or on any other grounds with the prison authorities.

227. On 17 October 2007, on arrival at State remand centre No. 1 (FBU IZ-34/1) of the Central FSIN Authority for Volgograd province, Mr. ZubairaeV was examined by medical staff and placed under medical care for existing chronic conditions. It emerged that Mr. ZubairaeV had sustained a number of head injuries as a result of road traffic accidents in 1995, 1997, 2004 and 2006, for which he was receiving treatment as a day patient from specialist doctors.

228. On 27 October 2007, Mr. ZubairaeV was admitted to correctional colony No. 25 (FBU IK-25) in Frolovo in Volgograd province, where he continued to receive regular check-ups.

229. On 30 October 2007, Mr. ZubairaeV was diagnosed with the sequelae of repeated closed head injuries and was thus given day-patient care.

230. On 31 January 2008, in accordance with article 81, paragraph 2, of the Penal Correction Code that guarantees personal safety, Mr. ZubairaeV was transferred to Volgograd correctional colony No. 9 (FBU IK-9) to serve his sentence, as he had used obscene language against another convict, which had given rise to conflict between the two men.

231. From 31 January to 20 February 2008, the prisoner was held in State correctional colony No. 9. On 20 February 2008, Mr. ZubairaeV was hospitalized to undergo scheduled tests and receive relevant treatment at Volgograd secure hospital No. 15 (FBU LIU-15), following which he was discharged in a satisfactory condition on the recommendation of specialists that he should continue to receive check-ups and treatment as a day patient.

232. Since 13 July 2008, Mr. ZubairaeV has been under treatment as a day patient in the clinical wing of secure hospital No. 15.

233. From 23 October to 25 December 2008, Mr. ZubairaeV underwent tests and treatment in the surgical unit of State secure hospital No. 15, from which he was discharged after his health improved and transferred to another unit of the hospital. During this time, he was examined on numerous occasions by a surgeon, a neurologist, a physician and other medical specialists.

234. According to the Government's response, Mr. ZubairaeV is currently in State secure hospital No. 15. His state of health is judged to be satisfactory. No complaints have been made. He is continuing to receive check-ups and the recommended treatment as a day patient. The medicines necessary to treat Mr. ZubairaeV are available in the prison. Furthermore, the authorities of the correctional institutions in which he has been held have not prevented him from receiving any medicines. Mr. ZubairaeV's treatment includes the use of medicines provided by him. Thus, of the 54 medicines received to date, 17 are used for the treatment of the prisoner. The remainder are kept in the clinical unit of secure hospital No. 15.

235. The Government response highlighted that while Mr. Zubairaev was serving his sentence, he was repeatedly found to have contusions and abrasions in the forehead area sustained by falling to the floor or against the bedside table or by banging against the wall, as well as infected abrasions on both shins, which, as the medical records show, were self-infected. The most recent manifestation of such behaviour was observed on 15 January 2009. On every occasion, Mr. Zubairaev has received the requisite medical treatment.

236. On February 2009, Mr. Zubairaev was sent to the Central Medical Social Assessment Office for Volgograd province for re-assessment and confirmation of the existing degree of disability. There were no indications of incapacity and the prisoner was therefore not declared disabled. After the treatment given, Mr. Zubairaev's abrasions healed, as confirmed on 12 March 2009 by the conclusions of a panel of doctors from Volgograd medical establishments.

237. During that examination, he was diagnosed with an underlying condition corresponding to that diagnosed by the doctors of secure hospital No. 15. In addition, a foreign body (a metal screw) was found in the soft tissue of the right knee joint, along with signs of purulent inflammation. He refused to explain how that foreign body had appeared and the Dzerzhinsky District Investigation Unit of the Investigative Department of the Investigative Committee attached to the Office of the Procurator for Volgograd province is therefore examining the circumstances in a procedural check that has not yet been completed.

238. During the time that he was held in the institutions of the Central FSIN Authority for Volgograd province mentioned above, six orders were issued in response to applications by Mr. Zubairaev and his representatives that criminal proceedings should not be initiated for lack of evidence. Four checks by the inquiry unit of secure hospital No. 15 on 27 March 2008, 6 June 2008 and 28 August 2008 established the circumstances in which the above-mentioned bodily harm has been sustained. Decisions were accordingly issued not to initiate criminal proceedings, in accordance with article 24, paragraph 1 (1) of the Code of Criminal Procedure (lack of evidence of a crime). A forensic expert concluded that the bodily harm of the form of infected abrasions had been occasioned by fingernails. The above-mentioned decisions were sent to the Procurator for Volgograd province responsible for ensuring that correctional institutions adhere to the law.

239. The decision of 4 May 2008 not to initiate criminal proceedings was issued by the senior investigator of the Frolovo Inter-District Investigation Unit of the Investigative Department of the Investigative Committee attached to the Office of the Procurator for Volgograd province. The decision of 25 May 2008 not to initiate criminal proceedings was issued by the investigator of the Dzerzhinsky District Investigation Unit of the Investigative Department of the Investigative Committee attached to the Office of the Procurator for Volgograd province.

240. In relation to the complaint made to the prosecutorial bodies, the Ombudsman for Human Rights for the Volgograd province, Mr. M.A. Tarantsoc, also conducted a procedural check on the claim of unlawful use of physical force against Mr. Zubairaev by officers of correctional colony No. 25. The information given proved unfounded. A decision of 4 March 2009 by the investigator of the area division of the State Procurator's Investigative Committee not to initiate criminal proceedings was issued in accordance with article 24, paragraph 1 (1) of the Code of Criminal Procedure.

241. Furthermore, on 21 January 2009, the investigator of the area division of the State Procurator's Investigative Committee decided not to initiate criminal proceedings on the same grounds, following procedural checks of the prisoner's claim that, in March 2008, he was beaten with rubber truncheons by unknown, masked individuals in the office of the deputy governor of secure hospital No. 15.

242. These decisions were ruled lawful and well-founded by the Volgograd province Procurator's Office.

243. On 16 February 2009, the governor of the secure hospital No. 15 issued a decision stating that Mr. Zubairaeв wilfully had violated the established rules on serving a sentence. He is not well regarded by the prison authorities. During the period preceding the decision, he did not receive any credits for good behaviour and he was placed in a punishment cell for violating the established rules on serving a sentence on four occasions, including twice for abusing other prisoners. The Office of the Procurator of Volgograd province has studied the disciplinary records of the use of punishment against prisoner. The decisions taken to place him in a punishment cell were founded in law.

244. On 13 March 2009, Dzerzhinsky District Court ruled that the punishment regime should be changed from a strict regime to a three-year prison sentence.

245. On 17 March 2009, when meeting the Prosecutor for Volgograd province, Mr. L.L. Belyak, Mr. Zubairaeв declined the proposal that he explain his complaints about the actions of prison officers and state the circumstances in which physical force had been used against him.

246. No compensation has been paid to Mr. Zubairaeв or members of his family by State secure hospital No. 15 of the Central FSIN Authority for Volgograd province, as the prisoner's claims that his rights had been violated by that authority's prison officers have not been substantiated in the course of numerous checks. The claim that the prisoner had been threatened by prison officers was also not substantiated during the checks by the Office of the Procurator.

247. Furthermore, the Government states that on 18 February 2009, State secure hospital No. 15 of the Central FSIN Authority for Volgograd province initiated proceedings before the Kirov District Court in Volgograd seeking protection of its business reputation and claiming for moral harm against Ms. E.I. Maglevannya, the author of defamatory articles about the situation of the prisoner Mr. Zubairaeв in that institution, which were posted on the Internet.

248. The information set forth in the request has thus not been substantiated. The facts have in any case been reviewed repeatedly by the prosecutorial bodies, in response to numerous complaints by the prisoner's relatives, publications in the media and communications from human rights organizations.

Rwanda

Communication sent

249. On **14 September 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Rwanda to bring attention to information received concerning the Draft East African Community (EAC) Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations, which aims to harmonize anti-counterfeiting laws in EAC countries (Burundi, Kenya, Rwanda, Tanzania and Uganda). This proposed policy promotes standards of intellectual property enforcement extending beyond the obligations of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and threatens the progressive realization of the right to health in the EAC countries.

250. According to the information received, the Government would be assisting the drafting of a policy, which, if adopted, would hinder expeditious access to essential and affordable medical products in both EAC countries and neighbouring countries. Allegedly,

this proposed policy envisages a complete harmonisation of intellectual property enforcement laws among EAC countries, including legal definitions of counterfeiting, investigative procedures, border control measures, seizure and warehousing, destruction of materials, judicial proceedings, and penalties. It was alleged that the proposed definition of counterfeiting is exceptionally broad in its inclusion of patented products, going beyond the territoriality principle of intellectual property law.

251. Moreover, in allegedly criminalizing patent violations, the policy would go beyond traditional standards for patent law. Unlike trademark and copyright law, patent law is not generally amenable to criminal procedure due to the fact that the grant of a patent is never conclusive; a patent may traditionally be challenged until the last year of its protection. Similarly, it was alleged that the policy proposes expanding border controls to include exports and in-transit products, in addition to imports, which are TRIPS-plus enforcement standards that minimize the potential usefulness of TRIPS flexibilities. Mechanisms proposed in the policy allegedly would not recognise flexibilities such as transitional periods for the Least Developed Countries (including most EAC countries), parallel importation, Bolar provisions, and compulsory licensing. Such a policy would have the potential to compromise access to affordable medical products between EAC and neighbouring countries and could hamper the development of local generic industries.

252. Furthermore, it was alleged that public interest groups, including generic medicine consumers and affected individuals already expressed serious concerns in response to recent anti-counterfeit legislation in Kenya and the proposed anti-counterfeit bill in Uganda. Allegedly, the proposed policy further strengthens these approaches to intellectual property rights enforcement by harmonizing the national legal frameworks.

253. Lastly, the allegations claimed that there would be no evidence from the medicine regulation authorities regarding the counterfeiting of medicines, which might justify the closure of any pharmaceutical plants in the region. Rather, it was alleged that, contrary to the stated facts, the entry of genuine high quality generic medicines fostered competition and enhanced the reduction of prices to ensure affordability, which the draft policy would hinder.

Observation

254. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Sri Lanka

Communication sent

255. On **16 April 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an urgent appeal to the Government of Sri Lanka to call attention to information received concerning the health situation of persons treated within the Vanni region, as well as of internally displaced persons (IDPs) treated in hospitals and other health facilities in areas outside the Vanni.

256. Reportedly, with regard to the availability of adequate supplies of essential medicines, thousands of persons in the “no-fire zone” allegedly would be at risk because of a critical lack of access to medicines. Health services then would be concentrated at makeshift medical points inside the “no-fire zone.”

257. According to the information received, approximately 5,000 individuals were reporting daily to each medical point. However, due to the limited medical supplies, treatment was limited to first aid and triage. There were increasing reports of minor injuries

resulting in amputations due to an inability to treat them. Five shipments of medical supplies were made between 19 February and 21 March 2009, but allegedly none of the shipments received was sufficient to meet the needs of the affected population.

258. Furthermore, it was alleged that in February 2009 the Ministry of Health in Colombo ordered eight doctors and 1,000 medical and health workers to leave the Vanni region. Defence Ministry officials allegedly threatened medical workers with dire consequences for “helping supporters of terrorists.” It also was reported that the Ministry of Defence held back urgently needed medical supplies in Vanuniya from being dispatched and that hundreds of deaths could have been prevented if basic facilities and medicines were made available.

259. With regard to a new health facility in Pulmuddai, it was alleged that the makeshift health facility established in Pulmuddai with the assistance of the Indian authorities could only provide immediate care, and was not suited to provide emergency health care to the large number of patients coming from the Vanni region. Allegedly, there were only three doctors, six nurses and 30 attendants at this health facility, which had received 493 patients as of 23 March 2009. According to information received, patients were transported by boat to the beach in Pulmuddai, where the Sri Lanka Navy (SLN) would check them before being provided medical attention in the health facility. After receiving medical assistance, patients allegedly were registered by the Sri Lanka Army (SLA) and subsequently transferred to hospitals in Vanuniya, Padaviya, Mannar, Colombo and Anuradhapura, or welfare camps in Vanuniya.

260. Allegedly, out of the 493 patients brought to Pulmuddai as of 23 March, only 100 were treated in this facility, whereas a large number of patients requiring immediate surgery and other complicated health conditions were transferred to the Padaviya hospital (125 patients) and the Vanuniya IDP camps. It was alleged that patients with serious injuries and those who underwent surgical operations faced serious health risks in the IDP camps in Vanuniya due to the outbreaks of chicken pox and scabies that have been reported to occur there. It was alleged further that the Trincomalee hospital, which was better equipped to treat patients from the Vanni region, especially those requiring immediate surgery, no longer would be used since the establishment of the new health facility at Pulmuddai. The decision to transfer patients to the hospital in Padaviya rather than to the one in Trincomalee alleged was based on political, rather than medical, reasons.

261. It also was alleged that due to security restrictions, only persons and organizations authorized by the Ministry of Defence would have access to the Pulmuddai health facility, and that ICRC, UNHCR, UNICEF and other organizations providing assistance to IDPs so far have not been granted access to this facility. Furthermore, patient lists – which are necessary, amongst other things, to identify ailments and provide special care – allegedly were not made available to service providers.

Observation

262. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Communication sent

263. On **29 April 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health together with the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, and the Special Rapporteur on the right to food sent a joint urgent appeal to the Government of Sri Lanka. The Special Procedures brought to the attention of the Government information that they had continued to receive concerning the

persisting serious humanitarian situation, including access to food, water and health care of internally displaced persons (IDPs) in the Vanni region.

264. According to the information received, IDPs in Vanuniya had been unable to have regular access to sufficient and adequate food as the food distribution system had been subject to delays and unclear procedures. It had been reported that IDPs may receive food ration cards but only after having registered. The registration process reportedly had been very long. In some places it appeared that there were no registration mechanisms in place yet.

265. Reportedly, there had been instances of people fighting over access to food which, in one case, had resulted in the death of a 7 year old. It also had been reported that paramilitary and other groups had been providing for unorganized and ad-hoc distributions of small amounts of food, which, since they could not satisfy needs, had contributed to fuelling a tense and frustrating situation within IDP camps and sites. Reports indicated that at some of the sites, including the screening site of Omanthai, IDPs had not received any food for three consecutive days. It appeared that due to the critical situation in the food sector, the Government had committed to providing cooked food for the first three days of new arrivals at the camps. At the time of the communication it remained to be seen whether the Government had the capacity to implement this measure.

266. It also was reported that the health situation in the Vanni region had further deteriorated. Due to malnutrition and dehydration, the population was becoming weaker and more vulnerable to infectious diseases. Chicken pox and watery diarrhoea epidemics already had been reported as well as a case of typhoid fever. Treatments for diabetes, hypertension, cancer, different psychiatric conditions and other chronic diseases were still unavailable.

267. It also has been alleged that even though some transit sites received daily ambulance visits, the majority was without a full-time doctor and some reported no doctors' visit for a few days. It also was reported that there was no data concerning the number of deaths, but it appeared that the majority was that of infants under two years old and the elderly. In addition, referrals to hospitals remained problematic since the Ministry of Health had not developed a contingency plan. Consequently, the likelihood of preventable deaths during new arrival influxes was very high. The situation in hospitals receiving IDPs was reported to be increasingly difficult, as they were extremely under-staffed and severely overcrowded. In Vanuniya there was an estimated 1,500 to 1,800 patients with a bed capacity of 600. A similar situation was reported in Chettikulum hospital that currently was treating more than 520 patients with a bed capacity of 140. IDPs who had received life-saving surgery reportedly were dying due to a lack of post-operative care capacity.

268. It was alleged that there was an urgent need for professional mental health support, as significant numbers of IDPs reportedly were suffering from mental trauma as a result of their experience during the conflict. In addition, it was alleged that since 1 April hardly any shipment of food, medical supplies or non-food relief items had been delivered to the no-fire zone. It further was alleged that for the previous six months, shipment of essential medicine and medical supplies for the people in the no-fire zone had been met with consistent delays in clearance from the Ministry of Defence, which consequently was hindering access to life-saving supplies. Chronic water shortages and limited access to scant water supplies had been reported at Omanthai as well as in most of the transit sites. It also was alleged that the quality of drinking water was not satisfactory and that the Ministry of Defence had not been clearing consistently the supply of chlorine tablets to treat water supplies in the no-fire zone.

269. In the transit sites and IDP camps, reports emerged of insufficient toilet facilities and an inadequate drainage system to manage the situation, particularly with heavy rains. It also

was reported that sanitation facilities and water supplies were located far away from the blocks at Menik Farm zone 3, creating access problems particularly for the elderly and the disabled, and security concerns for women and children. Furthermore, the lack of adequate access to sanitation reportedly was leading to increased open defecation, which could cause serious health problems for the entire IDP population.

Response received

270. By letter dated **11 May 2009**, the Government of Sri Lanka sent a reply regarding the communication sent on 29 April 2009. In addition to addressing concerns regarding the availability of food and adequate nutrition, the Government denied allegations that people in the IDP camps would suffer from epidemics. It admitted, however, that the health situation is problematic due to a large number of people living in the camps. Additionally the Government included some statistics indicating the amount of supplies provided for the people from the LTTE-controlled zones. Finally the Government informed the Special Rapporteur that it requested more detailed information to a number of Ministries in Sri Lanka.

Communication sent

271. On **26 May 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Chairperson of the Working Group on Arbitrary Detention, the Chairperson of the Working Group on Enforced or Involuntary Disappearances, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal to the Government of Sri Lanka. It concerned information received regarding Dr. Thangamutha Sathiyamoorthy, the regional director of health services in Kilinochchi, Dr. Thurairaja Varatharajah, the regional director of health services in Mullaitivu, and Dr. V. Shanmugarajah, medical superintendent at Mullivaaykkaal field hospital.

272. According to the information received, Dr. Sathiyamoorthy, Dr. Varatharajah and Dr. Shanmugarajah are government employed and had been treating the sick and wounded in the conflict zone in northeastern Sri Lanka until they left the “no-fire zone” with approximately 5,000 other civilians on 15 May 2009. The Sri Lankan Army detained the three doctors on 16 May 2009, under the broad arrest and detention powers of security forces pursuant to the Prevention of Terrorism Act. The physicians were last seen on the morning of 15 May 2009 at a holding area at Omanthai check point. An official of the Ministry of Health stated on 18 May that Government forces handed over the physicians to the police.

273. Dr. Shanmugarajah and Dr. Sathiyamoorthy apparently are being held at a detention centre of the Terrorist Investigation Division in Colombo. However, their relatives are not aware of their exact whereabouts and neither has had access to a lawyer. Dr. Varatharajah was seriously injured and is reported to have been airlifted by the Sri Lankan Air Forces from the Omanthai checkpoint to an unknown destination.

274. Reportedly, while working in the conflict zone, the doctors provided detailed eyewitness reports to the media and the international community from hospitals and makeshift medical centres. Their reports detailed the suffering of ordinary civilians, many of whom died from war-related injuries. Their reports also highlighted continuous shelling of areas with large concentrations of non-combatants.

Response received

275. By letter dated **28 May 2009**, the Government of Sri Lanka responded to the abovementioned urgent appeal sent on 26 May 2009. It indicated that Dr. Varatharajah was injured and is now undergoing treatment, and will be well looked after by his colleagues from the Ministry of Health. The Government cannot publicly reveal where he is since his life may still be under threat from LTTE elements. However, the Government would be happy to discuss the issue with the Special Rapporteurs in Geneva.

276. With regard to the other two doctors, they are in custody and the circumstances in which they made certain statements, under duress, over the last couple of months are being investigated.

277. By letter dated **15 July 2009**, the Government indicated that Dr. Thangamutha Sathiyamoorthy, Dr. V. Shanmugarajah and Dr. Thurairaja Varatharajah surrendered to the Army when they arrived at Omanthai checkpoint on 15 May 2009. Dr. Varatharajah, who was injured at the time of surrender, was admitted to the General Hospital on Colombo. He was released on 6 June 2009.

278. The three doctors were detained under section 19(1) of the Emergency Regulation on charges of their alleged links with the LTTE organization, disseminating false information to the international media, and supplying medicine and medical equipment to the LTTE from Government hospitals. They are now being held in protective custody by the Criminal Investigation Department in Colombo, pending the completion of the investigations. They have been visited by the ICRC and their families on several occasions, and were given healthcare services.

279. At a media briefing on 8 July, all three doctors stated that they were forced by the LTTE to speak to foreign media and provide exaggerated information on civilian casualties. They also said that they were not under duress to attend the media briefing organized by the Media Centre for National Security.

280. By letter dated **3 August 2009**, the Government indicated that investigations so far have revealed that Dr. Shanmugarajah moved to Mullaitivu and joined the LTTE in 1995. He worked as a doctor at Puthuikuvuruppu Hospital run by the LTTE. During the peace accord in 2002, he completed his medical degree and served as a Government doctor in an LTTE controlled until 2009.

281. While he was serving at a makeshift hospital in Mullaivaikkal in May, a member of the LTTE Medical Wing informed him that the BBC in London would contact him, and that he should say that shelling by the Government troops continued and that scores of civilians and patients were dying as a result, which he did.

282. Dr. Sathiyamoorthy was appointed to the Kilinochchi Base Hospital in 2000 and was promoted as the acting Medical Superintendent.

283. Between February and March 2009, when he was at Puthkuduiruppu makeshift hospital, a member of the LTTE Medical Wing informed him that the BBC in London would contact him, and that he should say that there was a severe shortage of drugs and those scores of civilians and patients were dying as a result, which he did.

284. Dr. Varatharajah was appointed Director of Health Services in Mullaitivu District in December 2008. In early 2009, he was given a check for 5 million Rs. by the leader of the LTTE Transport Wing, to purchase a jeep used by a Tamil National Alliance Member of Parliament. On instructions of the LTTE member, he bought the jeep and used it for his official and private work. At the request of the LTTE Medical Wing, medical equipment and drugs were given to the LTTE from the Government Hospitals in Mullaitivu District. These were then taken to LTTE makeshift hospitals to treat the injured LTTE cadres. BBC

correspondents contacted him on several occasions, and he gave them exaggerated casualty figures. He also reported shelling by the Government troops to several other news agencies. On 14 May he sustained injuries due to LTTE shelling.

285. All three doctors had access to healthcare facilities at the expense of the state, and were visited on several occasions by the ICRC and their families. In addition, physical exercises, reading and writing material and draft boards are available. No complaint has been lodged by or on behalf of these doctors.

Communication sent

286. On **27 August 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Special Rapporteur on human rights defenders and the Chairperson of the Working Group on Arbitrary Detention sent a joint urgent appeal to the Government of Sri Lanka. It was brought to the attention of the Government information concerning Mr. Charles Raveendran Navaratnam, aged 45, employed by the United Nations High Commissioner for Refugees and Mr. Kanthasamy Sounthararajan, aged 31, employed by the United Nations Office for Project Services.

287. Reportedly, on 11 June 2009 Mr. Navaratnam was questioned at his home by a person addressed as the "OIC" and several other persons in civilian clothes. He was informed that he had to be taken away for an inquiry, and was taken to a dark blue Pajero Jeep (Registration No. 61-7068), where he was immediately handcuffed. He was then blindfolded and asked to indicate where the "goods" were. He denied any knowledge about this, following which he was beaten and stricken with an iron rod on his head. He was threatened with being killed if he did not reveal "the truth." He was then taken to Vepankulam, where he was beaten in the stomach, neck and face, including the mouth, ears and jaw, as well as on his legs with a wooden baton. He was taken to a house where other persons were being held. He spent the night handcuffed and with his legs chained.

288. On 12 June 2009, he was again interrogated about the "goods" and asked whether he knew certain individuals. He denied any knowledge and was beaten again. He was also taken to the Menik Farm and Technical College Internally Displaced Persons Camp, where he was ordered to identify LTTE suspects, which he failed to do. He spent the night at the Vanuniya Police Station, where he was forced to sleep with his legs chained.

289. On 13 June 2009, at about 8:30 a.m., he was taken away in the same jeep and stopped at the Petrol Station close to Vanuniya Kachcheri. There, the persons in the jeep got out and forcibly took Mr. Kanthasamy Sounthararajan, indicating that he was being taken for questioning and would be released after an inquiry. He was questioned about some suspected persons and was beaten when he denied any information. Both men were then taken to Temple Road where international nongovernmental organizations and United Nations Agencies have their offices. They were both directed to tell whether staff in these organizations had any connections with terrorists. They denied any knowledge and were threatened with death. In the afternoon, they were taken in the direction of Vanuniya Mannar Road and stopped at a cemetery in Bharathipuram. Mr. Sounthararajan was taken out, beaten and threatened with a pistol. However, when bystanders arrived on the nearby road he was forced back into the jeep. Later that day, both men were taken to Colombo and were held in a building behind Borella Police Station. There they were subjected to prolonged interrogations by several police officers and beatings and were later transferred back to Borella Police Station.

290. On 25 June 2009, they were examined by officers of the International Committee of the Red Cross. Later, they were permitted visits by relatives, staff of their employing

agency and their lawyers. The next day, they were forced to sign a statement in Sinhalese, a language that they did not understand. They are still being held at the Borella Police Station, and it is believed that they were arrested for “actively engaging in LTTE activities”. A fundamental rights application was filed in the Supreme Court for both men. The Supreme Court gave them leave to proceed and instructed the Judicial Medical Officer (JMO) to examine the detainees and submit a report to the court. They were examined by the JMO on 26 June. On 23 July, the police took them back to the JMO and requested him to write a new report based on documentation provided by the police. However, the JMO refused. As a result of the beatings, both men suffer from back pain, partial loss of hearing and severe headaches.

Observation

291. The Special Rapporteur regrets that at the time of the finalization of this report, the Government has not transmitted any reply to his communication.

Communication sent

292. On 5 August 2009, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an urgent appeal to the Government of Sri Lanka to call attention to information received concerning the detention of 300,000 internally displaced persons interned in forty camps in and around Vanuniya and other areas allegedly against their will without freedom to enter or leave the camps.

293. According to the information received, 300,000 persons are being detained in the camps against their will and that the nature and scale of their injuries and their deteriorating health is developing into a large-scale humanitarian crisis. The current provision of health services allegedly are be inadequate in meeting the IDPs’ needs in terms of coverage, comprehensiveness and quality.

294. It was alleged that there are more than five deaths a day in the welfare centres within the camps due to starvation and malnutrition. On one day alone there were 14 death of older persons registered. Allegedly, there were over 8,500 chicken pox cases in Vanuniya and large numbers of injured, including those who have recently undergone amputation surgeries, who would be reportedly not receiving care. The incidence of hepatitis A, typhoid and respiratory tract infections reportedly have been on the rise, which indicates overcrowded and poor sanitary conditions in part of the camps. Considerable gaps in the provision of health services allegedly exist, despite the existing government efforts services have not been continuously available, no psychosocial care services have been provided, and services to provide basic sterile services, as well as surgical and reconstructive services for those injured in conflict, have been absent. In addition, reportedly restrictions on movement imposed within the camps have hindered access to medical assistance and access to the camps, and approval to provide the full range of necessary health services have been restricted for NGOs and international agencies.

295. Furthermore, the absences of adequate water supply and of a health and hygiene promotion programme allegedly have exacerbated the current situation, similar to the alleged lack of protection provided from sexual and other forms of violence.

Observation

296. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Sudan

Communications sent

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

298. According to the information received, on 5 March 2009, following the issuance of an arrest warrant against President Omar Bashir by the International Criminal Court, it was announced that the operations related to humanitarian assistance and human rights work of these organizations were suspended. These organizations include 13 international non-governmental organizations. In addition, the activities of three national organizations were also terminated. These 16 organizations employed nearly 6,500 national and international personnel, constituting close to half of the workforce in Darfur. Relief and humanitarian international NGOs reportedly have appealed the eviction orders (according to Sudanese law), while the closing of local NGOs cannot be appealed according to the Humanitarian Act of 2006.

299. Incidents of threats against NGO personnel were reported as well as systematic confiscation and seizure of property. The impact not only would affect Darfur, but also the Three Transitional Areas and Eastern Sudan. According to estimates, 1.5 million beneficiaries no longer have access to health and nutrition services. Host and IDP populations are particularly affected. Water supply, sanitation and hygiene services provided by these NGOs to 1.16 million people have been interrupted (Blue Nile – 102,000; Eastern States – 50,000; and Darfur – 1,007,000). Some 1.1 million people have stopped receiving general food distribution and the treatment of some 4,000 children for severe and moderate malnutrition could be interrupted. In the non-food item and emergency shelter sectors, 670,000 individuals are to be affected. Distributions of non-food items and emergency shelter ceased in 19 camps and locations in Darfur.

300. Finally, disturbing reports of censorship, temporary newspaper suspensions, threats of and arbitrary arrest and detention to prevent human rights defenders, journalists and members of opposition parties from freely expressing their opinions, have been noted. In addition to comments on the accuracy of the alleged facts, the Special Rapporteurs requested further information on the legal basis of the suspension of the aforementioned 16 non-governmental organizations as well as the seizure of their property; on the measures taken by local and central authorities to ensure that the economic and social rights of the inhabitants in the region of Darfur, in Northern Sudan and in the Transitional Areas are respected and protected, especially those related to health, housing, education, food, water and sanitation.

Observation

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

Tanzania (United Republic of)**Communication sent**

302. On **14 September 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Tanzania regarding the Draft East African Community (EAC) Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations, which aims to harmonize anti-counterfeiting laws in EAC countries (Burundi, Kenya, Rwanda, Tanzania and Uganda). This proposed policy promotes standards of intellectual property enforcement extending beyond the obligations of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and threatens the progressive realization of the right to health in the EAC countries.

303. According to the information received, the Government would be assisting the drafting of a policy, which, if adopted, would hinder expeditious access to essential and affordable medical products in both EAC countries and neighbouring countries. Allegedly, this proposed policy envisages a complete harmonization of intellectual property enforcement laws among EAC countries, including legal definitions of counterfeiting, investigative procedures, border control measures, seizure and warehousing, destruction of materials, judicial proceedings, and penalties. It was alleged that the proposed definition of counterfeiting is exceptionally broad in its inclusion of patented products, going beyond the territoriality principle of intellectual property law.

304. Moreover, in allegedly criminalizing patent violations, the policy would go beyond traditional standards for patent law. Unlike trademark and copyright law, patent law is not generally amenable to criminal procedure due to the fact that the grant of a patent is never conclusive; a patent may traditionally be challenged until the last year of its protection. Similarly, it was alleged that the policy proposes expanding border controls to include exports and in-transit products, in addition to imports, which are TRIPS-plus enforcement standards that minimize the potential usefulness of TRIPS flexibilities. Mechanisms proposed in the policy allegedly would not recognise flexibilities such as transitional periods for the Least Developed Countries (including most EAC countries), parallel importation, Bolar provisions, and compulsory licensing. Such a policy would have the potential to compromise access to affordable medical products among EAC and neighbouring countries and could hamper the development of local generic industries.

305. Furthermore, it was alleged that public interest groups, including generic medicine consumers and affected individuals already expressed serious concerns in response to recent anti-counterfeit legislation in Kenya and the proposed anti-counterfeit bill in Uganda. Allegedly, the proposed policy further strengthens these approaches to intellectual property rights enforcement by harmonizing the national legal frameworks.

306. Lastly, the allegations claimed that there would be no evidence from the medicine regulation authorities regarding the counterfeiting of medicines, which might justify the closure of any pharmaceutical plants in the region. Rather, it was alleged that, contrary to the stated facts, the entry of genuine high quality generic medicines fostered competition and enhanced the reduction of prices to ensure affordability, which the draft policy would hinder.

Observation

307. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Thailand

Communication sent

308. On **26 August 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Chairperson of the Working Group on Arbitrary Detention, the Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of Thailand regarding a group of individuals from the Rohingya minority of Myanmar currently in immigration detention in Thailand. The conditions of detention, and particularly reported shortcomings in the access to medical care, are alleged to have resulted in the death of two detainees, Abdul Salam and Hammah Tulah.

309. According to the information received, Abdul Salam and Hammah Tulah reportedly were part of a group of 78 individuals that arrived in Thailand on 26 January 2009 and who were transferred subsequently to the Immigration Detention Center (IDC) in Ranong, Thailand.

310. On 1 July 2009, Abdul Salam died of heart failure at the age of 18 at the Ranong IDC. On 13 August 2009, Hammah Tulah, 15 years old, also died while in detention at the Ranong IDC. In both cases, the rapid deterioration of their health may be due to the inadequacy and inefficiency of healthcare being provided to them during their detention period and particularly during the hours preceding their deaths. A third person is reportedly in critical medical condition. Following these deaths, all remaining individuals from the aforementioned Rohingya minority group have been transferred to the Suan Plu IDC in Bangkok.

311. It has also been reported that irregular immigrants in Thailand face potentially indefinite administrative immigration detention.

Response received

312. By letter dated **17 November 2009**, the Government responded to the joint urgent appeal of 26 August 2009 indicating that the Rohingyas who arrived on Thai shores entered illegally and are illegal immigrants under Thai law. The issue of Rohingyas is a complex one that involves problems of statelessness, people smuggling and human trafficking. The issue must therefore be addressed in a comprehensive manner and through regional cooperation, including bilateral cooperation with Myanmar and Bangladesh; cooperation with a contact group of affected countries (Bangladesh, India, Indonesia, Malaysia and Myanmar); cooperation with the Association of Southeast Asian Nations; and cooperation within the Bali Process on People Smuggling, Trafficking in Persons and related Transnational Crime.

313. With regard to the group of 78 Rohingyas who have arrived on Thai shores in January 2009, Thailand has taken care of them based on humanitarian considerations. The Government allowed relevant embassy representatives and staff from UNHCR to visit them.

314. With regard to the death of Mr. Abdul Salam and Mr. Hammah Tulah in the Immigration Detention Centre in Ranong Province, the post mortems have suggested that the causes of death were cardiac arrest.

315. On a humanitarian basis, the Immigration Bureau moved all the Rohingyas to the Immigration Detention Centre in Bangkok to give them more space for exercise and recreation, as well as for better access to medical care. The move also made it easier for UNHCR and other relevant NGOs to have access.

316. As reported by the Government, Thailand has no intention of detaining this group of persons indefinitely, and steps are being taken to verify their nationality and country of origin and to provide a long-term solution for them.

Turkey

Communication sent

317. On **25 August 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of Turkey regarding Ms. Güler Zere, aged 37, currently held at Karatas Prison in Adana.

318. According to the information received, Ms. Zere was diagnosed with cancer while she was held in Elbistan E-type Prison. The diagnosis came late due to restrictions on access to adequate medical care. Even once the illness was diagnosed, treatment was delayed, citing lack of space in the hospital dormitory and the “queue” of prisoners awaiting treatment. As a result, the cancer spread and has become life-threatening.

319. In spite of a report dated 22 June 2009 by forensic medical doctors of Cukurova University in Adana, which indicated that Ms. Zere was in need of hospitalization and that her life was in danger, she has not been released from detention and is unable to access adequate medical treatment.

320. A complaint against the Prison Prosecutor of Elbistan has been filed, however, to no avail.

Observation

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

Uganda

Communication sent

322. On **14 August 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Uganda to call attention to information received concerning the proposed Counterfeit Goods Bill (2008) to prohibit trade in counterfeit goods and its possible effect on the right to health in Uganda, specifically regarding access to medicines.

323. Reportedly, the Counterfeit Goods Bill would contain overly broad and restricting provisions to implement national intellectual property legislation in compliance with the World Trade Organization agreement on Trade Related Aspects of Intellectual Property

Rights (TRIPS). Allegedly, the Bill would apply the term “counterfeit” broadly to any item potentially infringing any intellectual property right, when it should normally only be applied to trademark infringing goods. This would be of concern as border guards would be empowered to halt the importation of generic medicines that merely would be alleged, and never actually proven, to be lacking in the necessary licenses to enter the country. Allegedly, this would be contrary to article 44 of TRIPS, which allows countries to limit enforcement measures to “declaratory judgments and adequate compensation” after a full judicial proceeding.

324. Furthermore, it was alleged that the Bill also gives powers to the Uganda National Bureau of Standards (UNBS) and the Commissioner of Customs to enforce the provisions of the Bill by primarily taking action against alleged counterfeit goods. Allegedly, this would confer the powers of the National Drug Authority (NDA) to UNBS. The NDA is the drug regulatory body in Uganda and its role is to ensure that only high quality, efficacious and cost effective medicines are available to population of Uganda. Conferring the powers of the NDA to the UNBS is of concern as the UNBS does not necessarily have the technical capacity to determine drugs are of low quality.

325. It also was alleged that the proposed provisions of the Bill prescribe for strong intellectual property enforcement measures, many of which impose TRIPS-plus standards. For example, the Bill would not recognize the transitional period and other flexibilities afforded by TRIPS, which are necessary to ensure timely access to affordable medicines. Specifically, the Bill does not provide for parallel importation, the boar exemption or compulsory licenses. Allegedly there would be apprehension that the proposed legislation would hamper access to medicines in the country, as it imposes TRIPS-plus standards and does not allow for flexibilities, which can be used to facilitate generic competition and production of medicines.

326. Moreover, the proposed bill allegedly would raise health concerns, as Uganda has no obligation to implement TRIPS until 1 July 2013. With regard to pharmaceutical products, Uganda does not need to apply provisions on patents and protection of undisclosed information until 1 January 2016. The transitional period provided by TRIPS is intended to enable the Least Developed Countries (LDC) to have time to develop, improve economic and social conditions, such as the situation of access to medicines, and to create a viable technological base in view of the needs and requirements of LDC member states in light of their economic and developmental abilities.

Observation

327. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Communication sent

328. On **12 November 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of Uganda concerning the Detention of nine men under Penal Act Code Article 145(a) and the alleged ill treatment of two of the detainees, one of whom died immediately upon release from prison.

329. According to the information received, consensual homosexual conduct is a criminal offense in Uganda, punishable, in some cases, with life imprisonment. At present, people suspected of homosexual conduct are being prosecuted on the charge of “carnal knowledge

of any person against the order of nature” under Penal Act Code Article 145(a). Reportedly, nine men currently are being detained on this charge and have been held in detention for over 90 days without trial. They allegedly were arrested without warrant or other permission by local police officers, in some cases in cooperation with Local Council Officials, on the basis of unfounded allegations of homosexuality made by fellow villagers. They thus have been detained for extended periods of time, longer than the maximum of 48 hours, during which time some men were beaten by other detainees and the police, forced to undergo invasive medical examinations and denied access to necessary health care.

330. Details regarding each of the individuals are as follows: 1. Mr. S. S. was first detained in Nakifuma, Kawuuga Prison, Mukono, and is now detained in Luzira Prison, Kibuye. Initially charged with “carnal knowledge against the order of nature”, he was later charged with “defilement” and “aggravated defilement”. Mr. S. remains in Luzira Prison pending a hearing on his application for bail, which has recently been postponed for two months 2. Mr. S. K. K. has been detained since March 2009 in Kigo Prison, Entebbe. He was initially charged with “carnal knowledge against the order of nature” and later with “aggravated defilement”. 3. Mr. C. T.: The details of his detention are unknown. 4. Mr. J. K. is detained in Butuntumula Prison, Luwero Village. Initially charged with “carnal knowledge against the order of nature”, he was later charged with “defilement” and “aggravated defilement”. 5. Mr. J. S. was detained from June 2009 to 13 July 2009 in Luzira Prison, Kibuye, charged with “aggravated defilement”. 6. Mr. D. E. M. K. K. was arrested in May 2009 in Nakawuka Village, Kasanje Sub-County, Wakiso District and charged with “aggravated defilement”. 7. Mr. J. K. T. was arrested in October 2008 in Karoza, Mitooma, Bushenyi and charged with “carnal knowledge against the order of nature”. 8. Mr. F. W. (also known as N. M.) was arrested on 8 April 2009 in Namakwekwe Village, Mbale District of Eastern Uganda and charged with “carnal knowledge against the order of nature”. He was detained in Kampala Road Police Station, Mbale Police Station, and Maluke Prison (all in the Mbale District of Eastern Uganda) until 20 May 2009. 9. Mr. B. M. was arrested on 8 April 2009 in Namakwekwe Village, Mbale District of Eastern Uganda, charged with “carnal knowledge against the order of nature”. He was detained in Kampala Road Police Station, Mbale Police Station and Maluke Prison (all in the Mbale District of Eastern Uganda) until June 16, 2009.

331. In particular, information received regarding Mr. B. M. and Mr. F. W. suggests that there were no investigations into actions by the police, who lacked arrest warrants. The arrests followed denunciations of Namakwekwe villagers and local LCD officers who suspected Messrs. M. and W. of homosexual activity. At the Kampala Road Police Station, both men were kept in a cell with 17 other men who allegedly severely beat them on two occasions, after having been incited by the police to do so upon disclosure of the allegations against them.

332. On 9 April 2009, both men were transferred to Mbale Police Station, where a police doctor allegedly examined them in a humiliating and invasive manner. The report of these examinations (dated 16 June 2009) stated that both men had gonorrhoea and were HIV negative, and mentioned that both men had pierced ear lobes, a presumed sign of homosexuality. The police also allowed the media to take photographs of Mr. M. and Mr. W., which were then used in full coverage stories on television and in newspapers. Reports about these alleged violations of the right to privacy were submitted to the Uganda Human Rights Commission on 17 June 2009.

333. Both men remained in custody at Mbale until 17 April 2009, when they were formally charged in court with “having carnal knowledge against the order of nature.” They were then transferred on remand to Maluke Prison in Mbale. Following appearances on 21 April 2009 and 4 May 2009, bail was set for both of them. However, neither man could immediately meet the financial terms and conditions set by the court, so their detention was

again extended until 20 May 2009, when Mr. W. was released. He is attending court hearings while on bail.

334. Meanwhile, Mr. M. remained in custody until 16 June 2009. Due to the violent treatment received while in custody, Mr. M. was admitted to Mbale District Hospital, with severe injuries to his head and internal organs, immediately upon getting bail. However, he went into a coma before any medical examinations were carried out. Subsequently, his condition deteriorated and he died on 13 September 2009. Medical records contain conflicting information on the cause of this death. While one report indicates that the coma was due to complications from syphilis, others indicate that his death was related to meningitis or anaemia. Despite the resulting uncertainty, no autopsy was carried out on Mr. M. and the cause of this death remains unknown. However, a number of sources have indicated their fear that physical and psychological ill-treatment or torture during Mr. M.'s detention may have caused or contributed to his death.

Observation

335. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Communication sent

336. On **22 December 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Uganda to call attention to information received concerning the Draft East African Community (EAC) Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations, which aims to harmonize anti-counterfeiting laws in EAC countries (Burundi, Kenya, Rwanda, Tanzania and Uganda). This proposed policy promotes standards of intellectual property enforcement extending beyond the obligations of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and threatens the progressive realization of the right to health in the EAC countries.

337. According to the information received, the Government was party to the drafting of a policy, which, if adopted, would hinder expeditious access to affordable and essential medical products in both EAC countries, as well as neighbouring countries. Allegedly, this proposed policy envisages a complete harmonization of intellectual property enforcement laws among EAC countries, including legal definitions of counterfeiting, investigative procedures, border control measures, seizure and warehousing, destruction of materials, judicial proceedings, and penalties. It was alleged that the proposed definition of counterfeiting is exceptionally broad in its inclusion of patented products, going beyond the territoriality principle of intellectual property law.

338. Moreover, in allegedly criminalizing patent violations, the policy goes beyond traditional standards for patent law. Unlike trademark and copyright law, patent law is not generally amenable to criminal procedure due to the fact that the grant of a patent is never conclusive; a patent may traditionally be challenged until the last year of its protection. Similarly, it was alleged that the policy proposes expanding border controls to include exports and in-transit products, in addition to imports, which are TRIPS-plus enforcement standards that minimize the potential usefulness of TRIPS flexibilities. Mechanisms proposed in the policy allegedly would not recognise flexibilities such as transitional periods for the Least Developed Countries (including most EAC countries), parallel importation, Bolar provisions, and compulsory licensing. Such a policy would have the potential to compromise access to affordable medical products among EAC and neighbouring countries and could hamper the development of local generic industries.

339. Furthermore, it was alleged that public interest groups, including generic medicine consumers and affected individuals have already expressed serious concerns in response to recent anti-counterfeit legislation in Kenya and the proposed anti-counterfeit bill in Uganda. Allegedly, the proposed policy further strengthens these approaches to intellectual property rights enforcement by harmonizing the national legal frameworks.

340. Lastly, the allegations claimed that there is no evidence from the medicine regulation authorities regarding the counterfeiting of medicines, which might justify the closure of any pharmaceutical plants in the region. Rather, it was alleged that, contrary to the stated facts, the entry of genuine high quality generic medicines would have fostered competition and enhanced the reduction of prices to ensure affordability, which the draft policy would hinder.

Observation

341. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Communication sent

342. On **23 December 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Chairperson of the Working Group on Arbitrary Detention, and Special Rapporteur on extrajudicial, summary or arbitrary executions sent a joint allegation letter to the Government of Uganda concerning a legislative bill pending before the Ugandan legislature, Bill No. 18 of 2009.

343. According to the information received, the Parliament of Uganda would be currently considering Bill No. 18 of 2009 (also known as the “Anti-Homosexuality Bill”) tabled before it on 15 October 2009. The proposed Bill increases penalties for homosexual conduct and criminalizes many related activities. The envisaged penalties range from imprisonment not exceeding three years for the failure to denounce the commission of an offence as defined by the Bill to life imprisonment and the death sentence. Consensual homosexual conduct is already a criminal offence under article 145(a) of the Ugandan criminal code, which penalizes “carnal knowledge of any person against the order of nature”. However, Bill No. 18 would expand the reach of this existing provision by including “any person who touches another person with the intention of committing an act of homosexuality”. The Bill also punishes “aggravated homosexuality,” including activity by “serial offenders” or those who are living with HIV, with the death penalty.

344. In addition, the Bill punishes any form of “promotion of homosexuality” with imprisonment of five to seven years. This raises concerns that the work of civil society actors and human rights defenders addressing issues of sexual orientation or gender identity might be criminalized. The Bill specifies that this includes anyone who publishes or disseminates “homosexual materials,” “funds or sponsors homosexuality and related activities,” “uses electronic devices which include internet, films and mobile phone” or “who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices.” The Bill also criminalizes failure to report any offences within its scope, compelling citizens to report to the authorities anyone whom they suspect of engaging in homosexual activity.

345. Furthermore, HIV prevention activities in Uganda, which rely on an ability to speak frankly about sexuality and health and to provide condoms and other safer sex materials, may be compromised by this Bill. However, women, sex workers, people living with HIV

and other marginalized groups may also find their activities tracked and criminalized through this Bill should it be enacted into law.

346. Concerns were raised with the Government regarding its commitment to protect the right to health as reflected in the international legal instruments, including the Universal Declaration of Human Rights (article 25(1)) and the International Covenant on Economic, Social and Cultural Rights (article 12), which the Government of Uganda ratified on 21 April 1987.

347. Furthermore, a number of studies indicate that criminalization of homosexuality will have a detrimental impact on efforts to combat the spread of HIV in Uganda. It has been shown that decriminalization of homosexuality, combined with efforts to address stigma and discrimination against lesbian, gay, bisexual and transgender (LGBT) persons constitutes a far more effective approach to HIV prevention. If the Bill came into force, it would impede access to HIV- and health-related information and services for LGBT individuals and could thereby undermine the national HIV response, not only by discouraging LGBT individuals from seeking and accessing services, but also by preventing service providers from providing information and services to members of this community.

Observation

348. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

Ukraine

Communication sent

349. On **10 February 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on extrajudicial, summary or arbitrary executions sent an allegation letter to the Government of Ukraine to call attention to information received concerning Mr. H.H. Ashakhanov, born in 1973.

350. Reportedly, Mr. Ashakhanov was serving his sentence in Orekhovskaya penal colony No. 88, when he fell sick in September 2009. He approached the medical unit, where he allegedly received two injections of unknown drugs. Subsequent to this treatment, Mr. Ashakhanov became permanently ill, lost his appetite and often vomited after meals. Mr. Ashakhanov reportedly complained repeatedly to the medical unit, requesting them to conduct an examination and administer proper treatment. However, no examination was performed and no treatment was administered.

351. Since November 2009, Mr. Ashakhanov's health condition severely deteriorated. He was unable to leave his bed as he was severely weak and suffered from nausea and vomiting. His temperature rose above 40 degrees Celsius. In two months, Mr. Ashakhanov lost about 20 kilograms of weight. On those days when he was able to walk, he went to the medical unit to complain. He was given medication (analginum or diphenhydramine), which decreased his temperature for a short time. On several occasions, he was placed in the medical unit, however, never for a period exceeding five days. There was no medical examination and no permanent treatment administered. When Mr. Ashakhanov could not get out of the bed and go to the medical attendant for help, he did not obtain medical assistance at all because the warders did not respond to his complaints.

352. In mid-January 2010, Mr. Ashakhanov again was placed in the medical unit for several days. In the morning of 19 January 2010, he suddenly was transported away from the colony in an unknown direction. On 20 January 2010, Mr. Ashakhanov's cellmates were told that he had died.

353. Information received indicated that Mr. Ashakhanov has submitted a complaint to the European Court of Human Rights (application no. 35930/06). Reports further suggested that prison officials intimidated Mr. Ashakhanov more than once, in connection with this complaint. His correspondence was allegedly intercepted.

354. Reports further indicated a high mortality rate among prisoners at Orekhovskaya penal colony No. 88 due to the absence of medical assistance. Prisoners reportedly are taken out of the colony only in the event of exceptionally severe health deterioration. Information further suggested that neither family members nor other relevant persons would have been informed to which hospital detainees would be transported.

355. Concern was raised with regard to the circumstances of the death of Mr. Ashakhanov.

Observation

356. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

United Kingdom of Great Britain and Northern Ireland

Communication sent

357. On **15 July 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an urgent appeal to the Government of United Kingdom to call attention to information received concerning the health of Mr. Mahmoud Abu Rideh, under "control order" imposed by the authorities of the Government of the United Kingdom under the Prevention of Terrorism Act 2005.

358. Allegedly, there was a real risk that Mr. Mahmoud Abu Rideh would attempt suicide. He had made three previous attempts, most recently in May 2008, and the risk of another attempt would persist due to his situation. The indefinite nature of his control order, lack of access to travel documentation to leave the United Kingdom and the recent separation from his family allegedly would have contributed to his level of despair that places him at a high level of danger to himself. Furthermore, Mr. Mahmoud Abu Rideh is a survivor of torture and suffers from severe post-traumatic stress disorder. It was alleged that his mental and physical health had been severely damaged by years of persecution by UK authorities. Allegedly, he would be often unable to move without the use of a wheelchair. According to the information received, Mr. Mahmoud Abu Rideh would not receiving adequate medical attention given the concerns about his health and well-being and past history of attempted suicide.

Observation

359. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

United States of America

Follow-up to earlier case

360. By letter dated **22 April 2009**, the Government of the United States responded to the letter sent on 12 December 2008 by the Special Rapporteur on the right to the highest attainable standard of health together with the Special Rapporteur on torture (see A/HRC/11/12/Add.1, paragraphs 213-214), referring to the treatment of Mr. William Coleman. The Government stated the following facts.

361. According to the Government, the December 2008 letter did not provide sufficient information to investigate the allegations. On January 23, 2009, the United States requested further information regarding the identity and location of Mr. Coleman. On 5 February 2009 further identifying information for Mr. Coleman was provided to the United States. The United States then contacted the Connecticut Department of Corrections (CT DOC) in February 2009, which provided a letter detailing its position on the Coleman case and papers from the court proceedings of his case.

362. With regard to the facts described in the letter sent to the Government dated 12 December 2008, the Government of the United States qualifies them as accurate but incomplete. According to the CT DOC, Mr. Coleman was originally arrested in October 2002, but he was subsequently released. He was later re-arrested, and in May 2005 convicted of two felonies. The CT DOC stated that Mr. Coleman began a hunger strike in January 2007, refusing all solid foods. Beginning in September 2008, for a period of over five weeks, he refused all liquids, seriously jeopardizing his health.

363. Reportedly, the CT DOC informed the Government that they were granted a temporary injunction by the Superior Court for the State of Connecticut, after a hearing in which Mr. Coleman was represented by counsel and permitted to testify. The temporary injunction allowed the force-feeding of Mr. Coleman when necessary due to medical reasons. The CT DOC stated that the court order permits forced medical treatment only in response to a medical necessity, and Mr. Coleman only has been force fed by medical professionals on ten occasions – in September and October of 2008 – in order to preserve his life. Furthermore, the CT DOC stated that, prior to being force fed, Mr. Coleman was given the opportunity to voluntarily take nourishment.

364. According to the communication received from the US Government, the written opinion from the Superior Court for the State of Connecticut, granting a temporary injunction to force-feed Mr. Coleman, stated “(t)here was ample and convincing evidence that allowing the defendant to starve himself to death would harm the orderly administration and security of the prison where he is incarcerated, upsetting the other inmates, requiring additional measures to deal with the inmate reactions and potentially causing unrest, demonstrations, and violence. His suicide by starvation would be contrary to the preservation of his life. He seeks by his hunger strike to force a further investigation by state authorities into his criminal conviction, and its circumstances, which is an attempt to manipulate the state. And his death would deprive his innocent, dependent children of his future financial support. For all of these reasons, the state has established a reasonable degree of probability of success on the merits in this case.” Reportedly, the Government argued that according to the CT DOC, medical doctors determined that Mr. Coleman could do serious damage to himself and that the feeding would not be difficult.

365. In its letter, the Government contends that the CT DOC’s characterization of Mr. Coleman’s reactions is different than that described in the letter that was sent to the Government, as it states that the Special Rapporteur received information that following the procedure “Mr. Coleman began sneezing up blood. He is suffering from the psychological impact of the force-feeding.” However, the Government mentions that the CT DOC states

“the defendant tolerated this procedure well and without complications. His nasal passageways were, as might be expected, somewhat irritated by the placement of the tube” and that the defendant’s medical expert testified that “The defendant suffered no long-term effects from the methods or timings of the feedings.”

366. Reportedly, the CT DOC was seeking a permanent court order at the time the communication was received, to allow the continued force-feeding of Mr. Coleman if necessary, due to the length of Mr. Coleman’s hunger strike. Allegedly, the trial ended in February 2009 and a decision was expected by the CT DOC in May 2009. Finally, the Government reports to be aware of no formal domestic complaint lodged by Mr. Coleman related to the force-feeding.

Communication sent

367. On **27 April 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of the United States of America regarding the alleged imminent transfer of Mr. Paul Pierre, a Haitian national, recently released from immigration detention in Miami, Florida, now resident in Irvington, New Jersey.

368. According to the information received, Mr. Pierre suffers from oesophageal dysphagia and therefore receives food and water through a feeding tube connected to his stomach. His feeding tube is essential to his survival and needs to be guarded against infection by being cleaned daily after each meal.

369. Reportedly, Mr. Pierre is facing deportation to Haiti, without having at his disposal any further recourse to the U.S. court system. It is alleged that, if transferred to Haiti as a criminal deportee, he would be detained, which means that he might be subjected to dehydration, starvation and infection via his feeding tube, since it is unclear whether basic hygiene provisions would be fulfilled.

370. Evidence pertaining to the state of the Haitian prison system, deriving from the United States’ own country condition reports and from numerous international organizations, has allegedly led to extensive criticism on the inadequacy of Haitian prison conditions for healthy prisoners. For instance, in *Auguste v. Ridge*, the United States Third Circuit Court of Appeals made reference to the fact that Haitian prisons lack basic health standards. This description was based on documentary evidence submitted to the court by the petitioner. Allegedly, for example, “...many of the cells lack basic furniture, such as chairs, mattresses, washbasins, or toilets, and are full of vermin, including roaches, rats, mice, and lizards. Prisoners are occasionally permitted out of their cells for about five minutes every two or three days. Because cells lack basic sanitation facilities, prisoners are provided with buckets or plastic bags in which to urinate and defecate; the bags are not often collected for days and spill onto the floor, leaving the floors covered with urine and feces. There also indications that prison authorities provide little or no food or water, and malnutrition and starvation [are] continuous problems. Nor is medical treatment provided to prisoners, who suffer from a host of diseases including tuberculosis, HIV/AIDS, and Beri-Beri, a life-threatening disease caused by malnutrition...”.

Response received

371. By a letter dated **5 June 2009**, the Government responded to the aforementioned urgent appeal indicating that due to privacy issues, the office of the Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS) is unable to comment on the specifics of Mr. Pierre’s case without evidence that he has consented to that disclosure.

372. The Government also explained that, when ICE determines that a detainee is unfit for travel or if appropriate medical care may not be available in the detainee's home country, efforts to remove the detainee may be postponed until a change occurs. While an individual is in ICE custody, ICE is responsible for ensuring that the detainee has access to medical services that promote the detainee's health, safety and general wellbeing. Each detention facility has a mechanism that allows detainees the opportunity to request health care services provided by a physician or other qualified medical officer. In the event medical care demands exceed the facility's capability to deliver, ICE will transfer the detainee to a medical facility equipped to meet the detainee's needs.

Viet Nam

Communication sent

373. On **24 December 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on freedom of religion or belief, 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 joint urgent appeal to the Government of Viet Nam regarding Father Thadeus Nguyen Van Ly, a Catholic priest, aged 63 years. Father Ly was already the subject of the Working Group on Arbitrary Detention's Opinion No. 20/2003 (Viet Nam), adopted on 27 November 2003 and a joint urgent appeal by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression dated 23 February 2007. Receipt of the Government's response is acknowledged dated 18 May 2007. The Special Rapporteur on freedom of religion or belief had previously sent two communications to the Government of Viet Nam regarding Father Thadeus Nguyen Van Ly (see E/CN.4/1993/62, para. 68 and A/56/253, para. 77) to which the Government replied (see E/CN.4/1994/79, para. 80 and E/CN.4/2002/73, para. 114).

374. According to the information received, on 11 December 2009 Father Nguyen Van Ly was transferred back to Ba Sao prison, where he would be currently serving an eight-year prison sentence for "carrying out propaganda against the Socialist Republic of Vietnam," (Article 88 of the Vietnamese Criminal Code). He was arrested on 18 or 19 February 2007 and sentenced on 30 March 2007 following a trial that lasted approximately four hours. He was denied access to counsel before and during the trial.

375. At Prison Hospital 198, which is run by the Ministry of Public Security in Hanoi, Father Ly had been recovering from a second stroke suffered in detention on 14 November 2009. Father Ly would remain partially paralyzed on the right side of his body.

376. During his detention, Father Ly would have been mainly held in solitary confinement. He would suffer from high blood pressure and other health problems. In the seven months before the stroke, he would have several bouts of ill-health for which the prison authorities neither provided a proper diagnosis nor adequate medical treatment.

377. Father Ly was first imprisoned for his criticism of the policies of the Vietnamese Government on religion in the late 1970s, and would have already spent approximately 17 years in prison in relation to his activities promoting respect for human rights, including freedom of opinion, expression and religion. He is one of the founders of the internet-based movement "Bloc 8406" which supports democracy, and has helped to set up other political

groups which have subsequently been banned in Viet Nam. He also secretly published a journal entitled “To Do Ngon Luan”.

378. Grave concerns were expressed in respect of Father Nguyen Van Ly’s state of health, particularly in view of reports that he would have been transferred back to the prison despite not having fully recovered from a stroke.

Response received

379. By a letter dated **19 March 2010**, the Government responded to the above mentioned joint urgent appeal regarding the case of Mr. Nguyen Van Ly.

380. The Government explained that Mr. Nguyen Van Ly was accused of activities in violation of Vietnamese laws and sentenced to eight years in prison by the People’s court of Thua Thien Hue Province on 30 March 2007, according to article 88 of the Penal Code. The Government refuted all allegations that Mr. Ly was denied access to counsel and not provided adequate medical treatment. It further clarified he refused legal counsel, and that all proceedings (arrest, provisional detention and trial) were carried out in strict compliance with existing Vietnamese laws, particularly the Criminal Procedures Code, and in line with international standards on human rights. The Government noted that many foreign diplomats and journalists, including those from the United States and Europe, attended the court proceedings, and that not complaints were lodged on behalf of Mr. Ly.

381. While serving his prison sentence, the Government acknowledged that Mr. Ly suffered from high blood pressure and other health problems, including a stroke. The Government explained that medical treatment was provided for Mr. Ly, including transfer to a hospital for the paralysis in his right arm and leg. Diagnostic results demonstrated that the paralysis emanated from by brain injuries suffered from his previous stroke and not a new stroke. Mr. Ly’s family was informed about his health condition and allowed to visit him while he was at the hospital. Furthermore, a group of priest, led by Archbishop Nguyen Nhu The, also visited him at the hospital. Upon the improvement of Mr. Ly’s health situation, he was moved back to prison for the continuation of his sentence.

382. The Government noted that given Mr. Ly’s health situation and the high risk of stroke, and in the spirit of amnesty, on 12 March 2010 the People’s Court of Ha Nam Province decided to postpone the sentence for a period of 12 months, beginning from 15 March 2010, according to article 61 of the Penal Code. Mr. Ly has been allowed to return to Thua Thien Hue Province for health treatment and he is currently residing at Hue’s Bishop.

III. Others

Newmont Ghana Gold Limited

Communication sent

383. On **1 July 2009**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment on human rights, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and the Special Rapporteur on the right to food sent an allegation letter to Newmont Ghana Gold Limited (NGGL) concerning reports received indicating potential negative impacts that the establishment by

NGGL of an open-pit gold mine in Akyem, more precisely within the Ajenua-Bepo Forest Reserve in the Birim North District of Ghana's Eastern Region may have on the enjoyment of economic, social and cultural rights of the affected communities.

384. The Special Rapporteurs shared the concerns that they had had raised with the Government of Ghana, which and drew the company's attention to the relevant provisions of international human rights law.

385. In addition to comments on the accuracy of the allegations, they Special Rapporteurs requested further information on whether any study on social, environmental and health impact of the open mine project had been realized by NGGL and the conclusions of the studies; on the measures taken by NGGL to ensure that the open mine project does not have disproportionate negative impacts on the environment and on the livelihoods of neighbouring communities; on the measures been taken by NGGL to ensure that water resources would be protected from risks of leakages, and to ensure that mining wastes would be disposed of appropriately; if the concerned communities had been allowed to participate from the inception of the plans to construct the mine; if the land subject to expropriation had been duly evaluated; if any ongoing consultation was undertaken with the persons threatened with eviction; on the measures foreseen by NGGL in terms of compensation for the persons threatened with eviction; and on the measures taken by NGGL to ensure that the right to health of neighbouring communities was respected.

Response received

386. By letter dated **1 July 2009**, Newmont Ghana Gold Limited (NGGL) informed their commitment to implement the best possible practices in the areas of Social and Environmental management and impact mitigation at the Akyem project. International and national environmental experts, members of the communities living in the area, the Government of Ghana, as well as the International Finance Corporation, have studied NGGL's Akyem project extensively. It has been the subject of a thorough environmental impact study, public consultation processes, an independent review process, and an overall regulatory review.

387. NGGL also informed that Newmont project leaders have engaged with numerous community representatives, government agencies, nongovernmental organizations and international organizations on many occasions. 600 meetings and events between 2004 and early 2009 were held with different local and regional stakeholders. The Akyem communities demonstrated overwhelming support for the project at three public hearings.

388. In addition, more than 150 Ghanaian community leaders issued statements in support of the Akyem project. Concerns raised by NGOs during the Environmental Impact Study process were discussed with local communities and the results presented in an environmental impact study that was reviewed by the Ghana Environmental Protection Agency (EPA). The analyses of the company were also reportedly reviewed by national and international environmental experts. The Ghana EPA was granted Newmont an environmental permit to operate at Akyem.

Addax Petroleum Development; Chevron Nigeria Limited; Conoco Phillips; Hardy Oil Nigeria Limited; Mobil Producing Nigeria; Nexen Petroleum Nigeria Offshore; Philips Oil Co. (Nigeria) Limited; Shell Petroleum Development Company of Nigeria Limited; Statioil Hydro, Statoil Nigeria Ltd; Texaco (Nigeria) Plc; Total E&P Nigeria Limited

Communication sent

389. On 7 September 2009, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Special Rapporteur on the right to food, Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation and the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights sent allegation letters to the Addax Petroleum Development, Chevron Nigeria Limited, Conoco Phillips, Hardy Oil Nigeria Limited, Mobil Producing Nigeria, Nexen Petroleum Nigeria Offshore, Philips Oil Co. (Nigeria) Limited, Shell Petroleum Development Company of Nigeria Limited, StatoilHydro, Statoil Nigeria Ltd., Texaco (Nigeria) Plc, and Total E&P Nigeria Limited concerning possible negative impacts that the petroleum industry in the Niger Delta may have and will likely continue to have on the full enjoyment of economic, social and cultural rights by the affected communities.

390. The Special Rapporteurs shared the concerns that they had had raised with the Government of Nigeria, which is included in the “Governments” section of this report, and drew the company’s attention to the relevant provisions of international human rights law. They mentioned in particular Article 25 of the Universal Declaration of Human Rights, which recognizes that “everyone has the right of living adequate for the health and the well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”. The Universal Declaration of Human Rights proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. Moreover, in resolution 8/7 (2008), the Human Rights Council affirmed that “transnational corporations and other business enterprises have a responsibility to respect human rights and assist in channelling the benefits of business towards contributing the enjoyment of human rights and fundamental freedoms”. The Human Rights Council has also welcomed the policy framework for managing corporate related human rights issues presented by the Special Representative of the Secretary General of the United Nations on human rights and transnational corporate bodies and other business enterprises. The framework identifies differentiated, but complimentary responsibilities of governments and companies with regard to human rights. The framework confirms the State duty to protect against corporate-related human rights abuses but also confirms that the “baseline responsibility is to respect human rights”. This responsibility, which applies to all internationally recognized human rights, exists independently of State duties and requires companies to exercise due diligence to become aware, prevent, address and mitigate negative human rights impacts. The due diligence required from the companies entails a responsibility to undertake human rights impact assessment, either in conjunction with or separately, based on recognized international human rights law.

Responses received

Chevron Nigeria Limited

391. By a letter dated **4 December 2009**, the Special Rapporteur received a reply from Chevron Nigeria Limited (CNL) in which the company acknowledged that the companies can play a positive role in contributing to the protection and promotion of human rights. To this end CNL worked actively to conduct its operations in a manner consistent with human rights principles applicable to business. This included recognizing and respecting the relevant ideals expressed in the Universal Declaration of Human Rights. In addition, CNL condemned human rights abuses. In the meantime CNL pointed out that it was not in a position to comment on the incident concerning release of the crude oil into Bodo creek, as well as in the village of Kira Tai IN Ogoniland, as these incidents had not occurred in the CNL's area of operations and were not directly linked to company's production activities. CNL further informed the Special Rapporteurs on the actions which the company was taking when oil spills occurred, as well as on the relevant regulations contained within Nigerian law. CNL described the process for Environmental, Social and Health Impact Assessments which it observed in its daily practices. The objective of this process was to identify, assess and mitigate potential operational impacts on the environment and local communities in a formal and structured manner. In addition, CNL commented on its community engagement programs which are an integral part of company's commitment to human rights and which focus on improving access to basic needs supporting education and health care and promoting infrastructure developments and economic livelihoods. As an example of such community engagement it mentioned a community hospital that CNL had built in the Escravos area in order to provide comprehensive health care to the area. Finally, CNL indicated that since 2005 its approach towards community engagement has been based on the Global Memorandum of Understanding signed with communities and governments in five states where the company was operating in the Niger Delta.

Nigerian Agip Oil Company Limited

392. By a letter dated **30 November 2009**, the Special Rapporteur received a reply from the Nigerian Agip Oil Company Limited. The company informed the Special Rapporteur that the contents of the allegation letter were currently being reviewed and provided him with its assurances to submit a detailed response soon.

Shell Petroleum Development Company of Nigeria Limited

393. By a letter dated **6 December 2009**, the Special Rapporteur received a reply letter from Shell Petroleum Development Company of Nigeria Limited (SPDC) in which the company recognized its commitment to the principle of sustainable development and determination to always look to improve SPDC's performance in order to reduce environmental impact and footprint as far as possible and to maximize its social contribution. SPDC's operations in Niger Delta were heavily dependent on maintaining good relations with communities. The company found inaccurate the allegation that the petroleum industry, in particular SPDC was responsible for most oil spills, arguing that 85 per cent were the result of criminal activities. It said that SPDC was providing relief materials and carrying out clean up operations whenever spills occurred, and that both government and community representatives monitored these operations. As regards health concerns, SPDC then referred to a 1995 World Bank report that considered oil related pollution a low priority concern, and to an undated WHO report which considered poverty

as the main cause of poor health. Waste disposal was said to be carried out by licensed service providers in accordance with regulatory guidelines. As for water discharges, SPDC was committed to gear its operations towards complying to the limits set by the Directorate of Petroleum Resources. As for heavy metals in soils and groundwater, SPDC carried out environmental evaluation reviews for its facilities in old "brown" fields. About impact assessment and community consultations, SPDC replied that for all new projects it conducted environmental social and health impact assessment in line with guidelines of the department of petroleum resources and the federal ministry of environmental. The impact assessment documents were public documents available to all stakeholders in the process, and they were available at local and federal government offices for consultation. SPDC felt that the impact assessment process ensured fair community participation and fair compensation – SPDC compensation rates were negotiated with communities. After oil spills, SPDC complied with all measures required by law, including compensation, relief and clean up operations. Studies on long term impact had been carried out by UNICAL Consult, World Bank and WHO. For its part, SPDC strongly supported a study undertaken by the World Bank in collaboration with the government on gas flaring, as well as a UNEP-led environmental study on spills in Ogoniland. Finally, SPDC indicated its support to the voluntary guidelines on security and human rights, and to the principle of development, which extended in its case to health, education and microcredit, conflict resolution, and to infrastructure development such as water provision and electrification. SPEC worked alongside with NGOs, UNDP and the World Bank. It also contributed to development commitments through the taxes paid to the federal government.

Total E&P Nigeria Limited

394. By a letter dated **9 December 2009**, the Special Rapporteur received a reply from Total E&P Nigeria Limited (TEPNG) in which the company acknowledged that it was not in a position to provide a response or to comment on the specific allegations contained within the communication received from the Special Rapporteur since the alleged incidents are not related to the TOTAL Group operated activities in Nigeria, but that it wished to clarify its position with regards to the allegations of a general nature. Total and its subsidiaries in Nigeria were responsible operators with stringent environmental and community social responsibility guidelines which place highest importance on the respect for the environment, as well as social and economical development of the local communities. Moreover, spills of a technical nature only amounted to 16 per cent of the incidents, while all others were the result of acts of sabotage. TEPNG's refuted the allegation that operations induced water discharges, it also denied that its operation may induce the presence of heavy metal in soils and groundwater. With regard to emergency water supplies in case of oil spills, this was not a case it had encountered as none of the spills it had suffered reached the extent to which it would be needed. In case of oil spills, TEPNG followed federal guidelines, by informing the department of petroleum resources, negotiating access to affected areas with communities, organizing joint inspection visits , negotiating compensations except in cases of sabotage, carrying out repair works, and doing final inspections after the works were completed. Total was also fully committed to the economic development of communities, and it entered in consultation with them for its operation, notable by signing memorandums of understandings. For all its new projects, it carried out environmental impact assessment as required by the regulations of the oil and gas industry. Total was committed to follow the requirements of these impact assessment processes, including regarding community participation. Finally, TEPNG noted that Total was conscious of its obligations as a good corporate citizen to its environment, its host communities and its host countries, It was also committed to carrying out sustainable development projects in such areas as health, infrastructure, education and capacity building of members and community groups. As it was committed to improving its actions,

Total had made efforts to get an independent third party review on the way it implemented corporate social responsibility programmes, of the types of relationships maintained with communities and of necessary improvements.
