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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 independence of judges
and lawyers, Leandro Despouy**

Addendum

SITUATIONS IN SPECIFIC COUNTRIES OR TERRITORIES* **

* Owing to the fact that the present document greatly exceeds the page limit required by relevant General Assembly resolutions, it is being circulated as received, in the languages of submission only.

** Late submission.

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Introduction

1. The present report supplements the main report submitted by the Special Rapporteur on the independence of judges and lawyers to the Human Rights Council. It reflects specific situations alleged to be affecting the independence of the judiciary or violating the right to a fair trial in 62 countries. Further, it presents any replies received from the Government of the country concerned in response to specific allegations together with the Special Rapporteur's comments and observations. Readers will thus find in it:

(a) Summaries of the urgent appeals and allegation letters transmitted by the Special Rapporteur to governmental authorities between 16 January 2007 and 15 March 2008, and of press releases issued during the same reporting period. In this connection, the Special Rapporteur wishes to emphasize that the communications presented in the report exclusively reflect allegations he received and subsequently acted upon. Where information was insufficient and could not be supplemented, or where the information received was outside the mandate, the Special Rapporteur was not in a position to act. Hence such allegations were not included in the report;

(b) Summaries of the replies received from several States concerned between 16 January 2007 and 30 April 2008. In certain instances, the Government reply was obtained late and referred to allegations that were presented in the previous report concerning the year 2006 or even earlier. In those cases, the Special Rapporteur has included the respective allegation in the section of communications sent, in order to facilitate the reader's comprehension. On the other hand, it may be noted that certain responses to urgent appeals or allegation letters sent during the reporting period, and for which the Special Rapporteur wishes to thank the Governments, could not be included in the report owing to the fact that they were either not translated in time or received after 30 April 2008. To the Special Rapporteur's regret, they will therefore be reflected only in next year's report. Finally, due to restrictions on the length of the report, the Special Rapporteur has been obliged to summarize the details of all correspondence sent and received. As a result, requests from Governments to publish their replies in their totality could regrettably not be accommodated;

(c) Observations or specific comments by the Special Rapporteur.

2. The report also includes five tables of statistical data so as to help the Human Rights Council to have an overview of developments in 2007 and the first trimester of 2008.

3. As may be seen from the tables, action has mainly been taken in the form of joint urgent action (65%). This reflects not only a personal choice of the Special Rapporteur to work in close collaboration with other special Rapporteurs and aimed at strengthening the functioning and impact of the special procedures, but also the fact that it is far from uncommon that situations affecting the judiciary occur in contexts in which other democratic institutions are also at risk, or where a wide range of human rights are being violated such as the right to life, the right not to be subjected to torture and ill-treatment, the right to freedom of expression, as well as the specific rights of women, indigenous people and minorities.

4. The Special Rapporteur notes that communications have been sent to Member States of all regions of the world. Asia and the Pacific (38%) and the Middle East and North Africa (25%) represent more than half of the total of communications sent (63%). Africa comes on third place with 17% of the communications. Finally, Latin America and the Caribbean and Europe, North America and Central Asia have received an equivalent number of communications from the Special Rapporteur (10%).

5. At the same time, the Special Rapporteur wishes to point out that, as compared to previous years, he has enjoyed increased cooperation on the part of Governments. In fact, 38 States of the 62 States referred to in this report have provided him with a substantive reply to his communications. Most of these States have offered detailed substantive information on the allegations received. The Special Rapporteur welcomes and further encourages cooperation from the Governments that have provided replies to his communications. The Special Rapporteur underlines that it is crucial that Governments share their views on the allegations received with him. He highlights his preoccupation in relation to the proportion of specific allegations of serious human rights violations that remain unanswered. The Special Rapporteur invites those States which are lagging behind to avoid situations in which they do not offer any form of substantive reply to allegations transmitted to them. Fearing that such lack of reply may expose these States to various interpretations ranging from administrative negligence to an admission by omission of the allegation relayed to them, he urges them to provide precise and detailed answers at the earliest possible date.

6. In addition, the Special Rapporteur notes that replies are often received with a considerable delay. This is certainly a matter of concern, in particular in situations in which the life or the physical integrity of a person or a group of persons is in danger. The Special Rapporteur encourages States to reply to his communications within reasonable deadlines.

7. The Special Rapporteur trusts that the situation described above demonstrates the relevance of the existence and the concrete impact of this special procedure which, in his view, should definitely be strengthened in the course of the review of mandates by the Human Rights Council.

I. STATISTICAL DATA

8. The following four figures are aimed at helping the Human Rights Council to have an overview of developments in 2007 and first semester of 2008. The Special Rapporteur would like to clarify that these figures do not include the press releases issued by him.

Figure 1

Type of communications sent by the Special Rapporteur

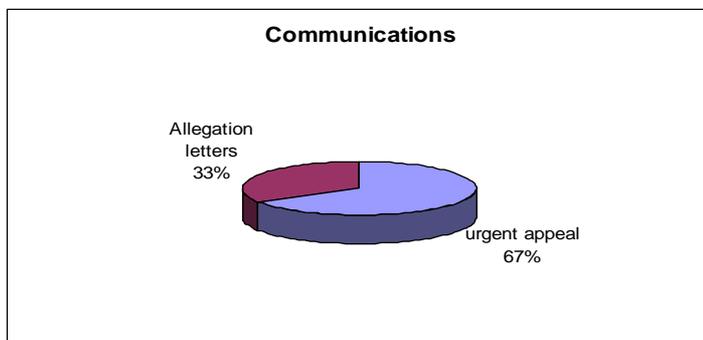


Figure 2

Individual and joint communications sent by the Special Rapporteur

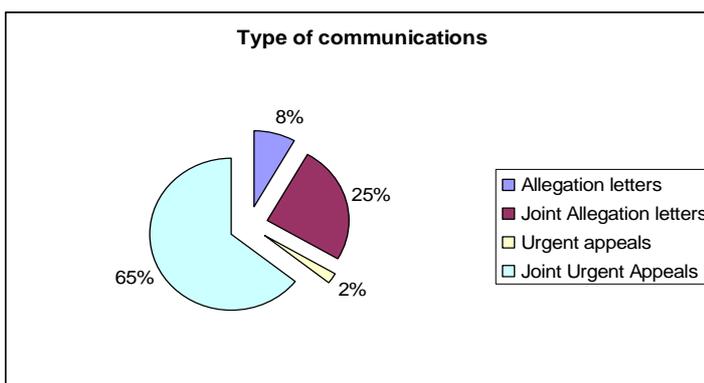


Figure 3

Communications sent by the Special Rapporteur by region

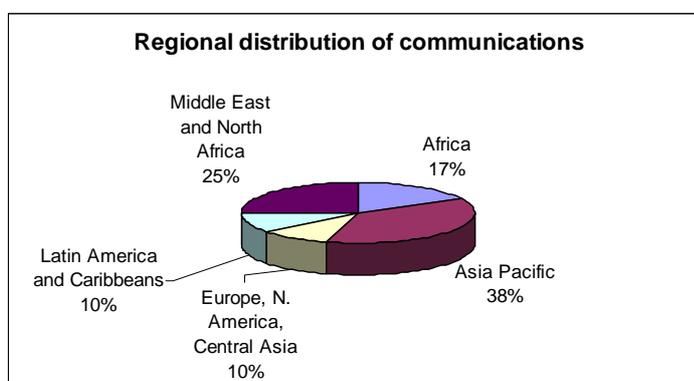


Figure 4

Communications sent by the Special Rapporteur between 16 January 2007 and 15 March 2008 and Government replies received between 16 January 2007 and 30 April 2008

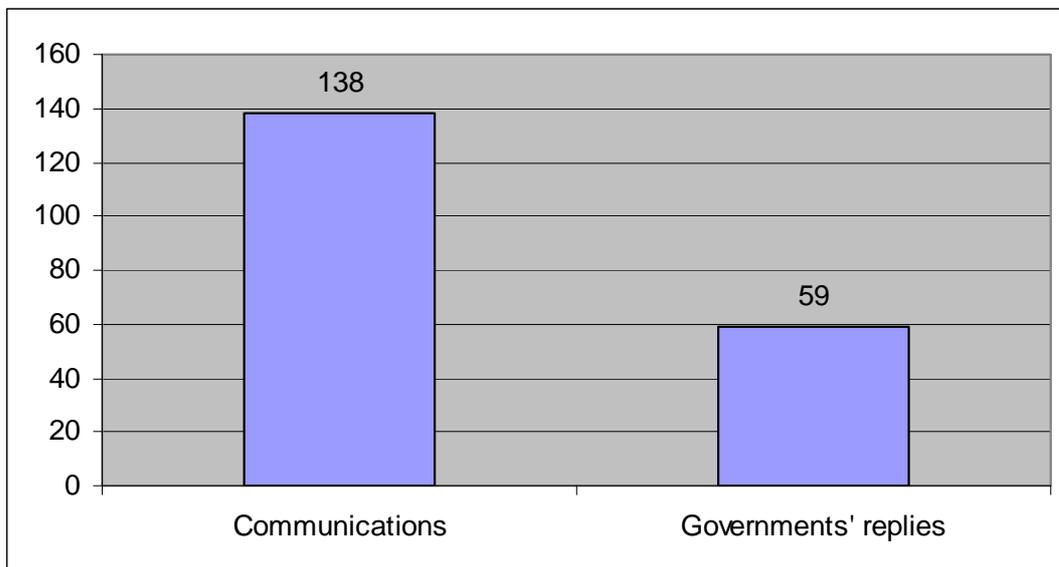
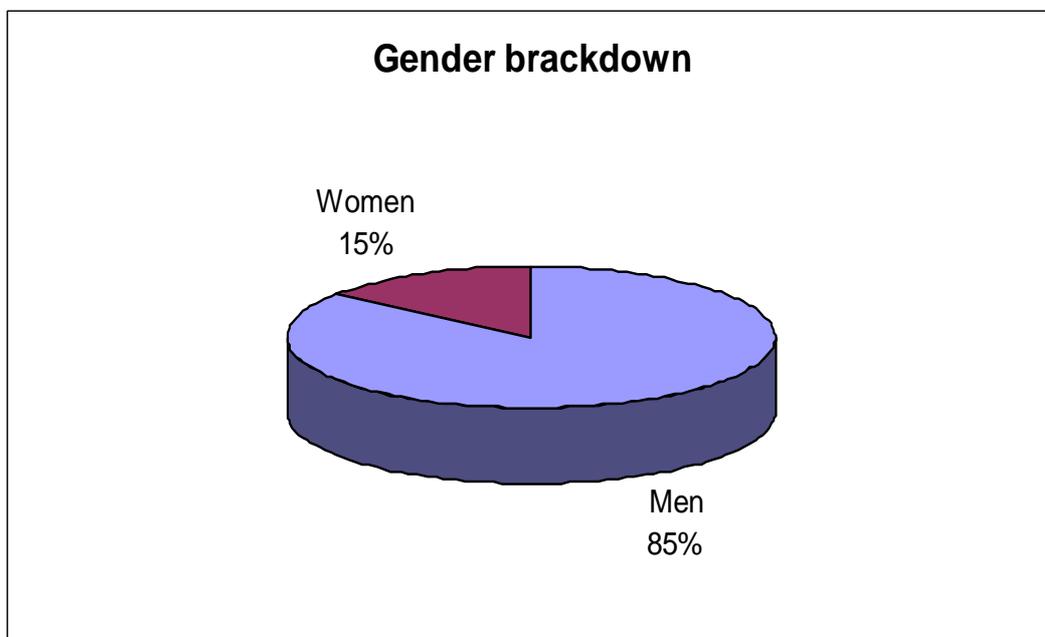


Figure 5

Communications sent by the Special Rapporteur by gender



II. SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED

Afghanistan

Communication sent

9. On 28 January 2008, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, 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, regarding Mr. Sayed Perwiz Kambaksh, a student and journalist at a local newspaper in the city of Mazar-i-Sharif. According to the information received, on 22 January 2008, Mr. Kambaksh was sentenced to death on blasphemy charges by the city court of Mazar-i-Sharif in a trial reportedly conducted in camera and without the presence of a defence lawyer. The blasphemy charges are related to a report that Mr. Kambaksh printed off the internet and distributed to other journalism students at Balkh University, which was considered by the judges as having “distorted Quran verses” and “humiliated Islam”. According to reports, Mr. Kambaksh’s sentence may be related to articles written by his brother and published by the Institute of War and Peace Reporting criticizing Balkh provincial authorities for corruption and abuse of power.

Communications received

None.

Special Rapporteur’s comments and observations

10. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Afghanistan to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations. The Special Rapporteur is deeply concerned and urges the Government to urgently provide detailed information regarding the trial process of the accused, especially considering that Mr. Kambaksh has reportedly been sentenced to death in a trial that does not seem to comply with article 14 of the International Covenant of Civil and Political Rights.

Algeria

Communications envoyées

11. Le 5 octobre 2006, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l’homme a adressé au Gouvernement algérien une lettre d’allégations concernant la situation de Me Hassiba Boumerdassi et Me Amine Sidhoum Abderramane, avocats algériens et défenseurs des droits de l’homme, membres de l’ONG SOS Disparu(e)s. Me Amine Sidhoum Abderramane avait déjà fait l’objet d’une communication antérieure envoyée conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d’opinion et d’expression et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l’homme le 26 mai 2006 et d’une autre communication envoyée conjointement avec cette dernière le 8 septembre 2006. Selon les informations reçues de la source, le 10 septembre 2006, Me Hassiba Boumerdassi et Me Amine Sidhoum Abderramane auraient comparu devant le juge

d'instruction du tribunal de Bab El Oued en raison des poursuites initiées à leur rencontre pour avoir remis à leurs clients retenus en prison des documents relatifs à leur défense. Ainsi, dans le cas de Me Hassiba Boumerdassi, il s'agirait du dossier du procès verbal du détenu concerné, remis qui aurait été autorisée par un gardien de la prison ; dans celui de Me Amine Sidhoum Abderramane, il s'agirait de la remise de ses cartes de visite. Me Hassiba Boumerdassi serait accusée d'avoir violé l'article 166 du Code de l'organisation pénitentiaire et de l'insertion sociale des détenus qui dispose qu'il est interdit de remettre, d'essayer de remettre ou de faire parvenir à un détenu dans des conditions illégales, en quelque lieu que ce soit, des sommes d'argent, correspondances, médicaments ou tout autre objet non autorisé. De même, elle serait accusée d'avoir violé l'article 16 de la Loi relative à la sécurité des prisons qui établit qu'il n'est pas permis d'introduire ou de faire sortir de sommes d'argent ou correspondances, sauf si elles sont permises par le règlement intérieur de la prison ou si elles sont autorisées expressément par le directeur de la prison. Me Hassiba Boumerdassi serait en outre poursuivie pour violation de l'article 31 de la Loi portant sur le règlement intérieur de prisons qui dispose que le prisonnier qui remet ou envoie dans des conditions illégales ou tente de remettre à un autre prisonnier ou à toute autre personne des sommes d'argent, correspondances, médicaments ou autre chose s'expose à des sanctions pénales. Selon les informations reçues, Me Boumerdassi et Me Sidhoum devaient se présenter devant le juge d'instruction le 25 septembre 2006. Cependant, leur audience aurait été reportée au début du mois de novembre 2006. La source exprimait la crainte que les charges retenues contre Me Hassiba Boumerdassi et Me Amine Sidhoum ne visent à empêcher ces derniers de poursuivre leurs actions en faveur de la défense des droits des familles de disparus au sein de SOS Disparu(e)s et affirmait qu'elles s'inscrivaient dans un contexte d'intimidation et de harcèlement auquel sont confrontés les défenseurs algériens, notamment lorsqu'il s'agit de défendre les droits des familles de disparus.

12. Le 29 juin 2007, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la torture, a envoyé un appel urgent concernant la situation de M. Mohamed Boucekkine, résident de Fouka. Selon les informations reçues, deux individus en civil seraient entrés au domicile de la famille Boucekkine, à Fouka, sans s'identifier. Ils auraient demandé à Mohamed Boucekkine de leur présenter ses papiers et auraient procédé à une fouille de la maison ; après quoi, ils lui auraient demandé de les suivre. Interrogés par l'épouse sur le lieu où ils emmenaient son mari, les deux individus lui auraient répondu qu'ils allaient simplement l'interroger. Selon les informations reçues, M. Boucekkine aurait été amené avec le visage couvert dans un endroit inconnu où il serait encore détenu. Treize jours après son arrestation, il n'aurait toujours pas pu entrer en contact avec sa famille ni avec un avocat. Mohamed Boucekkine avait déjà été arrêté et avait purgé une peine d'emprisonnement de 7 ans avant d'être libéré en 1999. En plus, son père aurait été arrêté en 1995 et serait à ce jour toujours porté disparu. Sa mère aurait été arrêtée en 1997 et serait morte en détention suite aux mauvais traitements qu'elle aurait subis. Des craintes ont été exprimées quant au fait que Mohamed Boucekkine soit soumis à la torture ou d'autres mauvais traitements entraînant des conséquences extrêmement graves.

Communications reçues de la part du Gouvernement

13. Le 26 juin 2007, le Gouvernement a répondu à la lettre d'allégations du 5 octobre 2006 relative à la situation de MM. Amine Sidhoum et Hassiba Boumerdassi, indiquant que ces deux avocats avaient été inculpés le 1er août 2006 par le Tribunal de Bab el Oued pour avoir, dans des conditions illégales, fait parvenir des objets non-autorisés à des détenus, faits prévus et réprimés par l'article 166 du Code de l'administration pénitentiaire et de la réinsertion. L'information

judiciaire terminée, les deux prévenus avaient été renvoyés devant le tribunal pour y être jugés. Le 25 avril 2007, le tribunal a levé les charges contre MM. Amine Sidhoum et Hassiba Boumerdassi ont été relâchés par le tribunal.

14. Le 3 juillet 2007, le Gouvernement a informé que la communication envoyée le 29 juin 2007, avait déjà fait l'objet d'une communication adressée au Groupe de travail sur les disparitions forcées, en date du 20 juin 2007.

Commentaires et observations du Rapporteur spécial

15. Le Rapporteur Spécial remercie le Gouvernement de sa réponse du 26 juin 2007 concernant la situation de Me Hassiba Boumerdassi et Me Amine Sidhoum Abderramane, et en prend note avec satisfaction. S'agissant du cas de M. Mohamed Boucekkine, le Rapporteur spécial prend note de la lettre adressée par le Gouvernement au Groupe de travail sur les disparitions forcées en date du 20 juin 2007. En ce qui concerne la communication envoyée le 29 juin 2007, le Rapporteur Spécial urge le Gouvernement de Algérie de fournir le plus tôt possible, préférablement avant la fin de la neuvième session du Conseil des Droits de l'Homme, une réponse substantive et détaillée aux allégations mentionnées ci-dessus.

Argentina

Comunicaciones enviadas

16. El Relator Especial envió una comunicación el 7 de Julio de 2006, sobre la situación de la Dra. Marta Catella, quien fue suspendida el 12 de enero de 2006 en su cargo como Jueza del Superior Tribunal de la Provincia de Misiones por la Sala Acusadora de la legislatura provincial. Se señaló, además, la preocupación por el caso de los Drs. Horacio Alarcón, Juez Penal de la provincia de Misiones y Lloyd Jorge Wicström, Fiscal de Estado en la misma provincia, quienes según la información recibida son objeto de sendos juicios políticos promovidos por el gobierno provincial. La situación de las personas mencionadas había sido objeto de una previa comunicación enviada al Gobierno, el día 24 de enero de 2006. En dicha comunicación se solicitaba la aclaración de varios puntos relacionados con las investigaciones y juicios iniciados en contra de dichas personas, así como con relación a la situación general de la independencia del poder judicial en la provincia de Misiones. En dicha ocasión el Relator indicó que conforme a declaraciones públicas, la acusación contra la Jueza Marta Catella se funda en dos votos emitidos por ella: el primero, en un recurso de apelación interpuesto por el Intendente de San Vicente (provincia de Misiones), contra la decisión del Concejo Deliberante de destituirlo (Resolución N 492-STJ-05). El segundo voto que se invoca en la acusación es el recaído en un incidente de nulidad, también presentado por el Intendente de San Vicente en la misma causa, en virtud del cual se declaró la nulidad de diversas actuaciones en el expediente principal, incluida la sentencia (Resolución N.º 576-STJ-05).

17. En virtud de la declaración de nulidad, la cuestión que origina el pedido de juicio político (que contempla la falsedad o no del Acta 08/05 y de la Resolución 07/05 del Concejo Deliberante) se encuentra pendiente de resolución judicial. Las alegaciones señalan este aspecto como de suma gravedad por constituir al Poder Legislativo como una nueva instancia revisora, contrariando el principio republicano de separación de poderes, y vulnerando la independencia judicial de los magistrados que ya se han pronunciado. Pero además, sostener la acusación de

Marta Catella por el contenido del voto emitido, podría configurar una suerte de amenaza de destitución a los jueces que actualmente entienden en la causa judicial, ya que correrían el riesgo de que, si votaran en sentido concordante a como lo hizo la magistrada Catella, podrían sufrir las mismas consecuencias, esto es ser denunciados con el propósito de ser destituidos. Las alegaciones también indican que este proceso fue iniciado por el Intendente de San Vicente, del partido de gobierno, pocos días después que la Jueza Catella - a cargo del Tribunal Electoral de la Provincia - se pronunciara en forma adversa a las pretensiones del Gobierno provincial. Marta Catella aplicó una cláusula de la Constitución Provincial que reserva un mínimo de un tercio de la representación legislativa a la minoría - y que no establece un umbral mínimo de votos para acceder a un cargo - en contra de los intereses del oficialismo que aspiraba se le reconociera dos bancas: una en la Cámara de Representantes y otra en el Concejo Deliberante de El Dorado. Este proceso se da en un contexto de persecución política contra jueces independientes en la provincia de Misiones, que incluye el reciente pedido de destitución del juez penal Horacio Alarcón, quien había ordenado el procesamiento por homicidio del hijo de una diputada del partido de gobierno y el juicio político promovido contra el Fiscal de Estado Lloyd Jorge Wicstrom, quien ha denunciado públicamente diversos casos de corrupción administrativa del actual gobierno provincial.

18. El 18 de abril de 2007, el Relator especial envió conjuntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, una carta de alegación sobre la situación del Dr. Pablo Gabriel Salinas, abogado defensor de derechos humanos en la provincia de Mendoza. El Dr. Salinas ha trabajado a favor de víctimas de brutalidad policial, de ejecuciones extrajudiciales y de otras violaciones de derechos humanos cometidas durante la dictadura militar en la Argentina. El Dr. Salinas ya había sido objeto de un llamamiento urgente enviado el 27 de diciembre de 2005 por el Relator Especial sobre la independencia de magistrados y abogados y la Representante Especial del Secretario-General para los defensores de los derechos humanos. Según las informaciones recibidas, el Dr. Salinas habría recibido una carta anónima amenazándole a él y a su familia con que algo les sucedería si no dejaba su actividad. Al día siguiente se habría presentado la denuncia de la amenaza anónima ante la Unidad Fiscal de Delitos Complejos de la Primera Circunscripción Judicial de Mendoza. Asimismo, a través de una petición presentada ante la Comisión Interamericana de Derechos Humanos, se habrían solicitado medidas cautelares para proteger al Dr. Salinas y a su familia. De acuerdo a lo informado, éste habría sido víctima de reiterados actos de hostigamiento y amenazas. En el 2005 el Dr. Salinas habría recibido llamadas telefónicas amenazantes y su oficina apareció cubierta de graffitis. Se teme que estos eventos puedan estar relacionados con la actividad en defensa de los derechos humanos del Dr. Pablo Gabriel Salinas y se expresa profunda preocupación por su seguridad e integridad física así como la de su familia.

19. El 3 de Mayo de 2007, el Relator Especial conjuntamente con el Representante Especial del Secretario-General para los defensores de los derechos humanos, envió una carta de alegación, para señalar a la atención urgente del Gobierno de Argentina la información que había recibido en relación con el aumento de actos de hostigamiento y amenazas en contra de jueces, fiscales y abogados vinculados a la defensa de los derechos humanos, sobre todo aquellos que han participado en los procesos judiciales contra integrantes de la dictadura militar argentina por delitos de lesa humanidad cometidos entre los años 1976 y 1983. Entre ellos se destacan las amenazas dirigidas a dos jueces del Tribunal Oral que condenó a Miguel Etchecolatz, el Sr. Norberto Lorenzo y el Sr. Horacio Insaurralde, así como al despacho del juez Arnaldo Corazza y del fiscal Sergio Franco, ambos pertenecientes al Tribunal Federal de Primera

Instancia de La Plata y a cargo de la instrucción de causas contra ex represores. Asimismo, el juez Carlos Rozansky, presidente del Tribunal Oral que condenó a Miguel Etchecolatz a reclusión perpetua, recibió dos llamados telefónicos amenazantes provenientes del Servicio Penitenciario Federal: uno de la Unidad 2 de Devoto y otro de la Unidad 27 femenino, realizados desde teléfonos que utiliza el personal a los que los internos no tienen acceso. La escalada de amenazas y actos intimidatorios que desde marzo de 2005 vienen sufriendo en la ciudad de Córdoba, los abogados querellantes, la representante del Ministerio Público y los activistas de derechos humanos en el marco de las causas judiciales que tramita la justicia federal con asiento en esa ciudad, en donde se trata de esclarecer las violaciones a los derechos humanos ocurridas en la última dictadura militar, bajo la jurisdicción del 3º Cuerpo del Ejército. Particularmente, la amenaza realizada el 11 de marzo de 2005 contra el Sr. Juan Martín Fresneda, integrante de la agrupación H.I.J.O.S. y abogado querellante en las causas que tramita el Juzgado Federal Nº 3 de la ciudad de Córdoba, donde representa a familiares de desaparecidos por razones políticas de la última dictadura militar. En dicha ocasión tres personas se dirigieron al estudio jurídico del Sr. Fresneda y advirtieron a un vecino que colocarían una bomba allí si el Sr. Fresneda seguía actuando en causas judiciales contra ex represores. El hecho ocurrió al día siguiente de la detención de Arnaldo José López acusado de gravísimas violaciones a los derechos humanos. Fresneda es el abogado querellante en esas causas. A raíz de estas amenazas, se efectuó una denuncia judicial pero la misma se encontraría paralizada en la Fiscalía Federal Nº 2 de Córdoba. Las intimidaciones contra abogados y fiscales en la ciudad de Córdoba se intensificaron en el año 2006. El 4 de junio de 2006 se envió un correo electrónico al periodista Mariano Saravia, de parte de un supuesto policía en actividad, en el que se advertía que se estaría preparando un atentado mortal contra la vida del abogado Claudio Orosz (abogado de las organizaciones Familiares de Desaparecidos-Detenidos por Razones Políticas de Córdoba, e H.I.J.O.S. y querellante en las causas de violaciones a los Derechos Humanos). El mensaje indicaba una serie de detalles de personas, vehículos y domicilios, los cuales habrían sido constatados como veraces por el Fiscal Federal Nº1, Sr. Enrique Senestrari. El 26 de junio de 2006 se recibió una nueva amenaza contra el Sr. Orosz, esta vez en el contestador automático de su estudio jurídico, donde se le advierte: “te vamos a matar, los voy a matar”. Asimismo, el 18 de junio, en el correo electrónico del periodista Saravia se recibió otra intimidación, en este caso dirigida a la Fiscal del Juzgado Federal Nº 3, Dra. López de Filoñuk, quien lleva adelante causas de derechos humanos en la provincia de Córdoba. Por su parte, desconocidos ingresaron al estudio del abogado Juan Carlos Vega, el 23 de junio, y sustrajeron una computadora portátil con material relativo a la causa judicial “Mackentor”. Posteriormente, el 29 de junio, la abogada de la asociación Abuelas de Plaza de Mayo Córdoba, Dra. María Teresa Sánchez, recibió una nota en su estudio jurídico en la que se advertía que harían volar su auto cuando ella se encontrara manejando. Su socia, la Dra. Mariana Paramio, fue golpeada y amenazada por un individuo que entró y destruyó el estudio de ambas. Todos estos actos intimidatorios fueron denunciados en la Fiscalía Federal Nº 1 de Córdoba. En la ciudad de Mar del Plata, el Dr. César Sivo, abogado de las causas penales y de los Juicios por la Verdad que se están desarrollando en Tandil, Las Flores, Azul, Olavaria y Mar del Plata, fue perseguido e intimidado en reiteradas oportunidades. También fueron interferidas sus llamadas telefónicas y recibió en su estudio visitas de personas que se presentan como clientes y luego le informan haber participado de la dictadura militar y le advierten que emplearán con él los mismos métodos. Asimismo, recibe a diario llamadas intimidatorias de todo tenor, que van desde las amenazas directas, el silencio prolongado y la reproducción de marchas militares hasta la información de cuestiones de su vida privada y la reproducción de conversaciones sostenidas con otras personas. En muchas ocasiones, se

advierten vehículos no identificados en la puerta de su estudio o gente sacando fotos al estudio o al abogado. También se registraron ingresos forzados en su estudio jurídico. Otro tanto ocurre con personas allegadas al Sr. Sivo, a las que se ha llegado a ofrecer dinero y servicios profesionales para que inicien juicios contra el abogado o hablen en su contra. En la provincia de Tucumán, la Dra. Laura Figueroa, abogada del Colegio de Abogados de Tucumán y querellante en las causas de Familiares de Desaparecidos en la Justicia Federal de Tucumán, ha sufrido amenazas con anterioridad y posterioridad al caso Julio López, a consecuencia de su activa intervención en las causas vinculadas con la violación de derechos humanos durante la dictadura militar. El 20 de octubre del 2002, mientras se encontraba sola en su domicilio particular, ingresó un comando armado que la redujo violentamente, revolvió todo, le hizo saber que sus conversaciones eran escuchadas, y le efectuaron amenazas de muerte si continuaba con las causas. En el mismo mes ingresaron nuevamente a su domicilio particular, mientras ella no se encontraba, rompiendo y revolviendo toda la casa. Durante el mismo año 2002, también sufrieron actos de persecución una de las auxiliares del GIAAT (Grupo Interdisciplinario de Arqueología y Antropología de Tucumán) y el Fiscal de la Causa del Pozo de Vargas. Se presume que estas amenazas, ataques y persecuciones estuvieron vinculadas a la profundización en la investigación de la causa judicial del “Pozo de Vargas” en el año 2002. Desde el año 2003 la Dra. Laura Figueroa tiene una guardia permanente en su domicilio particular. En Enero del 2006, dejaron una amenaza en el contestador telefónico de su estudio jurídico. La investigación de esta amenaza está en curso. En Octubre del 2006, recibió un nuevo mensaje en el contestador telefónico que decía “ya no te llamaremos más”. Por su parte, el Fiscal Federal N° 1 de Tucumán, Dr. Emilio E. Ferrer, interviniente en causas por violaciones a los derechos humanos, recibió amenazas anónimas por carta en la que se le advierte que será juzgado por un tribunal particularmente imparcial y que volverán a comunicarse con él. La Dra. Ana María Figueroa, abogada defensora de los derechos humanos, miembro de la Asamblea Permanente por los Derechos Humanos y actual Directora General de Jurídicos de la Secretaría de Derechos Humanos de la Nación recibió amenazas contra su vida y la de sus hijos. El Dr. Ciro Annicchiario, abogado y miembro de la Comisión de Política Criminal de la Asociación de Abogados de Buenos Aires fue amenazado y su esposa, Nora Cerviño, fue atacada y golpeada por un sujeto que le dijo “esto es para Ciro”. Asimismo, en dos oportunidades aparecieron inscripciones intimidatorias dentro de su domicilio. También los miembros de la Comisión de Derechos Humanos de la Asociación de Abogados de Buenos Aires, Sr. Manuel Justo Gaggero y Sra. Liliana Beli, recibieron llamados y mensajes en sus contestadores telefónicos en los que se escuchaban marchas militares que solían difundirse con frecuencia durante la dictadura militar. El Fiscal Federal del Chaco, Dr. Jorge Auat, quien interviene en varias causas por violaciones a los derechos humanos durante la última dictadura militar, entre ellas la investigación de la causa Margarita Belén, recibió una carta amenazante en su oficina por su actuación en la investigación de crímenes de lesa humanidad. En la provincia de Neuquén, el abogado del Centro de Profesionales por los Derechos Humanos (CEPRODH), Dr. Leopoldo Denaday, fue detenido sin causa por efectivos de la policía neuquina cuando participaba pacíficamente de un evento cultural. Fue llevado a la Comisaría 1° y mantenido en un calabozo durante varias horas en las que a sus abogados se les impidió acceder a información alguna sobre su situación. El juez Marcos Quinteros y el Fiscal Neri Roberto López de la provincia de Formosa, recibieron cartas intimidatorias tras la desaparición del testigo Jorge Julio López. En la provincia de San Luis, el defensor de derechos humanos y representante de víctimas de la dictadura, Dr. Enrique Ponce, recibió un mensaje telefónico intimidatorio El Relator Especial y la Representante Especial temen que las sucesivas amenazas e intimidaciones de diversa índole dirigidas contra jueces,

fiscales y abogados en diferentes regiones del país estén directamente vinculadas al ejercicio de su profesión por el esclarecimiento de la verdad y la búsqueda de justicia, en particular en los casos en los que se investigan las violaciones a los derechos humanos durante la dictadura militar.

Comunicaciones recibidas

20. El 8 de Agosto de 2007, el Gobierno de Argentina envió una respuesta a la comunicación enviada el 7 de Julio de 2006. Por esta razón el Relator la incluye en este informe, a pesar de que la comunicación no está comprendida en el periodo que cubre el mismo. De acuerdo con la respuesta del Gobierno, en lo que se refiere a la decisión de admisibilidad del juicio político en contra de la magistrada Catella, adelantado por el gobierno provincial, no fue declarado en sesión reservada y se llevó a cabo conforme a la Constitución. Respecto a la notificación del pedido de juicio político a la interesada, el Gobierno explicó que ella no podía ser notificada antes de que la Sala Acusadora realizara una acusación formal, por así disponerlo la Ley 120 y la Constitución Provincial. La magistrada Catella no demandó por inconstitucionalidad las mencionadas normas. En cuanto al traslado del dictamen acusatorio y demás actuaciones relativas al juicio político, el Gobierno indicó que de acuerdo a la ley, si se decide formalizar la acusación, se corre traslado al denunciado con todas las pruebas correspondientes, para que ejerza su derecho a la defensa. Respecto a la posibilidad de la denunciada de conocer la identidad de las personas que intervinieron en el procedimiento de destitución, el Gobierno indica que se trataba de actuaciones conocidas por todas las personas, con mayor razón de un magistrado del tribunal Superior, como lo era la magistrada Catella. Sin embargo, en cuanto la Dra. Catella solicitó la nómina para plantear una recusación, dicho pedido fue rechazado por unanimidad puesto que lo hizo de forma extemporánea, es decir, antes de tener la posibilidad de participar como parte en el proceso, antes de la acusación formal. Respecto a la alegación según la cual, la magistrada Catella no habría tenido acceso a copias de varias de las actuaciones adelantadas en el juicio político en su contra, el Gobierno indica que efectivamente se le negó dicha solicitud, puesto que lo hizo, un vez más, antes de ser parte en el proceso. Sobre la pregunta del Relator relativa a la supuesta falta de notificación de la sesión de la Sala Acusadora, el Gobierno afirma que la magistrada Catella tuvo conocimiento de la misma y además gozó de todas las oportunidades para ejercer su derecho a la defensa. Sobre la preocupación relacionada con la existencia de alguna investigación respecto de las supuestas irregularidades en que se incurrió durante el juicio político en contra de la jueza Catella, el Gobierno informa que no se advierte ninguna trasgresión a ninguna norma en el trámite del juicio en mención, en consecuencia no habría razón para iniciar ninguna investigación. En lo que se refiere al recurso de nulidad emitido dentro del proceso por prevaricato en contra de la magistrada Catella, el Gobierno indica que el mismo mejoró la situación procesal de la misma. Sin embargo, deja claro que dicho recurso no sana el accionar contrario a la ley en que pudieran haber incurrido los magistrados investigados. El Gobierno aclara que la acusación de delito de prevaricato en contra de la magistrada Catella efectivamente es por no haber declarado la falsedad del Acta 08/05 y la Resolución 07/05 del Consejo Deliberativo de San Vicente, en su voto de la resolución 492/05. Sin embargo, el Gobierno agrega que la decisión de prevaricato también es por haber incurrido en contumacia, puesto que cambió su voto de manera totalmente contraria a lo inicialmente expresado, sin que se hubiera alterado en nada la cuestión en debate y las pruebas. En cuanto a las causas de pedido de enjuiciamiento en contra de Horacio Alarcón, Juez Penal de la provincia de Misiones y Lloyd Jorge Wicström, Fiscal de Estado en la misma provincia, el Gobierno indicó que respecto del primero se le acusa de haber cometido varias irregularidades en el

proceso de la muerte de María Elena Bárbaro (en el cual uno de los imputados es Matías Ortiz, hijo de la Diputada Provincial Marlene Carballo) a su cargo, entre ellas, la detención del Sr. Ortiz, puesto que la ordenó sin determinación de los indicios o causas que lo llevaron a tomar la decisión. Asimismo, se le acusa de avalar la actuación irregular de un sub-comisario, de falta de investigación de una posible alteración de la escena del crimen, a pesar de estar al tanto de que personas ajenas a la administración de justicia tuvieron acceso a la misma y habrían podido modificar las pruebas. También se le acusa de haberse negado a recibir testimonios cruciales para el proceso en cuestión, de haber dado un trato desigual a las partes del proceso, ya que mostró una preferencia evidente respecto de una de las partes. En resumen, para el Gobierno, el juez Alarcón no inició ninguna investigación de varios delitos que estaban en su conocimiento, con lo cual incumplió sus obligaciones y deberes como funcionario de la administración de justicia. En lo que respecta al juicio que enfrenta Lloyd Jorge Wicström, Fiscal de Estado en la misma provincia, el Gobierno indica que se le acusa de incumplimiento de funciones a su cargo y comisión de delitos en el ejercicio de sus funciones. Entre las acusaciones que se le formulan está la emisión de dictámenes técnico legales contradictorios sobre una misma causa sin fundamento jurídico, incumplir las instrucciones del Ejecutivo en el sentido de interponer recurso judicial, la habilitación al poder ejecutivo para que contrajere un empréstito contrario a la Constitución Provincial, puesto que dobló el costo inicialmente estipulado, inejecución de fallos del Tribunal de Cuentas, omisión de investigaciones relacionadas con denuncias sobre detrimento al patrimonio de la Provincia. Finalmente, en cuanto a la motivación de la derogación de la Ley 3964 que disponía la reducción de nueve a cinco miembros del Superior Tribunal de Justicia, el Gobierno afirma que de acuerdo con la exposición de motivos del Proyecto de Ley que dio lugar a la derogación de la ley en cuestión se expresó que la misma era una de las normas centrales en el armado de ingobernabilidad que trazó el poder legislativo al ejecutivo en la provincia. Existiendo una vacante en el Superior Tribunal de Justicia para cubrir, después que se enviaran los pliegos para su nombramiento, se reformó el número de magistrados de 9 a 5, alegándose razones de economía en el servicio de administración de justicia. No solo no se cumple la finalidad dispuesta por la norma, pues el poder judicial multiplicó por 5 su presupuesto, sino que ella ha redundado en perjuicio de la justicia, porque se privó al tribunal superior de un magistrado. No ha sido beneficioso para la comunidad la reducción operada y debido a la cantidad de causas judiciales es más beneficioso que el tribunal superior de misiones cuente con 9 y no con los 5 establecidos por la ley 3964.

21. Mediante comunicación de fecha 4 de Julio de 2007, el Gobierno proporcionó información con respecto al llamamiento urgente enviado el 18 de abril de 2007. El Gobierno indicó lo siguiente: 1. El Sr. Subsecretario de Justicia de la Provincia, Dr. Gustavo Castiñeira de Dios, se comunicó personalmente con el Dr. Pablo Salinas poniéndose a su disposición y ofreciéndole las medidas protectoras que creyera convenientes. Se le propuso protección policial provincial y se le indicó la posibilidad de requerir el auxilio de protección de la policía federal si lo estimara pertinente. Ante la negativa del Dr. Salinas al respecto, se le comunicaron los teléfonos celulares de las máximas autoridades provinciales en materia de seguridad y se le solicitó que tanto él como su familia informaran cualquier movimiento sospechoso que entendieran que podría implicar peligro potencial o real. A pesar del ofrecimiento de colaboración del gobierno provincial, el Dr. Salinas no ha puesto en conocimiento del mismo, la existencia de nuevas amenazas telefónicas o intimidaciones. Sin perjuicio de ello, las medidas protectoras aludidas o cualquier otra que se considera conveniente, se encuentran a disposición del Dr. Salinas.

Finalmente, el Gobierno de la República Argentina se compromete a mantener informados a los Señores Relatores respecto a los avances que se produzcan en las investigaciones relacionadas en et caso antes mencionado.

Comentarios y observaciones del Relator Especial

22. El Relator especial agradece al Gobierno de Argentina su grata cooperación y el envío en un plazo razonable de informaciones sustantivas respecto del llamamiento urgente enviado el 18 de abril de 2007 relacionado con la situación del Dr. Pablo Gabriel Salinas, en su carácter de abogado defensor de derechos humanos en la provincia de Mendoza. Asimismo, aprecia la respuesta enviada a la comunicación del 7 de julio de 2006, sobre una cuestión que había sido objeto de una previa comunicación al Gobierno, del 24 de enero de 2006 y que este Relator había consignado como pendiente en el Informe anterior. Se pedía entonces aclaración sobre investigaciones y juicios iniciados en contra de magistrados de la provincia de Misiones y con relación a la situación general de la independencia del Poder Judicial en dicha provincia. El Relator Especial espera que se logre una solución adecuada y que se le comunique.

23. Por otra parte, el Relator Especial manifiesta su preocupación por la ausencia de respuesta oficial a la carta de alegación enviada el 3 de mayo de 2007 en la que se requería la atención urgente del Gobierno argentino con respecto al aumento de actos de hostigamiento y amenazas en contra de jueces, fiscales y abogados vinculados a la defensa de los derechos humanos, en especial aquellos que han participado en procesos judiciales contra integrantes de la dictadura militar por delitos de lesa humanidad. Se urge, por lo tanto, al Gobierno de Argentina para que envíe lo más pronto posible, preferentemente antes de la finalización de la novena sesión del Consejo de Derechos Humanos, una respuesta sustantiva a la carta de alegación mencionada.

Bahrain

Communication sent

24. On 7 March 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, concerning Mr. Ali Jaffar Ali, 17 years of age, Mr. Jassim Mirza, 17 years of age, and his brother Mr. Mohammad Mirza, 16 years of age, who were arrested after participating in a demonstration regarding Mr. Hassan Mushiana, Secretary-General of an organisation calling itself "Movement of Freedoms and Democracy - HAQ", and Mr. Abdul Hadi Al-Khawaja, President of an organisation called "Bahrain Center for Human Rights". According to information received, Mr. Ali Jaffar Ali was arrested on 25 February 2007 after security forces had searched the home of his father in Sanabis for several times during his absence. On the same day he was formally ordered into custody for 15 days by the Public Prosecutor and charged after participating in a peaceful demonstration pursuant to article 178 of the Penal Code of 1976, which provides that anyone "shall be punished by a term of up to two years and a fine not exceeding two hundred Dinars, or both, who participated in a gathering in a public place consisting of at least five persons, the purpose of which is to commit crimes, or acts equipping or facilitating it, or to disturb public security, even if that was to fulfill a legitimate objective." Mr. Ali Jaffar Ali is currently being detained at Khamees police station detention center. Mr. Jassim Mirza and Mr. Mohammad Mirza were arrested on 3 February 2007 at their homes in Sanabis by heavily armed Special Forces and have been detained at an unknown place of detention without having

access to lawyers or members of their family since then. The arrests were made following their participation in a peaceful protest on 2 February 2007 against the arrests of Mr. Hassan Mushiana and Mr. Abdul Hadi Al-Khawaja.

Communications received

None.

Special Rapporteur's comments and observations

25. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Bahrain to provide at the earliest possible date, and preferably before the end of the 9th session of the Human Rights Council, a detailed substantive answer to the above allegations. The Special Rapporteur also urges the authorities to give the above mentioned detainees regular access to their families and lawyers and to provide information about the whereabouts of Mr. Jassim Mirza and Mr. Mohammad Mirza. Bearing in mind that the detainees should be brought before a court in due time, he would also like to know if the respective trials have started.

Bangladesh

Communications sent

26. On 15 December 2006, the Special Rapporteur sent an allegation letter concerning the lack of independence of the judiciary, alleged political control of the prosecution and obstacles to the prosecution of crimes by public officials. According to the information received, despite the fact that section 22 of the Constitution provides that the State shall ensure the separation of the judiciary from the executive branch of the State, it is reported that the judiciary in Bangladesh is subject to interferences from the executive branch. Judges of subordinate courts and tribunals, who deal with the bulk of the cases in the judiciary in Bangladesh, both civil and criminal, are answerable to government ministries. In particular, the Courts of Metropolitan Sessions judges and the Courts of Metropolitan Magistrates, both criminal courts, are administratively attached to the Ministry of Law and the Ministry of Home Affairs respectively. Furthermore, all magistrates throughout the country and in the four metropolitan cities, where they work in Chief Metropolitan Magistrate's Courts, are allegedly answerable to the local district deputy commissioner. It has been reported that those judges discharge dual functions, judicial and executive ones, being also responsible for duties under a range of ministries, including home affairs, finance, establishment and law, justice and parliamentary affairs. They are allegedly appointed from the administrative services by the public service commission. The Ministry of Law, Justice and Parliamentary Affairs oversees the recruitment, posting and promotion of judges. The Special Rapporteur expressed his concern that the lack of independence of the judiciary in Bangladesh stems from some constitutional provisions. Indeed, articles 95, 96, 115, and 116 enable the interference of the executive in the appointment and tenure of judges. Article 96 provides that the President may, by order, remove a Judge from office. Article 115 provides that appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf. Finally, according to article 116, the control, including the power of posting, promotion and grant of leave and discipline of persons employed in the judicial service and

magistrates exercising judicial functions shall be vested in the President and shall be exercised by him in consultation with the Supreme Court. Notably, he expressed concern by the reported appointment of a large number of judges without effective consultation of the Chief Justice, and by the appointment of 19 judges to the High Court Division of the Supreme Court only three days before the Annual Vacation in August 2005. It is alleged that the 19 judges were appointed without properly assessing the qualifications, experience and suitability of the candidates. It has been reported that some of the appointees lack seniority and the necessary experience. It was informed that since 1991, the major political parties, including the Bangladesh Nationalist Party (BNP), promised in public meetings that they would separate the judiciary from the executive. This was even included in the BNP's electoral programme. The separation of the judiciary was one of the most prioritized election pledges made by the BNP-led four-party alliance during the last general election, held in 2001. However, after winning the election and despite having a two thirds majority in the Parliament, which enables a political party to make amendments to the Constitution, the BNP did not proceed to the separation of the judiciary from the executive. I also wish to recall that the separation of the judiciary from the executive is spelled out in Point XVII of the Human rights pledges made by the Government of Bangladesh to the United Nations in 13 April 2006 in support of its candidature for membership in the Human Rights Council. In a judgement given by the Appellate Division of the Supreme Court on 2 December 1999, in the case of the State versus Mr. Mazdar Hossain, the Supreme Court gave a 12 point order to the Government asking it to separate the judiciary, and to establish a judicial service commission to appoint judges and deal with promotions, transfers, leave, pensions, etc. It has been reported that the Government requested extension of time for the implementation of the decision and that the Supreme Court allegedly accepted at least 23 extensions of time to delay the enforcement of this separation. However, according to information received, on 5 January 2006, the Supreme Court rejected a further request for time extension and called for the separation of the judiciary to be implemented. A contempt of court case has been opened against the Government over its failure to implement the 1999 order. Nevertheless, it has been reported that the Government has not implemented the decision up to now. Additionally, the Special Rapporteur calls the Government's attention to allegations of political control over the prosecution. Prosecuting attorneys are reportedly replaced every time that a new Government comes to power. As a result, they lack independence. In addition, they do not accumulate experience or build institutional legacy. Furthermore, the prosecuting and investigating branches are not linked. If the police decide not to investigate a crime, the prosecutor has no obligation to do so. Finally, the Special Rapporteur drawn the Government's attention on reported obstacles faced by victims and their family members when attempting to bring cases to the courts. In particular, the Special rapporteur expressed his deep concern by some provisions of the Constitution and of the code of criminal procedure which violate the right to access to a judicial remedy. Section 46 of the Constitution of Bangladesh empowers the government to extend immunity from prosecution to any state officer on extremely broad grounds : "Notwithstanding anything in the foregoing provisions of this part, Parliament may by law make provision for indemnifying any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance and restoration of order in any area in Bangladesh or validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done in any such area to make the above-mentioned law." Notably, it has been reported that Joint Drive Indemnity Ordinance 2003 removed from the hands of victims and their family to take legal action against soldiers, police and other security forces responsible for the gross abuses that repeatedly occurred

from 16 October 2002 to 9 January 2003, under Operation Clean Heart. Aside from the passing of special laws under section 46, there are barriers built into ordinary criminal procedure that prevent people from making a complaint against an official, especially, sections 132 and 197 of the Code of Criminal Procedure 1898. Under section b 132, no criminal complaint can be lodged against any official without prior sanction from the Government. Furthermore, an accused person who is found to have been acting in good faith or on orders from a superior shall never be charged, and their actions shall never be considered a crime. I also note with great concern that the Judicial Probe Commission in charge of investigating the police response to the protest over rural electricity supply, in Chapainawabgani in February 2006, did not prosecute any perpetrators despite alleged cases of torture.

27. On 16 January 2007, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on violence against women, its causes and consequences, regarding Mrs. Anita Rani Mondol (born 11 November 1989), wife of Mr. Jamini Mandol, from Khaliar Chak village, under the Paikgachha police station in Khulna district. According to information received, on 23 July 2006, Mr. Panchanan Mondol, member of a rich and influential family and reportedly not related to the victim, allegedly raped Mrs. Anita Rani Mondol when she was alone at home. Upon hearing her crying for help, her neighbours and her husband, who arrived home by then, apprehended Mr. Panchanan Mondol. Soon after, Panchanan Mondol's brother, Mr. Krishnapado Mondol, the son, Mr. Bipul Mondol, and two relatives, Mr. Shivpado Mondol and Mr. Bholanath Mondol, allegedly arrived on the scene, physically assaulted the victim and her family, including her husband, and took Panchanan Mondol away thereby preventing him from being handed over to the police. The Investigation Officer of the rape case, Sub Inspector Mr. Mohsin Uddin, submitted the Charge Sheet No. 141 to the Paikgachha Magistrate's Cognizance Court under section 9 (1) of the Women and Child Repression Prevention Act-2003. However, in his investigation report, Mr. Mohsin Uddin submitted the charge only against the alleged perpetrator, Mr. Panchanan Mondol. The assault charges against the other four alleged perpetrators of the assault have been dropped even though the report mentions that while Mr. Panchanan Mondol was raping the victim, he was apprehended by her family. Later, Mr. Panchanan Mondol's brothers and nephews came to the house, assaulted the victim's family members and took Mr. Panchanan Mondol away. The Superintendent of Police of Khulna district, Mr. Moynul Islam supervised the case in person by visiting the scene and, having interviewed the eyewitnesses, officially forwarded the police investigation report to the court, but failed to identify the involvement of the fellow perpetrators. The case has now been forwarded to the Women and Child repression Special Tribunal of Khulna for trial. As of 6 December 2006, the perpetrators allegedly complicit in the incident have not been arrested or charged. It is alleged that the police officers who dropped the assault charges against the four accomplices might have been bribed. The victim, her family and the case witnesses are subjected to threats. Mr. Panchanan Mondol is allegedly pressuring the victim to withdraw the case by threatening to use his wealth and influence to bribe the police and ensure that they submit a false "Final report". It is also alleged that Mr. Panchanan Mondol allegedly also threatens key witnesses trying to cause them to make false affidavits in his favour.

28. On 20 February 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on the question of torture, on the situation of Mr. Nazmul Huda, Bar-at-Law and former Minister of Communications and several other individuals. According to information received, during the night of 3 to 4 February 2007, Mr. Huda was detained under Section 3 of the Special Powers

Act 1974 for a period of 30 days, which is likely to be extended. Four trucks carrying armed personnel entered the road where Mr. Huda lives and blocked all exits of the road. The armed personnel entered the family's premises and apprehended Mr. Huda. Thereafter the premises were searched. The order of detention "for anti-state activities" was issued by a magistrate 36 hours after the arrest of Mr. Huda. The detention order was delivered to the police authorities the next morning. Mr. Huda's family was informed that Mr. Huda was being taken to the Cantonment Police Station, Dhaka. The family met him there. It has been reported that other individuals who have been arrested under the same detention order on the basis of Section 3 of the Special Powers Act 1974, have not had access to counsel, that they have been beaten, and needles have been pushed under their fingernails and into private parts. Moreover, detainees have reportedly been deprived of sleep. Mr. Huda has been subjected to deprivation of sleep for two nights and days. Mr. Huda's wife, who is a lawyer, has applied several times to visit her husband in jail. On 12 February 2007, Mrs. Huda was granted permission to visit Mr. Huda briefly in her capacity as his wife. However, Mr. Huda has not yet had access to counsel. Mr. Huda's wife filed an application of habeas corpus under section 491 of the Criminal Procedure Code on behalf of her husband with the High Court on 7 February 2007. Mrs. Huda did not file a writ since parts of the Constitution of Bangladesh concerning fundamental rights are currently suspended under the emergency provisions. The Lordships of the High Court issued a rule noting that an order will be issued within 10 days.

29. On 20 April 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders, regarding the situation of Mr. Aminul Islam and Mr. Abdul Kashem Palash Director and Chairperson of the Association of Development Agencies in Bangladesh (ADAB). According to information received: on 12 January 2007, early in the morning, Mr. Palash and Mr. Islam were arrested from their respective homes in Dhaka city, by members of the Rapid Action Battalion (RAB). The RAB failed to produce a warrant for either arrest. The arrests were carried out the day after a state of emergency was declared. According to reports, Mr. Palash was detained at Mohammadpur police station until 4.30 p.m. whilst Mr. Islam was held in custody at the RAB headquarters in Moghbazar. At 8:30 p.m. that evening both men were transferred to Dhaka Central Prison, where they were issued with a 30 day preventive detention under Section 3 (1) of the Special Powers Act-1974 for "prejudicial acts". On 20 January 2007, Mr. Palash and Mr. Islam received a document from the Home Ministry which outlined the reasons for their arrests under Section 8 of the Special Powers Act-1974. Under the Act they were considered as posing a threat to State Security. On 5 February 2007, in an order signed by the Senior Assistant Secretary of the Home Ministry's Security Cell-3, Mr. Palash and Mr. Islam had their sentence extended by a further 30 days. On 26 February 2007 the High Court Bench of the Supreme Court ordered the immediate release of Mr. Palash and Mr. Islam claiming that their detention was unlawful. However on 28 February, following an application by the Government, the Appellate Division passed an order staying the High Court judgement. On 12 March 2007 the order of stay was extended until 29 March with the Appellate Division of the Supreme Court having granted the Government of Bangladesh leave to appeal and requested that an appeal be prepared by 3 May 2007. Mr. Palash and Mr. Islam are due to have their cases reviewed by the Advisory Board, comprising of two sitting High Court judges and a Government official, on 19 April 2007. This process of review by the Board was carried out pursuant to Section 10 of the Special Powers Act 1974. Mr. Palash and Mr. Islam are currently being detained at Dhaka Central Prison, and both men are being denied access to legal representation.

30. On 28 June 2007, the Special Rapporteur sent an urgent appeal regarding the situation of Mrs. Sigma Huda, lawyer and United Nations Special Rapporteur on trafficking in persons, especially women and children. According to the information received, Mrs. Sigma Huda has been accused of corruption and has been summoned to appear before a court on 25 June. In view of her deteriorating health conditions, the court granted her six additional days. Ms. Huda, currently hospitalized, is now due to appear on 1 July 2007. Whilst not wishing to prejudge the outcome of the judicial procedure, based on the information received it is feared that Mrs. Huda will not be granted a fair trial. It is reported that a special court has been specifically set up to rule on corruption charges. This special court, which lies within the compound of the Parliament, would function as a closed court, where neither the public nor the media are allowed in. Also, as a consequence of the high number of militaries present in the court, the atmosphere would be particularly intimidating. It is also reported that judges and prosecutors in charge of this trial have been intimidated: they indicated that they cannot rule in an independent manner and that their hands are tied. Moreover, it is reported the Mrs. Huda's lawyers have not had access to the files related to her case. Moreover, it is reported that the Chairman of the Anti-Corruption Commission, in a visit to different parts of the country, has addressed the lawyers of each district and asked them not to defend those accused by the current regime. Also, it is reported that the Chief of the Army has invited all lawyers of the Supreme Court to a gathering in which he told them not to take on cases of a list of accused among which Mrs. Huda is included. All lawyers would have been approached and requested to represent the Government side. As a consequence, the two lawyers hired by Mrs. Huda have withdrawn from the case explaining that they had received threats. Consequently, it is reported that Mrs. Huda faces difficulties finding a lawyer who would represent her.

31. On 11 July 2007, the Special Rapporteur sent an a joint urgent appeal together with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and Special Representative of the Secretary-General on the situation of human rights defenders, on the arrest and detention of Mr. Milton Chakma, Assistant Coordinator of the Hill Watch Human Rights Forum and member of the United Peoples Democratic Front, an organization representing the Jumma people of the Chittagong Hill Tracts. According to information received, on 29 May 2007, at around 11.30 a.m., Mr. Milton Chakma and his wife, Ms. Sumana Chakma were waiting for a bus near Chengi Bridge, one kilometre west of Khagrachari bazaar, on their way to Chittagong for Ms. Chakma's medical treatment. At the bus station, a Bangladesh army lorry reportedly came near them, and one of the army personnel asked Mr. Milton to identify himself. When Mr. Chakma told his name, the lorry went towards the direction of Khagrachari town. The lorry returned after a few minutes, and the military personnel arrested Mr. Chakma and took him away. No reason for his arrest was allegedly given at that time. In the afternoon of the same day, Mr. Chakma's relatives proceeded to Khagrachari zone army headquarters to seek information on his whereabouts. The army personnel allegedly refused to provide information on the grounds that their offices were closed at 2.00 p.m. When Mr. Chakma's relatives returned again to the headquarters the next day, the zone commander told them that Mr. Chakma was picked up by army personnel from Mahalchari zone. However, they went to Mahalchari zone army headquarters, the army officials denied having arrested Mr. Chakma. On 31 May 2006, Mr. Chakma was produced before the Court in Rangamati. The Court reportedly granted a 7-day police remand for interrogation on 6 June 2007. On 12 June 2007, he was reportedly transferred secretly in an army vehicle to the Rangamati jail, allegedly with the intention to prevent his lawyer from appealing for bail. On that date, the Court

of Rangmati granted an additional remand for 4 days. Since the end of this remand, Mr. Chakma has been reportedly held in judicial custody at Rangamati jail and, to date, has not been produced before the Court. According to information subsequently received, Mr. Chakma was arrested on the basis of a First Information Report (FIR) filed by Md. Shadihul Islam, Sergeant (No. 3998686) of 24 Bengal Regiment. In this report, Mr. Chakma has been charged in relation to the alleged murder of an army officer in Ghilachari, Rangamati district, in December 2006 (Case No. GR 304/06). The officials records reportedly show that this case was originally filled on 27 December 2006 under Sections 302-304 of the Bangladesh Penal Code. However, in the original FIR Mr. Milton Chakma was not reportedly included. It is alleged that the assassination charges brought against Mr. Chakma are manifestly unfounded, and that they may be related to his peaceful work in defense of the rights of the Jumma people in the Chittagong Hill Tracts.

32. On 7 November 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur 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 the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders regarding Mr. Jahangir Alam Akash, journalist with CSB News Bangladesh and human rights defender. According to the new information received, in the night of 23 October 2007, at around 1.30 a.m., a group of 10 -12 Rapid Action Battalion (RAB) agents in plain clothes went to the house of Mr. Alam Akash in Rajsh. Reportedly, his wife did not let them in until they told her who they were; she asked for a search warrant but they refused to present one. Reportedly, the agents disclosed their identity and said that a reliable source had told them that there were some arms hidden in the house and alleged they had a search warrant issued by the concerned court. The RAB agents grabbed Mr. Alam Akash and began slapping him hard in the face. Then, they put him in handcuffs, wrapped a black cloth around his head and took him away. He was reportedly taken to a nearby army camp where he was severely beaten. It has been reported that he has suffered severe physical injuries and is unable to walk, having been moved to the Rajshahi hospital. Mr. Alam Akash remains detained on extortion charges and has not yet appeared in court. Prior to these attacks, Mr. Alam Akash had been broadcasting and publishing news on alleged abuses of power by the RAB. In particular, on 2 May 2007 Mr. Alam Akash presented a report on an attempted extrajudicial execution by RAB agents that had allegedly taken place in Rajshahi. He has also received numerous death threats due to his work and has suffered physical assaults in the past after publishing critical articles regarding local politicians. Concern expressed that the alleged ill-treatment and detention of Mr. Alam Akash may be directly related to his peaceful activities in defence of human rights.

33. On 23 August 2007, the Special Rapporteur issued the following press release:

**UNITED NATIONS HUMAN RIGHTS SPECIAL RAPPORTEUR
EXPRESSES CONCERN ON SIGMA HUDA'S TRIAL**

“The Special Rapporteur on the independence of judges and lawyers wishes to express his concern concerning the proceedings of the trial of Ms. Sigma Huda, lawyer and Human Rights Council's Special Rapporteur on trafficking in persons, especially women and children. On 27 August 2007, the Special Anti Corruption Court of Bangladesh sentenced Ms. Huda to 3 years' imprisonment for aiding and abetting extortion found to have been committed by her husband.

The Special Rapporteur received information indicating that the right to legal representation and the independence of the court were severely affected during her trial. According to these reports, defense lawyers felt pressured. They had no opportunity to visit her in prison and could only meet with her at the end of the hearings. They also had difficulties accessing the case files and other relevant information, thus compromising their ability to ensure an adequate defence. The atmosphere during the trial was reportedly intimidating, with military and police presence both outside and inside the courtroom, and access of the public and the media to the courtroom was considerably restricted.

The Special Rapporteur is concerned by these alleged irregularities which would amount to a violation of article 14 of the International Covenant on Civil and Political Rights, ratified by Bangladesh. Against this background, the Special Rapporteur calls upon the Bangladesh authorities to ensure the right of Ms. Sigma Huda to a fair and public trial during any ensuing appeal process.”

Communications received

34. On 26 April 2007, the Government replied to the allegation letter of 15 December 2006 stating that in order to secure independence of judiciary and to protect human rights, the separation of the Judiciary from the Executive branch of the Governance is essential. It has been a long-standing demand from all stakeholders and international community. The last two elected Governments despite public commitment could not succeed in separating the judiciary from the executive. The directives of the Hon’ble Appellate Division, the Supreme Court of Bangladesh, made in the historical judgement of Majdar Hossain’s Case remained unimplemented. The present interim Caretaker Government has taken a bold initiative in this direction and has made considerable progress in achieving the separation, which eluded the country for many years. After taking over the responsibility of the present Caretaker Government, Hon’ble President by promulgating Ordinance in February 11, 2007 brought about revolutionary change in the century old Criminal Procedure Code, 1898. Apart from this, the Caretaker Government on January 16, 2007 framed four rules namely (1) Bangladesh Judicial Service Commission Rules 2007 (2) Bangladesh Judicial Service (Pay Commission) Rules 2007, (3) Bangladesh Judicial Service (Constitution, Appointment, Temporary Suspension, Suspension and Removal from service) Rules 2007 (4) Bangladesh Judicial Service (Place of Posting, Promotion, Leave, Control, Discipline and other Conditions of Service) Rules 2007. These Ordinance and rules have been promulgated with a view to separate the Judiciary from the Executive in an effective and efficient way. The Government has submitted the said Ordinance and those Rules before the Appellate Division, Supreme Court of the Bangladesh for necessary directives of the Hon’ble Court. In accordance with the provision of the aforesaid Ordinance and Rules, the Supreme Court will fix the date when the subordinate Judiciary will function independently being separated from the Executive. It has been the long practice in the country to appoint public prosecutors by the political Governments. Once the particular political Government changes, the prosecutors also lose their jobs. New Government appoints new prosecutors of their choice. So the system suffers from the Jack of continuity, commitment, skill, quality, efficiency and accountability on the part of most of the law officers. Often this results in the delay in legal process and the ineffective trial of offences. To remedy the situation, the Law Ministry has taken an initiative to create a separate and independent prosecution service. A draft Bill is now under consideration of the Government in this regard. There are some obstructions in prosecuting the criminals in the current legal system, which the country inherited and yet to make up to date.

As for example Government officials cannot be prosecuted without prior sanction of the Government if the offences are committed in discharge of their official responsibility. The Government is very much aware of the shortcomings and pledge bound to improve the situation. In course of time, it will remove this sort of anomalies through reform of relevant laws.

35. On 25 May 2007, the Government replied to the joint allegation letter of 16 January 2007, indicating that Mrs. Anita Rani Mondal wife of Mr. Zamini Mondal of village: Kahar Chak, Police Station: Paikgacha, District: Khulna lodged a First Information Report (F.I.R.) against Mr. Panchanan Mondal, son of late Jitendra Nath Mondal of the same village at Paikgacha Police Station under Section 9 (1) "Women and Children Repression Prevention Act, 2000 (Amendment 2003)" on 25.7.2006. The Investigation Officer (I.O.) of the said criminal case submitted charge sheet (No. 141, dated 11.9.2006) against Mr. Panchanan Mondal under Section 8 (1) of the said Act in the concerned court. According to Medical Experts' opinion, there was no sign of forcible sexual intercourse with the victim Mrs. Anita Rani Mondal. On 25 January 2007, Mrs. Mondal declared through an affidavit that she was not raped by Mr. Panchanan Mondal. In her affidavit she also mentioned that there were disputes between Mr. Panchanan Mondal and her husband on land property issues. Mrs. Mondal confirmed that she only had an altercation with Mr. Panchanan Mondal about the disputed property of her husband. The alleged rape incident is, therefore, categorically ruled out. The case against Mr. Panchanan Mondal is under trial in the Special Tribunal, Khulna. In the meantime, the alleged accused Mr. Panchanan Mondal has been granted bail by the Honourable High Court Division, Dhaka. The victim and the accused will receive fair judgement as guaranteed by the law of the land.

36. On 13 June 2007, the Government added in a separate communication the following declaration that was made under oath by Anita Rani Monda: I had submitted application No. 20812006 at the court under Women and Children, following case No. 15, dated 25 July 2006, G.R. 124/2006 under Rule 9 (1) of Women and Children 2000 (amended in 2003). The application states that Mr. Panchanan Mondal, Son of late Jitendra Nath Mondal, Address: Khaliarchar, Thana: Paikgachha, District: Khulna, raped me in the evening of 23 July 2006. That is not true. No one raped me, and the incident of rape mentioned in the application is not correct. We had some property related disputes with Mr. Panchanan Mondal, a relative of my husband, and I had altercations with Mr. Panchanan Mondal on that issue on 23 July 2006. Later Mr. Abir Mondal, son of late Shanatan Mondal, came to my house in absence of my husband and advised me to keep the police station informed about the altercation. Then he took my thumb impression on a blank sheet of paper, and I did not have any ill motive. Later I came to know that an application had been submitted with my thumb impression on it stating that Mr. Panchanan Mondal had raped me. Actually Mr. Panchanan Mondal is not guilty. I did not have any complain against him earlier, and I do not have any even now.

37. On 24 July 2007, the Government replied to the urgent appeal of 28 June 2007 stating that on the basis of specific allegations the Anti-Corruption Commission, an independent statutory body, had filed formal complaints of corruption against Ms. Huda and her husband, Mr. Nazmul Huda, who was the former Minister of Communication. Ms. Huda is accused of aiding and abetting her husband in accepting bribes which investigation reveals were deposited in bank accounts controlled by her as signatory. Other allegations relate to misuse and abuse of power and extortion by her husband, Mr. Huda, to provide her with material benefits. There are several cases pending against her. The trial stage commences only when the court takes

cognizance of the offence and frames charges. The several other complaints and offences have been under investigation and the formal charge sheet has yet to be submitted in respect of these. The actual trial of one case has commenced: Special Case No. 02/07 arising out of Dhanmondi P.S. Case No. 70(93) 07 under Section 5(2) of the Prevention of Corruption Act 1947, read with Sections 161/109 of the Penal Code and Rule 15 of the Emergency Rules 2007. From the first information reports lodged with the Dhanmondi police Station (case No. 70, dated 21-03-2007) against Mr. Nazmul Huda and his wife Ms. Sigma Huda, it appears that one Mr. Zahir Hossain, a construction contractor of Roads and Highways Department paid Mr. Nazmul Huda, the then Communications Minister, an amount of Tk. 2,40,00,000/- as bribe for gaining an illegal favour. This amount was discovered in the bank account of Ms. Sigma Huda. This is an offence of corruption under the Prevention of Corruption Act, 1947 [section 5(2)] under sections 26 and 27 of the Anti Corruption Act of 2004 and under section 109 of Penal Code. Md. Wahidur Rahman (Azad), also a contractor of Roads and Highways Department filed a complaint to the Tejgaon Police Station of Dhaka (case No. 69 dated 26-6-2007 under section 385/109 of Penal Code) stating that Mr. Nazmul Huda, then Minister of Communications, forced him to build a conference room for the BSEHR (Bangladesh Society for Enforcement of Human Rights), of which Ms. Sigma Huda is the Chairperson. This cost him Taka 5,50,000/- which neither Mr. Huda, nor Ms. Huda paid to the contractor. Rather he was threatened by Mr. Huda that he would face problems in realization of other bills pending with Roads and Highways if he asked for the money he spent for construction of the conference room for the BSEHR. The same person lodged another complaint to the Shahbag Police Station, Dhaka (case No. 47 dated 26-6-2007 under section 420/406/109 of Penal Code) stating that he had to build the boundary wall and a one-storied building of the BSEHR office of which Ms. Sigma Huda is the Chairperson. This cost him Tk. 41,26,000/- He was asked to claim only Tk. 21,90,000/- in his bill, which he complied. But he was not paid any amount for this purpose. Rather he was threatened when he asked for the money. Charges have been pressed by the Anti-Corruption Commission officials against Ms. Huda (along with her husband) for accepting illegal gratification. On 5 July 2007, the Special Tribunal Judge, Dhaka has framed charges against the accused Ms. Huda who appeared before the tribunal and has been taken to custody on 5 July 2007. In anticipation of proceedings being instituted against her, Ms. Huda had moved an application for anticipatory/pre-arrest bail. In her bail application she had pleaded ill health as the ground for grant of bail. The Court granted bail by its order dated 26 April 2007. Ms. Sigma Huda applied to the High Court Division on 10-5-2007 for permission to go outside the country to carry out her mandate as the Special Rapporteur on Trafficking in persons. As the material time preparations for criminal proceedings against Ms. Huda were in progress, these proceedings would have been frustrated if she suddenly left the country. Hence, the Government was constrained to appeal against the above order dated 13 May 2007, which was stayed by the apex Court, the Appellate Division. In this connection it may be mentioned here that the Government has no objection to Ms. Huda's functioning as a Special Rapporteur. Her presence in the country was necessary in relation to the legal proceedings. The Charge against Mrs. Huda is serious in nature. In the backdrop of the country-wide anti-corruption drive, it was apprehended by the investigator that Ms. Huda might be involved in some more corruption cases. If allowed to go abroad, she might not come back and thus would avoid the judicial proceedings. That is why, the prosecution preferred for a leave to appeal against the order of the Honourable High Court Division. The Government is mindful of the status of Ms. Huda and is adhering to strict legal principles in dealing with her case. She has been and continues to be represented, as of date, by

at least two of the most prominent attorneys in Bangladesh namely Mr. Rafique-ul-Haq, Senior Advocate and former Attorney General and Mr. Azmalul Hossain, Q.C. She has also been represented by Advocate Haji Nazrul Islam and Borhan Uddin. According to provisions of law the trial has to be completed within 45 days. The time can be extended by another 15 days in addition to the 45 days by assigning sufficient reasons. Since the Court took cognizance of the offences on 7 June 2007, the trial should be completed within a period of 60 days commencing from 7 June 2007.

38. On 16 August 2007, the Government added that Ms. Huda has been provided with proper and timely medical treatment as and when required, under the existing Jail Code of Bangladesh. She has also received specialized medical care. As desired by her, a renowned Cardiac Specialist of BSM Medical University, the country's most reputed Medical Hospital, attended her on 4 July 2007. She was also sent to this specialized hospital recently to obtain medical advice. On 6 August 2007, she was again referred to this specialized hospital. Subsequently, as per advice of the doctors, she was admitted in the same hospital, where she has received the necessary medical care.

39. On 31 August 2007, the Government added the Court Verdict on Mrs. Sigma Huda. In the bribery case filed by the Anti-Corruption Commission (ACC), a special Judge Court yesterday (on 27 August 2007) sentenced Mrs. Sigma Huda to three years simple imprisonment. Mrs. Huda's spouse and former Communication Minister Mr. Nazmul Huda was sentenced to seven years rigorous imprisonment and was fined Tk. 2.50 crore in the same case. The Special Judge's Court-2 pronounced the verdict on Mr. Huda under Prevention of Corruption Act, 1947 for abuse of power and corruption and Mrs. Huda was sentenced under Bangladesh Penal Code for being the accomplice in the crime. Ms. Huda was represented in the trial by Barrister Azmalul Hossain, Q.C, a prominent lawyer in Bangladesh. The verdict was delivered in 56 working days of trial. Depositions of 48 witnesses were taken during the period, eight of whom gave deposition in favour of Mr. and Mrs. Huda. The following charge was laid: Mr. Nazmul Huda, former Communication Minister, took Tk. 2.40 crore as bribe from one Mr. Mir Zahir Hossain at different times in exchange for awarding him five Government contracts for construction works including road renovations worth about Tk. 30 crore. The bribe was taken in phases between 12 February 2005 and 17 February 2005. Five work contracts were awarded to the plaintiff, the works of which were carried out between 2004 and 2005. The Government contracts included a work order for renovation of roads under DFID projects at Bhulta, Rupanj and Rampura worth Tk. 4.16 crore. The other contracts were for maintenance works of Rajshahi-Natore Road, Rajshahi-Nawabganj Road, and roads and highways in greater Rajshahi area worth Tk. 10 crore, for works of Faridpur-Kamarkhali Road worth Tk. 5.64 crore, for construction of Jamuna Multi-purpose Bridge Building at Banani in the capital worth Tk. 4 crore, and another contract for works of Rajshahi-Natore Road worth Tk. 6.72 crore, prosecution sources said. Ms. Sigma Huda was charged in the same case for aiding and abetting her husband in taking the bribe, which was found deposited in an account of "Khoborer Ontorale", a weekly newspaper owned by her. Later Tk. 1 crore of the bribe money was transferred to HSBC bank accounts of their daughters. The legal proceedings against Ms. Huda are being conducted impartially and her rights to a fair trial and due process of law are being respected. The Special Judge has awarded the jail sentence. The plaintiff has full right to appeal against the verdict in the higher courts.

40. On 5 October 2007, the Government replied to the communication sent on 20 April 2007, stating that Mr. Aminul Islam, son of Late Abdul Malek of Puradia, Police Station Nagarkanda, District- Faridpur, present address- D/3, House-8, Road-13, Dhanmondi, Dhaka was arrested and produced before the Court on 12 January 2007 in connection with Dhanmondi Police Station General Diary number 661 dated 12 January 2007 corresponding to detention case No. 02/2007 because of his involvement in some acts subversive to the State. He, being a Director of ADAB, a sister concern of Proshika, organized and incited local slum dwellers and other people in Dhanmondi area in disguise and tried to create enmity between different classes of people there. He also patronized some acts of the violence, which endangered public safety and security in Dhanmondi area. This led to him being accused in four cases. Of the four, one case (No. 13 dated 2 March 2004) already ended in framing prima-facie charge against Mr. Islam and others on completion of investigation while the rest of the cases are still under investigation as evidences are impeding. After the arrest, Mr. Aminul Islam was initially given one-month detention under the Special Power Act. Later on it was extended for another month. However, he challenged the verdict in the High Court. The High Court ruled in his favour and he was freed from Dhaka Central Jail on 27 April 2007. Mr. Abul Kashem Polash, son of Late Bazlur Rahman of Payerkhola, Police Station- Chowddagram, District- Comilla, present address: Quarter P/15, Noorjahan Road, Mohammadpur, Dhaka was arrested and produced before the competent Court on 12 January 2007 in connection with Mohammadpur Police Station General diary No. 737 dated 12 January 2007 for his involvement in some acts subversive to the country and other feuds and fracas. He, in the grab of Deputy Director of ADAB, tried to jeopardize the law and order situation in the Mohammadpur area by provoking and inciting the local people and the Slum dwellers against the law enforcing agencies. Consequently, he was accused in three cases. Mr. Abul Kashem Palash is the Central Coordinator of Proshika. He played a vital role in bringing forth people for political programmes of the Awami League. He was arrested on 12 January 2007 by the Joint Forces for his alleged role in utilizing NGO activists for anti-state activities and creating unrest in the society. He was arrested from his house by Rapid Action Battalion (RAB)-2. Later on, he was handed over to Mohammadpur Thana Police. There were one General diary (No. 737 dated 12 January 2007) and two cases (No. 13/06 and 54/06) against him at Mohammedpur Police Station and one case (number 13 dated 12 March 2004) at Dhanmondi Police Station. A Charge sheet against him was given on 7 July 2005 in the case filed with Dhanmondi Police Station. Mr. Abul Kashem was sent to jail and given one month detention under the Special Power Act after the arrest. However, it was extended for another three months until 11 May 2007. However, Mr. Abul Kashem challenged his detention in the High Court. After the hearing Hon'ble High Court ordered him to be released on bail. On 23 May 2007 he was freed from Dhaka Central Jail. Mr. Aminul Islam and Mr. Abul Kashem Polash were arrested for their alleged role in creating unrest in the society. They violated the law of the country as NGO representatives and got involved in internal political activities, which were subversive to the State. They also forced poor people to be associated with their NGO for taking part in the destructive political activities to create chaos and unrest. However, they were given proper opportunity to fight their cases in the court. The legal proceedings against Mr. Aminul Islam and Mr. Abul Kashem Polash respectively will be conducted impartially and their rights to a fair trial and due process of law will be respected.

41. On 27 November 2007, Government replied to the communication sent on 7 November 2007. The Government referred to its previous communication dated 2 May 2007. The Government informed that Mr. Akash has a record of toll collection, black

mailing and reporting false and fabricated stories, and therefore he was boycotted by his colleagues and was avoided by local people. The Government maintained that Mr. Akash has launched an international campaign to draw sympathy in his favour in order for the Government to refrain from taking action against him according to national law.

Special Rapporteur's comments and observations

42. The Special Rapporteur thanks the Government of Bangladesh for its cooperation and its detailed responses to several of his communications. Regarding the communication of 26 April 2007, the Special Rapporteur welcomes the initiatives undertaken by the Government in order to separate the judiciary from the executive. However, he remains concerned by several obstacles that subsist. In particular, he is concerned by the lack of implementation of laws and judgements ensuring practical separation between the executive and the judiciary. The Special Rapporteur recalls the Government of Bangladesh to remove these obstacles in the shortest delay. He also requests the Government to keep him informed about the situation. Regarding the communication sent on 7 November 2007, the Special Rapporteur remains concerned by the fact that the Government did not reply to the questions related to the respect of the guarantees of the due process of law in the case of Mr. Akash. He asks the Government of Bangladesh to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

43. In addition, the Special Rapporteur is concerned at the absence of reply to its communications of 20 February and 11 July 2007 and urges the Government to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Belarus

Communications sent

44. On 23 January 2008, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, on the situation of Mr. Aleksandr Sdvizhkov, editor at the weekly newspaper Zhoda, which has been shut down by the government. According to the information received, On 18 January 2008, Mr. Sdvizhkov was found guilty by the Minsk City Court of "incitement to religious hatred" for reprinting the cartoons of Prophet Mohammed that originally appeared on September 2005 in the Danish newspaper Jylland Posten. He was sentenced to three years in a high-security prison following a trial conducted in camera. The cartoons were published in the Zhoda newspaper in February 2006. A month later, the newspaper was shut down by the Government. Fearing prosecution, Mr. Sdvizhkov fled the country. He was arrested by the Security Service in November 2007 when he returned to Belarus to attend his father's funeral. Mr. Sdvizhkov and the Zhoda newspaper were one of the few independent voices in the Byelorussian press, in particular during the presidential election of 2006, when the Zhoda newspaper decided to also give coverage to the opposition candidate who took part in the elections.

Communications received

None.

Special Rapporteur's comments and observations

45. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Belarus to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Bolivia

Comunicación enviada

46. El 12 de noviembre de 2007, el Relator Especial envió una carta de alegación en relación con los magistrados del Tribunal Constitucional Walter Raña Araña, Artemio Arias Romano, Elizabeth Iñiguez de Salinas y Martha Rojas Álvarez. Según las informaciones recibidas, el proceso impulsado desde la Comisión de Constitución de la Honorable Cámara de Diputados contra los magistrados constitucionales anteriormente mencionados, se habría realizado sin las garantías debidas, llegando a vulnerar varios principios relativos al debido proceso y a la independencia del poder judicial. A través del memorial del 15 de mayo de 2007, Juan Evo Morales Ayma, Presidente Constitucional de la República, habría formalizado una denuncia en contra de los cuatro magistrados por la supuesta comisión de los delitos de resoluciones contrarias a la Constitución y las Leyes, impedir o estorbar el ejercicio de funciones y prevaricato, que se habrían cometido al pronunciar la Sentencia Constitucional (SC) 0018/2007 del 9 de mayo de 2007, que declaró inconstitucional un Decreto Supremo del Gobierno que designaba de manera interina a cuatro ministros de la Corte Suprema de Justicia. El 28 de mayo de 2007, los magistrados habrían presentado ante la Comisión de Constitución, Justicia y Policía Judicial excepciones de incompetencia del órgano legislativo en razón de la investigación y enjuiciamiento penal; incompetencia del órgano en razón de la materia; y falta de acción. Dichas excepciones habrían sido declaradas improbadas por la mencionada Comisión. Notificados con esa decisión, el 27 de junio de 2007, los magistrados habrían interpuesto recurso de apelación incidental ante la Comisión de Constitución, recurso que no obstante los reclamos efectuados, no mereció el trámite previsto en el art. 405 del Código de Procedimiento Penal (CPP). Dicho artículo determina que presentado el recurso, el juez emplazará a las otras partes para que en el plazo de tres días lo contesten, y, en su caso, acompañen y ofrezcan prueba; añadiendo que con la contestación o sin ella, dentro de las veinticuatro horas siguientes se remitirán actuaciones ante el Tribunal de apelación. Según lo informado, ninguno de los memoriales presentados por los magistrados del Tribunal Constitucional denunciando la actividad procesal defectuosa al órgano encargado de ejercer el control de la etapa preparatoria habría sido tramitado. Sin embargo, el Comité del Ministerio Público y Policía Judicial de la Cámara de Diputados habría librado mandamiento de aprehensión contra los magistrados del Tribunal Constitucional, pese a que la Ley 2623 prohíbe la aplicación de medidas cautelares durante la etapa preparatoria. Los magistrados habrían planteado un recurso de amparo constitucional contra los miembros de la Comisión de Constitución, Justicia y Policía Judicial. La tutela impetrada mediante el citado amparo, habría sido concedida a través de la Resolución 027/07-SSA-I de 8 de agosto de 2007, que dispuso la inmediata tramitación del recurso de apelación incidental y su consiguiente remisión a la Comisión de Derechos Humanos. El 22 de agosto de 2007, la Comisión de Derechos Humanos habría emitido la Resolución 019/07, por la que declaraba admisible el recurso de apelación incidental interpuesta por los magistrados y procedente las excepciones de incompetencia en razón de la materia y de falta de acción, disponiendo el archivo de los obrados.

Sin embargo, el mismo día 22 de agosto, algunos diputados habrían pronunciado la Resolución Camaral 049/02007, a través de la cual adoptaron y aprobaron como decisión de la Cámara de Diputados, el Proyecto de Acusación presentado por la Comisión de Constitución, Justicia y Policía Judicial, por la que se acusaba a los magistrados de los delitos de prevaricato y de impedir y estorbar el ejercicio de funciones, de manera que dispusieron a su vez, la suspensión de los magistrados en el ejercicio de sus funciones. Finalmente, el 4 de septiembre de 2007, se habría dictado la Resolución 059/2007, mediante la cual se dispuso el archivo definitivo de los obrados en el proceso penal en contra de los mencionados jueces de la Corte Constitucional, conforme lo decidido en la Resolución 019/2007 de 22 de agosto, y la restitución de los Magistrados a sus funciones, ordenando se notificara a las autoridades competentes, en particular al Comandante General de la Policía Nacional, para que se garantice el normal desempeño de funciones. En relación con las irregularidades alegadas, hay que añadir la supuesta aprobación por la mencionada Comisión de una Resolución acusatoria sin el quórum correspondiente. Además, según las fuentes, la Resolución emitida por la Comisión de Constitución habría desconocido del amparo constitucional establecido por la Corte Superior de Distrito a favor de los magistrados del Tribunal. El Relator Especial expresó, ante todo, su gran preocupación por las irregularidades en torno a dicho proceso puesto que he recibido información que apunta a que el cese de las funciones de los cuatro magistrados podría tener como fin la neutralización de la acción del Tribunal Constitucional en la labor de defensa de la Constitución. En este sentido, resaltó la importante función del Tribunal Constitucional como máximo guardián de la Constitución, del régimen democrático del gobierno y de la protección de los derechos humanos. Asimismo, destacó el carácter independiente de dicho órgano en el desempeño de sus funciones jurisdiccionales, y la necesidad de que otros poderes institucionales no interfirieran con dicha independencia. En este contexto, expresó su preocupación por el hecho de que los cuatro magistrados del Tribunal Constitucional se encuentren nuevamente suspendidos del ejercicio de sus funciones. Según las últimas informaciones recibidas, el pasado 26 de octubre las magistradas del Tribunal Constitucional, Elizabeth Iñiquez y Martha Rojas, habrían presentado su renuncia irrevocable al cargo que desempeñan. Las magistradas habrían destacado las constantes presiones del Poder Ejecutivo al Poder Judicial, que coartan su libertad de desempeñar su cargo. En este contexto, también expresó su preocupación por la situación actual del Tribunal Constitucional, que no puede funcionar con sólo tres miembros. En este sentido, hizo un llamamiento para que la elección de los dos nuevos miembros del Tribunal se realice sin demoras y de acuerdo con unos criterios de objetividad e imparcialidad. Sin embargo, también expresó su preocupación por algunas de las disposiciones establecidas en la Ley 2623, de 22 de diciembre de 2003. El Relator Especial consideró sumamente preocupante que la potestad judicial de dictar sentencia condenatoria en contra de magistrados, imponiendo sanciones penales de privación de libertad, corresponda al Poder Legislativo. Esto vulnera el principio de la división de poderes, previsto en la Constitución, y el derecho fundamental de cada persona de ser juzgado por un tribunal competente, independiente e imparcial, y no por el Poder Legislativo, que no ofrece las garantías de independencia y competencia necesarias. Igualmente consideró preocupante que, conforme a lo dispuesto en esta Ley, la sentencia condenatoria pueda ser impugnada mediante recurso de apelación restringida ante la sesión del Congreso, lo cual implica que la apelación es conocida por quienes actuaron como acusadores y por quienes emitieron la sentencia. Esto vulnera el derecho fundamental de cada persona de que el fallo condenatorio y la pena que se le haya impuesto sean sometidos a un tribunal superior. Por último, se recibió información sobre la adopción de otras medidas que menoscaban la independencia del Poder Judicial en el país. En este sentido, el Relator Especial destacó la severa

reducción de los salarios de los magistrados que, según fuentes, se habría llevado a cabo mediante Decreto Supremo. El Relator Especial subrayó que la independencia financiera de los jueces es un elemento fundamental de su independencia como representantes del poder judicial, que les permite no ser sujetos a presiones externas. Es entonces muy importante que se les garantice un salario de un cierto nivel, que corresponda al rol tan importante que desempeñan dentro de la sociedad, y que garantice su independencia frente a las presiones a las cuales son a menudo sometidos.

Comunicaciones recibidas

Ninguna.

Comentarios y observaciones del Relator Especial

47. El Relator Especial expresa su preocupación por la ausencia de respuesta oficial y urge al Gobierno de Bolivia para que envíe lo más pronto posible, preferiblemente antes de la finalización de la novena sesión del Consejo de Derechos Humanos, una respuesta sustantiva a las alegaciones arriba mencionadas. Preocupa particularmente al Relator Especial las alegaciones sobre las medidas adoptadas por parte del Poder Ejecutivo y del Legislativo que vulneran el principio de división de poderes y menoscaban la independencia del Poder Judicial.

Burundi

Communication envoyée

48. Le 16 mai 2007, le Rapporteur spécial a envoyé au Gouvernement du Burundi, conjointement avec le Rapporteur spécial sur la torture, une lettre d'allégation concernant la situation des mineurs incarcérés au Burundi. Selon les informations reçues, à la fin du mois de décembre 2006, environ 400 enfants, âgés de 13 à 18 ans, se trouvaient incarcérés dans les prisons du Burundi. Plus de 75 pour cent d'entre eux étaient alors toujours en attente d'un procès, après des mois, voire des années de détention. La plupart d'entre eux n'auraient pas eu accès à un avocat. Le Gouvernement du Burundi a reconnu l'existence de problèmes liés à la détention préventive, y compris des mineurs, dans un rapport au Comité contre la torture des Nations Unies en 2003 mais depuis lors, loin de s'améliorer, la situation se serait détériorée de manière significative. En l'absence d'un système de justice pour les mineurs, les enfants seraient traités comme des adultes tant devant les tribunaux que dans les prisons. L'âge limite de la responsabilité criminelle est de 13 ans et les mineurs ayant entre 13 et 18 ans qui sont déclarés coupables d'un crime ne bénéficieraient pas des réductions de peine normalement accordées aux adultes reconnus coupables des mêmes crimes. Bon nombre de mineurs retenus prisonniers en attente de procès seraient mélangés avec ceux ayant été reconnus coupables. Le recours rare à la mise en liberté sous caution occasionnerait un surpeuplement des prisons et les enfants n'ayant pas d'avocat ne seraient souvent même pas tenus au courant de la possibilité légale d'être libérés sous caution. Les enfants et les adultes en prison seraient détenus ensemble pendant la plupart de la journée, exposant ainsi les enfants à des agressions physiques et sexuelles de la part de prisonniers adultes.

Communications reçues de la part du Gouvernement

Aucune.

Commentaires et observation du Rapporteur spécial

49. Le Rapporteur Spécial regrette de devoir constater qu'en plus d'un an il n'a reçu du Gouvernement du Burundi aucune réponse aux graves allégations ci-dessus. Il l'invite instamment, non seulement à lui transmettre au plus tôt, et de préférence avant la fin de la neuvième session du Conseil des droits de l'homme, des informations précises et détaillées en réponse à ces allégations, mais aussi à prendre les dispositions d'urgence que la situation pourrait réclamer. Il se tient en outre à sa disposition pour examiner la question à fond et rechercher les solutions à y apporter.

Cambodia

Communication sent

50. On 7 May 2007, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Representative of the Secretary-General on the situation of human rights defenders, concerning two events affecting the functions of the Extraordinary Chambers in the Courts of Cambodia (ECCC). In particular the expulsion of the non-Governmental organization Open Society Justice Initiative (OSIJ). According to the information received, OSIJ issued a press release on 14 February 2007, calling for a thorough investigation of allegations that Cambodian officials may be obliged to pay "kickbacks" in return for their positions at the ECCC. The press statement also called for any investigation on the case to be made public and, if the allegations proved true, that immediate measures be taken by the ECCC to address the problem. The release was based on information gathered over several months from sources both within and outside of the ECCC. On 16 February 2007, the Deputy Prime Minister Sok An was quoted by Agence France Press as saying that OSJI was no longer allowed to enter the court. Meanwhile, ECCC Deputy Administrator Michelle Lee and Public Affairs Officer Peter Foster asserted that the OSIJ would still have full access to the Chambers and to international personnel. Later that same day, the ECCC Administrator Sean Visoth sent a letter to the OSIJ, which stated that the Cambodian side of the ECCC's Office of Administration would "have no further cooperation with the OSIJ". On 9 March 2007, OSIJ members were informed that, two weeks earlier, the Prime Minister Hun Sen had issued an oral order to expel OSIJ from Cambodia and had asked for a list of the names of everyone associated with OSIJ's ECCC project. On 11 March 2007, OSIJ was told that the delivery of names to the Deputy Prime Minister might trigger a decision to execute the expulsion order.

51. On 23 August 2007, the Special Rapporteur issued the following press release:

52. The United Nations Special Representative of the Secretary General for human rights in Cambodia and the Special Rapporteur on the Independence of Judges and Lawyers express concern over judicial independence in Cambodia in the light of recent judicial appointments

53. “The Special Representative and the Special Rapporteur are concerned that recent judicial appointments appear not to have been made in accordance with the Constitution, casting doubt on whether the constitutionally guaranteed principle of judicial independence is being fully respected in Cambodia.

54. According to Cambodian law, all judicial appointments, transfers, promotions, suspensions or disciplinary actions are decided by the Supreme Council of Magistracy and implemented by royal decree. Yet the royal decree of 9 August 2007 replacing the President of the Court of Appeal (NS/RKT/0807/339) appears not to have been made on the basis of a decision of the Supreme Council of Magistracy: prior to the issuance of the decree, no meeting of the Council was convened.

55. Instead, the decree states that the action was requested by the Chairman of the Supreme Council for State Reform, following proposals from the Co-Chairmen of the Council for Legal and Judicial Reform and the Minister of Justice. In other words, the replacement of the Appeal Court President was done at the request of the executive branch of government in contravention of the separation of executive and judicial powers specified in the Constitution.

56. Without commenting on the merits of the allegations made against the outgoing Appeal Court President, disciplinary action against judges is, according to the law, the prerogative of the Supreme Council of Magistracy, acting through a Disciplinary Council. The United Nations Basic Principles on the Independence of the Judiciary, which form part of Cambodian law, state that judges, like all citizens, are entitled to a fair hearing and other guarantees of due process. The Executive should not have a role in deciding whether any judge has acted inappropriately and should be dismissed.

57. The appointment of four new members of the Supreme Council of Magistracy by another royal decree (NS/RKT/0807/340), also issued on 9 August 2007, appears to have been made similarly at the request of the Executive rather than in accordance with the law.

58. The Special Representative has already expressed concern that the composition of the Supreme Council of Magistracy, which includes a government minister and a member of the ruling party’s Permanent Committee, does not inspire confidence that the judicial appointment process in Cambodia is free of political control. But these recent royal decrees actually sideline the Supreme Council of Magistracy, leaving it only a role in implementing, together with the Supreme Council for State Reform, a decision that it did not formally approve.

59. Three of the appointments to the Supreme Council of Magistracy were for positions which, according to the Law on the Supreme Council of the Magistracy, are reserved for members elected by the judges. No elections appear to have been held for these positions; indeed, no elections have ever been held for these three elected positions.

60. An independent judiciary is a fundamental guarantor for the protection of human rights in any country: without independent judges, it is not possible to ensure everyone’s right to a fair trial. Unless the Supreme Council of Magistracy is, and is seen to be, free of government control, the Courts of Cambodia cannot be recognized as independent. And if the courts are not independent and impartial, they cannot administer justice fairly in accordance with international human rights standards.

61. The Special Representative and the Special Rapporteur call upon the Cambodian Authorities to ensure that the provisions of the Constitution, the Law on the Supreme Council of Magistracy, as well as international human rights law, are respected so that the independence of the Cambodian judiciary can be ensured.

62. They also associate themselves with the concerns already expressed by the United Nations about the implications of the transfer of the Co-Investigating Judge at the Extraordinary Chambers in the Courts of Cambodia to the presidency of the Appeal Court. Legal and judicial reform is crucially important to the future development of Cambodia; but it should not be undertaken at the expense of the essential protections provided to judges, including guarantees of tenure, that enable judges to administer, and be seen to administer, justice efficiently, impartially and fairly, free of political interference.”

Communications received

None.

Special Rapporteur’s comments and observations

63. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Cambodia to provide at the earliest possible date, and preferably before the end of the 9th session of the Human Rights Council, a detailed substantive answer to the above allegations.

Cameroon

Communication envoyée

64. Le 29 août 2007, le Rapporteur spécial a envoyé au Gouvernement du Cameroun, conjointement avec le Rapporteur spécial sur la situation des droits de l’homme et des libertés fondamentales des populations autochtones et de la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l’homme, un appel urgent sur la situation des éleveurs Mbororos Fulanis dans la province du Nord-Ouest du Cameroun, notamment sur les événements ayant entraîné la destitution du chef traditionnel des Mbororos, Lamido Adamu K. Buba. L’appel urgent signalait l’allégation selon laquelle ces événements se déroulaient dans un contexte plus large de violations des droits de la population Mbororo, violations entraînées par la dépossession de leurs terres traditionnelles au profit d’un entrepreneur privé. Il était allégué que la situation mettait en évidence l’interférence supposée de M. Baba Danpullo, l’entrepreneur en question, dans le système de l’autorité traditionnelle de la communauté Mbororo, et débouchait sur des persécutions et arrestations de chefs traditionnels et d’autres membres de la Communauté. Selon les allégations reçues, le chef spirituel de la communauté Mbororo, Lamido Ahmadu Sabga, serait décédé le 13 juin 2007. En accord avec la loi coutumière de la communauté, le Conseil traditionnel Mbororo aurait élu, le 15 juin 2007, à la majorité des votes, M. Adamu Kawuyel Buba en tant que nouveau chef traditionnel. Il était allégué que la nomination de M. Adamu K. Buba aurait été explicitement objectée par M. Baba Danpullo, qui, depuis la mort de l’ancien Lamido, aurait essayé d’influencer le processus et nommé l’un de ses collaborateurs pour le remplacer. Dans ce contexte, lors des condoléances de l’ancien Lamido Ahmadu Sabga, M. Adamu K. Buba aurait, selon les

informations rapportées, menacé un des membres du Conseil traditionnel avec les mots suivants : « Je vous conseille de choisir un bon chef et si vous choisissez une personne qui ne me convient pas, je ne l'accepterai pas ». En accord avec leur pratique, après l'élection du nouveau Lamido, les autorités des Mbororos auraient envoyé une lettre au Chef Provincial de Mezam, l'informant de l'intronisation. Cependant, le 19 juin 2007, ce dernier aurait publié une Décision Préfectorale (n° 129 PD/E29/PS) déclarant la nullité de l'intronisation de M. Adamu K. Buba, interdisant toutes les réunions et les assemblées de la communauté Mbororo et fermant le palais traditionnel du Lamido. Un Recours Gracieux (Réf. MLF/RG/001/07) aurait été présenté le 28 juin 2007 par les dirigeants de la communauté contre cette décision préfectorale. Sans tenir compte de cette plainte en cours, et, négligeant les pratiques traditionnelles des Mbororos, le Chef Provincial de Mezam aurait, selon les informations reçues, annoncé la vacance du poste du Lamido traditionnel. Le 12 juillet 2007, tous les membres du Conseil traditionnel Mbororo auraient été convoqués à la Direction Générale de la Recherche Extérieure du Poste de Liaison du Nord-Ouest-Bamenda. Pour n'avoir reçu aucune information officielle sur les motifs de cette convocation, et par crainte de représailles pour l'intronisation du nouveau Lamido, les membres du Conseil traditionnel auraient choisi de ne pas se rendre à la gendarmerie. Le 13 juillet 2007, aux alentours des 5h00 du matin, approximativement 500 personnes de la communauté Mbororo, y compris le Lamido récemment élu, Adamu K. Buba, ainsi que les membres du Conseil traditionnel, auraient manifesté contre la décision préfectorale annulant l'intronisation du nouveau Lamido. Au cours de cette manifestation, les protestataires auraient paisiblement bloqué la route principale qui traverse la communauté de Sagba. Tous les membres du Conseil traditionnel, y compris le Lamido Adamu K. Buba, auraient à nouveau été convoqués à la Direction Générale de la Recherche Extérieure du Poste de Liaison du Nord-Ouest-Bamenda, interrogés, puis libérés. Selon les allégations, le 8 août 2007, le Lamido Adamu K. Buba aurait à nouveau été interrogé avant d'être libéré. Selon les allégations, le Chef Provincial de Mezam aurait informé la population de Sagba qu'au cours de la journée du 20 août 2007, après dépôt de nouvelles candidatures, une nouvelle intronisation serait discutée. Cependant, aux alentours des 6h00 du matin, le 20 août, une troupe de plus de 100 soldats aurait été déployée dans le village de Sabga, le Chef Provincial de Mezam aurait intronisé Mamuda Sagba, supposément par défaut d'autres candidatures. Vers 16h00, M. Baba Danpollo et le Lamido de Banyo du département d'Adamawa seraient entrés dans Sagba. L'arrivée de M. Baba Danpollo aurait accentué la révolte des membres de la Communauté Mbororo. Une utilisation abusive de la force aurait alors été employée par les soldats, avec utilisation de gaz lacrymogène et coups de fusil. Les personnes suivantes et un bébé de quelques mois auraient alors été blessées : Mme Maimouna Dawuh, âgée de 29 ans ; Mme Fatimatou Manjo, âgée de 22 ans ; M. Abdou Moussa, 31 ans ; M. Yakubu Alim, 22 ans, M. Kabiru Oumarou, 21 ans. Par ailleurs, des chevaux auraient été tués. Un total de 21 personnes, comprenant des membres du Conseil traditionnel ainsi que de l'organisation MBOSCUA auraient été inscrites sur une liste d'individus à arrêter. Plus de vingt Mbororos auraient quitté le village ce même soir pour Yaoundé. D'autres les auraient rejoints ultérieurement, et 34 personnes se seraient rassemblées devant l'ambassade des Etats-Unis.

Communications reçues de la part du Gouvernement

65. Le 18 Décembre 2007, le Gouvernement a répondu partiellement à l'appel urgent envoyé le 29 Août 2007. Dans sa réponse, le Gouvernement informe que le Premier Ministre vient de mettre sur pied en date 31 avril 2007, une commission ministérielle ad hoc chargée de recueillir sur le terrain toute information relative à la crise de succession à la tête de la chefferie de Sagba.

Cette commission a mené du 23 au 25 Septembre 2007, une enquête administrative dans le Département concerné. Ses conclusions seront transmises au Rapporteur Spécial. De même, le Gouvernement a signalé que la réponse à l'appel urgent sera transmise au Rapporteur Spécial dans les meilleurs délais.

Commentaires et observations du Rapporteur spécial

66. Le Rapporteur Spécial remercie le Gouvernement de sa réponse du 18 Décembre 2007. Il invite instamment à lui transmettre au plus tôt des informations précises et détaillées en réponse aux graves allégations ci-dessus et concernant la situation actuelle des personnes qui en sont l'objet. Notamment, il attend l'information concernant l'enquête menée par la commission ministérielle. Le Rapporteur Spécial espère vivement que la situation a été résolue de manière pacifique et satisfaisante, dans le respect des droits de l'homme de la communauté Mbororo.

Central African Republic

Communication envoyée

67. Le 26 février 2007, le Rapporteur spécial a envoyé au Gouvernement de la République Centrafricaine, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire et le Rapporteur spécial sur la torture, un appel urgent sur la détention du Colonel Bertrand Mamour. Selon les informations reçues, le Colonel Mamour aurait été arrêté le 18 novembre 2006 à Bangui par des agents de la Sécurité présidentielle, sans mandat d'arrestation et pour des motifs non explicités. Au moment de l'appel urgent, il était allégué qu'il était détenu au Camp de Roux, à Bangui, sans bénéficier de l'assistance d'un avocat et sans contact avec sa famille, et qu'il faisait l'objet de traitements inhumains et dégradants, ayant des répercussions immédiates et sérieuses sur son état de santé. Il était en outre allégué qu'un membre de sa famille était décédé au mois d'octobre 2006 dans des circonstances similaires.

Communications reçues de la part du Gouvernement

Aucune.

Commentaires et observation du Rapporteur spécial

68. Le Rapporteur Spécial regrette de devoir constater qu'en plus d'une année, le Gouvernement de la République centrafricaine n'a pas donné suite à ses demandes d'observations sur les graves allégations ci-dessus. Il l'invite instamment à lui transmettre au plus tôt, et de préférence avant la fin de la neuvième session du Conseil des droits de l'homme, des informations précises et détaillées en réponse à ses demandes et sur la situation actuelle du Colonel Mamour.

Chad

Communication envoyée

69. Le 29 février 2007, le Rapporteur spécial a envoyé au Gouvernement du Tchad, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante spéciale du Secrétaire général concernant la

situation des défenseurs des droits de l'homme, un appel urgent sur la situation M. Jean-Bernard Padaré, avocat et membre de la Ligue tchadienne des droits de l'Homme. M. Padaré avait déjà fait l'objet d'un appel urgent envoyé par la Représentante spéciale et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression le 14 février 2008. Le Rapporteur spécial signalait que, selon les nouvelles informations reçues, le 14 février 2008, M. Jean-Bernard Padaré aurait déposé plainte pour arrestation illégale et détention arbitraire à la suite de la disparition de MM. Ngarlejoy Yorongar et Ibni Oumar Mahamat Salehdes, dirigeants de l'opposition légale tchadienne. La source rapportait que, depuis lors, M. Padaré faisait l'objet de menaces quotidiennes. Ainsi, le 15 février 2008, des individus cagoulés se seraient rendus plusieurs jours de suite à son domicile en vue de l'intimider. M. Padaré aurait été absent de son domicile lors de ces visites et n'aurait pu le regagner depuis lors. Les jours suivants, M. Padaré aurait reçu deux SMS le menaçant en des termes suivants : « M. Arche de Zoé, malheur à toi si on te retrouve au Tchad. Sale traître, mercenaire à la solde des Français. Tu vas payer de ta vie, sale traître. » puis « M. Arche de Zoé, si tu es un homme, montre-toi de jour ou de nuit dehors et tu verras toi qui aime défendre les Français et les affaires louches. » Ces menaces feraient allusion au rôle de M. Padaré dans le procès de l'organisation non-gouvernementale « l' Arche de Zoé » qui s'est déroulé du 21 au 26 décembre 2007 à N'Djamena et au cours duquel il assurait, aux côtés d'autres avocats, la défense des six accusés de nationalité française.

Communications reçues de la part du Gouvernement

Aucune.

Commentaires et observation du Rapporteur spécial

70. Le Rapporteur Spécial regrette de devoir constater qu' il n'a reçu du Gouvernement du Tchad aucune réponse aux allégations ci-dessus et il l'invite instamment à lui transmettre au plus tôt, et de préférence avant la fin de la neuvième session du Conseil des droits de l'homme, des informations précises et détaillées en réponse à ces allégations et concernant la situation actuelle de M. Jean-Bernard Padaré.

Chile

Comunicación enviada

71. El 15 de Enero 2008, el Relator Especial envió un llamamiento urgente junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y de Representante Especial del Secretario-General sobre la situación de los defensores de los derechos humanos en relación con los arrestos de la Sra Yénive Cavieres Sepúlveda, abogada defensora de causas indígenas e integrante de la rama chilena de la Asociación Americana de Juristas, las Dras. Orielle Nuñez y Berna Castro y quince mapuches, de los cuales, tres son menores de edad. Según la información recibida, el día 3 de enero del 2008, la Sra Yénive Cavieres Sepúlveda asistió a una manifestación pacífica de reclamación de justicia por el asesinato reciente del estudiante mapuche, Matías Catrileo Quezada. Durante la manifestación, los Carabineros habrían detenido a dos manifestantes, las Dras Orielle Nuñez y Berna Castro. Según fuentes, la abogada Yénive Cavieres Sepúlveda habría tratado de interceder defendiendo, ante los Carabineros, el derecho de cualquier ciudadano a manifestarse pacíficamente y a ejercer el derecho a la libertad de expresión. Los Carabineros habrían ejercido una fuerza excesiva y

habrían detenido a la abogada Yénive Cavieres, a las Dras Orielle Nuñez y Berna Castro, y a quince mapuches, de los cuales, tres eran menores de edad. Los detenidos habrían sido trasladados a la 1ª Comisaría de Santiago, donde habrían permanecido durante seis horas, hasta que fueron liberados. Se alega que la detención de estas personas pueda estar relacionada con su trabajo en defensa de los derechos humanos.

Comunicaciones recibidas

Ninguna.

Comentarios y observaciones del Relator Especial

72. El Relator Especial expresa su preocupación por la ausencia de respuesta oficial y urge al Gobierno de Chile para que envíe lo más pronto posible, preferiblemente antes de la finalización de la novena sesión del Consejo de Derechos Humanos, una respuesta sustantiva a las alegaciones arriba mencionadas.

China

Communications sent

73. On 30 November 2006, the Special Rapporteur sent a joint allegation letter together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Mr. Gao Zhisheng, a lawyer and Director of the Shengzhi Law Office in Beijing, his wife Ms. Geng He, their children aged 13 years and two years and his 70 year old mother-in-law. Mr. Gao Zhisheng has represented victims of human rights violations; clients who sought to hold the State accountable for corruption and neglect including forced evictions; and represented clients involved in cases related to freedom of speech and the press. He has been the subject of three communications sent to your Government, the first sent by the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers, dated 25 November 2005, a second communication was subsequently sent by the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture on 21 December 2005 and the most recent communication dated 22 August 2006 was sent by the Special Rapporteur on the question of torture, the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on the situation of human rights defenders. According to the new information received, on 24 November 2006 Ms. Geng was beaten by members of the State Security police who had been following her movements and keeping her under surveillance. It is reported that Ms. Geng, her 13-year-old daughter and her mother have been constantly followed by police for approximately three months. The incident reportedly took place on a street in Beijing (Jingsong Road, near the Lidu Hotel on bus route 408), after Ms. Geng told three police officers (two male, one female) to stop following her and her children. As a result of the beating by the two male police officers, Ms. Geng is reported to have loosened teeth, a bleeding mouth and gums, her fingernail on one hand completely torn off and her leather clothing ripped into pieces. It is

further reported that Mr. Gao and Ms. Geng's 13-year-old daughter, Gege, has also been harassed by the State Security Police who accompany her at all times, including while she is in school. It is reported that they follow her to her classroom, in the school corridors and even to the bathroom, which makes her educational environment difficult. Furthermore, on 21 November, it is reported that Beijing police showed their badges and attempted to pick up Tianyu, their 2-year-old son, but his kindergarten teacher refused to comply. It has also been reported that Ms. Geng's 70-year-old mother is also tailed by police if she leaves the house. On 12 October 2006, Mr. Gao Zhisheng was formally charged with "inciting to subvert the state". It is reported that on 6 October 2006, Ms. Geng's birthday, she was allowed to see her husband at the Beijing No. 2 Detention Centre where they were watched and interrupted by police officers throughout the visit which lasted for approximately 20 minutes. However sources indicate that Mr. Gao has still not had access to his lawyer Mr. Mo Shaoping despite the recent discovery of his current whereabouts, as the authorities have reportedly stated that his case concerns "state secrets". Prior to 6 October 2006 he had allegedly been held incommunicado since 15 August 2006 when he was arrested without a warrant at his sister's house in Dongying City in Shandong Province, by more than 20 plainclothes police officers from the Beijing Public Security Bureau. According to reports the official Xinhua News Agency released a statement on 18 August 2006 stating that Mr. Gao had been arrested "on suspicion of breaking the law" however details of the alleged crime he had committed were not provided. Concern was expressed for the physical and psychological integrity of Mr. Gao Zhisheng as it is feared that he may be subject to torture or ill-treatment while in detention. Concern was expressed that the charges against him may be fabricated and may represent an attempt to prevent him and deter others from carrying out legitimate legal work in defence of human rights. Further concerns were also expressed for the safety of his family, particularly his wife, Ms. Geng and his children as it is feared that they may be subject to further acts of intimidation, harassment or violence because of Mr. Gao's aforementioned human rights work.

74. On 21 December 2006, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Mr. Chen Guangcheng, a 34 year old blind self-taught human rights lawyer in Linyi, Shandong province, and his wife Ms. Yuan Weijing, his lawyers Mr. Li Jinsong and Mr. Li Fangping, a member of his defence team, Dr Teng Biao, and witnesses to his trial, - Mr. Chen Gengjiang, Mr. Chen Guangdong, Mr. Chen Guangyu and Mr. Chen Guanghe. Mr. Chen Guangcheng has a long history of campaigning for the rights of farmers and the disabled. He assisted villagers in solving drinking water pollution problems when he was attending Najing Chinese Medicine University in 2000. He created and ran the "Rights Defense Project for the Disabled" under the auspices of the Chinese Legal Studies Association between 2000 and 2001. Since 1996, he has provided free legal consultation to farmers and the disabled in rural areas. In 2004, he ran a "Citizen Awareness and Law for the Disabled Project". In April 2005, Mr. Chen Guangcheng and Ms. Yuan Weijing began to investigate villagers' claims that Linyi City authorities were employing extensive violence in implementing government birth quotas. The first report was published by them on 10 June 2005 through the Citizens Rights Defence Network (gongmin weiquan wang) and they brought law suits against officials involved. Mr. Chen Guangcheng has been the subject of four previous communications to your Government, the most recent of which

were sent by 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 and the Special Representative of the Secretary-General on the situation of human rights defenders dated 1 December 2006, 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 question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 14 July 2006. Previous communications were also sent on 7 April 2006 by the Special Representative on the situation of human rights defenders, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture, on 31 October 2005 by the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences and Special Representative of the Secretary-General on the situation of human rights defenders, and on 19 September 2005 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders. The mandate holders acknowledge receipt of the Government's replies dated 12 December 2005, 14 June 2006 and 3 October 2006. The Government states that "(i)n dealing with Chen and his associates, the public security authorities acted in compliance with the law, in remanding them in custody or holding them for questioning. Throughout this period their lawful rights were fully protected and there is no substance to the allegation that Chen Guangcheng was subjected to beatings and placed under house arrest." While the mandate holders welcomed the Government's observations, they were afraid that they do not alleviate their concerns with respect to this case, particularly so in the light of consistent reports that a number of individuals involved in his trial have allegedly been targeted by the security forces including his wife, his lawyers, a member of his defence team and witnesses to his trial. According to new information received: On 27 November 2006, Chen Guangcheng's retrial before the Yinan County People's Court lasted approximately 10 hours. It is reported that on 1 December 2006, he was sentenced to four years and three months' imprisonment for "gathering crowds to disrupt traffic" and "intentional destruction of property". According to reports, Chen Guangcheng's wife, Yuan Weijing, has been under de facto house arrest from 12 August 2005 until 25 November 2006. Since then, she had been continuously followed by local security personnel and persons in civilian clothes believed to have been hired by the police. On 28 November 2006, around midday, she was arrested by members of the Yinan County Public Security Bureau and detained for questioning. Their one-year-old child was also taken but was sent home later that day. Approximately eight hours later, Yuan Weijing, was dragged out of police car and left in a barely conscious state on the side of the road near her village. She was taken to the Mengyin County Menglianggu Hospital where she was treated for extreme trauma however she was accompanied by up to 20 policemen as an order of "residential surveillance" had been issued while she was in detention. She is also suspected of committing "gathering crowds to disrupt traffic" and for "intentional destruction of property". Furthermore it is reported that the local authorities have intimidated witnesses and allegedly withheld evidence in order to prejudice Chen Guangcheng's retrial. It is further reported that four other key witnesses in the aforementioned trial have been subject to police harassment in relation to the most recent trial and were subjected to torture in order to provide false testimony against Mr. Chen Guangcheng in his previous trial. According to reports, Mr. Chen Gengjiang was

detained on 26 November 2006 and held until after the hearing had taken place. He was allegedly forced to sign papers in which he agreed not to participate in the case. On the same day, Mr. Chen Guangdong and Mr. Chen Guangyu reportedly disappeared after they had agreed to testify on behalf of the defence. Later the same evening, Mr. Chen Guanghe was allegedly abducted by undercover police officers as he was on his way to meet with Mr. Li Fanping regarding the upcoming trial in which he was scheduled to testify the following day. He was reportedly formally arrested on 28 November but his family was not informed of his arrest or his whereabouts until 3 December 2006. Previously, it is alleged that Mr. Chen Guanghe was detained and tortured before the first trial by members of the Yinan police in order to procure a false confession and to testify against Mr. Chen Guangcheng. He was convicted on the basis of the false confession but granted a suspended sentence. It is feared that his recent detention may be related to the fact that he has submitted written testimony stating that his prior evidence had been coerced through torture. Members of Chen Guangcheng's defence team have also allegedly been harassed, including his lawyers Mr. Li Jinsong, Mr. Li Fangping and Dr Teng Biao. The two lawyers were apparently prevented from interviewing witnesses and obtaining further evidence for the retrial. On 27 November 2006, as the trial was taking place, Dr Teng Biao was reportedly detained for five hours during which he was allegedly pushed to the ground by six or seven policemen who held him down while they searched him. They also apparently searched his bags and computer and confiscated his mobile phone. Grave concerns were expressed that the charges against Chen Guangcheng and his wife Yuan Weijing are fabricated and are solely related to their legitimate activities in defence of human rights, in particular their defending villagers' rights. Serious concern was expressed that Chen Guangcheng did not receive a fair trial as his lawyers were obstructed in all aspects of their work from collecting evidence from witnesses to meeting with their client. Concern was also expressed by the allegations his lawyers were subjected to physical abuse and detention to prevent them from representing their client at trial. Similar concerns were expressed for the fate of his wife, Yuan. Further concern was expressed for the physical and psychological integrity of any witnesses for the defence as it is feared that they have been subjected to acts of torture or brutality by the Yinin County PSB.

75. On 1 December 2006, the Special Rapporteur sent a joint allegation letter together with Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Representative of the Secretary-General on the situation of human rights defenders, concerning the enactment of tightening regulations regarding the legal profession, procedural obstacles to its exercise and an increase in the harassment of lawyers. It is alleged that the Criminal Code and the Criminal Procedure Code have been misused by authorities, in order to undermine lawyer's defense work, especially in sensitive political or social unrest cases. Article 306 of the Criminal Code, article 96 of the Criminal Procedure Law and article 45 of the Law of the People's Republic of China on Lawyers, would allow prosecutors to arrest lawyers on grounds of perjury or false testimony. According to these provisions, lawyers can be prosecuted for destroying or fabricating evidence and of forcing or inciting a witness to change a testimony. These acts are punishable by imprisonment up to seven years and by the revocation of the lawyer's licenses. It is reported that at least 100 lawyers have been accused of violating this article on the fabrication of evidence. These incriminations are reportedly used by authorities as a method to silence defense lawyers. It is also reported that article 96 of the Criminal Procedure Law, which applies to State secret cases, compels defendants who wish to be provided and meet with a legal counsel to request the approval of the investigative organ, which in general is the

public security authority. Moreover, both the Law on the protection of State secrets and a notice issued by the Ministry of Public Security and the National Administration for the Protection of State secrets in 1995 entitled “Regulation on State secrets and the scope of each level of classification in public security work” contain a definition of “State secrets” which is very broad. As a consequence, criminal defense lawyers are very much exposed to being accused of disclosing State secrets. Moreover, several restrictive regulations on the legal profession have been issued by national and local authorities. On 20 March 2006, the All China Lawyers Association (ACLA) issued a “Guiding Opinion on Lawyers handling Collective Cases”, which allegedly aims to ensure that sensitive cases do not threaten social stability. According to these rules, lawyers taking on collective cases (cases involving more than 10 people) and “major sensitive cases” are required to immediately report and accept the supervision and guidance from judicial administrative organs. Collective cases are reportedly linked to land requisitioning, levying of taxes, building demolitions, forced evictions, migrants’ enclaves, enterprise transformation, environmental pollution and rural laborers. According to the guidelines, only “politically qualified” lawyers are allowed to deal with these kinds of cases and before accepting them, they need the approval of at least three law firm partners. In addition, the guidelines allegedly warn lawyers to not encourage their clients to participate, or participate themselves in petitions before Government offices and not to contact foreign media. Lawyers who violate the rules face sanctions. Besides, it is alleged that more restrictive regulations have been issued by local public authorities. These regulations are generally called “Opinions on strengthening the guidance of lawyers handling major and collective cases” and reportedly limit lawyer’s freedom of expression, because they are not allowed to talk to the media about their views on collective and sensitive cases. It is also reported that several procedural obstacles are preventing lawyers from performing their duties, in particular conducting investigations and gathering evidence. Lawyers are compelled, *inter alia*, to request an authorization to the investigative organ to meet their clients in prison and reportedly face restrictions on photocopying and recording case materials, necessary for the defense work. Besides, in order to carry out their work lawyers reportedly often need to pay to officials and judges “file retrieval fees”, “services fees” and fees for referrals from judges. Furthermore, it has been reported that the national lawyer’s association ACLA is not independent, since its Secretary General is also the Deputy Director of the division in charge of lawyers and notary publics in the Ministry of Justice. Finally, it is alleged that some lawyers are being harassed by authorities, because of their professional activities as legal representatives. Lawyers allegedly have no system of immunity linked to their professional activity. They are assimilated to their clients and like the suspects they defend, they are allegedly often held in prolonged pretrial detention and have difficulty meeting with their own lawyers. When released, they and their families may be subjected to intimidation by the authorities. One of the consequences of this situation would be that some defendants may have been unable to find a lawyer willing to take their case because of its sensitive nature.

76. In this context, the mandate holders brought to the Government’s attention some cases of lawyers who have been allegedly victims of intimidation and harassment. According to the information received, Mr. Yang Maodong, a lawyer in charge of human rights cases, also known as Guo Feixiong, who was the subject of previous communication by the Special Representative of the Secretary-General on Human Rights Defenders and the Special Rapporteur on the independence of judges and lawyers, dated 6 March 2006, was detained on 2 August 2006 after four days of “disappearance” following a protest outside the Xinhua Gate to the central Government residential compound in Beijing. On 9 August 2006, he was reportedly beaten by

the train police and then taken to Shaoguan, Guangdong Province, where he was detained overnight. On 10 August 2006, he was allegedly forcibly sent back home in Guangzhou, after being accused by the police of holding a fake train ticket.

77. On 18 August 2006, the police announced that Mr. Gao Zhisheng, a well known human rights lawyer, was arrested “for suspect involvement in criminal activities”. Mr. Gao Zhisheng was already the subject of three previously transmitted communications by the Special Rapporteur on the independence of judges and lawyers and Special Representative of the Secretary-General on the situation of human rights defenders dated 25 November 2005, 21 December 2005 and 22 August 2006. In response to his arrest, dozens of persons have signed a petition asking for his release. Several of them have been reportedly put under house arrest, as well as his wife and two children who allegedly are under permanent surveillance and have been harassed by numerous female police officers based in front of their home.

78. On 19 August 2006, the trial of Chen Guangcheng, a well-known human rights lawyers in Linyi, Shandong province of China, who has been instrumental in highlighting human rights violations committed in the course of the implementation of the one-child per couple policy, reportedly took place without the presence of his legal team, because all of them have been either detained by the police or denied access to the court. On 24 August 2006, he was sentenced to four years and three months in prison. Moreover, two other lawyers associated with Mr. Chen’s case, Yan Zaixin and Zhang Jiankang have been reportedly harassed and forcibly returned to their home. Chen Guangcheng was already the subject of several communication sent by the Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Representative of the Secretary-General on the situation of human rights defenders and other mandate-holders on 14 July 2006, 7 April 2006, 31 October 2005 and 19 September 2005.

79. On 27 June 2006, Li Jinsong resigned as Chen Guancheng’s chief Counsel after reportedly being attacked by 20 men who overturned his car while he was inside. On 19 August 2006, Mr. Jinsong and another defense lawyer working on Chen Guancheng’s case, Zhang Lihui, were allegedly denied access to the trial. They were allegedly surrounded by the police after dinner the night before the trial. They were allegedly detained without charged and then released. Xu Zhiyong, who replaced Li Jinsong in defending Chen Guancheng, was allegedly beaten and taken into police custody by unidentified men on 18 August 2006, the day before Chen’s trial began. They were released 22 hours later, after Chen’s trial had already ended. Mr. Zheng Enchong, a lawyer who deals with human rights cases, served three years in prison for “leaking State secrets abroad” after he contacted an overseas human rights group about illegal forced evictions in Shanghai. Released in June 2006, he has since been reportedly under virtual house arrest and is allegedly being constantly monitored and harassed by the police. Mr. Zheng Enchong was the subject of two urgent appeals sent by Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Representative of the Secretary-General on the situation of human rights defenders and other special procedures mandate holders on 16 March 2004 and 20 July 2006. Li Baiguang was detained on 14 December 2004, allegedly because he provided legal representation to approximately 100,000 peasants seeking damages for forced land evictions. It is reported that since his release he has been detained and physically attacked several times. Ma Guanjun, who represented a rape suspect in 2003, was detained and accused of “obstructing justice”. It is

alleged that at the trial he produced seven witnesses who testified in favour of his client, but that during the trial recess, local police officers questioned the witnesses. The result was that witnesses changed their testimonies. According to the information received, at the retrial, the witnesses said in their testimonies that the suspect could not have committed the rape, however police officers interrogated them and once again they changed their testimonies. Afterwards, Ma Guanjun was convicted of violating article 306 of the Criminal Code. He served 210 days in prison until a lawyer's association launched an investigation on his case which led to his release in March 2004.

80. On 19 January 2007, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, on the secret trial and execution of Mr. Chen Tao, a Sichuan farmer found guilty of killing a policeman during a demonstration. According to the reports we have received, Mr. Chen Tao and three other protesters were arrested in 2004 after mass protests against a hydropower plant project in Sichuan province. The protesters had clashed with police, and a riot-control policeman was killed. The four men were tried behind closed doors in June 2006; Mr. Chen on the charge of "deliberately killing" the policeman. Their lawyers were not informed of the trial (in fact, they learned of the trial and the sentences inflicted on 4 December 2006, when the lawyer of a co-defendant received the sentence sheet), nor were the families notified. Mr. Chen was sentenced to death, the other three defendants to prison terms. On 20 November 2006, Mr. Chen Tao's father, Mr. Chen Yongzhong, received a court notice asking him to claim the ashes of his son and to pay 50 Yuan for the bullet. Mr. Chen Yongzhong declined, arguing that he could not be sure whether the ashes would actually be his son's.

81. On 10 May 2007, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the question of torture, Special Representative of the Secretary-General on the situation of human rights defenders and Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, regarding Ms. Mao Hengfeng, a well-known petitioner against family planning policies and forced evictions in Shanghai since 1989. Ms. Mao Hengfeng was the subject of an allegation letter sent by the Special Rapporteur on the question of torture together with the Special Representative to the Secretary-General on the situation of human rights defenders on 9 June 2005. According to information received, on 16 April 2007, Ms. Mao Hengfeng was informed by the Municipal No. 2 Intermediate People's Court in Shanghai that her original sentence of two and half years was to be upheld. The court session lasted 10 minutes during which time the judgement was read out. Neither Ms. Mao Hengfeng nor her lawyer was authorized to present an argument in her defence and only family members were allowed to attend the hearing. On 12 January 2007, Ms. Mao Hengfeng was sentenced to two and a half years in prison by Shanghai Yangpu District Court for allegedly damaging hotel property whilst in detention by Shanghai's Yangpu Public Security Bureau at a guest house in Beijing. It was alleged that Ms. Mao Hengfeng had broken two table lamps in the guesthouse and she was subsequently arrested on 30 June 2006 on charges of 'intentionally destroying property'. During the trial Ms. Mao Hengfeng was prevented by prison guards, from verbally protesting against the mistreatment and abuse which she was subjected to whilst in detention. According to reports, prior to her trial on 16 April Ms. Mao Hengfeng was detained in a small cell in which the floor was covered with excrement with the smell preventing her from sleeping. Reports also claim that prison guards had covered the only window in the cell. Ms. Mao Hengfeng's current conditions of detention are unknown.

82. On 10 May 2007, the Special Rapporteur sent an allegation letter jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the Special Representative of the Secretary-General on the situation of human rights, in relation to Mr. Liu Dehuo, Mr. Cui Yongfa, Ms. Shao Xiaobing, Mr. Chen Ningbiao, Mr. Chen Zhibiao, Mr. Shao Xixia and Mr. Guo Jianhua, human rights defenders working to protect their land from forced annexation. According to the information received: on 10 April 2007, the District Court of Sanshan, in Nanhai County, Guangdong province sentenced Mr. Dehuo, Mr. Ningbiao and Mr. Zhibiao to four years in prison, Mr. Yongfa, Mr. Xixia and Mr. Jianhua received a sentence of three years and six months, whilst Ms. Xiaobing was sentenced to two years and six months in prison. They were all charged with illegally obstructing an approved construction project in Sanshan District. Upon hearing the verdict all of the defendants announced that they would appeal the sentence. According to reports, the seven defendants were detained by Nanhai police in June 2006 and have been in detention since then. They were charged with extortion and blackmailing the Yingshun Tank Farm, a gas and petrochemical company, which had reportedly taken over 1 hectare of land in Sanshan without official approval for use as a construction site. The company was reportedly requested by villagers to hand over 50,000-yuan to compensate them or the plan to develop a construction site on the land would be exposed. However the company filed a complaint for blackmail against the defendants before making any payment. Mr. Liu Dehuo, Ms. Shao Xiaobing, Mr. Chen Ningbiao, Mr. Chen Zhibiao, Mr. Shao Xixia and Mr. Guo Jianhua were tried on 6 December 2006 without legal counsel. Mr. Yongfa's wife acted as his legal representative. Concern is expressed that the aforementioned events form part of an ongoing campaign against human rights defenders in China. Concern is also expressed at reports that Mr. Liu Dehuo, Mr. Cui Yongfa, Ms. Shao Xiaobing, Mr. Chen Ningbiao, Mr. Chen Zhibiao, Mr. Shao Xixia and Mr. Guo Jianhua did not receive a fair trial.

83. On 27 June 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders, to information received regarding Mr. Chen Guangcheng, a human rights lawyer who was sentenced to four years and three months of imprisonment after taking legal action against Linyi City authorities for their practice of forcing women to have abortions in order to meet the national birth quotas.

84. On 28 September 2007, the Special Rapporteur sent a joint urgent appeal together with Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Mr. Gao Zhisheng, a human rights lawyer. According to the information received: On 22 September 2007, Mr. Gao Zhisheng was taken from his apartment in Beijing by plainclothes policemen. His whereabouts remain unknown and concern is expressed that he is being held incommunicado detention. Reportedly, Mr. Gao's arrest is directly related to an open letter he sent to the United States Congress last week expressing his deep concerns over the worsening deterioration of human rights in China ahead of the 2008 Beijing Olympics. It has also been reported that prior to that letter, the police had threatened Mr. Gao with jail if he released any more open letters or statements.

85. On 3 October 2007, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on Human Rights and counter terrorism, and the Special Rapporteur on the question of torture, regarding the case of Mr. Husein Dzhelil, ethnic-Uighur of Canadian

nationality. According to the allegations received on 19 April 2007, he was sentenced to life imprisonment for “plotting to split the country” and to 10 years of imprisonment for joining a “terrorist organization”. These sentences were the result of an unfair trial which was based on a confession extracted through torture. However, the High People’s Court of Xinjiang Uighur Autonomous Region (XUAR) denied Mr. Dzhelil’s appeal, assessing that the facts were clear, and that the evidence was reliable and adequate. Allegedly, during the trial, the court-appointed lawyer did not make any statements on behalf of Mr. Dzhelil.

86. On 5 October 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Mr. Li Heping, a human rights lawyer practicing at the Gaobo Longhua law firm in Beijing. According to information received on 29 September 2007, at approximately 5.30 p.m., Mr. Li was abducted in the car park of the offices of his law firm by twelve men in civilian clothes. The men allegedly put a hood over his head and forced him into an unregistered car. After about an hour’s drive, the men stopped at an unknown location and took Mr. Li to a basement where they beat him and tortured him using electric rods. While torturing Mr. Li the men demanded him to promise to stop practicing law and leave Beijing. If he refused, they threatened him with systematic attacks. At approximately midnight, they drove Mr. Li to the woods at Xiao Tang Mountain in the suburbs of Beijing and left him there. Mr. Li managed to get a taxi to the Beijing hospital where he was treated for his injuries. Days prior to his abduction and assault, Mr. Li was reportedly approached by policemen from the National Security Protection Unit of the Beijing Public Security Bureau and instructed that he and his family were to leave Beijing. When Mr. Li refused to leave the city, the policemen proceeded to follow him, keeping him under constant surveillance. According to Mr. Li, the policemen who followed him witnessed his abduction as he had just talked to them. Upon his return home, Mr. Li discovered that his lawyer’s identification card as well as some other personal belongings had been taken. In addition, all of the files saved on his computer had been erased.

87. On 4 December 2007, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a joint urgent appeal regarding Mr. Li Guohong. Mr. Li Guohong is a representative of former workers of the Zhongyuan Oil Field. According to information received, on 31 October 2007, Mr. Li Guohong went to Puyang City, Henan Province, where the headquarters of the Zhongyuan Oil Field are located, in order to gain information with regard to a lawsuit being taken by dismissed workers against the oil field company. When Mr. Li Guohong went to Zhongyuan Oil Field Public Security Bureau (PSB) to investigate the detention of Zhongyuan Oil Field workers, he was placed in administrative detention for fifteen days. On 16 November 2007, when he was due to be released, he was instead sent to a “Re-education Through Labor” (RTL) camp for one and a half years by the Zhongyuan Oil Field PSB. Since 2001, the Zhongyuan Oil Field has reportedly unfairly carried out the dismissal of 10,000 workers without providing them with adequate compensation. According to the regulations in place for RTL camps, there is no the right to have the decision ordering the transfer to such a camp be reviewed by a judicial body.

88. On 22 January 2008, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders on the situation of Mr. Li Jinsong and Mr. Li Fangping, who are lawyers of the detained

pro-democracy campaigner and HIV-Aids activist Mr. Hu Jia, who was the subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders, the working group on arbitrary detention, and the Special Rapporteur on torture, on 4 January 2008. According to the information received, On 10 January 2008, Mr. Li Jinsong was reportedly placed under house arrest for several hours in a Beijing hotel, after inviting foreign journalists to confirm that it was impossible for him to see Mr. Hu Jia's wife, Ms. Zeng Jinyan. He is allegedly under surveillance by the police. According to reports, Mr. Hu Jia's other lawyer, Mr. Li Fangping, was not detained but he was allegedly strongly urged not to try to approach Ms. Zeng Jinyan's home. Previously, the authorities prevented them from visiting Mr. Hu in prison on 4 January on the grounds that the case had been classified as a "state secret". Furthermore, foreign journalists and friends and relatives of Ms. Zeng Jinyan and her husband were reportedly prevented by police from visiting or communicating with her on 11 January 2008. The police allegedly stated that it was because a "criminal investigation" was underway. Concern was expressed that the aforementioned arrest of Mr. Li Jinsong and the intimidation of Mr. Li Fangping may be directly related to their human rights activities, particularly their defence of Mr. Hu Jia. Further concern is expressed for the physical and psychological integrity of Mr. Hu Jia while in detention, as well as that of the members of his family.

89. On 5 March 2008, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the question of torture and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, regarding Mr. Zheng Enchong, a human rights lawyer in Shanghai. Mr. Zheng Enchong had been the subject of three communications sent by mandate holders; an urgent appeal sent by the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on extrajudicial, summary or arbitrary executions on 16 March 2004, an urgent appeal sent by the Special Representative, together with the Special Rapporteur on the independence of judges and lawyers on 20 July 2006, and an urgent appeal sent by the Special Representative, together with the Special Rapporteur on the question of torture and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living on 27 July 2007. According to new information received, on 16 and 17 February 2008, Mr. Zheng Enchong was reportedly assaulted by police officers who were following him and his wife, Ms. Jiang Meili. Later on 17 February 2008, he was summoned to the police station and detained for over 12 hours, during which time he was beaten by unidentified men. The police reportedly questioned Mr. Zheng Enchong about legal aid he recently provided to petitioners and victims of land grabs. The questions also focused on an interview Mr. Zheng Enchong had given to the Epoch Times on 12 February 2008, in which he discussed the corruption case of Shanghai tycoon Mr. Zhou Zhengyi and the possible involvement of former Chinese Communist Party leader Mr. Huang Ju. On 19 February 2008, the interview to the Epoch Times was published and the following day, Mr. Zheng was again arrested. While in detention, he was once more beaten by an unidentified person, sustaining injuries as a result, before being released that evening.

90. On 13 March 2008, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Representative of the Secretary-General on the situation of human rights defenders Mr. Teng Biao and Mr. Li Heping. Both of the aforementioned are human rights

lawyers. Mr. Teng Biao was the subject of an urgent appeal sent by several experts on 21 December 2006. Mr. Li Heping was the subject of an urgent appeal sent by the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on the situation of human rights defenders on 5 October 2007. According to information received, on the night of 6 March 2008, Mr. Teng Biao was reportedly abducted from outside his home. Neighbours reported seeing Mr. Teng Biao being put into an unmarked black car. No information on Mr. Teng Biao's whereabouts is available. Reports received also indicate that, on 7 March 2008, an unmarked car crashed into Mr. Li Heping while he was driving his son to school. It is also reported that there were three people in the unmarked car, who may belong to a group reportedly following Mr. Li Heping since January 2008.

Communications received

91. On 12 February 2007, the Government responded to the joint urgent appeal of 30 November 2006, regarding Gao Zhisheng, male, aged 42, born 20 April 1964, ethnic Han Chinese, lower-level university education, resident in room No. 202, unit 7, building No. 11 in Xiaoguan Beili, Chaoyang district, Beijing, prior to his arrest a lawyer with the Zhisheng law firm in Beijing. On 15 August 2006, Gao was placed under investigation by the Beijing public security authorities, in accordance with the law, on suspicion of the commission of a criminal offence, and, on 21 September, his arrest warrant was approved by the procurator's office. Beijing people's procurator's office No. 1 laid charges against Gao for the offence of fomenting subversion of the authority of the State and instituted proceedings against him with Beijing people's intermediate court No. 1. Beijing people's intermediate court No. 1 determined, following its consideration of the case in open proceedings, that: from December 2005 to May 2006, Gao had composed and published on websites such as "dajiyuan.com", "kanzhongguo.com" and others, nine articles with such titles as "Three open letters from Gao Zhisheng to Hu Jintao and Wen Jiabao" and "This administration never stops killing people". In these articles, Gao engages in rumour mongering and slander, vilifying the current Chinese State political and social system and inciting his readers to overthrow the authority of the State. At the same time, on 10 separate occasions, both from his home and in other places, Gao had given interviews to foreign media, such as "Radio Free Asia", "Voice of Hope", and other outlets, which held discussions with him and recorded his incitements to subvert the authority of the State. Those had been recorded by the foreign media as audio files and placed on their websites, for other people to listen to or download. For the offence of incitement to subversion of the authority of the State, he was sentenced to three years' fixed term imprisonment, to be suspended for five years, and stripped of his political rights for one year. After the court handed down its judgement at first instance, Gao declared himself willing to accept the verdict and did not lodge an appeal. The judgement has since become enforceable. In the course of the proceedings against Gao on the charge of incitement to subversion of the authority of the State, the public security authorities fully upheld his rights in litigation and those of his family and conducted the proceedings in strict compliance with the law, applying the law in a civilized manner. Three days before proceedings opened in this case, the court of first instance, in accordance with the stipulation of the law, notified the procurator's office and the defence counsel and published in advance the dates and venue of the trial. When the court rendered its judgement, Gao's family were present in the public gallery. When serving papers on Gao, the court expressly informed him of his rights in litigation to appoint a lawyer to conduct his defence. Gao indicated that, as he was himself a lawyer, he did not need to assign a lawyer to conduct his defence and he did not agree to his family appointing a lawyer for him. For that

reason, the lawyers Mo Shaoping and Ding Xikui, from the Mo Shaoping law firm in Beijing, appointed by his brother Gao Zhiyi, were unable to act in his defence. Under these circumstances, the court decided, in order to ensure that Gao's rights in litigation were fully upheld, that it should still appoint two lawyers to defend him, Qian Lieyang, from the Tianda law firm in Beijing (which goes by the English name "East Associates"), and Yang Xiaohong, from the Chao Yang law firm in Beijing, and Gao agreed to this appointment. In the course of the trial, in addition to conducting his own defence, Gao also received full defence services from his two defence lawyers. The allegations in the letter that we have received that the police harassed Gao's family members and others are unfounded.

92. On 14 February 2007, the Government replied to the joint urgent appeal of 21 December 2006 (A/HRC/4/25/Add.1), regarding Chen Guangcheng, male, born November 1971, ethnic Han Chinese, technical college graduate, blind, resident of Dongshigu village, Shuanghou township, Yinan county, Shandong province. In the evening of 5 February 2006, because he was unhappy with the work of poverty alleviation officials sent to his village, guided by his wife Yuan Weijing and others, he stormed into the offices of the Dongshigu village committee in Shuanghou township, Yinan County, and started smashing the glass panes in the doors and windows. Shortly after this, upon returning to Chen Guangyu's home in his village, he called on Chen Guanghe, Chen Guangdong, Chen Gengjiang and other villagers and urged them to go and smash up police cars in service at the Yinan county police station and minibuses belonging to the Shuanghou township local authority. Chen Guanghe, Chen Guangdong and their associates went round the village, shouting and urging people to go and smash up cars, set on local officials, chasing them to the municipal offices, and then charged across to the east end of the village, bearing wooden clubs, rocks and other implements, and proceeded to smash the windows in three police cars belonging to the Shuanghou police station, rolled these vehicles over into the roadside ditch, and then set about attacking and beating up police officers on duty at the Yinan county public security bureau. In the evening of 11 March 2006, Chen Guangyu, who had been drinking, claimed to have been beaten up in Dongshigu village and burst into the offices of the local village committee, where he started smashing office property. Claiming to be seeking an explanation for Chen Guangyu's beating, Chen Guangcheng seized the opportunity to gather together Chen Guangyu, Chen Guangjun, Yuan Weijing and others and, at 6 p.m. that same evening, they charged over to the Yinghou village section of State highway 205, where they proceeded to block the movement of traffic. First Chen Guangcheng took up a position in the middle of the road and stopped the traffic, then he directed Chen Guangjun, Chen Guangyu and the others to stand and shout in the middle of the road and to block the passage of all vehicles. Police officers from the public security bureau arrived on the scene to direct the traffic and instructed Chen Guangcheng to halt what he was doing, namely, urging a crowd of people to block the passage of vehicles. Chen Guangcheng totally ignored their instructions and continued calling on Chen Guangjun, Chen Guangyu and the others to block the traffic. This had the consequence that more than 290 motor vehicles, including ambulances attending to pregnancy and childbirth emergencies, were unable to move and that a section of State highway 205 was blocked for a period of three hours. On 10 June 2006, Chen was arrested, in accordance with the law, by the Yinan county public security bureau in Shandong province on suspicion of the offences of wilful damage to property and assembling a mob to disrupt the flow of traffic and, on 21 June, he was taken into custody with the approval of the procuratorial authorities. After his case had been referred to the Yinan county people's court, Chen's wife assigned as his defence counsel the lawyers Li Jinsong, from

the Yitong law firm in Beijing, and Zhang Lihui, from the Beijing office of the Xingyun law firm, also known as the “Astrorhyme” law firm, based in Zhejiang province. Before the proceedings opened at first instance, Chen requested the replacement of his defence lawyers by one Xu Zhiyong, a lecturer at the State Posts and Telecommunications College. In accordance with the provisions of the Chinese Code of Criminal Procedure, only a lawyer, person recommended by a civic organization or the defendant’s or suspect’s work unit and duly nominated by him or her, or the defendant’s or suspect’s legal guardian or close relative or friend, may act in his or her defence. Xu Zhiyong, however, only had his office pass and personal identity document and was unable to produce any official letter of introduction or other credentials; the court had no means of verifying his identity or his relationship to Chen and for that reason was unable to approve his attorneyship. The court appointed Li Jiasheng, a lawyer from the Yangdu law firm in Shandong, and Zhu Baolun, a lawyer from the Shandong Tonglixing State law office, as defence counsel for Chen, but Chen refused their services. On 19 August 2006, the Yinan county people’s court, meeting at first instance, found Chen guilty of the offence of causing wilful damage to property and sentenced him to seven months’ fixed term imprisonment; it also found him guilty of the offence of gathering a mob to disrupt the flow of traffic and sentenced him to serve four years’ fixed term imprisonment; the court decided that he should serve a combined sentence of four years and three months’ fixed term imprisonment. Following his sentencing at first instance, Chen refused to accept the court’s verdict and lodged an appeal. The Linyi city people’s high court in Shandong province, meeting at second instance, found that the court of first instance had restricted Chen’s right to defence (the assigned defence counsel had not been accepted by Chen), a factor which might have adversely influenced the fairness of the proceedings, and, on 31 October 2006, it quashed the original judgement and sent the case back to the court of first instance for retrial. The allegations in the letter that we have received that the case was sent back to the original court because there had been insufficient evidence to convict Chen Guangcheng for the offence of gathering a mob to disrupt the flow of traffic are unfounded. On 27 November 2006, sitting at a reconstituted bench, the Yinan county people’s court reopened the case in open proceedings, Chen’s brother attended the court in the public gallery, and Chen’s defence was conducted by the lawyers Li Fangping from the Beijing Ruifeng law firm and Li Jinsong from the Beijing Yitong law firm. During the proceedings, Chen’s rights in litigation were fully upheld: he exercised his own rights to defence and the lawyers appointed by him also made submissions in his defence. On 1 December 2006 the court ruled at first instance and made public its verdict: for the offence of wilful damage to property, it sentenced Chen to seven months’ fixed term imprisonment and, for the offence of gathering a mob to disrupt the flow of traffic, it sentenced him to four years’ fixed term imprisonment, ruling that he should serve a combined term of four years and three months. After sentencing at first instance, Chen refused to accept the court’s verdict and once again lodged an appeal. As the original court judgement had been based on clear facts, the conviction had been correct, the sentence had been commensurate with the offence and the trial proceedings had followed due process, the court dismissed the appeal and ruled that the original judgement should stand. This ruling was published on 12 January 2007. During the proceedings at second instance, the court also heard the views of Chen’s defence counsel and, in accordance with the applicable evidence, found that the facts set out in the accusation by the procuratorial authorities and the charges brought against the defendant were sound and accordingly handed down the judgement referred to above. With regard to the allegations in the letter which we have received to the effect that, on 30 October 2005, Chen’s lawyers endeavoured to lay charges with the Yinan county court against public security officials from Shuangzhou township for having caused intentional bodily

harm to Chen, but that the court ignored this suit, it is our understanding that the Yinan county court did indeed receive an application from the lawyers to bring charges, but because the lawyers did not have Chen's power of attorney, following an investigation the court determined that the lawyers were not authorized to act for the plaintiff and rejected the application. With regard to the allegations in the letter to the effect that Li Jinsong and Li Fangping filed an administrative and civil action with the Linyi city intermediate people's court against the Linyi city public security bureau (including the bureau chief, Liu Jie) and other Government agencies, it is our understanding that the court did indeed receive such an application from the lawyers, in December 2006, which had been sent by expedited mail service, and that the matter is currently being investigated and no conclusion has been reached as yet. The allegations in the letter that public security officials have been harassing members of Chen's family, his lawyers and other persons are entirely without substance.

93. On 26 February 2007, the Government replied to joint allegation letter of 1 December 2006 (A/HRC/4/25/Add.1), explaining that the received allegation letter stating that the Chinese Criminal Code and the Chinese Code of Criminal Procedure have been misused by authorities in order to undermine lawyers' defence and that there are procedural obstacles to the exercise by lawyers of their profession, especially with regard to the gathering of evidence and conduct of investigations, have no substance in fact. The Constitution of the People's Republic of China expressly stipulates that defendants have the right to defence; the Chinese Code of Criminal Procedure, the Code of Civil Procedure and the Code of Administrative Procedure set out specific provisions on all aspects of the right of lawyers to engage in litigation; the Lawyers Act gives detailed provisions on all aspects of the lawyers' right to exercise their profession; the People's Supreme Court, the People's Supreme Procuratorate and other bodies have also issued various normative instruments guaranteeing the right of lawyers to exercise their profession, which set out special provisions on the participation of lawyers in criminal proceedings, clearly stipulate what is meant, in the Code of Criminal Procedure, by the term "cases involving State secrets", and also set out clear provisions guaranteeing, in criminal proceedings, the right of lawyers, in accordance with the law, to meet their clients, to have access to files, to conduct investigations, to obtain evidence and to conduct other procedures, thus providing effective guarantees of the right of lawyers fully to exercise their profession. In the performance of their professional services, effective safeguards are provided to lawyers, and in this way the development of a State democratic legal system is effectively promoted. Regarding the "Guiding Views on the Conduct of Class Actions by Lawyers", issued by the All China Lawyers' Association. The All-China Lawyers' Association, in its capacity as the organization overseeing self discipline in the legal profession, issued its "Guiding Views on the Conduct of Class Actions by Lawyers" (hereinunder referred to as the "Guiding Views"), putting forward suggestions and setting out requirements on issues meriting particular attention by lawyers conducting class actions. The Guiding Views are designed to support and guide lawyers in enhancing their conduct of class actions, to promote the work of lawyers in resolving social conflicts and disputes, from the standpoint of a more extensive defence of the lawful rights and interests of parties to legal proceedings, and to help all parties to disputes to settle their conflicts and disputes in a lawful, appropriate, peaceful and sensible manner. They serve both as a standard for, and means of ensuring oversight of, lawyers' professional activities, and also as a safeguard for lawyers' professional rights and interests. At the same time, they provide a tangible manifestation of the endeavour by lawyers to ensure self-discipline in their profession, and also reflect a wide range of lawyers' views and aspirations.

The Government Yang Maodong, male, born August 1966, resident of Gucheng County in Hubei province, non-practising lawyer. In January 2006, the Guangdong province public security authorities learned that Yang, who in 2001 in Guangzhou had unlawfully published a book entitled Political Upheaval in Shenyang, as a special 2001 issue of the Chinese legal journal Falü Zongheng, was the prime culprit in a case involving the operation of an unlawful business under investigation by the Liaoning public security authorities and was currently on the run. Following a thorough investigation, conclusive evidence was gathered against him. In September 2006, the Guangzhou public security authorities, working together with the department responsible for comprehensive enforcement of administrative law in cultural activities, launched its city-wide programme to counter pirated publications. In the course of this undertaking it apprehended Yang Maodong, who, in collusion with Jiang Wei, Zhang Zhitao and others, had set up a counterfeit publication outfit, misappropriating lawful publications and publication numbers, and illegally publishing, printing and distributing more than 20,000 separate books and pamphlets. On 14 September 2006, the Guangzhou province public security authorities, acting in accordance with the law, took Yang into criminal detention on suspicion of the offence of operating an illegal business, on 28 September his arrest warrant was approved by the procuratorial authorities and his case is currently in progress. Zheng Enchong, male, born in September 1950, ethnic Han Chinese, resident of Shanghai, formerly a lawyer with the Siwei law firm in Shanghai. On 7 March 2001, Zheng on his own initiative terminated his employment with the Siwei law firm and formally arranged to be relieved of his functions. Since he has not submitted any application to resume his professional functions, he is no longer entitled to practise as a lawyer. On 28 October 2003, because he had committed the offence of providing State secrets abroad, Zheng was sentenced by Shanghai city people's intermediate court No. 2 to three years' fixed term imprisonment and stripped of his political rights for one year. On 5 June 2006 he was released on completion of his sentence. Li Baiguang, male, born 1968, resident of Beijing, formerly head of the legal centre (as a non-practising lawyer) of Modern Civilization Pictorial, published by the Chinese Academy of Social Sciences, currently unemployed. In December 2004, Li was arrested by the Fujian province public security authorities, in accordance with the law, on suspicion of the offence of fraud; in January 2005 he was released on his own recognizance with restricted freedom of movement pending trial and in January 2006, the restriction order against him was lifted. The public security authorities are not currently applying any measures against Li. There does not appear to be any lawyer by the name of Ma Guanjun, as mentioned in the letter that we have received. Following a verification of the circumstances in question, it would appear that the person intended is Ma Guangjun, a lawyer from the Songyuan law office in Inner Mongolia. In December 2002, Ma took on the responsibility of representing a suspect, Xu Wensheng, in a rape case. On 22 August 2003, the Ningcheng county procuratorial office took Ma into custody on suspicion, as the counsel for the defence, of the offence of interfering with the giving of testimony and, on 5 January 2004, instituted proceedings against him with the courts. On 10 March, the Ningcheng county people's court tried Ma on the charge of interfering with the giving of testimony and found him not guilty. On 23 March, the Ningcheng procurator's office challenged the court's verdict. On 24 May, the Chifeng city intermediate people's court delivered its final ruling in the case: the challenge was dismissed and the original judgement stood. Ma was acquitted of the charges against him.

94. On 6 April 2007, the Government replied to the joint allegation letter of 19 January 2007, stating that Chen Tao, male, born 20 February 1985, ethnic Han Chinese, from Hanyuan county in Sichuan province, lower secondary education, farmer, residential address: unit 2, Maiping

village, Dashu township, Hanyuan county. For commission of the offences of wilful homicide and malicious damage to property he was sentenced to death and stripped of his political rights in perpetuity and, on 16 November 2006, he was executed. The three other persons referred to in the communication that we have received are Cai Zhao, Liu Yong and Wang Xiujiao, all farmers in Dashu Township, Hanyuan County in Sichuan province, who have all received sentences. The Pubugou hydroelectric station on the Dadu River, which is situated in Hanyuan county, Ya'an municipality, in Sichuan province, on the boundary with Ganluo County in Liangshan prefecture, is a State priority construction project. On 3 November 2004, a number of the persons being relocated from the area of the hydroelectric dam in Hanyuan County decided that the compensation being paid to them was insufficient, and gathered at the power station to stage a sit-in, with a view to obstructing work on the dam. At noon that same day, Cai Zhao, Chen Tao, Liu Yong and Wang Xiujiao, bearing twisted iron bars and kitchen choppers, set off in pursuit of the armed police and public security officers who were on duty. After catching Zhang Zhiming, a police officer from the anti-riot squad of the Xichang city public security bureau, Cai Zhao struck him violently on the head with an iron bar and knocked him to the ground, whereupon Chen Tao, Liu Yong and Wang Xiujiao joined Cai Zhao in attacking Zhang Zhiming with iron bars, pounding him with rocks, kicking him and injuring him in other ways, fracturing his skull and causing loss of blood. They finally left when Zhang's life was hanging by a thread. Cai Zhao, Chen Tao and the others then attacked a passenger coach of the Emei make, parked at that spot, with the registration number W16995. Chen Tao set fire to the seats of the coach, which was then completely destroyed in the flames. After this, Chen Tao noticed another policeman trying to rescue Zhang Zhiming, lying on the ground, so he rushed at him, brandishing his kitchen chopper, and chased him away. He then turned back to Zhang Zhiming and slashed at him three times, kicked him ferociously with both feet, and then left. Zhang Zhiming was rushed to hospital but efforts to save his life proved unavailing and he died. According to the forensic examination, Zhang Zhiming's death was caused by repeated blows to his head, chest and back with a heavy, club-like and irregularly shaped blunt instrument, which fractured his skull causing fatal craniocerebral injuries and led to closed hematomothorax. On 5 November 2004, the co-defendants Cai Zhao and Wang Xiujiao again gathered a mob to attack the Yayuan guest house, a public facility jointly operated by the provincial and city headquarters. After committing this offence, Chen Tao was apprehended and brought to justice. In June 2005, the Sichuan Ya'an city people's intermediate court passed judgement, sentencing Chen Tao to death for the offence of wilful homicide and to deprivation of his political rights in perpetuity; for the offence of causing malicious damage to property it sentenced him to three years' fixed term imprisonment, and ruled that the death sentence was to be carried out and that he was to be stripped of his political rights in perpetuity. After judgement was passed at first instance, Chen Tao refused to accept the court's verdict and lodged an appeal, on the following grounds: there were discrepancies in the evidence confirmed in the judgement of first instance; Chen Tao had shown a good attitude in admitting his guilt; he had helped the investigation and solving of his case; and he had provided information which had led to the unmasking of other suspected offenders in the same case. Zhang Zhiming's death had been due to head injuries, yet he himself had not struck Zhang in the region of the head, making his offence one of homicide by indirect intent; Zhang Zhiming's death had been caused by a number of people, and Chen Tao had acted under instructions from others in committing his offence. Third, Chen Tao's defence counsel, the lawyer Feng Yubin from the Yazhou law office in Sichuan, argued that, while Zhang Zhiming may have died from his head injuries, there was no conclusive evidence demonstrating that Chen Tao had caused this by striking him three times and that, at the proceedings at first

instance, no weapons used in the offence had been exhibited. He called for clemency to be shown to his client. On 5 June 2006, the Sichuan provincial people's high court handed down its definitive verdict, dismissing the appeal and ruling that the original judgement should stand. The court found that the co defendants Cai Zhao, Chen Tao, Liu Yong and Wang Xiujiao, motivated by dissatisfaction with the terms of the compensation awarded to people displaced by the Pubugou hydroelectric dam project and with the aim of obstructing work on the power station, had attacked armed public security police on duty at the site and, brandishing iron bars, kitchen choppers and lumps of rock, had attacked Zhang Zhiming, the public security policeman on duty at that spot, stabbing him and slashing at him, causing him fatal injuries, conduct which constituted the offence of wilful homicide, in aggravating circumstances and with severe consequences, an offence which, under law, had to be punished with severity. Chen Tao also set fire to a passenger coach, which was destroyed by fire, directly causing 50,901 yuan's worth of damage, categorized as a very high level of damage, causing his conduct to constitute the offence of malicious damage to property. It decided, in Chen Tao's case, to apply the principle of joinder of punishments for multiple offences. The grounds supporting Chen Tao's appeal and the views put forward by his defence counsel did not tally with the facts ascertained in the investigation and the actual circumstances as demonstrated by the evidence, namely that Chen Tao and the others had kicked and attacked the deceased in the region of the head with blunt instruments, and were deemed to be untenable. As for the good attitude shown by Chen Tao in admitting his offence and his argument that Zhang Zhiming's death had been caused by a number of people, these factors were insufficient to warrant a more lenient sentence. Accordingly, it was decided to uphold the verdict of first instance, handing down a combined punishment for wilful homicide and malicious damage to property, whereby Chen Tao should be sentenced to death and stripped of his political rights in perpetuity. In accordance with the notice of the People's Supreme Court authorizing people's high courts and military courts of the People's Liberation Army to review and approve certain cases involving the death penalty, the Sichuan provincial people's high court delivered its ruling that the death sentence should be carried out on Chen Tao and authorized the Ya'an people's intermediate level court to pronounce the judgement on its behalf on 17 November 2006. Statements in the communication to the effect that Chen Tao had been tried in secret and that his lawyers and family members were not notified of the trial and that, on 20 November 2006, Chen Tao's father, Chen Yongzhong, had received a court notice asking him to claim the ashes and had been asked to pay 50 yuan for the cost of his execution by shooting, are inconsistent with the facts. This case was tried at first instance by the Ya'an city people's intermediate level court in Sichuan province, which, in accordance with the law, heard the proceedings in open court; the public prosecutor, the defendant and the expert witnesses all came to the court to attend the proceedings and members of the public were permitted to attend in the public gallery. After the proceedings at first instance, the defendant lodged an appeal. The Sichuan provincial people's high court formed a collegiate bench to hear the case at second instance. In compliance with the provisions of article 187 of the Chinese Code of Criminal Procedure, the court of second instance, once it had gone over the case-files, questioned the defendants, heard the arguments of the defence counsel, found that the facts of the case were clear and ruled that proceedings in the case should proceed in closed court. After the proceedings at second instance had concluded, the Sichuan provincial people's high court entrusted the Ya'an city people's intermediate level court to pronounce the judgement on its behalf and transmitted to it the legal documents. The Ya'an city people's intermediate level court, acting in accordance with the provisions of the law, three days prior to the passing of judgement, posted public notices and notified the family that they could visit the defendant. On 16 November 2006, the Ya'an city

people's intermediate level court, as part of the oversight proceedings conducted by the Ya'an city procurator's office, asked him whether he had any last words or wished to write any letters. That evening, a meeting was arranged between Chen Tao and his father, Chen Yongzhong. On 17 November 2006, the Ya'an city people's intermediate level court, on behalf of the Sichuan provincial people's high court, delivered a public reading of the judgement at second instance in one of its own trial chambers and proceeded to carry out the instruction to implement the death sentence: Chen Tao's identity was verified and he was executed. Officials were assigned by the Ya'an city procurator's office to attend the scene of the execution and to oversee the proceedings. Upon completion of the execution, the Ya'an city people's intermediate court sent Chen Yongzhong, Chen Tao's father, an official notice inviting him to collect his son's ashes. On 4 December 2006, Chen Yongzhong called at the Ya'an city mortuary to collect Chen Tao's ashes. During his legal proceedings at first and second instance, Chen Tao exercised his rights to defence in accordance with the law and received the services of a lawyer. During the proceedings at first instance, Chen Tao's appointed defence counsel was the lawyer Zhou Dehua, from the Li Yuan law office in Sichuan; during the proceedings at second instance, the lawyer assigned to defend him by Chen Tao's family was Feng Yubin, from the Yazhou law office in Sichuan. Throughout the proceedings, Chen Tao conducted his own defence and his defence lawyers also made defence submissions to the court on his behalf. Following their examination, the courts of both first and second instance found that Chen Tao's defence - both his own exculpatory self-defence and the defence put forward by his defence counsel - was not consistent with the facts as demonstrated by the evidence and did not hold water; accordingly, they were unable to accept it. Under the provisions of articles 163 and 164 of the Chinese Code of Criminal Procedure, judgements must be pronounced in public and the written judgement must clearly indicate the time limit for appeal and the name of the court that will hear the appeal. When Chen Tao's case was heard at first instance, the Ya'an city people's intermediate court indicated in the written judgement and directly notified Chen Tao that, if he did not accept the verdict of the court of first instance, he could lodge an appeal, within a period of 10 days, with the Sichuan provincial people's high court. Following pronouncement of the judgement, Chen Tao lodged an appeal. Acting on his behalf, Chen Tao's family appointed a lawyer to conduct his defence in the proceedings at second instance. After reaching its final decision in the case, the court of second instance instructed the court of first instance to publish and to serve the judgement. Acting in accordance with the provisions of the law, the court of first instance posted public notices three days before pronouncing judgement, then arranged the reading of the judgement to Chen Tao in public and handed him a written copy of the judgement of the court of second instance. Before the sentence was carried out, Chen Tao's family was informed and arrangements were made for Chen Tao's father, Chen Yongzhong, to see his son. The proceedings in Chen's case were in strict accordance with prescribed legal procedure and fully complied with the stipulations of Chinese law.

95. On 31 July 2007, the Government replied to the allegation letter sent on 10 May 2007. The Government informed that the case of extortion brought against Chen Ningbiao and other persons, numbering seven in all, was considered by the Nanhai district people's court in Foshan city, Guangdong province, and on 10 April 2007, in accordance with the law, the court rendered its judgement in criminal case Nan Xing Chu Zi (Nanhai criminal court of first instance) No. 1913. The court found that the facts of the case were as follows: At about 6 a.m. on 16 May 2006, Liang Mingji, a driver employed by Fanghua elementary school in the Liwan district of Guangzhou city, was driving the school bus (registration Guangdong A24695),

transporting schoolchildren, when, at the Yidong Market intersection in the Sanshan area of Pingzhou, Guacheng neighbourhood, Nanhai district, he encountered Chen Ningbiao, sitting on his motorcycle, registration Y61470, and blocking the road. Liang sounded his horn and proceeded slowly forward, but Chen would not let him through, whereupon Liang brought his vehicle to a stop with a space of more than 10 centimetres between it and Chen's motorcycle. Chen picked up a rock and use it to threaten Liang, preventing him from leaving, and, claiming that his motorcycle had been struck, demanded that Liang pay him 200 yuan compensation. When Liang refused to pay, Chen made telephone calls to Chen Zhibiao, Liu Dehuo and other residents of Sanshan village, totalling 10 in all, summoning them to his assistance. When Chen Zhibiao and Liu Dehuo arrived at the scene, they saw that Chen Ningbiao's motorcycle had sustained no damage, but the three men still gathered round the school bus and started making a commotion, pushing and shoving Liang Mingji and demanding that he pay the compensation, and also blocking the path of the traffic police who had come to investigate the incident. Following this, the owners of the bus, Zhao Jiandong and Zhao Jiannan, made their way to the scene, to find out what was going on. At this point, Chen Ningbiao let the air out of the bus's tyres, to prevent it from proceeding into Sanshan, and threatened to smash it up, demanding 5,000 yuan in damages from the bus owners, while Chen Zhibiao and Liu Dehuo noisily repeated his threats. Under duress, Zhao Jiandong and Zhao Jiannan agreed to pay 3,500 yuan in compensation. On the suggestion of Chen Zhibiao and Liu Dehuo, Chen Ningbiao used a false name, "Chen Yidong", on the receipt slip. The plot of land situated in the area called "Meichong" in Pingzhounan village on Guacheng Street in the Nanhai district of Foshan city had been expropriated as State land on December 1997 by the Guangdong province cadastral office and was managed by the Nanhai district land resource centre. At a later date, because the land was not yet developed, it was allocated to the Nanhai farmer Li Bin for his use. In April 2006, Li Bin was granted permission to rent the piece of land to the Shunying fuel depot in Nanhai district. The general manager of the depot, Chen Zhujia, hired a digger to excavate a pond on the land for use as a fish farm. At about 9 a.m. on 20 May 2006, Chen Ningbiao, Chen Zhibiao, Cui Yongfa, Liu Dehuo, Guo Jianhua and other villagers from Sanshan, numbering more than 10 in all, gathered at the fuel depot and started creating a disturbance, claiming that damage had been caused to the piece of land in "Meichong", threatening to set fire to the digger and demanding compensation from the person who had rented it for the excavation of a fish-pond. The defendant Zhao Xiaobing then went up to a motor vehicle parked in front of the depot gates and threatened to let the air out of its tyres. Chen Zhujia was worried that the villagers might damage the fuel depot, so he pretended that the piece of land in question had been leased to someone else and undertook to go and call that person. All 10 and more of the defendants, Chen Ningbiao, Chen Dehuo, Cui Yongfa, Guo Jianhua and the other villagers from Sanshan, forced their way on three separate occasions into the fuel depot and urged Chen Zhujia to go and fetch the person who had rented the land for use as a fish-farm. At about 3 p.m. that afternoon, Chen Zhujia realized that the safety of the fuel depot was under threat and was therefore constrained to try and find the depot's legal adviser, Lin Jiaqing, and ask him to masquerade as the person who had rented the land for use as a fish farm and to enter into discussions with the villagers. Chen Zhibiao, Liu Dehuo, Cui Yongfa, Shao Xixia and other persons, claiming to be acting on behalf of the village, went up to Lin Jiaqing, standing on the embankment nearby, and demanded payment of damages. Basing the claim on the damage which Lin Jiaqing had allegedly caused to the plot of land, Liu Dehuo demanded that he pay 150,000 yuan in compensation. Chen Zhibiao and the other persons took up the same demands, but were met with refusal from Lin Jiaqing. Undeterred, Liu Duhuo, Cui Yongfa and the others, arguing that Lin

had allegedly signed an “illegal agreement”, demanded that he pay them at least 75,000 yuan. In the meantime, Shao Xiaobing and a group of villagers dragged over some water pipes which they found lying around in the vicinity and used them to block the main gate into the fuel depot. They then continued creating a disturbance, shouting and threatening. Chen Ningbiao and Guo Jianhua then joined the other villagers on the embankment, demanding payment of damages. Chen Zhujia realized what consequences all this might have for the safety of the fuel depot and its operation and, under duress, suggested to Lin Jiaqing that he pay 50,000 yuan in compensation. After Chen Zhibiao and the other persons had received the payment of 50,000 yuan, the villagers present at the scene were each paid out an amount of 200 yuan by Shao Xixia. It has been ascertained in addition that, before this piece of land in “Meichong” was expropriated, it had been the property of the Nanshan village collective and none of the seven defendants belong to that village collective. The Nanhai district people’s court in Foshan city, Guangzhou province, determined that Chen Ningbiao, Chen Zhibiao and Liu Dehuo had engaged in two acts of extortion, to an amount of 53,500 yuan; that the defendants Cui Yongfa, Shao Xixia, Guo Jianhua and Shao Xiaobing had engaged in one act of extortion, to an amount of 50,000 yuan, and that the amounts obtained by extortion were substantial. In the course of jointly committing the offence of extorting money from the Shunying fuel depot, Chen Ningbiao, Chen Zhibiao, Liu Dehuo, Cui Yongfa, Shao Xixia and Shao Jianhua had played the main role and were therefore the primary culprits: they should be punished in a manner commensurate with the commission of the full offence; Shao Xiaobing had played a secondary role and was an accessory to the offence: in accordance with the law she should receive a lighter punishment. In accordance with the provisions of article 274, article 26, paragraphs 1, 3 and 4, and article 27 of the Criminal Code of the People’s Republic of China, for the offence of extortion the defendants Chen Ningbiao, Chen Zhibiao and Liu Dehuo were sentenced to four years’ fixed-term imprisonment, the defendants Cui Yongfa, Shao Xixia and Shao Jianhua were sentenced to three years’ and six months’ fixed-term imprisonment and the defendant Shao Xiaobing received a sentence of two years’ and six months’ fixed-term imprisonment. In the course of these proceedings, the court, acting in accordance with the law, informed the defendants of their right to receive the services of court-assigned defence lawyers or to appoint their own defence lawyers. Of the seven defendants in the case, Liu Dehuo, Cui Yongfa and Shao Xiaobing separately appointed defence lawyers (Cui Yongfa appointed two defence lawyers). After being notified by the court as required by law, Zhang Jiankang and Wang Quanzhang, the lawyers appointed by Liu Dehuo and Cui Yongfa, respectively, still failed to appear in court. Huang Liuxiao, the other lawyer appointed by Cui Yongfa, and Zhu Daohua, the lawyer appointed by Shao Xiaobing, did appear in court and participated in the proceedings. The other defendants did not appoint their own defence lawyers but, in court, in accordance with the law, all fully exercised their right to conduct their own defence. Article 34 of the Code of Criminal Procedure of the People’s Republic of China stipulates as follows: “In the event that the defendant is blind, deaf or mute or is a minor, and has not appointed a defence lawyer” or “may incur the death penalty and has not appointed a defence lawyer, the people’s court shall designate a lawyer, who shall be duty-bound to provide legal assistance in that person’s defence”. The above named defendants did not fall into the categories specified as necessitating the appointment or assignment by the court of defence lawyers. After the Nanhai district people’s court in Foshan city, Guangdong province, had passed sentence at first instance, the seven defendants lodged appeals within the time limit set by law. The case is currently being heard at second instance by Foshan city people’s intermediate court in Guangdong province.

96. On 12 December 2007, the Government replied the joint urgent appeal sent on 28 September 2007. The Government informed that Mr. Gao Zhisheng recently left Beijing to travel abroad to visit relatives on family business and he has been able to move freely and to communicate by letter without any impediment. The allegations in the communication which we have received to the effect that, because of an open letter which he sent, he has been taken from his home and is being held in incommunicado detention are not consistent with the facts.

97. On 13 February 2008, the Government replied to the joint urgent appeal sent on 4 December 2007. At the time this report was finalized, this reply of the Government has not been translated.

98. On 24 April 2008 the Government replied to the communications sent on 20 July 2006, 5 March 2008 and 13 March 2008. At the time this report was finalized, these replies of the Government had not been translated.

99. On 28 April 2008, the Government replied to the joint allegation letter sent on 5 March 2008 and the joint urgent appeal sent on 13 March 2008. At the time this report was finalized, these replies of the Government had not been translated.

Special Rapporteur's comments and observations

100. The Special Rapporteur thanks the Government of China for its cooperation and its detailed responses to several of his communications, which indicates the Government's continuous willingness to cooperate with the mandate. The Special Rapporteur is, however, concerned at the absence of reply to its communications of 10 May 2007 (joint allegation letter with the Special Rapporteur on the question of torture, Special Representative of the Secretary-General on the situation of human rights defenders and Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, concerning Mao Hengfeng), 27 July 2007 and 22 January 2008. He looks forward to receiving the remaining responses.

101. The Special Rapporteur deeply regrets that at time of finalizing the report, a number of replies still remain to be translated. This has made it impossible for him to make appropriate follow-up. However, in the light of the responses received, the Special Rapporteur notes with concern the important number of communications that had to be addressed to the Government of China in 2007 and three first months of 2008, which confirms the trend already noted in 2005 and 2006. He reiterates his concern in relation to the lack of guarantees for lawyers to perform their professional duties without risking prosecution, including of a criminal nature. He is also particularly concerned about the responses given by the Government on the cases related to harassment of lawyers by security officials, because they are often limited to a simple denial of the facts, without explaining the measures taken to investigate such harassments.

102. In every case, it is stated by the Government that the Chinese judicial authorities have acted in strict compliance with the Chinese Criminal Code, the Chinese Code of Criminal Procedure and other laws and regulations and in every case, the alleged victim's lawful rights are said to have been upheld. The Special Rapporteur emphasizes that the question in this regard is whether the Chinese Criminal Code, the Chinese Code of Criminal Procedure and other laws and regulations such as the Chinese Lawyers Act are compatible with international human rights

norms and standards such as those on the right to a fair trial, as contained on the Universal Declaration of Human Rights and the basic principles on the role of lawyers, on the role of prosecutors and on the independence of the judiciary. The Special Rapporteur would welcome further information from the Government of China that demonstrates that lawyers are able to freely conduct their work and that the Government takes measures to protect them so they can exercise their activity According to international standards.

Colombia

Comunicaciones enviadas

103. El 24 de Noviembre de 2006, el Relator Especial sobre la independencia de magistrados y abogados envió una carta de alegación sobre la situación del abogado Adalberto Carvajal Salcedo. Según las informaciones recibidas, el abogado Adalberto Carvajal Salcedo de 72 años de edad es un reconocido abogado laboralista, profesor y defensor de los intereses de los educadores en Colombia, miembro fundador de la Asociación de Abogados Laboralistas de Trabajadores. En el ejercicio de su profesión de abogado y en representación de 47 docentes de la Universidad del Magdalena habría realizado una conciliación con dicha Universidad, relacionada con el monto de numerosas prestaciones laborales adeudadas a los docentes por parte de la institución. El acuerdo se habría realizado con el Rector de la Universidad, el Sr. Carlos Eduardo Caicedo Omar. Según la información recibida, dicho acuerdo fue avalado con posterioridad por el Tribunal Administrativo del Departamento del Magdalena, en cumplimiento de la legislación relevante. Dicha conciliación habría puesto fin a un proceso judicial que estaba siendo adelantado con el fin de reclamar el pago de las prestaciones laborales adeudadas por la Universidad a sus docentes. De acuerdo con la información recibida, la Contraloría Departamental del Magdalena inició una investigación en contra del Rector de la Universidad, el Sr. Caicedo Omar, por diversos contratos y actos realizados durante su gestión. Entre dichos actos se encontraría la conciliación que realizó con el abogado Carvajal Salcedo. Se informa que paralelamente se habría iniciado una investigación penal en contra del Rector de la Universidad, cuyo resultado sería la acusación por parte de la Fiscalía de ser autor del delito de peculado por apropiación. Asimismo, se informa que la Fiscalía acusó al abogado Carvajal de ser el “determinador” del delito, es decir que incitó al Rector de la Universidad a cometer el delito de peculado por apropiación. La Fiscalía habría argumentado que el abogado Carvajal, al actuar como representante de los docentes y realizar la conciliación sobre las prestaciones laborales, estaba actuando como determinador del delito. El 16 de marzo de 2005 el Fiscal a cargo del caso decidió precluir la investigación contra ambos acusados, por atipicidad de la conducta. El Fiscal habría considerado que el abogado Carvajal había actuado de acuerdo con las leyes vigentes sobre conciliación administrativa y en ejercicio legítimo de su profesión. Dicha decisión fue recurrida por el Contralor del Departamento del Magdalena. El 18 de agosto de 2006 la Fiscalía revocó su decisión anterior y ordenó la detención preventiva de ambos sindicados. El abogado Carvajal es sindicado de ser el determinador del delito de peculado por apropiación. Según las informaciones recibidas, el defensor del abogado solicitó que se suspendiera la medida de detención preventiva por razones de la edad y que se tomara en cuenta el reconocimiento público del acusado. La decisión fue negativa, argumentando que éste había cometido una falta “gravísima” y que se temía que evadiera la justicia. El abogado Carvajal podría ser condenado a una pena que oscila entre 6 y 26 años de prisión. El Relator Especial manifestó su preocupación por el hecho de que el abogado Adalberto Carvajal Salcedo podría estar siendo investigado penalmente por el ejercicio legítimo de su profesión de abogado.

104. El 4 de diciembre de 2007, el Relator Especial sobre la independencia de magistrados y abogados y la Representante Especial del Secretario-General para los defensores de los derechos humanos, enviaron un llamamiento urgente en relación con la Corporación Jurídica Yira Castro (CJYC) y la Coordinación Nacional de Desplazados (CND), la Sra. Blanca Irene López y el Sr. Rigoberto Jiménez. La CJYC es una institución que se dedica a la defensa de los derechos humanos en Colombia, en particular, desarrolla actividades dirigidas a la protección de las víctimas del desplazamiento forzado y de las organizaciones que las representan, como la CND. La Sra. Blanca Irene López es la abogada de la CJYC y el Sr. Rigoberto Jiménez es el dirigente de la CND. Según la información recibida, el 15 de octubre del 2007, la Sra. Blanca Irene López habría recibido un mensaje en su casa que le amenazaba de muerte: “Bas a morir, diciembre 24 firma el popo” [sic]. El 2 de octubre del 2007, se habría enviado al correo electrónico de la CND un mensaje amenazante contra el Sr. Rigoberto Jiménez y los integrantes de la CJYC, advirtiéndole que se les habían declarado objetivo militar. El mensaje habría sido firmado por un grupo paramilitar conocido, las “águilas negras” y contenía el texto siguiente: “Señor Rigoberto Jiménez creemos que usted avia echo caso de las arrentencias hechas por nosotros asia días que no lo beimos por Bogota es que usted sigue ablando mierda del gobierno ya basta no siga haciéndole daño a la sociedad este se le orbido que esta declarado objetivo militar por las aguilas negras de Bogota usted y sus asesoras de la yira castro...” [sic]. Desde el mes de junio del 2006, la CYJC habría sido objeto de actos de intimidación, que conllevaran al traslado de la sede de la Corporación a otro lugar que actualmente comparte con la CND. Sin embargo, los actos de hostigamiento contra los integrantes de dicha organización continúan y se siguen recibiendo con frecuencia llamadas y visitas sospechosas. Se expresó el temor de que estas amenazas estén relacionadas con las actividades profesionales como abogados y en defensa de los derechos humanos que realizan estas personas

Comunicaciones recibidas

105. El 13 de agosto de 2007 el Gobierno envió relacionada con la comunicación enviada el 24 de noviembre de 2006, en relación con la situación del abogado Adalberto Carvajal Salcedo. El Gobierno informó que el 18 de agosto de 2006 se profirió resolución de acusación con medida de aseguramiento en contra del abogado en mención, sin beneficio de suspensión de la privación de libertad por razones de edad. Dicha decisión fue objeto de un recurso de apelación. El 17 de octubre de 2007, el Gobierno envió información complementaria. Según la misma, la Fiscalía General de la Nación informó sobre la prescripción de la investigación penal en contra del abogado, por los delitos relacionados con supuestas irregularidades en contratos realizados por la Universidad del Departamento del Magdalena. Según la información proporcionada por el Gobierno, el 26 de febrero de 2007, la Fiscalía 51 Delegada ante el tribunal Superior de Bogotá revocó parcialmente la resolución acusación precluyendo la investigación en contra del abogado Adalberto Carvajal Salcedo. En consecuencia la orden de captura emitida en su contra fue revocada.

106. El 4 de abril de 2004, el Gobierno respondió el llamamiento urgente enviado el 4 de diciembre de 2007. De acuerdo con la respuesta del Gobierno, el 31 de diciembre de 2007 el Ministerio del Interior y de Justicia aprobó la dotación de radios avantel a 4 mujeres pertenecientes a la corporación jurídica Yira Castro, entre ellas la Sra. Blanca Irene López, así como dos apoyos de transporte terrestre cada uno equivalente a 120 horas mensuales. Adicionalmente, se aprobaron 4 tiquetes mensuales aéreos nacionales para los integrantes de la organización y el estudio de seguridad que permitiría proporcionar protección blindada está en

trámite. Los estudios de nivel de riesgo y grado de amenaza a los integrantes de la organización están también siendo adelantados por la policía nacional. Además se impartieron órdenes de protección preventiva, incluyendo rondas periódicas por la sede de la organización. En lo que se refiere al robo supuestamente ocurrido en la sede de la organización, el Fiscal General de la Nación decidió el 14 de diciembre 2007, reasignar tres investigaciones iniciadas, designando especialmente al caso a un fiscal delegado ante los jueces de la unidad de delitos contra el patrimonio de la dirección de fiscalías de Bogotá. En lo que concierne el Sr. Rigoberto Jiménez y los integrantes de la CJYC, el Ministerio del Interior y de Justicia entregó un teléfono celular en 2003. También se han otorgado tiquetes aéreos nacionales y mediante un trámite de urgencia en agosto de 2007, se aprobaron tres meses de reubicación temporal. Además en virtud de la reunión realizada el 22 de agosto de 2007, la policía se comprometió a implementar rondas policiales de seguridad preventiva en la sede de la CND y la creación de una red de comunicaciones entre los directivos de la junta y la policía.

Comentarios y observaciones del Relator Especial

107. El Relator Especial agradece al Gobierno de Colombia su grata y pronta cooperación. El Relator recibe con agrado la decisión de preclusión de investigación penal en contra del abogado Salcedo, así como las diferentes medidas de protección que se han tomado respecto de los integrantes de la Corporación Jurídica Yira Castro (CJYC) y la Coordinación Nacional de Desplazados (CND), en especial la Sra. Blanca Irene López y el Sr. Rigoberto Jiménez. Sin embargo, el Relator quisiera preguntar al Gobierno porqué la investigación penal en torno al robo ocurrido en la sede de la corporación jurídica Yira está a cargo de un fiscal ante los jueces de la unidad de delitos contra el patrimonio. Dada la naturaleza de las amenazas y la labor de defensa de los derechos humanos desarrolladas por las supuestas víctimas, sería pertinente que dichas investigaciones fueran realizadas por un ente investigador especializado en derechos humanos.

Cuba

Comunicación enviada

108. El 26 de Junio de 2007, el Relator Especial junto con el Relator Especial sobre la tortura, el Relator Especial sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental y el Representante Especial del Secretario-General para los defensores de los derechos humanos envió un llamamiento urgente a propósito del Sr. Francisco Chaviano Gonzalez, ciudadano cubano de 50 años de edad quien está cumpliendo una sentencia en la prisión del Combinado del Este en La Habana, luego de haber sido condenado el 15 de abril de 1995 por “revelar secretos concernientes a la Seguridad del Estado”. El Sr. Chaviano Gonzalez fue el fundador de la organización llamada Consejo Nacional por los Derechos Civiles en Cuba. De acuerdo a los informes recibidos, el estado de salud del prisionero se ha agravado seriamente en los últimos días. Los reportes indican que sufre de un tumor en el pulmón de crecimiento alterado, de serios problemas de circulación sanguínea, hipertensión, cardiopatía isquémica, artrosis, y de graves problemas estomacales a raíz de una úlcera duodenal que padeció durante su primer año en la cárcel. En el llamamiento urgente, se indica que de acuerdo con las informaciones recibidas el prisionero no recibe la atención médica apropiada y vive en condiciones insalubres, abusivas y negligentes que deterioran aún más su estado de salud. Además, los expertos dan cuenta de las alegaciones según las cuales las condiciones de prisión

durante 13 años de encarcelamiento han tenido un fuerte impacto negativo sobre la salud física y mental del Sr. Chaviano Gonzalez. Por otra parte, se indicó que de acuerdo con las alegaciones desde su encarcelamiento, el 7 de mayo de 1994 y hasta ser juzgado por un tribunal militar en abril de 1995, el Sr. Chaviano Gonzalez fue mantenido en detención incomunicada y sin tener acceso a un abogado. Al momento de ser arrestado, el Sr. Chaviano Gonzalez tenía a su cargo la compilación de información, conducción de entrevistas y documentación de casos de personas desaparecidas en Cuba para el Consejo Nacional por los Derechos Civiles en Cuba.

Comunicación recibida

109. El 9 de Julio de 2007, el Gobierno envió respuesta al llamamiento urgente enviado el 26 de Junio de 2007. De acuerdo con la misma, el Sr. Francisco Chaviano Gonzalez fue procesado de acuerdo con todas las garantías procesales y su responsabilidad penal fue demostrada dentro del proceso judicial. Fue condenado a una pena de 15 años por los delitos de revelación de secretos concernientes a la seguridad del estado y falsificación de documentos. Desde Noviembre de 2006 se encuentra cumpliendo su pena fuera de prisión en un centro de rehabilitación, donde tiene acceso a servicios médicos de calidad, incluyendo todas las especialidades. La salud del Sr. Francisco Chaviano Gonzalez es buena y ha sido sistemáticamente atendido por especialistas de alto nivel de modo gratuito.

Comentarios y observaciones del Relator Especial

110. El Relator Especial agradece al Gobierno por su pronta y detallada respuesta. Sin embargo, el Relator Especial quisiera solicitar al Gobierno que indique amplíe su afirmación según la cual el proceso penal se llevó a cabo con el respeto de todas las garantías procesales y en qué medida el mismo se ajustó a los estándares internacionales en la materia. El Relator quisiera obtener información sobre las posibilidades que tuvo el Sr. Francisco Chaviano Gonzalez de tener acceso a un abogado durante todas las etapas del proceso. Asimismo, el Relator Especial quisiera llamar la atención del Gobierno sobre un principio establecido por estándares internacionales en materia de garantías judiciales, según el cual los tribunales militares en principio no tienen jurisdicción para juzgar a civiles. De acuerdo con dichos principios, El Estado debe asegurarse de que en todo tipo de circunstancias los civiles acusados de un delito, sin importar su naturaleza, sean juzgados por tribunales ordinarios (Principio No. 5, E/CN.4/Sub.2/2005/9).

Czech Republic

Communication sent

111. On 21 December 2006, the Special Rapporteur sent an allegation letter concerning Ms. Iva Brožová who on 30 January 2006 was dismissed from the position as President of the Supreme Court by the President of the Republic. According to information received, the President of the Republic dismissed Judge Brožová following Act No. 6/2002 Coll., section 106, which states that the Chairman of a Court may be recalled from his/her office by the person who appointed him/her, if he/she has seriously violated or repeatedly violates states' administration duties stipulated by law or fails to perform properly his/her duties. Judge Brožová was appointed by the President of the Republic on 20 March 2002. One of the reasons which was invoked by the Deputy Prime Minister and Minister of Justice their request to the President of the Republic for the dismissal of Judge Brožová, was that she did not fulfill her duty to unify the decisions of

the Supreme Court. It is alleged that Judge Brožová was dismissed because she was deciding independently from the remainder of the Supreme Court's judges. In this context, the Special Rapporteur received reports about the existence within the judiciary of a strong pressure to achieve an unconditional uniformity of judicial decisions. It is reported that for Supreme Court judges it is not possible to propose a dissenting opinion vis-à-vis an individual judicial decision; this would only be possible vis-à-vis the decision of a Division (Criminal Division, Civil Division and Commercial Division), which is a collegiums of judges. On 7 February 2006, Judge Brožová filed a complaint before the Constitutional Court against her dismissal. It appears that on 9 February 2006, the Constitutional Court, without anticipating the final result of the proceedings, decided to suspend the enforceability of the dismissal decision, highlighting the importance of the matter since it relates to the constitutional principle of separation of powers. On 12 September 2006 the Constitutional Court ruled that in dismissing Judge Brožová, the president had violated the independence of the judiciary. According to the information received, the President in turn accused the judiciary of wanting to usurp political power. In the light of the foregoing, the Special Rapporteur expressed his deep concern regarding the faculty of the President of the Republic to dismiss the President of the Supreme Court from her/his office, which constitutes a serious attack to the fundamental principles of the separation of powers and the independence of the judiciary. These principles require that other powers, including the executive power, do not interfere with the administration of the courts and the administration of justice. Articles 81 and 82 of the Constitution of the Czech Republic reflect these principles which are fundamental to any democratic system. It is of fundamental importance that those provisions, which are in line with international norms and principles on the independence of the judiciary, be respected. Article 1 (2) and 10 of the Czech Republic Constitution compel the State to observe its obligations under international law. International norms and principles include article 14 of the International Covenant on Civil and Political Rights, as well as the United Nations Basic Principles on Independence of the Judiciary.

Communication received

112. On 14 February 2007, the Government replied to the allegation letter of 21 December 2006, stating that under no circumstance the decision to dismiss Judge Brožová from position of President of the Supreme Court was taken on the grounds of her independent decision making as an independent judge, as through this position she directly partook on decision-making activities of the Supreme Court, as is indicated in the last sentence of the fourth paragraph of your letter. The reason of dismissal of Judge Brožová from the position of the President of the Supreme Court was not carrying out properly her duties at the performance of the state administration of the Supreme Court, which she is obliged to provide as a judicial official in the position of the body of the state courts administration (sec. 118, sec. 119 and sec. 124 of Act No. 6/2002 Coll. on Courts and Judges - annex I). Part of reproof to the way of performance of her function was a circumstance that under her presidency the Supreme Court failed to perform in a corresponding way task entrusted to it as a supreme element of the judicial system (sec. 14, para. 1 of the Act. No. 6/2002 Coll.) by sec. 14, para. 3 in relation with sec. 21 of the Act No. 6/2002 Coll. (annex 11). These sections impose the obligation to the Supreme Court to monitor and evaluate final decisions of courts and on their base on behalf of the unified decision-making of courts to adopt standpoints in the decision-making of courts in cases of a certain kind. In this respect it entirely concerns implementation of a principle of foreseeability of court decision-making through methods thoroughly respecting the independence of the judiciary. In principle it is necessary to refuse a statement that the Ministry of Justice strived to achieve "an

unconditional uniformity of judicial decisions". The conflict caused by the dismissal of Madame President from her position lies in the distinctness of understanding the position of the President of the Court. According to the authentic specific legislation the President of the Court is both an independent judge as well as the authority of state administration of courts, moreover in the position of the head of the structural unit of the state. In principle head of the structural unit of the state is a statutory body of the court. As it is impossible to separate the respective decision-making activity of the President of the Court - judge, at which lie arts as an entirely independent judge, and activity of the President of the Court - authority of the state administration of the court, ruled by the principle of superiority and subordination and responsibility for performance of these tasks to a body that carries the central responsibility for this sphere of action of court in face of the Government and through the Government of the lawmaking body, the mechanism of designation and dismissal of court officials was modified. The realization of this mechanism was in no way interfering with the position of court official as an independent judge. The regulation resulted from the opinion that the central authority responsible for the state administration of courts must have a tool how to ensure personal constitution so that it can truly carry this responsibility. This construct was challenged by the Judgement of the Constitutional Court (Judgement No. Pl. ÚS 18/06), whereby section 106, para. 1 of the Act No. 6/2002 Coll. was repealed (on bases of the motion filed by Judge Brožová). According to this repealed section a court official could be dismissed from the office by the authority that appointed him, if the dismissed breached seriously or repeatedly his duties in the area of state administration of courts (annex III). Presently the amendment of the legal regulation which will ensure the compliance with the opinion of the Constitutional Court is being prepared. Therefore it will only be possible to dismiss judicial officials by the decision of an independent court, e.g. in the disciplinary proceedings. Madame President of the Supreme Court filed two more petitions to the Constitutional Court. By the first she demanded cancellation of the decision of the Minister of Justice of the 14 February 2006 by which a particular judge was appointed to the Supreme Court after her dismissal from the position of the President of the Supreme Court (2 February 2006), alter that the decision of the Constitutional Court on suspension of the enforcement of this dismissal entered into force (9 February 2006). In December 2006 the Constitutional Court satisfied this motion and ruled that for the decision of the Minister of Justice No. 57/2006-PERS-SO/6 to be valid, it requires consent of the President of the Supreme Court as the state authority competent to appoint a judge to the Supreme Court is the Minister of Justice with the consent of the President of the Supreme Court (sec. 70 of Act No. 6/2002 Coll.). The absence of the consent made the decision of the Minister contradictory to article 2, para. 3 of the Constitution and to article 2, para. 2 of the Charter of Fundamental Rights and Basic Freedoms (annex IV). Through the second petition Madam President of the Supreme Court demanded cancellation of the decision of the President of the Czech Republic by which this particular judge was appointed her Vice-president. She objected that by appointing Judge Jaroslav Bures a Vice-president of the Supreme Court her political rights and right to freedom of speech were violated. The Constitutional Court dismissed the constitutional petition and on 5 February ruled that Madam President of the Supreme Court is a person apparently unauthorized to file such a petition (the reasoning of the judgement has not yet been published). The nature of the problem rests in the examination of character of activities of the court officials at the state administration of the court, as outlined at the end of point 1. The dismissal of the President of Court from the position of an authority of the state administration of courts was not viewed as an interference with the independent position of a judge, because in its character both positions are profoundly different and in principle the content of activities connected with both

positions cannot collide. With respect to the opinion of the Constitutional Court expressed in its judgements on the aforesaid cases, the legal regulation will be made accordant with these opinions in the shortest possible time in such a way that no doubts about real and thoroughly guaranteed independence of the judiciary will arise.

Special Rapporteur's comments and observations

113. The Special Rapporteur thanks the Government of Czech Republic for its response of 14 February 2007. The Special Rapporteur asks the Government to send him as soon as possible the decision of the Constitutional Court that dismissed the constitutional petition filed by Ms. Brožová, concerning an alleged violation to her political rights, as well as her right to freedom of speech.

Democratic Republic of the Congo

Communications envoyées

114. Le 26 juillet 2007, le Rapporteur spécial a envoyé au Gouvernement de la RDC, conjointement avec le Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, un appel urgent sur la situation de M. Loki Hilaire, lieutenant de la police intégrée, originaire de la province de l'Équateur et ancien membre de l'armée du Mouvement de libération du Congo (MLC) de Jean-Pierre Bemba. Selon les informations reçues, le 13 juin 2007 M. Loki Hilaire aurait été enlevé sur la route par des éléments de la Garde Républicaine apparemment en raison de sa provenance de la province de l'Équateur et de son statut d'ancien élément de l'armée de Jean-Pierre Bemba. Au moment de l'envoi de l'appel, il était allégué qu'il était détenu au secret, à Kinshasa, dans le sous-sol d'un bâtiment de la deuxième cité de l'OUA au camp militaire Tshatshi, dans la commune de Ngaliema, où se trouve le camp de la Garde républicaine. Il était allégué que M. Loki Hilaire était privé de tout contact avec l'extérieur, et n'avait pas accès à l'assistance d'un avocat. Selon la source, la détention de M. Loki Hilaire ne serait pas un cas isolé. D'autres personnes, y compris des civils, seraient régulièrement détenues sans mandat d'arrêt préalable par la Garde Républicaine dans le camp militaire Tshatshi et dans d'autres camps de la Garde Républicaine, sans être autorisées à voir ni leurs familles ni un avocat. En outre, il y aurait également un certain nombre de soldats de la Garde Républicaine détenus en application d'une sanction disciplinaire dont la durée de détention aurait dépassé le délai maximum autorisé (15-21 jours), qui devraient par conséquent soit être libérés soit voir leur dossier transféré devant un tribunal militaire compétent.

115. Le 12 septembre 2007, le Rapporteur spécial a envoyé au Gouvernement de la RDC une lettre d'allégation concernant de récents changements survenus au sommet du pouvoir judiciaire militaire de la République démocratique du Congo (RDC) dont il était allégué qu'ils compromettaient l'indépendance du pouvoir judiciaire dans le pays. Selon les informations reçues, en juin 2007 le Président de la République avait révoqué le Premier Président de la Haute Cour Militaire et le Premier Avocat Général près l'Auditorat Militaire Général, et les avait remplacés par de nouveaux magistrats. Dans ce contexte, le Rapporteur spécial signalait avec préoccupation qu'il était allégué que ces changements allaient à l'encontre des principes constitutionnels d'indépendance du pouvoir judiciaire et de séparation des pouvoirs, principes fondateurs de l'état de droit et de la démocratie. La nouvelle Constitution de la RDC stipule que le Président peut révoquer et nommer des magistrats uniquement sur recommandation du Conseil

Supérieur de la Magistrature, organe qui garantit l'indépendance du pouvoir judiciaire. Alors que ce Conseil n'avait pas encore été créé, la révocation et nomination de magistrats par le Président de manière unilatérale apparaissait contraire à la lettre et à l'esprit de la Constitution. Dans ce contexte, le Rapporteur spécial soulignait que l'adoption par le Parlement de la loi portant organisation du Conseil Supérieur de la Magistrature devrait être une priorité absolue, ainsi qu'il l'avait déjà mentionné dans son rapport préliminaire sur sa visite en RDC (A/HRC/4/25/Add.3 du 24 mai 2007). En outre, il signalait que, dans l'attente de l'adoption de cette loi, aucun magistrat ne devait être nommé ou révoqué de manière unilatérale par le Président, afin de ne pas contredire la Constitution. Concernant la nomination du Général Mukuntu au poste de Premier Avocat Général, il notait avec inquiétude que ce militaire n'avait pas démissionné de son poste au Conseil National de Sécurité (CNS) au sein de l'Exécutif, afin de devenir un haut magistrat. Il soulignait la caractéristique incompatible de ces deux postes, fait clairement établi par la Loi sur le Statut des Magistrats en son article 65. Pour le Rapporteur spécial, le fait qu'un magistrat, à fortiori lorsqu'il est de haut niveau, exerce en même temps des fonctions au sein du Gouvernement est une atteinte directe à l'indépendance du pouvoir judiciaire. Cela est encore plus grave quand on considère qu'il s'agit d'un haut magistrat auprès du bureau responsable de définir la stratégie d'instruction des crimes les plus graves commis en RDC. En ce qui concerne la nomination du Général Nyembo au poste de Premier Président de la Haute Cour Militaire (HCM), le Rapporteur spécial réitérait sa préoccupation au sujet de la révocation de son prédécesseur, le Général Nawele. Outre les aspects d'inconstitutionnalité mentionnés plus haut, il indiquait qu'il trouvait inquiétant que la révocation soit intervenue peu après l'acquiescement de Maître Marie-Thérèse Nlandu, prononcé par le Major Mbokolo, Président du Tribunal Militaire de Garnison et Directeur de Cabinet du Président Nawele. À la suite de cet acquiescement, le Major Mbokolo avait été démis de ses fonctions non seulement de Chef de Cabinet mais également de Président du Tribunal Militaire de Garnison, tribunal qu'il avait présidé pendant cinq ans. Au moment de l'envoi de la lettre d'allégations, le Général Nawele et le Major Mbokolo étaient en disponibilité et n'avaient été réaffectés à aucun poste, alors que le pays souffre d'une grave carence de magistrats. De plus, le second juge qui siégeait dans le procès Nlandu avait également été révoqué de son poste, et réaffecté à Lisala. À la lumière de ces éléments, la source alléguait que ces révocations pourraient être motivées par le rôle joué par ces magistrats dans la décision d'acquiescement de Maître Nlandu. Dans ce contexte, le Rapporteur spécial appelait l'attention des autorités sur l'importance du rôle que doit jouer le Conseil Supérieur de la Magistrature dans la nomination et la révocation des magistrats, car en l'absence d'une telle procédure le pouvoir des magistrats de statuer en toute indépendance, sans crainte de perdre leur poste, n'est pas garanti. Il signalait que, depuis que ces changements de hauts magistrats étaient intervenus, la source évoquait une possible tendance négative concernant la lutte contre l'impunité et l'indépendance du pouvoir judiciaire militaire, illustrée par des décisions prises dans plusieurs cas. En effet, cinq jours seulement après ces changements de magistrats, l'Auditorat Militaire Général avait fait appel de la décision d'acquiescement de Maître Nlandu, malgré le fait que le délai de cinq jours prévu par le droit militaire avait expiré depuis longtemps. Peu après ces changements, le verdict d'acquiescement de tous les accusés, militaires et civils, était également intervenu dans le cas du massacre de Kilwa, alors que de nombreuses preuves, dont notamment des témoignages oculaires, indiquaient de claires responsabilités dans ces événements tragiques. La source alléguait également que l'indépendance des magistrats n'avait pas été respectée dans ce procès. L'Auditeur Supérieur qui avait instruit et porté devant les juges le dossier avait été rappelé à Kinshasa et réassigné à Kananga alors que le procès était encore en cours. Selon la source, les irrégularités dans ce procès avaient été si manifestes que la

Haut Commissaire aux droits de l'homme, Mme Louise Arbour, avait publié un communiqué de presse condamnant le jugement. L'auditeur militaire ayant interjeté un appel, il était d'une importance capitale que le procès en appel se déroule de façon équitable, et que les magistrats concernés puissent juger en toute indépendance et uniquement sur la base de la loi applicable. Finalement, le 28 juillet 2007 la Cour Militaire de Kisangani avait émis un verdict que la source qualifiait d'inquiétant dans le cas de M. Khawa, décidant de l'acquitter en ce qui concerne la plupart de charges retenues contre lui. Khawa Panga Mandro, plus connu sous le nom de Chef Khawa, avait été condamné à la réclusion à vie en janvier 2006, pour meurtre et enlèvement, par le Tribunal de Grande Instance de Bunia. Il avait ensuite été condamné par le Tribunal Militaire de Garnison de Bunia à 20 ans d'emprisonnement pour « mouvement insurrectionnel, détention d'armes de guerre, crimes de guerre, crime contre l'humanité, assassinat et coups et blessures aggravés ». Le verdict du 28 juillet, qui annulait les charges extrêmement graves retenues contre lui, n'était motivé que par une erreur supposée de procédure, la Cour alléguant que le droit de M. Khawa d'être informé à propos du mandat d'arrêt à son encontre avait été violé. Or, selon les informations à la disposition des Nations Unies, M. Khawa aurait été informé du mandat d'arrêt lancé contre lui pendant toute la procédure, mais n'aurait pas voulu coopérer avec les autorités judiciaires. Le Rapporteur spécial signalait que l'affaire Khawa était un élément de référence dans la lutte contre l'impunité dans la mesure où il s'agissait du premier jugement contre un ancien chef militaire pour de graves violations des droits de l'homme. La source signalait que ce verdict semblait confirmer une inversion de la tendance très inquiétante au sein de la justice militaire, dans le sens de la destruction des légers progrès qui avaient été constatés depuis la période de la transition dans la lutte contre l'impunité et en faveur de l'indépendance des magistrats. Enfin, le Rapporteur spécial exprimait sa plus vive inquiétude au sujet d'une pétition circulant au Sénat et dont il était allégué qu'elle proposait d'amender la Constitution afin qu'elle prévoie que le Président de la République occupe le poste de Président du Conseil Supérieur de la Magistrature. Il manifestait qu'une telle proposition, si elle devait être adoptée, aboutirait à rendre vain l'ensemble des dispositions de la Constitution qui garantissent l'indépendance du pouvoir judiciaire. Alors que la Constitution, votée par referendum par le peuple congolais, se base sur le principe démocratique de la séparation des pouvoirs et interdit explicitement toute interférence avec le pouvoir judiciaire des autres pouvoirs et notamment du pouvoir exécutif (art. 149, al. 1), la nomination du Président de la République à la tête de l'organe garantissant l'indépendance du pouvoir judiciaire violerait clairement ces principes, et donc l'esprit même de la Constitution. Cela aboutirait également à revenir au système existant avant l'adoption de la nouvelle Constitution, quand le Président de la République était à la tête du Conseil, situation, qui selon les analyses convergentes de tous les experts et observateurs, avait été caractérisé par un manque quasi-total d'indépendance du pouvoir judiciaire, et un niveau d'impunité très élevé. La nouvelle Constitution visait justement à changer cette situation, et une modification de la Constitution dans le sens proposé détruirait tout espoir de pouvoir construire une justice indépendante dans le pays. A ce propos, le Rapporteur spécial formulait les recommandations suivantes qu'il demandait au Gouvernement de bien vouloir partager avec les organes compétents du pouvoir judiciaire et législatif : (i) la loi portant organisation du Conseil Supérieur de la Magistrature doit être adoptée d'urgence, car la mise en place de ce Conseil constitue un élément fondamental de garantie de la séparation des pouvoirs et donc de la démocratie et du respect des droits de l'homme dans le pays ; (ii) le Président de la République ne doit être ni membre ni président du Conseil, afin de garantir l'indépendance de cet organe et donc de la magistrature ; (iii) tant que la loi portant organisation du Conseil Supérieur de la Magistrature

n'aura pas été adoptée et le Conseil mis en place, aucun magistrat ne devrait être nommé ou révoqué de manière unilatérale par le Président ; (iv) la Haute Cour Militaire devrait se prononcer sur la légalité des décisions prises dans le procès Khawa ainsi que dans l'appel interjeté dans le cas Nlandu ; elle devrait aussi entendre au plus tôt l'appel dans le cas du massacre de Kilwa ; (v) il est essentiel que la Haute Cour Militaire, dans l'ensemble de ces cas, montre aux citoyens congolais ainsi qu'à l'opinion internationale qu'elle statue en toute indépendance et dans le respect de la loi et du droit international ; et enfin, (vi) les civils ne devraient plus être jugés par des tribunaux militaires, mais uniquement par des tribunaux civils, conformément à la Constitution de la RDC et des principes internationaux applicables en la matière.

116. Le 5 octobre 2007, le Rapporteur spécial a envoyé au Gouvernement de la RDC, conjointement avec le Rapporteur spécial sur la torture, un appel urgent sur la situation des magistrats militaires Guillaume Ngembo, David Kazadi, Julien Luemba, Joseph Nganama, de l'Auditorat de Garnison de Kisangani. Selon les informations reçues, le dimanche 30 septembre 2007, vers 16h30, le Général Jean Claude KIFWA, escorté d'une quarantaine 40 militaires lourdement armés, aurait fait irruption en la résidence du Magistrat Guillaume NGEMBO, au motif qu'il était à la recherche du Lieutenant Magistrat Julien LUEMBA. Bien qu'il ait été informé qu'il ne s'agissait pas du magistrat Julien LUEMBA, le Général KIFWA aurait traîné le Magistrat Guillaume NGEMBO sur la voie publique, sous la menace d'armes à feu, en lui administrant personnellement des coups de poings. Il aurait ensuite ordonné à son escorte de le ligoter, de le déculotter, de l'allonger par terre et de le fouetter, et ce devant toute sa famille et une foule nombreuse de passants et de voisins. Le pantalon baissé, le Magistrat aurait reçu au moins 50 coups de matraque. Le Général aurait ensuite conduit sa victime à l'Etat Major de la 9ème Région militaire où il l'aurait fait maltraiter devant ses collaborateurs ainsi que d'autres militaires et leurs familles résidant dans l'enceinte de l'Etat Major. Il aurait dit pouvoir tout se permettre, y compris de tuer impunément, au seul motif qu'il est cousin du Chef de l'Etat. Ensuite, le Magistrat Guillaume NGEMBO aurait été à nouveau embarqué à bord d'un véhicule et conduit sous la contrainte vers la résidence d'autres Magistrats militaires, situé au numéro 4 de l'avenue KITIMA, Commune Makiso. Arrivé sur les lieux, le Général KIFWA, rejoint un peu plus tard par son Adjoint chargé des Opérations, le Général Léon MUSHALE et le P2 NGOY KISULA de l'Inspection provinciale de la Police Nationale, se serait introduit dans l'immeuble pour arrêter le Lieutenant Magistrat David KAZADI, le Sous-Lieutenant Magistrat Julien LUEMBA et enfin le Sous-Lieutenant Magistrat Joseph NGANAMA. Ils auraient été traînés dehors en présence de leurs familles et d'une foule nombreuse, où ils auraient été déshabillés, ligotés, maltraités et humiliés par le Général en personne et les éléments de son escorte. Leurs appareils téléphoniques et d'autres biens comme des sommes d'argent, trouvés sur eux, leur auraient été confisqués. Profitant de l'inattention des militaires, les magistrats Guillaume NGEMBO, Joseph NGANAMA ainsi que le 1er Sergent-Major KUKWIKILA auraient réussi à se sauver. En revanche, les Magistrats David KAZADI et Julien LUEMBA, toujours ligotés et presque nus, auraient été embarqués dans une jeep de la Police nationale et conduits à l'Etat Major de la 9ème Région Militaire où ils auraient été battus et maltraités toute la nuit, de 19 heures du dimanche à 8 heures du matin. Des manches à balais et de raclettes auraient été utilisées pour la bastonnade. Le Magistrat David KAZADI aurait reçu environ 1.000 coups de bâton sur toutes les parties de son corps. Il aurait de ce fait une côte gauche brisée. Au cours du trajet vers l'Etat Major, le Magistrat David KAZADI aurait tenté de se sauver au passage d'un

véhicule de la MONUC. Le Général KIFWA aurait alors ordonné de l'abattre. Plusieurs coups de feu auraient été tirés sans atteindre le magistrat, mais une balle perdue aurait atteint au bras droit l'un des membres de l'escorte du Général. Le 1 octobre 2007, les deux magistrats auraient été amenés en tenue débraillée devant la troupe par le Général Jean Claude KIFWA, au cours d'une parade qu'il aurait présidé au Camp Sergent KETELE. Le Général les aurait présentés comme de dangereux criminels incorporés à l'armée parce qu'ils avaient étudié le droit, mais qui en réalité n'avaient passé leur temps à l'Université qu'à tricher. Pendant cette parade, qui aurait été largement médiatisée sur les chaînes locales de radio et de télévision, le Général se serait vanté d'avoir arrêté les magistrats qui prétendaient ne pouvoir être arrêtés à Kisangani, et aurait indiqué que ce même jour, il les expédierait à Kinshasa où ils seraient jugés et condamnés. Le Gouverneur de Province serait passé rendre visite à ces Magistrats au Centre de Santé CELPA, dans la commune Makiso. Emu par la situation, il leur aurait remis une somme d'argent pour leur permettre de payer la facture des premiers soins reçus. Dans ce contexte, le Rapporteur spécial faisait part au Gouvernement de sa préoccupation extrême quant à la gravité des faits rapportés, qui constitueraient, s'ils étaient confirmés, non seulement une violation grave de la dignité et l'intégrité physique des magistrats concernés, mais également une grave atteinte à la dignité et à l'indépendance du pouvoir judiciaire en tant que tel. Il observait que ces faits, d'une gravité extrême, revêtaient une importance encore plus significative du fait que les victimes étaient des représentants du pouvoir judiciaire, des magistrats dont l'indépendance et la sécurité doit être garantie par l'Etat, en tant que représentants d'une des trois principales institutions étatiques. Il indiquait que de tels agissements de la part d'un Général dépendant du pouvoir exécutif, s'ils étaient confirmés, constitueraient une atteinte inacceptable à la dignité et à l'honneur de la magistrature, ainsi qu'une interférence inadmissible du pouvoir exécutif dans les affaires judiciaires, au mépris des principes fondamentaux de la séparation des pouvoirs et l'indépendance du pouvoir judiciaire, fondements de la Constitution et de tout état de droit démocratique.

117. Le 11 février 2008, le Rapporteur spécial a envoyé au Gouvernement de la RDC, conjointement avec Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, une lettre d'allégation concernant le déroulement du procès en première instance et en appel des présumés assassins de M. Serge Maheshe, journaliste et défenseur des droits de l'homme tué le 13 juin 2007 à Bukavu, et concernant les pressions alléguées, exercées à l'encontre de plusieurs journalistes, responsables associatifs et avocats qui participaient ou suivaient ce procès. Selon les informations reçues, alors que le procès en appel des présumés assassins de M. Serge Maheshe s'était ouvert le 6 février 2008 devant la Cour de Justice militaire de Bukavu, plusieurs dysfonctionnements lors du procès en première instance en août 2007 auraient été observés. En l'occurrence : (i) l'absence d'enquête pénale approfondie avant et pendant le procès ; (ii) les armes des présumés assassins qui auraient dû être placées sous scellés traînaient par terre (photos disponibles), interdisant la possibilité de toute expertise efficace et en particulier de toute recherche ADN ; (iii) l'absence de toute expertise balistique, expertise des armes, ou test ADN et autopsie, et ce malgré certaines demandes des avocats et alors même que la MONUC avait proposé son assistance technique et logistique en ce sens ; (iv) tous les prévenus avaient assisté côte à côte aux auditions et débats de sorte qu'ils avaient entendu la version de tous les autres en direct, ce qui avait pu les influencer ou leur permettre de modifier leurs déclarations ; (v) ils avaient également pu communiquer entre eux, se trouvant côte à côte ; (vi) le refus de l'administration pénitentiaire de séparer certains prévenus en cellule ;

(vii) le refus du Tribunal d'explorer les différentes pistes et mobiles de l'assassinat, en particulier la thèse initiale d'un vol à main armée commis par les deux militaires des FARDC arrêtés le 14 juin, et celle impliquant des officiers de la Garde Républicaine ; (viii) les menaces de mort proférées en public lors de la reconstitution des faits par les deux prévenus militaires à l'encontre des amis de Serge Maheshe, seuls témoins oculaires, et d'un témoin qui les auraient reconnu ; (ix) l'avocat de la partie civile avait dû argumenter longtemps avant que le juge n'accepte d'entendre pour la première fois sa cliente, l'épouse de Serge Maheshe, au sujet des tensions et menaces proférées par deux militaires de la Garde Républicaine peu de temps avant l'assassinat ; (x) le blocage par le président du Tribunal de nombreuses questions que les avocats des différentes parties souhaitaient poser aux témoins ; (xi) le juge traduisait lui-même les questions/réponses des avocats aux militaires de la Garde Républicaine (GR) entendus en qualité de témoin, en l'absence de traducteur assermenté ; (xii) la clôture de l'instruction par le Président malgré la demande d'audition du témoin et les demandes d'investigations supplémentaires des avocats ; (xiii) la condamnation à mort de quatre civils par une juridiction militaire sur la seule base d'aveux non corroborés par d'autres éléments de preuve alors même que le tribunal avait reconnu dans son jugement les nombreuses contradictions persistantes et zones d'ombres, notamment sur l'arme du crime et l'identité de l'auteur ; (xiv) le refus de mettre le jugement à disposition des parties suite au prononcé du verdict le 28 août 2007, le jugement ayant été emporté à Kinshasa et seulement rendu disponible en octobre, bien après le délai légal d'appel, ce retard ayant obligé les parties à faire appel sans avoir pleinement connaissance de la décision du Tribunal. Par ailleurs, après le prononcé du délibéré de première instance, MM. Freddy Bisimwa et Mastakila qui auraient avoué avoir commis le crime et désigné les deux amis de M. Maheshe, MM. Serge Muhima et Alain Mulimbi, comme commanditaires, se seraient rétractés par courrier depuis la prison. Cette lettre adressée aux magistrats, qui serait sortie de manière régulière du centre de détention avec le visa du directeur de la prison, disculperait MM. Muhima et Mulimbi, condamnés à mort, et qui auraient toujours nié toute participation au meurtre de leur ami. Ce courrier mettrait aussi en cause deux magistrats de l'Auditorat militaire de Bukavu. En outre, des pressions seraient exercées sur les défenseurs des droits de l'homme qui participent ou suivent ce procès, en l'occurrence des avocats des différents prévenus et de la partie civile, journalistes et membres d'ONG des droits de l'homme. La plupart des menaces seraient anonymes, mais pourraient avoir des origines différentes selon les personnes visées.

Communications reçues de la part du Gouvernement

Aucune.

Commentaires et observation du Rapporteur spécial

118. Le Rapporteur Spécial regrette de devoir constater qu'il n'a reçu du Gouvernement de la République Démocratique du Congo aucune réponse aux graves allégations ci-dessus et il invite ce Gouvernement à lui transmettre au plus tôt, et de préférence avant la fin de la neuvième session du Conseil des droits de l'homme, des informations précises et détaillées en réponse à ces allégations. Il souhaite en outre connaître la situation actuelle des personnes faisant l'objet des plaintes en question. Il espère pouvoir s'entretenir en détail de ces questions avec des représentants du Gouvernement de la RDC à l'occasion de ladite session du Conseil.

Egypt

Communications sent

119. On 29 June 2007, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture, regarding the death sentences imposed against three men convicted on charges connected to the bomb attacks on the Sinai Peninsula in October 2004, Messrs. Muhammed Gayiz Sabbah, Usama 'Abd al-Ghani al-Nakhlawi and Yunis Muhammed Abu Gareer. According to the information received, the three men were tried before the Emergency Supreme State Security Court (ESSSC) sitting in al-Islamiliya on charges arising from the bomb attacks committed in Taba and Nuweiba on the Sinai Peninsula in October 2004, which killed 34 people and injured more than 100. In September 2006, the ESSSC announced the death sentences against Messrs. Muhammed Gayiz Sabbah, Usama 'Abd al-Ghani al-Nakhlawi and Yunis Muhammed Abu Gareer, while other defendants were sentenced to long prison terms. The death sentences were then reportedly submitted to the office of the Mufti. On 30 November 2006, the ESSSC announced that the Mufti had approved the death sentences and that it now confirmed them. It is the mandate holders understanding that there is no appeal against the sentences of the ESSSC, which can only be commuted by the President. Reports indicate that Messrs. Muhammed Gayiz Sabbah, Usama 'Abd al-Ghani al-Nakhlawi and Yunis Muhammed Abu Gareer had their first contact with their lawyers when the trial began, months after their arrest, and were only able to communicate with their lawyers during court hearings. The majority of the defendants denied the charges against them and claimed that they had confessed under torture. Upon request of the defence lawyers, the court ordered medical examination of the defendants. The medical exams, which were carried out several months after the alleged torture, did not confirm the allegations of the accused. It has also been informed that the cases of Messrs. Muhammed Gayiz Sabbah, Usama 'Abd al-Ghani al-Nakhlawi and Yunis Muhammed Abu Gareer were submitted to the African Commission on Human and Peoples' Rights, which has declared them admissible in May 2007. The African Commission has also issued provisional measures asking your Excellency's Government to defer the executions until it has decided the merits of the case. Reports were received, however, that the Government's delegation before the African Commission in May 2007 indicated that the legal adviser in the office of the President has advised to ratify the death sentences and that the President might ratify them at any time.

120. On 31 August 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on freedom of religion or belief, on the situation of Mr. Amr Tharwat, Mr. Abdel-Latif Mohamed Ahmed and Mr. Abdel-Hamid Mohamed Abdel-Rahman. According to information received, on 30 May 2007, Mr. Amr Tharwat was arrested by the State Security officers at his family's home in the Matrya neighbourhood in Cairo, pursuant to an administrative detention decree issued by the interior minister under the emergency law. In addition to Mr. Tharwat, the authorities arrested further people staying at their home, including Mr. Abdel-Latif Mohamed Ahmed and Mr. Abdel-Hamid Mohamed Abdel-Rahman. Mr. Tharwat is member of the Quranic group, a movement reportedly advocating for peaceful reform in the Muslim world based on democracy and human rights and to offer practical strategies for such change. He was accused of "exploiting religion to promote extreme ideas in contempt of Islamic religion, denying the Sunna and considering the Quran to be the main source of legislation". Further charges included "rejecting the penalty for apostasy" and "rejecting the

stoning of adulterers". Allegedly, during their detention, the detainees were not allowed to contact their families or lawyers until 21 June 2007, four days after their interrogations before the State Security Prosecution officer began. Reportedly, during the interrogations, questions were confined to the detainees' religious views. An appeal was filed against the administrative detention of the defendants, as they were detained for more than 30 days. On 12 and 14 July 2007, the Emergency State Security Court ordered the release of the three persons. However, the interior Ministry appealed their release order. On 7 and 8 August, the court decided to release them immediately. Despite the release order, the three individuals remain detained in preventive detention by the State Security Prosecution Office.

121. On 2 October 2007, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on human rights and counter-terrorism regarding forty members of the organization Muslim Brothers (الإخوان المسلمون) who, although they are civilians, are facing trial before the Supreme Military Court in Heikstep, northeast of Cairo, on charges of terrorism and money laundering. The forty defendants face charges that could incur the death penalty. Reportedly, some of the defendants were acquitted in January 2007 by a civilian court in Cairo, but their case was referred to a military court through a Presidential Order. The military trial commenced on 26 April 2007 and has been adjourned on a number of occasions. It has been reported that authorities did not provide defense lawyers with details of the charges until the trial began and that observers have been repeatedly denied access to the court. Apparently, a criminal court in Cairo was to hear an appeal filed by some of these defendants against the Public Prosecutor's decision to freeze their financial assets; the outcome of this appeal is not known. The military trial is still ongoing.

Communication received

122. On 11 July 2007, the Government replied to the joint urgent appeal of 29 June 2007, explaining that during this case of terrorism 34 persons were killed and 157 persons were injured. The case has been handled pursuant to the provisions of the Emergency Law applied in the country after the state of emergency was declared and in conformity with article 4 of the International Convention on Civil and political Rights. The judicial circuits which consider emergency criminal cases are constituted of the same judges of the normal criminal courts. Every circuit is constituted of three counselors who are members of the competent court of appeal. The trial took place according to the provisions of the law and in harmony with the international standards for fair trials in public sessions densely attended by representatives of international organizations for human rights and journalists from local and foreign media. Death sentences are issued by the consensus of the court panel and the sentence is only uttered after the judgement is approved by the Mufti of the Arab Republic of Egypt who expresses his opinion on whether or not the penalty conforms with Islamic sharia. This opinion is consultative in all cases for the both the normal and the emergency judiciary. The judgements issued by the emergency courts are subject to the "judgements confirmation system" which is the counterpart of the methods of appeal before the ordinary judiciary. The judgements issued by the emergency courts are reviewed, according to the judgements confirmation system, by counselors who are members of the judiciary authority delegated to the Judgements Confirmation Office. The law stipulates that the Office shall deposit a memorandum on the results of the case examination before the judgement is presented for confirmation. The memorandum shall contain the reply to the grievances brought in relation with the judgement from all of its legal and objective aspects. The judgements confirmation body has the competence to mitigate the judgements or to order retrial,

but does not have the competence to aggravate the penalty. The confirmation of a court judgement does not jeopardize the right of the convicts to petition the President of the Republic for granting amnesty or commuting the sentence by virtue of article 149 of the Constitution. It is evident from the presentation hereinabove that there was no assault on the individual freedom or on the inviolability of the private life of the complainants or any other rights and liberties, and that they were not treated in a degrading manner. This was confirmed throughout the stages of the case and in the investigations of the PPO, which is a branch of the judiciary, or during the criminal trial process to which they were subject. The documents indicate quite evidently that the right to litigation was not violated. The suspects had a fair and just trial before a legal national and competent court. The trial Sessions were public and were attended by the lawyers who represented the respondents; and the trial was concluded in a reasonable period. Hence this negates the occurrence of any violation by the trial of article 14 of the ICCPR which sets out the guarantees for fair trial. For all the above reasons, the allegations that the rights of Mohamed Cayez Sabah, Ossama Abdel Ghany al- Nakhlawy, and Mohamed Yunis Elayyan Abu Gareer were violated are incorrect and groundless.

Special Rapporteur's comments and observations

123. The Special Rapporteur thanks the Government of Egypt for its response of 11 July 2007. The Special Rapporteur is, however, concerned at the absence of reply to its communications of 31 August 2007 and 2 October 2007 and urges the Government to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Equatorial Guinea

Comunicación enviada

124. El 18 de febrero de 2008, el Relator Especial envió un llamamiento urgente junto con la Presidente-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, sobre la situación de la Sra. Brígida Asongsua Elo, esposa del Sr. Guillermo Ela Nguema, quien cumple una condena de 20 años de prisión por conspiración contra el Gobierno. De acuerdo con las informaciones recibidas, la Sra. Brígida Asongsua Elo fue arrestada durante la mañana del 16 de diciembre de 2007 al salir de misa en la Catedral de Malabo por dos agentes de policía vestidos de civil quienes no habrían mostrado orden de detención alguna. La Sra. Brígida Asongsua Elo no ha sido acusada de delito alguno y no ha sido presentada ante ninguna autoridad judicial. No se le han explicado los motivos de su reclusión en la Comisaría Central de Policía de Malabo ni se ha formalizado legalmente su privación de libertad. Se afirma que esta persona ha sido sometida a dos interrogatorios. Durante el primero, llevado a cabo poco después de llegar a la comisaría, la habría interrogado el Sr. Director General de la Policía, y dos días más tarde, el Sr. Ministro de Seguridad Nacional. Al parecer, el Ministro le mostró un dibujo que, según manifestó, era un plano de la Prisión Central de Malabo, conocida como "Black Beach", confeccionado por su esposo. El Ministro habría afirmado que Guillermo Ela Nguema planeaba fugarse de la cárcel y que había tratado de entregarle ese plano a su esposa durante su visita del 15 de diciembre. Brígida Asongsua Elo se negó a admitir que el dibujo que le mostraban era el que había hecho su esposo, ya que nunca lo había visto antes. Durante su visita a la prisión, según afirma, su esposo, de profesión ingeniero civil, le anunció que le entregaría unos planos de la casa que están construyendo. Como no se permite que los presos entreguen documentos directamente a sus

visitantes, Guillermo Ela Nguema puso los planos en manos de un guardia de la prisión para que éste se los diera a su esposa. Brígida Asongsua Elo no llegó a recibirlos, ya que un funcionario superior se presentó en el lugar y se los llevó. Una petición de hábeas corpus fue presentada en su favor el 21 de enero de 2008 ante el Tribunal de Instrucción y Primera Instancia. Sin embargo hasta el momento en que se envió la comunicación, el Tribunal no se había pronunciado. La Sra. Brígida Asongsua Elo permanecería detenida en la Comisaría Central de Malabo sin cargos ni juicio, y sometida a duras condiciones de detención en una celda colectiva con entre 70 y 100 detenidos, incluyendo varones; sin instalaciones higiénicas y sin ninguna privacidad. Se expresaron temores por su integridad física y psíquica y por su seguridad personal.

Comunicación recibida

No se ha recibido ninguna comunicación del Gobierno.

Comentarios y observaciones del Relator Especial

125. El Relator Especial lamenta que el Gobierno de Guinea Ecuatorial no haya respondido la comunicación enviada el 18 de Febrero de 2008. Teniendo en cuenta las graves alegaciones que informan que la Sra. Brígida Asongsua Elo habría sido detenida sin imputación de delito alguno, ni juicio, el Relator Especial hace un urgente llamado al Gobierno para que responda lo más pronto posible a dicha comunicación, preferiblemente antes de la novena sesión del Consejo de Derechos Humanos. Específicamente, el Relator solicita al Gobierno que por favor responda en forma detallada y lo más pronto posible, preferiblemente antes de que termine la novena sesión del Consejo de Derechos Humanos si: el Tribunal de Instrucción y Primera Instancia se ha expedido sobre la petición de hábeas corpus; si se le han informado los cargos por los que ha sido detenida; si la acusada ha tenido acceso a representación legal desde el momento de su detención, si se ha iniciado un proceso judicial y - en su caso- si la acusada ha tenido acceso a un abogado durante todas las etapas del proceso judicial.

Ethiopia

Communications sent

126. On 9 January 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Representative of the Secretary-General on the situation of human rights defenders, regarding the situation of Messrs. Tilahun Ayalew, Anteneh Getnet and Meqcha Mengistu, prominent members of the Ethiopian Teachers' Association (ETA), Ethiopia's main teachers' trade union. Mr. Getnet was previously the subject of an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 28 September 2006. That communication, in which it was brought to the Government's attention allegations that Mr. Getnet was abducted and beaten by members of the security forces in May 2006 and again abducted and taken to an undisclosed location on 23 September 2006, has unfortunately remained without a reply from the Government. According to the information

recently received, Mr. Tilahun Ayalew was arrested on 14 December 2006 and Mr. Anteneh Getnet on 29 December 2006. Both have since then been held incommunicado by police at the headquarters of the Central Investigation Bureau (Maikelawi) in Addis Ababa. Mr. Tilahun Ayalew and Mr. Anteneh Getnet appeared before a judge, but they were reportedly neither charged, nor given access to legal counsel or their relatives. Since 15 December 2006 Mr. Meqcha Mengistu has reportedly been detained by the police at a secret location after being under police surveillance for several days. His exact whereabouts is unknown and the authorities deny any information about it. In view of their incommunicado detention, concern was expressed as to the physical integrity of Messrs. Tilahun Ayalew, Anteneh Getnet, and Meqcha Mengistu. Further concern was expressed that their arrest and detention might be related to their legitimate activities in defense of human rights, in particular the promotion of labour rights of teachers.

127. On 2 May 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the human rights of migrants, and the Special Rapporteur on the question of torture, regarding Mr. Bashir Ahmed Makhtal, a citizen of Canada, Ms. Halima Badrudine Hussein, a citizen of the Comores, and her children (names and age unknown), Mr. Ayub Abdurazak, a resident of France, Mr. Tesfaldet Kidane Tesfasgi, a citizen of Eritrea and television cameraman, Mr. Saleh Idris Salim, a citizen of Eritrea and television journalist, Mr. Osman Ahmed Yassin, a citizen of Sweden, and Ms. Sophia Abdi Nasir, also a citizen of Sweden, and her children (names and age unknown), Ms. Ines Chine, a citizen of Tunisia, Mr. Abdi Muhammed Abdillahi, a citizen of Kenya, and more than seventy others whose names have not been reported to the mandate holders. According to the information received, in December 2006, the conflict between the militias of the Council of Somali Islamic Courts and the Transitional Federal Government of Somalia, supported by armed forces of the Government, caused a large flow of refugees seeking to cross the border from Somalia into Kenya. On 2 January 2007, Kenyan authorities announced the closure of the border for security reasons. Since then, it is reported that the Kenyan security forces have been patrolling the border and have arrested a number of those seeking to cross it. Kenya has deported at least 84 of those arrested back to Somalia, from where they were taken to Ethiopia. In late March the Government released five persons arrested and detained under these circumstances. On 10 April 2007, the Government announced that 29 more of the transferred detainees would be released. However, so far none of the 29 has been freed. The persons named above were allegedly arrested between 30 December 2006 and February 2007 as they tried to cross the border from Somalia into Kenya. They were detained in various locations in Nairobi before being transferred to Somalia on three charter flights between 20 January and 10 February 2007. Once in Somalia they were transferred to Ethiopia. They were not provided with an opportunity to challenge their forcible removal at any stage. Mr. Bashir Ahmed Makhtal, Mr. Tesfaldet Kidane Tesfasgi and Mr. Saleh Idris Salim are reportedly held at the facilities of the Central Investigation Bureau in Addis Ababa (also known as Maikelawi). Others are most likely held at the military bases of Debre Zeit, southeast of Addis Ababa, and Jijiga, about 60 km from the border with Somalia. They are all held incommunicado and are not known to have been given any opportunity to challenge the legality of their detention before a court. It would appear that the Government is detaining them on the suspicion that they might have links with the Council of Somali Islamic Courts or with al-Qa'ida, although no such charges are reported to have been formally filed against them.

128. On 20 November 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and

expression and Special Representative of the Secretary-General on the situation of human rights defenders, concerning the situation of Mr. Daniel Bekele, Head of the Policy Research and Advocacy Department for ActionAid International in Ethiopia, and Mr. Netsanet Demissie, human rights and environmental lawyer based in Addis Ababa, founder and director of the Organization for Social Justice in Ethiopia. Both men were arrested in November 2005, together with numerous human rights defenders and journalists, following demonstrations against alleged fraud in the general elections of May 2005 in which over 190 protestors were reportedly killed in clashes between demonstrators and law enforcement authorities. By the date when the communication was sent they were detained and were facing the charge of “crimes of outrage against the constitutional order” which carries a possible life sentence or death penalty. According to the new information received: In mid-July 2007, the 38 principal defendants in the trial were reportedly found guilty as charged, and most were sentenced to life imprisonment. Having signed a statement admitting their activities had been unconstitutional, they received a pardon and were freed with their civil rights restored. It is reported that international observers were barred from attending the trial. In August 2007, all the others accused, still on trial in the same case, were freed having gone through the same procedure of conviction, sentencing, pardon and release. However, Mr. Bekele and Mr. Demissie declined to sign any kind of statement admitting guilt. They appealed for bail, but on 6 August the Supreme Court heard and rejected their bail appeal. Few days later, the Court closed the defence case, and a verdict was scheduled to be delivered when the Court resumed its sessions on 9 October 2007. On 9 October 2007, the Court adjourned its verdict for a further 46 days to consider the evidence. A verdict is then expected to be given on 22 November. The charge against Mr. Bekele and Mr. Demissie carries a possible life sentence or death penalty. Serious concern is reiterated that Mr. Bekele and Mr. Demissie may not enjoy a fair trial because of their legitimate and peaceful activities in defence of human rights and because of their refusal to sign a statement admitting that their activities had been unconstitutional.

Communications received

129. On 24 January 2007, the Government replied to the joint urgent appeal of 9 January 2007, indicating that Tilahun Ayalew, Anteneh Getnet and Meqéha Mengistu were detained by the Addis Ababa Police Commission for alleged violations of the Ethiopian criminal law in accordance with the Ethiopian Criminal Procedure Code and accepted international standards. Ethiopian law enforcement agencies have scrupulously followed appropriate legal procedures and due process rights while taking the aforementioned individuals to custody. Hence, the concern expressed regarding their physical integrity is unfounded. The detainees were brought before the Federal High Court within 48 hours in accordance with the Criminal Procedure Code. The Court has allowed a remand period for police to undertake the necessary investigations. Tilahun Ayalew, Anteneh Getnet and Meqcha Mengistu are now held at Addis Ababa Police Commission’s headquarters. I would also like to assure you that Tilahun Ayalew, Anteneh Getnet and Meqcha Mengistu are being treated humanly and in accordance with international norms and standards. While in detention, they are allowed visits by their family, friends and religious counselors.

130. On 23 May 2007, the Government replied to the joint urgent appeal of 2 May 2007, stating that the Transitional Federal Government of Somalia handed 41 individuals over to Ethiopia captured in the course of the conflict in Somalia. Most of these detainees have now been released. Only 8 of the detainees remain in custody by the order of the Court. The rest have been

released because of their marginal roles. These individuals were among the international terrorists who answered the call for Jihad by Al Shabab group of extremists against the Transitional Federal Government of Somalia and Ethiopia. The Government of Somalia, due to the lack of adequate and secure facilities or functional prisons, requested that the Government of Ethiopia hold these individuals and undertake investigations into their activities. However, the allegation that there are more than seventy others in addition to those mentioned by name in the communication is false. Moreover, the allegations that the detainees are held incommunicado and that they might be at risk of torture are without any foundation whatsoever. With the exception of three individuals, who refused to exercise their right, embassy or consular officials from their respective countries have visited the detainees. Their embassies or consular officials have been cooperating with the competent Ethiopian Government agencies in arranging the return of their nationals. It is also not true that they were not afforded the opportunity to challenge the legality of their detention. All detainees have appeared before the competent Court in obligations of the country. Although security experts from the respective countries of origin of the detainees have been involved in questioning some of the suspects, this was done in the presence of Ethiopian personnel in order to ensure that no detainee is subjected to torture, inhumane or degrading treatment. The physical and mental integrity of all detainees has been fully respected. Lastly I wish to assure you that the remaining 8 detained suspected internal terrorists will continue to have access to embassy or consular officials of their respective countries and that their due process rights are being fully respected and they have not been in any manner ill-treated.

Special Rapporteur's comments and observations

131. The Special Rapporteur thanks the Government of Ethiopia for its cooperation and values its efforts to provide in a timely manner substantive information in response to the concerned expressed on letters sent on 9 January 2007 and on 2 May 2007. However, the Special Rapporteur is concerned at the absence of an official reply and urges the Government of Ethiopia, regarding the communication sent on 20 November 2007. The Special Rapporteur urges the Government of Ethiopia to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegation.

Fiji

Communications sent

132. On 8 June 2007, the Special Rapporteur sent an allegation letter concerning the suspension of the Chief Justice of Fiji, Daniel Fatiaki following the takeover of the Government by the Republic of Fiji Military Forces on 5 December 2006. According to the information received on 3 January 2007, Chief Justice Fatiaki was told by Deputy Commander Captain Teleni of the Republic of Fiji Military Forces to take leave pending an inquiry into complaints against the judiciary and the judicial system as a whole. Mr. Fatiaki was advised that if he refused to take leave, he would be removed from office. On 18 January 2007, Chief Justice Fatiaki was formally suspended by President Uluivuda. The President indicated that the suspension was based on section 138 (4) of the Constitution of Fiji. According to President Uluivuda's note of 18 January 2007, the suspension was processed on the grounds that the question of removing the Chief Justice from office ought to be investigated in terms of section 138 (3) of the Constitution.

In this note, the President also appointed a tribunal to investigate and determine whether the Chief Justice Daniel Fatiaki should be removed from office for breach of the provisions of section 138 (1) of the Constitution (“misbehaviour”). The establishment of this tribunal was confirmed in a letter from the Office of the President and the Vice President dated 5 February 2007 to Chief Justice Fatiaki. However, at the time of the suspension of Chief Justice Fatiaki, this tribunal was not yet established, neither were its Chairperson or members appointed. Prior to the suspension, on 15 January 2007, the Judicial Service Commission chaired by Justice Nazhat Shameem met in the absence of Chief Justice Fatiaki and resolved to recommend to President Uluivuda the appointment of Justice Gates as Acting Chief Justice pursuant to section 132 (3) (a) of the Constitution of Fiji following the consultation of Attorney-General Mr. Sayed-Khaiyum. On 16 January 2007, Justice Gates was sworn in as Acting Chief Justice. Given the important role of the Judicial Service Commission, which is headed by the Chief Justice, for guaranteeing the independence of the judiciary as well as in the protection of human rights, it is also feared that irregularities in the suspension and replacement of the Chief Justice compromise the independence of the judiciary as a whole.

133. On 19 July 2007, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression regarding Ms. Tupou Draunidalo, vice-president of the Fiji Law Society and Mr. Graham Leung, lawyer in Suva. According to the information received: Mr. Aiyaz Sayed-Khaiyum, Interim Attorney General, has taken legal action against Ms. Tupou Draunidalo concerning a statement she made in May, when she allegedly said that “the confidence of lawyers in the judicial system, let alone the public, is shattered”. Mr. Sayed-Khaiyum allegedly said that in bringing this proceeding, he was acting in the public interest to protect the integrity and authority of the judiciary, which may be undermined by such statements. The High Court will hear the case on 16 August. Also, the Home Affairs Ministry imposed a travel ban on M. Graham Leung. On July 16, the lawyer was barred from leaving Fiji and traveling to Australia and New Zealand. Military spokesman Major Neumi Leweni allegedly said that Mr. Leung was stopped from leaving the country because he had made misrepresenting statements about the interim Government abroad. Mr. Sayed-Khaiyum allegedly also said that Mr. Leung, at the Law Asia conference, had made a number of misrepresentations in his paper which was printed in The Fiji Times. He indicated that Mr. Leung misinformed the gathering by stating that members of the legal profession representing clients in constitutional matters were being silenced. Finally, it is reported that on 18 July, the travel ban against Mr. Leung was lifted. Mr. Leung’s lawyer indicated that he will still pursue a judicial review of the matter, which is currently before a judge.

Communications received

134. On 31 October 2007, the Government replied to the joint allegation letter of 19 July 2007, indicating that the legal proceeding against Ms. Tupou Draunidalo is in action for “contempt of Court”. The principle of judicial independence implies an obligation of the Attorney General to defend the courts. His intervention ensures that attacks on the judiciary are responded. In instituting contempt of court, the Attorney General was merely exercising a duty of protecting the integrity and authority of the judiciary. It will be the court that will adjudicate on whether there is contempt. Regarding Mr. Graham Leung, the Government stated that the matter is currently before the courts and the facts of the case are still not determined. However, it can be affirmed that there are currently no bans or restriction imposed on Mr. Leung’s movement or

travel. The Government has also affirmed that not complaint has been lodged by Ms. Tupou Draunidalo or Mr. Graham Leung. Regarding the measures taken to guarantee the freedom of expression and the freedom of movement, the Government stated that those rights have not been limited in any way to Mr. Graham Leung, nor to Ms. Tupou Draunidalo. In the case of Ms. Tupou Draunidalo, the court proceeding against her does not interfere with her freedom of express opinions. However, this proceeding demonstrates that the freedom of expression is not unlimited. In the case of Mr. Leung, is free to express his opinions subject to existing laws of Fiji. He can also travel when and if he pleases.

Special Rapporteur's comments and observations

135. The Special Rapporteur thanks the Government of Fiji for its cooperation and its detailed response to one of his communications. The Special Rapporteur is, however, concerned at the absence of reply to it communication of 8 June 2007 and urges the Government to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations. Concerning the communication sent on 9 January 2007, the Special Rapporteur remains concerned by the proceeding against Ms. Tupou Draunidalo and requests the Government to keep him informed about its developments.

France

Communication envoyée

136. Le 7 décembre 2007, le Rapporteur spécial a envoyé, conjointement avec le Rapporteur spécial sur la torture, une lettre d'allégations concernant l'absence d'intervention de la justice eu égard à une plainte déposée par quatre organisations non gouvernementales contre l'ancien Secrétaire d'Etat à la Défense des Etats-Unis, M. Donald Rumsfeld. Les sources affirmaient que, le 25 octobre 2007, quatre organisations non gouvernementales, la Fédération internationale des ligues des droits de l'Homme (FIDH), le Center for Constitutional Rights (CCR), l'European Center for Constitutional and Human Rights (ECCHR) et la Ligue française des droits de l'Homme (LDH), avaient déposé une plainte contre M. Rumsfeld auprès du Procureur du Tribunal de Grande Instance de Paris, accusant celui-ci d'avoir ordonné et autorisé des actes de torture. Ayant informé le Procureur que M. Rumsfeld se trouverait à Paris le lendemain, 26 octobre, à l'occasion d'un débat organisé par la revue « Foreign Policy », au 33, rue du Faubourg Saint-Honoré, dans le 8ème arrondissement, les organisations non gouvernementales indiquaient avoir demandé au Procureur d'entamer des poursuites à son encontre et de s'assurer qu'il ne puisse quitter le territoire. Après le déroulement de ce débat, M. Rumsfeld aurait quitté le territoire en l'absence d'intervention par le Procureur. La plainte en question aurait été déposée sur la base des articles 689-1 et 689-2 du Code de procédure pénale français et de l'article 1er de la Convention internationale contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, ratifiée par l'Etat français le 18 février 1986 et entrée en vigueur le 26 juin 1987. La compétence universelle des juridictions françaises pour connaître des crimes de torture commis à l'étranger découle des articles 689-1 et 689-2 du Code de procédure pénale. Selon l'article 689-1 du Code de Procédure Pénale « En application des conventions internationales visées aux articles suivants, peut être poursuivie et jugée par les juridictions françaises, si elle se trouve en France, toute personne qui s'est rendue coupable hors du territoire de la République, de l'une des infractions énumérées par ces articles. Les

dispositions du présent article sont applicables à la tentative de ces infractions, chaque fois que celle-ci est punissable. » Dans l'alinéa 2 du même article il est prescrit que « Pour l'application de la convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, adoptée à New York le 10 décembre 1984, peut être poursuivie et jugée dans les conditions prévues à l'article 689-1 toute personne coupable de tortures au sens de l'article 1er de la convention ». A la lumière de différents rapports très détaillés et de mémorandums engageant directement la responsabilité de M. Rumsfeld dans les crimes de torture et autres traitements inhumains et dégradants sur des détenus de Guantanamo, d'Abu Ghraib et d'ailleurs, dont notamment le rapport sur la « Situation des personnes détenues à Guantanamo Bay » soumis par différentes procédures spéciales à la Commission des droits de l'Homme (E/CN.4/2006/120 daté le 27 février 2006), les Rapporteurs Spéciaux ont exprimé leur préoccupation qu'aucune mesure n'ait été prise par le Procureur pour s'assurer que M. Rumsfeld ne quitte le territoire français. Ils ont souligné que, vu le sérieux des allégations de torture et d'autres traitements inhumains et dégradants formulées à l'encontre de M. Rumsfeld, il en découle une obligation de la France, en vertu de la Convention internationale contre la torture et de la législation nationale sur la juridiction universelle, d'ouvrir une enquête quand une personne soupçonnée de torture se trouve en France. À la lumière des éléments ci-dessus, les Rapporteurs Spéciaux ont exprimé leur préoccupation face à l'inaction du Procureur du Tribunal de Grande Instance de Paris et signalé l'inquiétude manifestée par les sources que celui-ci n'ait pas agité de façon indépendante, à l'abri de toute influence ou considération politique, en violation du principe de l'indépendance et de l'impartialité de la justice reconnu par les normes et standards internationaux, en particulier l'article 14 du Pacte international relatif aux droits civils et politiques.

Communications reçues

137. Le 10 mars 2008, le Gouvernement français a répondu à la lettre d'allégation du 7 décembre 2007, indiquant que, à la suite du dépôt de la plainte, le Procureur de la République du Tribunal de Grande Instance de Paris avait, le 26 octobre 2007, ordonné à la Brigade Criminelle de mener une enquête afin d'établir la réalité de la durée du séjour du M. Donald Rumsfeld à Paris, et saisi le Ministère des affaires étrangères afin de vérifier l'existence d'une éventuelle immunité diplomatique de l'intéressé. Le Gouvernement a en outre indiqué que le Parquet avait pris la décision de classer la procédure sans suite, cette décision ayant été prise en toute indépendance. Il précisait que le Ministre ne peut pas délivrer au Parquet des instructions, en vertu de l'article 30 du Code de procédure pénale, et que la décision du Parquet était basée sur des motifs de droit, à savoir (i) que la compétence des juridictions françaises ne pouvait pas être retenue en l'espèce car, pour que celles-ci soient compétentes, en concordance avec la jurisprudence de la Cour de Cassation, il est nécessaire que la personne concernée se trouve en France au moment de l'engagement des poursuites, or, une plainte simple déposée devant le Procureur de la République n'est pas suffisante car elle n'engage pas des poursuites; dès lors, aucune poursuite n'avait été engagée contre M. Rumsfeld au moment de son séjour en France; (ii) que M. Rumsfeld bénéficiait d'une immunité; en application des règles de droit international coutumier consacrées par la Cour Internationale de Justice, les Chefs d'État, de gouvernement, et les Ministres des Affaires étrangères, bénéficient de l'immunité et celle-ci subsiste après la cessation de leurs fonctions, pour les actes accomplis à titre officiel; (iii) que la Cour Internationale de Justice a, dans son arrêt du 11 avril 2000 (République Démocratique du Congo c. Belgique) établi certaines règles, à savoir, d'une part que les règles gouvernant la compétence des tribunaux nationaux et celles régissant les immunités juridictionnelles doivent

être soigneusement distinguées (la compétence n'implique pas l'absence d'immunité et l'absence d'immunité n'implique pas la compétence ; dès lors, la compétence quasi-universelle des tribunaux français n'est pas à confondre avec la question de l'immunité dont pourrait se prévaloir M. Rumsfeld) et aussi que le Ministre de la défense paraît bien faire partie des personnes occupant une fonction présentant un caractère international ; finalement, d'après la Cour Internationale de Justice, dans la même affaire, un tribunal d'un État peut juger un ancien ministre des affaires étrangères d'un autre État au titre des actes accomplis avant ou après la période pendant laquelle il a occupé ses fonctions, ainsi que au titre des actes qui, bien qu'accomplis pendant cette période, l'ont été à titre privé.

Commentaires et observations du Rapporteur spécial

138. Le Rapporteur Spécial remercie le Gouvernement français pour sa coopération et pour sa réponse détaillée. Il souhaite cependant appeler son attention sur la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, notamment l'article 2. De même, il voudrait appeler l'attention du Gouvernement sur l'article 4 qui dispose que tout Etat partie veille à ce que tous les actes de torture constituent des infractions au regard de son droit pénal. Il en est de même de la tentative de pratiquer la torture ou de tout acte commis par n'importe quelle personne qui constitue une complicité ou une participation à l'acte de torture. Le Rapporteur Spécial est inquiet du fait que l'immunité diplomatique ne soit utilisée comme argument pour ne pas enquêter sur la possible commission d'actes de torture. De la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, notamment des articles mentionnés, découle l'obligation des États d'enquêter sur des actes constituant torture. Aucune circonstance exceptionnelle, quelle qu'elle soit, ne peut pas être alléguée pour ne pas, au moins, initier une investigation pénale.

Germany

Communication sent

139. On 13 July 2006, the Special Rapporteur sent an allegation letter, regarding an alleged violation of the independence of the judiciary which was brought to his attention in relation to a criminal complaint filed in Germany on 29 November 2004 against ten high ranking United States of America's civil and military officials, including Secretary of Defense Donald Rumsfeld. This communication was sent to the Government with some delay in relation to the facts, since the Special Rapporteur was hoping that other initiatives he took would lead to proper investigations of these and other similar complaints. However, faced with a lack of investigations and effective remedy for the victims after a prolonged period of time, and in light of the reiterated concerns expressed by a number of governmental and non-governmental organizations in this respect, he took the decision to submit to the Government's attention the following serious concerns. According to the information received, the above-mentioned criminal complaint was filed with the German Federal Prosecutor's office at the Karlsruhe Court by the Berlin attorney Wolfgang Kaleck, from Republican Attorneys' Association (RAV), the New York-based Center for Constitutional Rights (CCR), the International Federation for Human Rights (FIDH) and Lawyers Against the War (LAW), on behalf of first four and later on 17 Iraqis plaintiffs who alleged they were victims of very serious crimes including torture by means of severe beatings, sleep and food deprivation, hooding and sexual abuse, when they were detained in Iraq by the United States military. The complaint was filed under the German Code

of Crimes against International Law (hereinafter “the German Code”). The charges include violations of the German Code which outlaws killing, torture, cruel and inhumane treatment, sexual coercion and forcible transfers. The German Code makes criminally responsible those who carry out the above acts as well as those who induce, condone or order the acts. It also makes commanders liable, whether civilian or military, who fail to prevent their subordinates from committing such acts. It is my understanding that the German Code grants German Courts what is called Universal Jurisdiction for the above-described crimes, in light of article 1, Part 1, Section 1 of the Code which states: “This Act shall apply to all criminal offences against international law designated under this Act, to serious criminal offences designated therein even when the offence was committed abroad and bears no relation to Germany.” This means that those who commit serious crimes under this Act can be prosecuted wherever found. Therefore, it is my understanding that the German Code places a prosecuting duty on the German prosecutor for all such crimes, irrespective of the location of the person, the crime, or the nationality of the persons involved. According to the information received, mainly originating from non-governmental organizations and the press, following the filing of the complaint, a strong pressure was exercised by the United States of America on Germany to obtain the dismissal of the complaint. Such pressures included open threats to the effect that the bilateral relations between the two countries could be at risk if the complaint was not dismissed. In addition, the Pentagon would have openly threatened the German prosecution by indicating that Donald Rumsfeld would not attend the Munich Security Conference in February 2005 if the complaint was not dismissed. Two days before the Munich Security Conference, on 10 February 2005, the German prosecutor issued a decision to dismiss the case. As a result, Donald Rumsfeld could attend the conference. In this context, the Special Rapporteur expressed his deep concern that a decision by the prosecutor on a case involving such serious crimes has been taken in a context of strong political pressure by the country of citizenship of the defendants. While the prosecutor was seized of the matter for little more than two months, it is hard to believe that it is a coincidence that a decision to dismiss the complaint intervenes just two days before the Munich conference, just in time to allow the United States of America Secretary of Defense to attend the meeting. In addition, the Special Rapporteur expressed his concern regarding the weakness of the legal justification of the dismissal. The prosecutor justified the dismissal by alleging that in virtue of the principle of subsidiarity, the German system should only prosecute under the universal jurisdiction when the State first called upon to adjudicate (in this case the State of citizenship of the defendants), or an international Court, are unwilling or unable to prosecute, and that in this case there are no indications that the authorities of the United States of America are refraining or would refrain to prosecute the violations described in the complaint. According to the prosecutor, the prosecution of the violations is therefore left to the judicial authorities of the United States of America, and he therefore dismissed the case. In relation to this analysis, the Special Rapporteur emphasized that the criminal procedures against low-ranking figures for crimes committed in Abu Ghraib and other detention facilities have shown the unwillingness of the military criminal justice system to look into the involvement of those up the chain of command. Moreover, in the United States of America’s military criminal justice system, the main defendant, Donald Rumsfeld, sits as the ultimate convening authority: therefore, the basic requirements for an independent trial cannot be fulfilled. Also, the United States of America Congress, vested by the Constitution with oversight authority, failed to seriously investigate the abuses and none of the various commissions appointed by the military and the Bush administration has been willing to investigate up the chain of command to consider what criminal responsibility lies with the military and political leadership. Finally, there are

no international or Iraqi courts that can carry out investigations and prosecutions of the United States of America role, since the United States of America has not joined the International Criminal Court, thereby foreclosing the option of pursuing a prosecution in international courts, and Iraq has no authority to prosecute since the United States of America gave immunity to all its personnel in Iraq from Iraqi prosecution. In the light of the elements mentioned above, which suggest that the prosecutorial authority would have failed to act in an impartial, independent and objective manner, The Special Rapporteur expressed his deep concern regarding the violation of the principle of the independence of the judiciary, as enshrined in recognized international norms and standards, including article 14 of the International Covenant on Civil and Political Rights, and the United Nations Basic Principles on Independence of the Judiciary. Moreover, the elements mentioned above, added to the unusual short length of the decision to dismiss and the lack of reference to the extensive arguments and documents submitted by the plaintiffs, suggest that the prosecutor has failed to comply with his obligations of independence, impartiality and objectivity.

Communication received

140. On 18 June 2007, the Government replied to the allegation letter sent on 13 July 2006. The Government apologized for having missed by mistake to present the translations of the response before. The Government presented 3 documents: translation of the decision of the Public Prosecutor General of 10 February 2005, translation of the decision of the Stuttgart Higher Regional Court of 13 September 2005 and response to the letter sent by the Special Rapporteur on 16 July 2006. According to the response, on 30 November 2004, Mr. Wolfgang Kaleck, brought criminal charges on behalf of the Center of Constitutional Rights and four Iraqi citizens, against ten high ranking United States of America's civil and military officials and the Secretary of Defense Donald Rumsfeld. The charges were the perpetration of very serious crimes including torture, allegedly occurred when the complainants were detained in Iraq by the United States military. According to the decision of the Public Prosecutor General of 10 February 2005, the charges will not be followed up, because there is no room for the German investigative authorities to take action. The application of the principle of universal jurisdiction established in the CCAIL, depends upon the principle of subsidiarity. The purpose of the CCAIL is to close gaps in punish ability and criminal prosecution. Nevertheless, this must be done without intervening in the affairs of other States. This also follows from article 17 of the Statute of Rome, which establishes that ICC's jurisdiction is subsidiary to the jurisdiction of the State of the perpetrated act or of the perpetrator, the ICC can only act if the nation-states initially called upon to pass sentence are unwilling or unable to prosecute. The ICC Statute constitutes the guiding principle for the interpretation and application of section 153f StPO (Criminal Procedural Code). According to these principles, the primary jurisdiction for the criminal prosecution is with the United States of America as the defendants' home country. In the present case there are no indications that the courts or authorities of the United States of America refrained or would refrain from taking penal measures as regards the assaults described in the complaint. Regarding the individuals indicted who are residing in Germany, as personnel of the US Army, they are subject to follow their employer's orders. The United States of America, as the prosecuting State, has unrestricted access to these individuals. Moreover, according to the decision of the Stuttgart Higher Regional Court of 13 September 2005, the representative of complainants appealed the decision of the Public Prosecutor General of 10 February 2005, initially by filing an application dated 10 March 2005 with Karlsruhe Higher Regional Court for a Court decision. By decision of 27 June 2005 Karlsruhe Higher Regional Court declared that it

was no competent in the matter. Mr. Kaleck filed an application with Stuttgart Higher Regional Court for a preliminary decision of the Constitutional Court (article 102 Basic Law), regarding the relationship between the principle of worldwide uniform law under CCAIL and section 153f StPO. The application also requested a court decision ordering the preferment of public charges against the indicted individuals or rather ordering the Public Prosecutor General to launch investigations. The Public Prosecutor has been given the opportunity to submit an explanation. He stated that the procedure for compelling public charges is inadmissible. The High Regional Court decided that it was competent on the matter. According to the court, the procedure for compelling public charges is not permitted, because the contested order is subject to the principle of discretionary prosecution under section 153f StPO. As regards the individuals who do not reside in Germany the conditions of section 153f first sentence StPO are fulfilled. As regards the individuals who reside in Germany, the contested order issued by the Prosecutor General was based on section 153f second sentence StPO. Even if these four individuals are stationed at US based in Germany, they are subject to US jurisdiction. There is thus not gap in punishability, which must be avoided by universal jurisdiction. Therefore, the decision of the Public Prosecutor General of 10 February 2005 is legally correct. The same would apply, if one of the six indicted living out Germany were to spend a fixed period residing in the area in which the CCAIL had jurisdiction. Moreover, the Court decided that there is no legal cause for complaint regarding of the Public Prosecutor General's discretionary decision. This decision can only be examined against the background of a court's competence to carry out an examination as to whether or not discretion has been exercised or whether or not the line has been overstepped and arbitrary action has been taken. The contested order in the present case can be classified neither as subject to a lack of exercise of discretion, nor to that arbitrariness. The German legislator introduced section 153fStPO in order to limit the massive enlargement of jurisdiction of German criminal prosecution. The Public Prosecutor General is competent to decide on matters affecting section 153fStPO, as the highest prosecution authority. He is the sole master of the proceedings, even after the main proceedings have been opened, as illustrated by his competence of withdrawing a complaint at any stage in the proceedings. Neither the approval of the court nor that of the indicted individual or the joint plaintiff is required for a complaint to be withdrawn. Finally, according to the response to the letter sent by the Special Rapporteur on 16 July 2006, the Public Prosecutor was not in fact issued with any instructions by the Federal Ministry of Justice, nor was any other influence exerted on him by the federal Government to persuade him not to launch investigations in on the Abu Gahrib allegations. The response retakes the legal reasons on which the decision of the Public Prosecutor General of 10 February 2005 and the decision of the Stuttgart Higher Regional Court of 13 September 2005 were based. In addition, explains that the Public Prosecutor office in Germany is an organ of the criminal justice system, equal in ranks to the courts. It is charged of investigating and presenting cases before the courts. It is a sui generis body, with similarities both the Executive and the Judiciary, and leases between this two branches. Public Prosecutors are not independent as is the judiciary, but are bound by the instructions of their superiors (ultimately the Minister of Justice) and are thus to that extent part of the Executive. It is accountable to the Parliament through the Minister of Justice. Neither the European Convention on the Protection of Human Rights and Fundamental Freedoms, nor article 14 of the International Covenant on Civil and Political Rights stipulate that prosecutors must be independent and cannot be given orders by their superiors. As regards the UN Guidelines on the Role of Prosecutors, it should be clearly stated that the inclusion of the list of means of exerting undue pressure does not mean that prosecuting agencies must in all situations be entirely independent and subject to no instructions from superiors whatsoever.

Special Rapporteur's observations

141. The SR thanks the Government of Germany for its response of 18 June 2007. However, he remains concerned by the fact that the Government while affirming that the Public Prosecutor was not issued with any instructions by the Federal Ministry of Justice, nor the Federal Government, affirms that in Germany prosecutors are not independent and are subjected to their superiors, in particular the Minister of Justice. The Special Rapporteur acknowledges the fact that in several countries the Prosecution Office is not considered to be as part of the judicial system. Nevertheless, according to international human rights standards, in particular, the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 27 August to 7 September 1990, they are obliged to carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination. The Special Rapporteur would like to reiterate his concern that in the light of the facts mentioned above, the decisions of dismissing the case has been taken in a context of an allegedly strong political pressure, which could have compromised the impartiality of the competent organ.

Greece

Communications sent

142. On 2 June 2006, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia related intolerance concerning Mr. Theo Alexandridis, legal counsel with the Greek Helsinki Monitor (GHM) and other staff members of the GHM. The GHM is an organisation that monitors and reports on human rights violations in Greece, including violations against the Roma community. According to the information received, on 19 April 2005 the Greek Minister of Health and the Secretary General of Social Solidarity, publicly accused non-governmental organisations of “existing only on paper” and of “publishing negative reports on the basis of unreliable, exaggerated and misleading information on the victims of the smuggling of human beings in Greece, in order to obtain an increase in funding from the Greek Ministry of Foreign Affairs”. It is reported that the GHM was specifically named in these accusations. It is further reported that GHM lodged a complaint against the Minister of Health and the Secretary General of Social Solidarity. On 13 October 2005 Mr. Alexandridis was arrested and detained in the Psair neighbourhood in Aspropyrgos, near Athens. It is reported that Mr. Alexandridis had gone to the police station to lodge a complaint against parents of non Roma children who had allegedly committed violent acts against demonstrators who were protesting against the expulsion of Roma children from a school in the area. It is alleged that after he had filed the complaint Mr. Alexandridis was told he was under arrest and was detained for four hours before being released without charge. Moreover, the president of the Pupils' Parents Association allegedly lodged a complaint against Mr. Alexandridis for “libel” and “defamation”. On 20 January 2006 it is reported that the Head of the Appeals Prosecutor's Office, during a radio interview, stated that all Roma are crime perpetrators and announced that “perpetrators, instigators and accomplices” of Roma people who helped the latter in a case concerning the alleged forced expulsion of Roma families in the Makrigianni area of the city of Patras, would be “called on to take the stand”, specifically including as potential targets representatives of GHM. It is reported that the Head of the Appeals Prosecutor's stated in the same radio interview that he had opened an inquiry into

the involvement of the GHM in petitioning the First Instance Prosecutor to open a criminal investigation into alleged illegal evictions and attacks against Roma people in Makrigianni. Concern was expressed that the above mentioned events are connected with the legitimate activities of Mr. Alexandridis and the GHM in defence of human rights, in particular because of their involvement in defending the legal rights of the Roma community in Greece.

Communications received

143. On 29 August 2007, the Government replied to the joint allegation letter of 2 June 2006 stating the following facts regarding the detention of Mr. Alexandridis: At the beginning of the 2005 school year among the 360 Greek children attending the 10th and 11th Primary Schools of Aspropyrgos, there were 24 Roma children. These schools operate in a single building complex at the city of Aspropyrgos, near Athens. A large number of parents have objected to the attendance of the Roma Children. As a result, on 13 October 2005 at 15.30 about 60 persons assembled to prevent the entry of 8 Roma pupils in the school. These pupils were accompanied by the representative of the Greek Helsinki Monitor Mr. Theodoros Alexandridis, who was a trainee lawyer. Half an hour later, following consultations between those assembled, the school Direction and after the intervention of the Greek police, the Roma pupils entered the schools and attended classes. At about 18.30, Mr. Alexandridis went to the Police station of Aspropyrgos and filed charges against the President of the Parents and Guardians Association of the aforementioned Primary Schools, Mrs. Eleni Panda, who was consequently arrested. Charges were also filed against unnamed men, for violation of articles 330, 361 and 33 of the Greek Penal Code. Three persons were also arrested for violation of article 330 of the Penal Code (illegal violence), because along with others, they tried to prevent the access of pupils in the school. At the Police Station of Aspropyrgos, Mrs. Eleni Panda filed charges, as well, against Mr. Theodoros Alexandridis, for insult and false complaints and, as a result of that action, Mr. Alexandridis was also arrested. At 21.45 of the same day, the Public Prosecutor of Criminal Proceedings was informed by phone and ordered the Police not to initiate the “flagrante delicto” procedure. Therefore, the arrested persons were released after registering their pleas. The brief was submitted to the Public Prosecutor of the Magistrate Court of Athens for follow up action. It should be noted that following that incident, the Officers of Aspropyrgos Police Station, whenever so requested by representatives of the Greek Helsinki Monitor, have always provided assistance so that registered Roma pupils could enter their schools and attend classes, despite reactions of some parents. Moreover, police officers have been at the school on a daily basis and took appropriate measures to protect Roma pupils when they enter and leave the schools.

Special Rapporteur’s comments and observations

144. The Special Rapporteur thanks the Government of Greece for its cooperation and values its efforts in providing substantive and detailed information in response to the above allegation.

Guatemala

Comunicación enviada

145. El Relator Especial envió una comunicación el 26 de octubre de 2005, sobre alegaciones de violaciones de derechos humanos de varios jueces y abogados en Guatemala, a saber: José Antonio Cruz Hernández, José Víctor Bautista Orozco, Leonel Meza Reyes, Fabian

Heriberto Molina Sosa, Enrique Gómez Romero, Julio César Barrios Mazariegos, Carlos Estuardo Marroquín Santos, Erick Moisés Gálvez Miss, José Antonio Meléndez Sandoval, Fritzman Dagoberto Grajeda Robles, Romeo Monterrosa Orellana, Harold Rafael Perez Gallardo, Edgar Rodolfo Brizuela del Aguilar, Giovanni Adonai Campos Girón, Eric Leonel González Urizar, Aura Patricia Aguilar de Meza. De acuerdo con las informaciones recibidas, el juez José Antonio Cruz Hernández, de 39 años de edad, fue asesinado el 21 de marzo del 2005 en un área residencial de la zona 7 de la ciudad de Guatemala, Guatemala. Según información recibida, el asesinato habría sido cometido por unos desconocidos que conducían en un picop de doble cabina. El juez José Antonio Cruz Hernández trabajaba como juez de paz en el municipio de San Pedro Ayampuc. Asimismo, el Juez José Víctor Bautista Orozco, de 53 años de edad, fue asesinado el lunes 25 de abril del 2005 en San Pedro Sacatepéquez, departamento de San Marcos. De acuerdo con datos proporcionados, el juez Bautista Orozco habría sido atacado cuando salía de su residencia por unos desconocidos con armas de fuego, disparándole en diez ocasiones en la espalda. El juez Bautista Orozco trabajaba como juez vocal del Tribunal de Sentencia de Alto Impacto con sede en Chiquimula. El juez presidente del Tribunal décimo de sentencia penal, Leonel Meza Reyes, fue atacado el 22 de agosto del 2005, en un sector de la ciudad de Guatemala, Guatemala. Según la información recibida el juez habría sido atacado por dos hombres desconocidos y armados, quienes habrían logrado golpearlo y despojarlo de sus objetos personales. Durante el ataque, el juez habría sido amenazado y golpeado con un arma de fuego. Los hombres se habrían dirigido a atacar al juez directamente y no a asaltar el comercio en el que se habría producido el hecho ni a las otras personas que se habrían encontrado allí. Igualmente, el juez de paz de Barrillas, Huehuetenango, Fabian Heriberto Molina Sosa, y el Oficial II del juzgado de paz de Barrillas, Huehuetenango, Enrique Gómez Romero fueron tomados como rehenes durante unas horas. Según la información recibida, tanto el juez, como el Oficial II y un traductor del juzgado de paz de Barrillas habrían sido llamados para realizar diligencias en el marco de un conflicto entre particulares, en dicha ocasión la gente los habría tomado como rehenes para asegurarse de que garantizarían la adecuada resolución del conflicto. Ninguno de ellos sufrió agresiones físicas, y fueron finalmente liberados gracias a la intervención de autoridades locales de Barrillas, Huehuetenango. El oficial segundo del juzgado de paz del municipio de Villa Nueva, Julio César Barrios Mazariegos, fue asesinado el 20 de junio del 2005 en el asentamiento de Villalobos. Según la información recibida, el asesinato habría sido cometido cuando el Sr. Barrios Mazariegos trataba de notificar a un acusado sobre un proceso que se lleva en su contra en el referido juzgado de paz. El auxiliar fiscal de la Fiscalía de Sección contra la Corrupción del Ministerio Público, Carlos Estuardo Marroquín Santos, fue asesinado el 4 de marzo del 2005. Según los datos recibidos, el asesinato habría sido cometido en el barrio “La Reformita” ubicado en la zona 12 de la ciudad de Guatemala, Guatemala. El fiscal de Chiquimula, Erick Moisés Gálvez Miss, fue asesinado el lunes 16 de mayo del 2005 en Chiquimula. Según la información recibida, el asesinato habría sido cometido por dos individuos desde una camioneta cuando el fiscal caminaba junto con un auxiliar fiscal por el centro de la ciudad, frente al Hospital Nacional de Chiquimula. El 27 de abril del 2005 el agente fiscal de Malacatán, municipio de San Marcos, José Antonio Meléndez Sandoval, fue baleado en el rostro por desconocidos. Afortunadamente logró sobrevivir al ataque armado. El defensor público Fritzman Dagoberto Grajeda Robles, fue asesinado el 03 de abril del año 2005 en una calle de la ciudad de Coatepeque, municipio del departamento de Quetzaltenango. Fritzman Dagoberto Grajeda Robles ocupaba el cargo de Subcoordinador municipal de Instituto de la Defensa Pública Penal. Por otra parte, el abogado

Romeo Monterrosa Orellana y su familia habrían recibido una serie de amenazas de muerte y habrían sufrido intimidación. Romeo Monterrosa Orellana, representa a la ONG Grupo de apoyo Mutuo, como parte en los procedimientos iniciados por la fiscalía estatal, en la acusación contra el propietario de la hacienda El Corozo por el asesinato de ocho trabajadores durante las protestas del 24 de enero de 2005. Asimismo representa a los trabajadores agrícolas que reclaman la propiedad de la hacienda Colonia La Catorze, en Puerto San José. El 30 de septiembre de 2005, Romeo Monterrosa habría recibido un mensaje de texto en su móvil que decía “sabes que so sus hijo puta y que todo lo que has hecho en tu puta vida lo vas a pagar con lo que más quieres”. Durante la noche del 8 de octubre habría habido un intento de robo en la oficina de Romero Monterrosa. El 16 de octubre de 2005, su mujer habría recibido 3 mensajes entre las 4 y las 5 de la tarde que parecían venir del teléfono móvil de Romeo Monterrosa, sin embargo, el Sr. Romeo Monterrosa no le habría envidado ningún mensaje. De otra parte, el abogado Harold Rafael Pérez Gallardo fue asesinado el 2 de septiembre de 2005 en la jurisdicción de Mixco, municipio del departamento de Guatemala. Según la información recibida, unos desconocidos lo habrían matado a balazos. El abogado Harold Rafael Pérez Gallardo era asesor del programa legal de Casa Alianza en el tema de adopciones internacionales. Los abogados Edgar Rodolfo Brizuela del Aguilar, Giovanni Adonai Campos Girón, Eric Leonel González Urizar también habrían sido asesinados. Asimismo, la abogada Aura Patricia Aguilar de Meza, de 42 años, fue atacada el 12 de julio del 2005. El ataque habría sido cometido por varios individuos en el camino a la aldea Altos de la Cruz, en el municipio de Amatitlán, departamento de Guatemala. En el momento en que se envió la comunicación, la abogada estaba recuperándose de sus heridas. Finalmente, el Relator Especial dejó constancia de información recibida referente a alegaciones de constantes amenazas y hostigamiento en la que se encuentran los operadores de justicia de Villa Nueva.

Comunicación recibida

146. El 4 de abril de 2007, el Gobierno de Guatemala envió una respuesta a la comunicación enviada el 26 de octubre de 2005. Por esta razón el Relator la incluye en este informe, a pesar de que la comunicación no está comprendida en el período que cubre el mismo. De acuerdo con la respuesta del Gobierno, se han adelantado investigaciones de los hechos arriba mencionados, incluyendo el análisis de la escena del crimen, análisis por parte del Departamento Técnico Científico de las evidencias encontradas en la escena del crimen, diligencias con el fin de identificar posibles testigos, análisis de informes de desplegados telefónicos de la víctima y necropsia. Asimismo, el Gobierno informa que el Ministerio Público está en la fase de investigación que permitiría identificar a los responsables de los hechos punibles. En respuesta a la pregunta de si se han indemnizado a los familiares de las víctimas, el Gobierno respondió que de conformidad con la Consitutción Política (artículo 101.b), es obligación del empleador otorgar al cónyuge, conviviente o hijos menores de un trabajador que fallezca estando en servicio, una prestación equivalente a un mes de salario por cada año laborado. Igualmente, según un acuerdo de la Corte Suprema de Justicia (8-2001) los familiares de los jueces que mueren estando en funciones tienen derecho a una indemnización de hasta 15.000 quetzales. Respecto a las acciones que el Gobierno ha iniciado para evitar que hechos similares se repitan, se ha adoptado la ley para la protección de sujetos procesales y personas vinculadas a la administración de justicia penal. Además, a partir del año 2005 se destinaron 28 millones de quetzales para coordinar y asignar seguridad a los funcionarios judiciales. Finalmente el

Gobierno hace mención de la política pública de prevención y protección para los defensores de derechos humanos, sujetos procesales y periodistas. Dicha política establece un marco de orientación para el fortalecimiento de las capacidades institucionales del Estado y la sociedad civil para que se garantice un efectivo cumplimiento de de las medidas de protección solicitadas, entre otros, por los Mecanismos especializados de las Naciones Unidas.

Comentarios y observaciones del Relator Especial

147. El Relator Especial agradece al Gobierno de Guatemala su grata cooperación. Sin embargo, lamenta que la respuesta a la comunicación enviada haya llegado dos años después de su envío. Asimismo, considera que la respuesta es demasiado general, puesto que no da cuenta de las medidas adoptadas en cada uno de los casos mencionados en la comunicación. La respuesta hace alusión a ciertas acciones que se han tomado en el marco de las investigaciones iniciadas por el Ministerio Público, pero no indica respecto de qué casos. Tampoco queda claro el tema de la indemnización, puesto que no se aclara en qué casos la misma ha sido adjudicada a las víctimas y/o sus familias. Es por ello que el Relator solicita al Gobierno que por favor proporcione informaciones detalladas respecto de cada uno de los casos mencionados, incluyendo las medidas que se han tomado para identificar a los responsables de los crímenes mencionados, así como las medidas que se han tomado para reparar a las víctimas y a sus familias, lo más pronto posible, preferiblemente antes de que termine la novena sesión del Consejo de Derechos Humanos.

Honduras

Comunicación enviada

148. El 31 de Mayo 2007, el Relator Especial junto con el Presidente del Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio del derecho de los pueblos a la libre determinación, el Relator Especial sobre la independencia de magistrados y abogados y el Representante Especial del Secretario-General para los defensores de los derechos humanos envió un llamamiento urgente en relación con las nuevas amenazas en contra del Sr. Felix Antonio Cáceres Alveranga, abogado que trabaja para la organización de derechos humanos Asociación para una Sociedad más Justa (ASJ). El Sr. Cáceres Alveranga ha estado trabajando en casos de conflictos laborales en empresas de seguridad privadas. Desde diciembre de 2006 otros miembros de la ASJ habrían sido víctimas de amenazas, incluyendo et Sr. Carlos Hernández, Presidente de la ASJ, la Sra. Dina Meetabel Meza Elvir, directora de proyectos y et Sr. Robert Marín García, la Sra. Claudia Mendoza, y la Sra. Rosa Morazán, periodistas de investigación. Como es del conocimiento del Gobierno, el caso de la ASJ ha despertado la preocupación de varios de los Relatores Especiales y Representatnes del Secretario General en cuatro ocasiones anteriores y en este sentido, se hizo referencia a los llamamientos urgentes conjuntos dirigido al Gobierno, el primero del Relator Especial sobre la independencia de magistrados y abogados y de la Representante Especial del Secretario-General para los defensores de los derechos humanos, con fecha de 13 de octubre de 2006, otro del Presidente del Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio del derecho de los pueblos a la libre determinación y de la Representante Especial del Secretario-General para los defensores de los derechos humanos, con fecha de 5 de diciembre de 2006, otro del

Presidente del Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio del derecho de los pueblos a la libre determinación y de la Representante Especial del Secretario-General para los defensores de los derechos humanos, con fecha de 13 de diciembre de 2006 y el más reciente también del Presidente del Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio del derecho de los pueblos a la libre determinación y de la Representante Especial del Secretario-General para los defensores de los derechos humanos, con fecha de 11 de enero de 2007. De acuerdo con la información adicional recibida: el 17 de mayo de 2007, hacia las 15:00, et Sr. Cáceres Alvarenga habría recibido un mensaje de texto amenazante en su teléfono móvil, lo cual decía 'Será mejor que se retire de (nombre de una empresa de seguridad privada) o lo dejamos como a Dionisio'. El Sr. Dionisio Díaz García, también abogado de la ASJ, fue asesinado el 4 de diciembre de 2006. Según se informa, desde el asesinato del Sr. Díaz García, otros miembros de la ASJ, incluyendo los arriba mencionados, habrían recibido amenazas mediante mensajes de texto y habrían sido seguidos y vigilados por desconocidos. Además, se ha denunciado la presencia de individuos en vehículos aparcados delante de sus casas. El 15 de diciembre de 2006, fuentes vinculadas a la inteligencia militar, revelaron al Sr. Roberto Marín un supuesto plan organizado por empresas de seguridad privadas para matar a los miembros de la ASJ.

Comunicación recibida

No se ha recibido ninguna comunicación del Gobierno.

Comentarios y observaciones del Relator Especial

149. El Relator Especial manifiesta su preocupación por la ausencia de respuesta oficial al llamamiento urgente enviado el 31 de Mayo de 2007 y urge al Gobierno de Honduras para que envíe lo más pronto posible, preferiblemente antes de la finalización de la novena sesión del Consejo de Derechos Humanos, una respuesta sustantiva al llamamiento arriba mencionado. Preocupa sumamente al Relator Especial las amenazas sufridas por los abogados de ASJ en el ejercicio de sus funciones y al respecto llama la atención sobre los Principios básicos sobre la función de los abogados, específicamente los principios 16, 17 y 18.

India

Communications sent

150. On 18 December 2007, the Special Rapporteur sent a joint allegation letter together with the Independent Expert on Minority Issues, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on violence against women on violence against Dalit Women in India. According to the information received, Dalits women and men suffer descent based discrimination in various aspects of their lives; they are also victims of violence and untouchability practices (based on notions of Dalits' supposed impurity) arising out of the caste system. While both men and women are discriminated and suffer from social exclusion, Dalit women are confronted with discrimination, exclusion and violence to a larger extent than men. They are indeed not only discriminated by people of higher casts but also by men of their own communities. The case of Dalit women is

specific because of their socio-economic positioning at the bottom of the caste, class and gender hierarchies. Dalit women face violence in the community and in their family, from State and private actors alike belonging to various castes and socio-economic groupings, and of both sexes. The major forms of violence that Dalit women are subject to are: physical and verbal abuse, sexual harassment, abduction, and sexual violence, including rape. On many occasions, cases of violence against Dalit women are not registered by the police and opportunities for intervention in the legal system are inexistent due to a general lack of law enforcement. Women are unaware of the laws protecting their rights and their ignorance is easily exploited by the perpetrators, and some members of the police and the judiciary. Allegedly, even if the cases are reported to the police, and the perpetrators arrested, they are usually released on bail and women do not receive justice as a result. The Indian government adopted the “Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act” in 1989, to prevent atrocities against Scheduled Castes and Tribes. According to this act, in cases of violence against Dalits, including physical or sexual violence against Dalit women, the police are obliged to register the case. However, the police often refuse to register the case under this act, because the act imposes high prison sentences and fines and the police may not agree with the purpose of the act and may try to protect the perpetrators (who are their fellow caste members) by not registering cases at all, or registering them under a different act. If a case is not registered under the Prevention of Atrocities Act, it is possible for the perpetrator to receive anticipatory bail which, especially in rape cases, in practice means that the case remains in full impunity. This goes against a Supreme Court judgement that ruled that anticipatory bail should not be available in cases within the Prevention of Atrocities Act (Case 1995-1198, State of M.P. & anr. vs. Respondent, Ram Krishna Balothia & anr, judgement of 6 February 1995). The Supreme Court also ruled that anticipatory bail can be denied for the purpose of investigation (Case 2005-326), which would apply to most rape cases, but this is allegedly not implemented in practice (Appeal (crl.) 326 of 2005, Adri Dharan Das v. State of West Bengal, judgement of 21 February 2005). The experts brought to the Government’s attention some specific cases which outline the impunity that seems to prevail with respect to ensuring protection and redress for Dalit women victims of physical and sexual violence. The common elements of these cases are the lack of investigation, not prosecution of alleged perpetrators. The experts expressed serious concern that the perpetrators of these acts of violence against members of the Dalit community continue to enjoy impunity and asked the Government to take all necessary measures to ensure accountability of any person guilty of the alleged violations. Moreover, they called the Government to take all necessary measures to prevent similar attacks on persons belonging to the Dalit caste in the future and to guarantee that the rights and freedoms of the aforementioned persons are respected.

Communications received

151. On 29 April 2008, the Government requested the mandate holders to provide the details of the place of occurrence (village/district/state) concerning each case included into the communication, in order to facilitate the investigations.

Special Rapporteur’s comments and observations

152. The Special Rapporteur thanks the Government for the reply regarding the allegation letter sent on 18 December 2007. He will reply to the Government’s request as soon as possible.

Iran (Islamic Republic of)

Communications sent

153. On 23 January 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, regarding the persons mentioned below. According to the information received, Ali Farahbakhsh, former reporter of the banned dailies Yas-e No and Shargh, was detained in November by security officers after he returned from a civil society conference in Bangkok about "Media and the Government". Since then and for more than 40 days, Mr. Farahbakhsh has been reportedly detained under the suspicion of espionage, though no charges have been filed against him. The Director of prisons in Teheran province has allegedly confirmed that Mr. Farahbakhsh is still in custody. Concerns have been expressed that his detention may be related to his work as a journalist and his recent participation in the said conference in Bangkok. On 18 December 2006, Mr. Javanmard, a journalist of the daily Krafto, which is based in the capital of the Kurdish region Sanadej, was arrested at his home by officials from the ministry of intelligence. Mr. Javanmard is still being held at Sanandaj prison without charges. On 27 October 2006, Mr. Hesên Rashidi, a journalist and writer, was sentenced to one year imprisonment and 5 years of suspended sentence. Mr. Rashidi has appealed the sentence during the first week of November. Reportedly the charges and the sentence brought against him are related to his activities on the promotion of the Azerbaijani identity, his engagement in research about Southern Azerbaijani history and culture and his articles and conferences on this question. It has been reported that Mr. Rashidi had no access to a lawyer during the interrogations and the proceedings, and that the court hearings were held in closed sessions.

154. On 6 March 2007, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the human rights of migrants, and the Special Rapporteur on the question of torture, regarding Mr. Abdul Rasoul Mazraeh, also known as Mr. Abdullah Abdulhamid Al Tamimi, which is the name under which he was registered with the file registration number 15010 by the United Nations High Commissioner for Refugees' office in Damascus, Syria. According to the information received, Mr. Mazraeh is an Ahwazi from the south-western region of the Islamic Republic of Iran and was accepted by UNHCR's Damascus office in Syria as refugee. He was arrested by Syrian security forces on 11 May 2006 and handed over to Iranian authorities in Tehran on 15 May 2006. Since his arrest he has not had access to a lawyer and has been detained in solitary confinement. Mr. Mazraeh is expected to go on trial in March, however, it remains unclear what charges are put against him. He was physically and mentally ill-treated while in detention. As a result, he reportedly carries blood in his urine, his liver and kidneys are not functioning and he lost all of his teeth. Furthermore, he is paralysed because his spine has been damaged. Grave concerns are expressed with respect to the physical and mental integrity and health of Mr. Abdul Rasoul Mazraeh, particularly in view of his reportedly continued incommunicado detention in solitary confinement.

155. On 30 May 2007, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, regarding Mr. Mohammad Hassan Fallahiya, journalist by profession, managing editor of

'Aqlam al-Talaba' ("The Students' Pens"), a publication issued by students from Ahvaz University in the Khuzestan province, correspondent for several Arab television and radio broadcasting news agencies including Abu Dhabi TV and Radio in the United Arab Emirates, and journalist for the Lebanese 'al-Mustaqbal' broadcasting corporation. According to the information received, Mr. Mohammad Hassan Fallahiya was detained in November 2006 and held in Section 209 of Evin Prison in Tehran. On 21 April 2007, Mr. Fallahiya was sentenced to three years' imprisonment with hard labour on charges related to allegations of publishing articles criticizing the Government and allegedly contacting opposition groups based outside Iran. He was not afforded legal representation at any point in the judicial process. Mr. Fallahiya is serving his sentence at Evin Prison. Mr. Fallahiya suffers from sickle cell anaemia, an inherited blood disorder that affects red blood cells, for which he needs regular antibiotics and access to medical examinations. In addition, he suffers from heart problems. According to his family, the prison authorities have refused to allow them to bring in supplies of his medication.

156. On 5 July 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Mr. Ali Shakeri, a peace activist and founding board member of the University of California, Irvine, Center for Citizen Peacebuilding, and Dr. Kian Tajbakhsh, a social scientist at the New School in New York who has worked as a consultant for the Open Society Institute and the World Bank. According to the information received, since early May 2007, Mr. Shakeri and Dr. Tajbakhsh have been held in section 209 of Evin Prison in Tehran on charge of "acting against national security by engaging in propaganda against the Islamic Republic through spying on behalf of foreigners". Both men are being detained incommunicado and denied access to their lawyers and families. With a view on Mr. Shakeri's and Dr. Tajbakhsh's incommunicado detention, concern was expressed for their physical and mental integrity. Further concern was expressed that their arrest and detention may be related to their peaceful activities in defence of human rights, and may form part of a pattern of harassment against human rights defenders who promote respect for human rights norms in the country.

157. On 30 August 2007, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the question of torture and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, regarding Shi'a cleric Ayatollah Sayed Hossein Kazemeyni Boroujerdi, Iranian citizen, aged 49. According to the information received, Mr. Boroujerdi's trial was held on 10 June 2007 before the Special Court for the Clergy. He was denied legal counsel. It is unclear whether he was sentenced to death or whether his case is still under consideration. Allegedly the trial is related to Mr. Boroujerdi's religious views since he supports freedom of religion and the separation between religion and politics. Mr. Boroujerdi is currently detained in Evin prison, where, on top of the severe conditions of detention, he has been beaten and had cold water spilled on him while he was sleeping. Although he suffers from Parkinson's disease, diabetes, high blood pressure and heart problems, Mr. Boroujerdi had reportedly been denied permission to seek treatment at the prison's medical facility until he started a hunger strike on 22 July 2007.

158. On 8 November 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, regarding Ms. Masoume Mansoori, student from Amir Kabir University. According to the information received: Ms. Mansoori was arrested on and has been detained incommunicado since 25 October 2007 in Tehran at an undisclosed place of detention after having attempted to collect her father's belongings from the public prosecutors' office. Mr. Mansoori had been detained for reasons yet unknown in September 2007. Mr. Mansoori's family had been threatened with detention before when they inquired with the competent court about his whereabouts. Officials from the Ministry of the Intelligence of the Islamic Republic of Iran had previously telephoned the Mansoori family a number of times insisting either to cease following up on Mr. Mansoori's situation or to face detention. They were also warned not to discuss his arrest with the media. Ms. Mansoori received a call 14 days prior to her arrest and detention from members of the Ministry and was threatened not to participate in any demonstration. It is believed that her recent arrest is connected with her activities in the recent demonstrations. After her arrest, officials from the Ministry also called her brother and urged him not to speak with anyone about her arrest or to seek the legal counsel of Mr. Abdolfattah Soltani taking-up Mr. Mansoori's case. Ms. Mansoori is suffering from nervous predicaments. In view of her alleged incommunicado detention at an unknown place, concern is expressed that Ms. Mansoori might be at risk of ill-treatment. Further concern is expressed for her state of health since it is reported that she would face grave consequences should her medical treatment be discontinued.

159. On 15 November 2007, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, concerning the situation of Mr. Abdolfattah Soltani, a lawyer at the Bar of Tehran and a founding member of the Defenders of Human Rights Centre (DHRC). According to the information received, Mr. Soltani was invited by the non-Governmental organisation International Federation of Human Rights to participate in a conference on "Freedom of expression in Iran" that was held at the Sorbonne university on 27 October 2007 in Paris. However, Mr. Soltani was unable to travel to France because his identity documents (i.e. passport and family record book) have not been returned to him yet after his acquittal on 28 May 2007 of all charges that were pending against him since July 2005. Concern was expressed that the abovementioned interference with the freedom of movement of Mr. Soltani may be linked to his peaceful activities in defence of human rights.

160. On 23 January 2008, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Mr. Sa'id Metinpour, a human rights defender advocating Azerbaijani linguistic and cultural rights in the Islamic Republic of Iran. According to new information received, Mr. Metinpour, who has been in detention for eight months, has had no access to a lawyer. He was transferred to Section 209 of Evin Prison in Tehran on 4 December 2007, where he was permitted his first family visit since his arrest. Before being transferred to Evin prison Mr. Metinpour spent 205 days in solitary confinement. He also had objects, such as slippers and jugs, inserted into his mouth by officials. The mandate holders highlighted that Mr. Metinpour was in urgent need of medical attention due to a dermatitis contracted during his detention. The mandate holders expressed their serious concern for Mr. Metinpour's physical and psychological integrity while in detention.

161. On 5 February 2008, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders, regarding the arrest of Mr. Behrouz Seferi, Iranian Azerbaijani human rights activist and his wife, Ms. Layla Heydari. According to the information received, Mr. Behrouz Seferi, who had campaigned for Iran's Azerbaijani minority to be given greater rights to use their mother tongue, has been detained without charge or trial since late May or early June 2007. He has not been allowed to consult a lawyer. Mr. Seferi was arrested shortly after demonstrations around the first anniversary of the publication of a cartoon in an Iranian newspaper which many Iranian Azerbaijanis found offensive. He was held in his home town of Zanzan until 4 December 2007, when, according to sources, he was moved to Evin Prison. Reportedly, his wife, Ms. Layla Heydari, has been detained since 28 August 2007. According to the information received, Ms. Heydari ran a shop selling Azerbaijani books, music and other cultural material until the authorities closed it down in 2006. She obeyed official warnings not to publicise her husband's arrest, but on 28 August 2007 she was summoned to visit him at the Ministry of Intelligence detention centre where he was held at the time, and was arrested. She too was moved to Evin Prison on 4 December 2007.

162. On 12 February 2008, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Mr. Amin Ghaza'i, writer, chief editor of an electronic journal called "ArtCult", and prominent member of an organisation called "Students for Freedom and Equality" ("Daneshjouyan-e Azadi Khah va Beraber Talab"). According to the information received, Mr. Amin Ghaza'i was arrested in Tehran on 14 January 2008 at a meeting along with 14 other students. He is currently being held without charge or trial in solitary confinement in Section 209 of Evin Prison in Tehran and has been ill-treated. On 15 January 2008 the police searched Mr. Ghaza'i's home and confiscated his computer and papers. On 30 January 2008, Mr. Ghaza'i was allowed a three minute telephone conversation with his family in the presence of guards, during which he appeared to be intimidated. Apart from this phone call Mr. Ghaza'i has not been allowed access to his family or a lawyer. Mr. Ghaza'i suffers from a peptic ulcer, heart problems, and asthma. Mr. Ghaza'i has published articles on the internet and written books about gender identity and has translated into the Persian language books on the subject, which are banned in the Islamic Republic of Iran.

163. On 10 March 2008, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders, regarding the arrest of Mr. Reza Daghestani, an Azerbaijani rights activist, at his family's house in the city of Oroumiye. Mr. Reza Daghestani is the editor of a student newsletter, Chamlibel, published in both Azerbaijani Turkic and Persian and he has written for several other publications; he started a series of Azerbaijani Turkic classes in the town of Naghadeh and established groups to organize peaceful demonstrations in the province of West Azerbaijan in connection with International Mother Tongue Day on 21 February. He was a member of the committee of a campaign group called Urmu Azerbaijan Sesi, which actively supported several would-be

candidates from Oroumiye who all were disqualified from standing for the Majles (parliament) elections to be held on 14 March. According to information received, during Mr. Daghestani's arrest on 21 February 2008, his house was searched and his computer, CDs, papers and books were confiscated, along with printouts of his newsletters. Mr. Daghestani called his family on 22 February 2008, saying he was being held in a detention centre belonging to the Ministry of Intelligence in Oroumiye. Mr. Daghestani has had no access to a lawyer and his family. When his family tried to visit him on 25 February, they were told that visits would not be allowed until at least 10 March. The experts expressed their fear that Mr. Daghestani may have been tortured to force him to provide information, as security forces searched his house a second time on 26 February and appeared to know where to find other papers and books.

Communications received

164. On 28 February 2007, the Government replied to the joint urgent appeal of 23 January 2007 indicating that Mr. Ali Farahbakhsh has been charged with "espionage". His legal dossier has been examined by the Office of Public Prosecutor and has been sent to the relevant court. Regarding Mr. Javanmard, he has been charged with "measures against the security of the country" by participating in the riots in the City of Sanandaj (Western Iran) on 1st August 2005. He has been sentenced to 5 years of imprisonment. This sentence has been commuted by the appellate court to 2 years. It is important to note that the above mentioned person continued his actions against the country even during the period of his trial and was detained again for his second charge. He is serving his prison term for his first sentence. Regarding Mr. Hesên Rashidi, the local judiciary authority of both Western and Eastern Azerbaijan have announced that they did not find any record of such person in their database. The issue will be re-examined if the source can provide complete details of this person. The first name is an irregular name in Iran.

165. On 23 August 2007, the Government replied to the joint urgent appeal of 6 March 2007 indicating that Mr. Abdul Rasoul Mazraeh is the head of the military wing of the terrorist group known as "MIAAD" and following participation in several terrorist operations, he had illegally fled from Iran to Syria, where, subsequent to his identification by the local pertinent authorities, as well as the issuance of writ of arrest by INTERPOL, he was arrested and extradited to the Islamic Republic of Iran. All the allegations reflected in the above-mentioned letter, including torture, his illness in prison, lack of access to lawyer as well as to his family are categorically denied. Mr. Mazraeh has been in good health. He has, frequently, met his family, and has made phone calls to them. Besides, he has enjoyed two times of city leave (out of prison, under police control) in December 2006 and March 2007. This case is presently going through investigation and legal proceeding in the competent court with the information and presence of Mr. Mazraeh's defense lawyers at different stages. No final verdict is, yet, issued.

Special Rapporteur's comments and observations

166. The Special Rapporteur thanks the Government of Iran for its cooperation and its response to his communication of 23 January 2007 and of 6 March 2007. However, regarding the response dated on 28 February 2007, the Special Rapporteur remains deeply concerned about the long period of time in which Mr. Ali Farahbakhsh and Mr. Javanmard have been detained without any formal charges. He is also very concerned by the affirmation made by the local judiciary authority of both Western and Eastern Azerbaijan that Mr. Hesên Rashidi has no records in their

database. The Special Rapporteur requests the Government to indicate whether he continues to be detained, as well as to indicate which measures have been taken to guarantee his rights. The Special Rapporteur is also concerned at the absence of reply to its communications of 30 May 2007, 5 July 2007, 30 August 2007, 8 November 2007, 15 November 2007, 23 January 2008, 5 February 2008, 12 February 2008 and 10 March 2008, and urges the Government to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Iraq

Communications sent

167. On 9 May 2007, the Special Rapporteur sent an urgent appeal regarding Mr. Muhammad Shami, a lawyer in Iraq. According to the information received, on 4 April 2007, Muhammad Shami left work earlier than usual. The same afternoon, two of his colleagues were shot dead at their desks in his office. Since then, Mr. Shami has not returned to his office for fear of being attacked. Mr. Shami and his colleagues have received many threats over the past three months for exercising their profession. Mr. Shami has been informed by his colleagues that after 4 April, masked men have come to his office and have been looking for him. These men left a message on the door saying: "You remained and should be killed", when they could not find him in the office.

168. On 13 June 2007, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture regarding Mr. Muhammed Khalid Shelal, born in 1973, who is the brother of a staff member of the United Nations Assistance Mission for Iraq (UNAMI). According to information received, Mr. Shelal was arrested by Iraqi authorities 6 March 2007 at 4 am without an arrest warrant produced and is currently held at Al-Harthia detention centre, where he has reportedly been ill-treated. Mr. Shelal received one visit by members of a Ministry of Justice's Observatory Committee, who took pictures from Mr. Shelal, allocated case number 14111 to him and submitted information on his case to the Ministry for Human Rights. On or around 17 April 2007, the Ministry for Human Rights' Prison Monitoring Team conducted its own visit to Al-Harthia. Mr. Shelal has been denied access to legal counsel and to his family. In view of his incommunicado detention and the allegations above, concerns were expressed that Mr. Shelal might be a risk of ill-treatment.

169. On 13 June 2006, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture regarding Mr. Ghasan Ibrahim Hussein, Mr. Ibrahim Mustafa Abdulrahman Ayash, a 70 year old man, a retired teacher, Mr. Jamal Khalil Abdulrahman, Mr. Mohammed Khalid Ahmed, Mr. Kamal Ribhi Asa'ad, Mr. Ra'fat Mohammed Awath, and Mr. Salih Mustafa Lutfi, all of whom are Palestinian refugees. According to information received, the seven men mentioned above were among a group of Palestinians, who were arrested on 13 and 14 March 2007, respectively, at the compound Al-Baladiyat in Baghdad. The arrests were carried out by the 4th Brigade of the Special Forces of the Ministry of the Interior, and police officers from al-Rashad Police Stations. These forces were accompanied by MNF-I troops. The men were initially detained in the near-by al-Rashad Police Station. Starting from 23 March 2007 the Ministry of the Interior began to transfer them to the Serious Crimes

Unit detention facility in Al-Adhamiyah, and from there to the Serious Crime Unit - Eastern Canal (the former Al-Hakimiyah Directorate) in Baghdad, where they are currently detained. Both detention facilities are run by the Ministry of the Interior. Seemingly the detainees are shifted back and forth between the two facilities. The exact dates of transfers and persons concerned are not known in its entirety, but it has been reported that, on 24 April 2007, upon an order of the competent judge attached to the Serious Crimes Unit at Al-Adhamiya, these men were transferred from there to the Serious Crimes Unit - Eastern Canal. At the Serious Crimes Unit - Eastern Canal they were interrogated and ill-treated for four hours. Thereafter, they were taken back to the Serious Crimes Unit office building in Al-Adhamiya. On 29 April 2007, the authorities decided to transfer the above-mentioned detainees again to the Serious Crimes Unit - Eastern Canal, however, their lawyer successfully instituted legal proceedings to prevent the transfer. On 2 May 2007 they were transferred from the Serious Crimes Unit in Al-Adhamiya, to the Serious Crimes Unit - Eastern Canal. On 8 May 2007 and on the following day, the detainees' lawyers went to the Serious Crimes Unit - Eastern Canal to provide their clients with food and money, however, they were prevented by the officers to meet with them. On 9 May 2007 one of the lawyers was briefly detained for two hours by officials at the Serious Crimes Unit - Eastern Canal. The Palestinians are charged with terrorism related crimes. Until end of May, none of them have yet been allowed to receive visits from their lawyers or families. In the absence of any incriminating evidence against them it is believed that the competent judge would have been willing to issue a decision for a release on 24 April 2007. It is also believed, however, that the judge has declined to do so out of fear of reprisals and ordered their transfer to the Serious Crimes Unit - Eastern Canal. It is alleged that the investigating officer, Mr. Khalid Al-Jaffari, and another officer, Mr. Ahmed Al-Asady, were involved in fabricating evidence against the detained Palestinians. Mr. Al-Jaffari reportedly made photomontages of the detained Palestinians, seemingly holding explosives, for use as evidence of guilt in court. After their interrogation and ill-treatment at the Serious Crimes Unit - Eastern Canal on 24 April 2007, two of the detainees, Mr. Ghasan Ibrahim Hussein and Mr. Jamal Khalil Abdulrahman, were allegedly severely ill-treated again by the investigator, Mr. Al-Jaffari, in order to extract false confessions from them. In view of their incommunicado detention grave concerns were expressed that the seven men might be subjected to ill-treatment. Further concerns are expressed as regards their state of health, specifically with respect to Mr. Ibrahim Mustafa Abdulrahman Ayash, who is reportedly an elderly man suffering from schizophrenia.

170. On 13 June 2007, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, regarding Mr. Jihad Mahmoud Humadi Al-Dulaimi, Mr. Munther Khudair Abbass Al-Dulaimi, Mr. Talal Khudair Abbass Al-Dulaimi, Mr. Abd Al-Karim Shaker Mahmoud Al-Akeedi, Mr. Omar Abbass Jawad Al-Ta'ee, Mr. Ra'ad Sabar Najim Al-Dulaimi, Mr. Bashar Latif Hameed Al-Dulaimi, Mr. Mustafa Latif Hameed Al-Dulaimi, Mr. Omar Jihad Abd Al-Jabar Al-Dulaimi, Mr. Ahmed Jasim Mohammed Al Jubouri, Mr. Omar Abbass, Mr. Abed Baker Abed, Mr. Ali Sa'eed Al-Azawi, Mr. Esam Satar Mahmoud Al-Dulaimi, Mr. Mus'ab Ali Enad Al-Azawi, Mr. Salah A'arif Alwan Al-Azawi, Mr. Majid Hameed Sabri Sultan, Mr. Ahmed Abbass Mahmoud Al-Akeedi, Mr. Ali Abbass Mahmoud Al-Akeedi, Mr. Qusai Numan Khathim Shihab, Mr. Alaaldeen Hussein Khathim Al-Marsoumi, Mr. Amer Majid Al-Janabi, Mr. Thair Jalal Mohammed, Mr. Ali Nasir Kareem Al-Nidawi, Mr. Waleed Mohammed Abd Al-Shujairi, Mr. Mustafa Mohammed Abd Al-Shujairi, Mr. Ahmed Abd Al-Khaliq Younis Al-Hariri, Mr. Hameed Hussein Alwan Jado'o Al-Obaidi,

and Mr. Ali Ewai'ed, all of whom are Sunni men, aged between 20 and 30 years. According to the information received: the above-mentioned persons, together with about 20 to 24 other young Sunni men, who have since been released, were arrested on 3 March 2007 at about 1:30 a.m., by Iraqi Army Forces in Baghdad, Street No. 15 and 17, Q. 324, Dis. Al-Shamasiya, Al-Sulaik area. While Multi-National Forces in Iraq (MNF-I) cordoned off the area, the Iraqi Army Forces carried out the arrests and searched their homes. It is not known whether an official arrest warrant was shown. Allegedly, 1.5 million Iraqi dinars were taken by the forces from one of the searched homes. Thereafter, the arrested persons were transferred to the Iraqi Army Investigation Centre, which is located in the Security School in the Sader Al-Qanat area. While the first group of detainees was released on 4 March 2007, the remaining 29 detainees mentioned above were transferred to an undisclosed detention centre of the National Police Force of the Ministry of the Interior, possibly in the al-Qanat area. There is reportedly a release order for at least some of the detainees issued by a competent judge about a month ago. It is not clear whether the release order covers all of the detainees or just some of them, but no detainee has yet been released. Some of the detainees' families are still unable to visit their detained relatives. The family members were told that they could make their visits only after the court proceedings. In view of their incommunicado detention, grave concerns were expressed that these persons might be subjected to ill-treatment in order to extract confessions.

171. On 28 June 2007, the Special Rapporteur sent an allegation letter, concerning the situation of judicial staff, in particular lawyers that are being targeted through threats against their safety, for exercising their profession in accordance with national legislation. According to information received, as a consequence of tensions between the Sunni and the Shia communities in Iraq, lawyers are being put under intense pressure, in particular when they handle cases concerning women's rights, issues of inheritance and the division of assets in a divorce, honour killings and adultery. Since the views on the resolution of those cases differ based on divergent interpretations of Islam, some lawyers are not taking on such cases for fear of violent reprisals. In this context, every day, hundreds of lawyers in Iraq are being threatened and many have been asked to abandon their cases. In some cases, lawyers have been violently attacked. Hence, many lawyers have already left the country because of threats and fears of persecution. This situation causes important delays in judicial processes so that rights of defendants and clients are being denied. Over the past year, the number of lawyers offering services in Iraq has reportedly decreased by at least 40 percent. At least 210 lawyers and judges have been killed since 2003, in addition to dozens injured in attacks against them. For example, on 29 July 2006, the well-known lawyer and professor Salah Abdel-Kader was shot dead in his office. Mr. Abdel-Kader had handled cases of honour killings and cases of child custody claims. After he was killed, a note was found near his body, saying "this is the price to pay for those who do not follow Islamic laws and defend what is dreadful and dirty". Furthermore, on 18 April 2007, two unnamed lawyers were killed after winning a case for a family who had had their house and belongings taken over by another family. The lawyers were shot to death by the other party of the case while leaving the court, in the middle of the street. Concern is expressed that those responsible for the murders of Mr. Abdel-Kader and the other two lawyers have not been charged, nor is any investigation procedure put in place. Furthermore, it is of grave concern that lawyers in Iraq are not provided the opportunity to work in safety, without risking their lives or without interference. Concern were also expressed that citizens do not appear to receive adequate legal assistance from lawyers who take up their cases.

172. On 4 July 2007, the Special Rapporteur sent an allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Mr. Said Mustafa Said, representing detainees who were the subject matter of a joint urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture on 13 June 2007. While the mandate holders appreciate that all the detainees mentioned in this urgent appeal were released on 18 June 2007 from the detention facility at the Serious Crime Unit - Eastern Canal/al-Hakimiyah, they expressed their concern about Mr. Said's killing on or after 21 June 2007. According to information received, on 21 June 2007, Mr. Said left his office and has reportedly been last seen in the Serious Crime Unit - Eastern Canal. On 24 June, Mr. Said's body was found by his family in the Medical Legal Institute in Baghdad. He had received death threats for representing his clients before. Grave concerns were expressed that the death of Mr. Said Mustafa Said is related to his activities in defense of human rights.

173. On 24 January 2007, the Special Rapporteur issued the following press release:

**HUMAN RIGHTS EXPERTS REITERATE CONCERN OVER DEATH SENTENCES
IMPOSED BY IRAQI HIGH TRIBUNAL**

“The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Leïla Zerrougui, issued the following statement today:

The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Leïla Zerrougui, remain concerned about the death sentences imposed upon Saddam Hussein and two co-defendants linked to his regime and are deeply alarmed by the manner in which the executions were carried out.

‘International law allows the imposition of capital punishment only within rigorous legal constraints, including respect of fair trial standards. However, these standards were not guaranteed by the Iraqi High Tribunal.’, the independent human rights experts highlight.

Former Iraqi Vice President Taha Yassin Ramadan is likely to be sentenced to death at a hearing before the Iraqi High Tribunal on 25 January, according to a statement by the court's spokesperson. Taha Yassin Ramadan was convicted in November in connection with crimes against humanity committed in the town of Dujail in 1982, but the Tribunal's Appeals Chamber ruled in its decision of 26 December that a life sentence for Ramadan was too lenient and ordered the court to re-sentence him.

A number of international bodies and experts have pointed to irregularities concerning the Iraqi High Tribunal's trial against Saddam Hussein and seven other defendants and to the lack of respect for due process rights. Among the main concerns highlighted by the Special Rapporteur on the independence of judges and lawyers is the violation of a number of international human rights standards on the right to be tried by an independent and impartial tribunal and on the right to defense. In this regard, there have been numerous

reports of external pressure imposed upon the judges of the Iraqi High Tribunal, which appear to have led to the removal and resignation of some of them. Also, the right to an appropriate and independent defense is severely undermined, in particular by the extremely serious attacks against defense lawyers.

Also, on 1 September 2006 in its Opinion No. 31/2006, the Working Group on Arbitrary Detention considered that the non-observance of the relevant international standards during Saddam Hussein's trial was of such gravity as to confer his deprivation of liberty an arbitrary character and invited the Governments of Iraq and the United States to give serious consideration to the question of whether a trial of Saddam Hussein in conformity with international law is at all possible before an Iraqi tribunal in the current situation in the country, or whether the case should not be referred to an international tribunal.

Moreover, the Special Rapporteur on extrajudicial, summary or arbitrary executions also indicated that when defense lawyers are murdered, the rule of law is doubly at stake. The assassination of defense attorneys appearing before the Iraqi High Tribunal threatens the entire procedure, since the role of defense lawyers is critical to a fair trial.

Finally, at the beginning of January, the United Nations High Commissioner for Human Rights, Louise Arbour, and the United Nations Secretary-General, Ban Ki-moon, both called on the Government of Iraq to refrain from carrying out the death sentences imposed by the Iraqi High Tribunal.

In light of the gravity of the shortcomings of the trial against Saddam Hussein and his seven co-defendants, the experts strongly call upon the Iraqi authorities to suspend without delay any further executions until it is ensured that a fair trial is provided to those accused under their jurisdiction, in full respect of all due process guarantees required by international human rights law.”

174. On 16 March 2007, the Special Rapporteur issued the following press release:

**UNITED NATIONS HUMAN RIGHTS INDEPENDENT EXPERT REITERATES
CONCERNS ABOUT DEATH SENTENCE ON FORMER VICE PRESIDENT OF IRAQ**

“Following the recent dismissal of the appeal by Taha Yassin Ramadan against the death sentence imposed by the Iraqi High Tribunal, the Special Rapporteur on the independence of judges and lawyers deems it necessary to reiterate his concerns expressed earlier in his press statements of 28 December 2006 and of 24 January 2007.

In its decision of 12 of February 2007, the Appeals Chamber of the Iraqi High Tribunal had not addressed the grave shortcomings of the first instance trial, but had expressed dissatisfaction with the life sentence imposed on Ramadan, describing it as too lenient, and had sent his case back to the trial court for it to be increased to death, shortly after the much criticized executions of Saddam Hussein, Barzan Ibrahim al-Tikriti and Awad Hamad al-Bandar. On 14 March 2007, all nine members of the appeals court ratified the death sentence on Taha Yassin Ramadan.

The shortcomings of the trial are related to the lack of observance of international human rights standards and principles, in particular the right to be tried by an independent and impartial tribunal and the right to adequate defense, as stipulated inter alia in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The Iraqi High Tribunal has violated international standards on due process: therefore it is not in a position to sentence Taha Yassin Ramadan to death.

The Special Rapporteur urges the Iraqi Government not to carry out the death sentence imposed upon Taha Yassin Ramadan following what appears to have been a procedurally flawed legal process.”

175. On 19 June 2007, the Special Rapporteur issued the following press release:

**SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS
CALLS FOR HALT IN APPLICATION OF DEATH PENALTY IN IRAQ**

“In light of the continued application of the death penalty in Iraq following procedurally flawed legal processes, the Special Rapporteur on the independence of judges and lawyers deems it necessary to reiterate his concerns in this regard, as expressed earlier in his press statements of 16 March 2007, 28 December 2006 and of 24 January 2007.

In those statements, the Special Rapporteur described the most serious shortcomings of the procedure followed by Iraqi High Tribunal. He notably referred to the lack of observance of the right to be tried by an independent and impartial tribunal and of the right to adequate defense, as stipulated inter alia in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The violence, threats and intimidation to which judges and lawyers are subjected in the country, illustrated amongst others by the very high number of assassinations of defense lawyers in the country, greatly contribute to impinge on their independence.

In this context, the Special Rapporteur urges the Iraqi Government to stop carrying out death sentences imposed following trials conducted in violation of international human rights standards and principles, including the death sentence against Mahmoud Sa’eed who has confessed having participated to the deadly attack against the headquarters of the United Nations in Baghdad in August 2003, where Sergio Vieira de Mello, Special Representative of the Secretary-General in Iraq, and a number of other UN staff members have been killed.

The application of the death penalty, beyond its illegality under circumstances where strict due process standards have not been followed, also attempts to the right to the truth of the victims and their families, notably the victims of the Saddam Hussein regime. In the present case, it would also deprive the families of the victims of the attack to the UN headquarters in Baghdad of the only information they could have on those tragic events.”

Communications received

None.

Special Rapporteur's comments and observations

176. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Iraq to provide at the earliest possible date, and preferably before the end of the 9th session of the Human Rights Council, a detailed substantive answer to the above allegations. Particularly he expresses his concern in relation to the lack of guarantees for lawyers to perform their professional duties without risking prosecution, including of a criminal nature. He fears that human rights victims have more and more difficulties in finding a legal counsel to defend their rights. In this context and taking into account that recently there have been several cases of lawyers and judges arrested because of their professional activities, he urges the Government to adopt as soon as possible appropriate measures to guarantee that lawyers can perform their duties safely and independently, without being prosecuted.

Israel

Communications sent

177. On 17 October 2006, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders, concerning the closing down of the offices of the organisation Ansar Al-Sajeen (Prisoners Friends' Association) in Israel and in the West Bank, and the search of the house of Mr. Munir Mansour, Chairperson of Ansar Al-Sajeen. Ansar Al-Sajeen is registered under Israeli law, and is one of the largest providers of legal representation to Palestinian detainees in Israeli military courts. It pays legal visits to Palestinian prisoners incarcerated in Israel and advocates for their rights. It also works with prisoners' families in need and has facilitated Palestinian family visits. According to the information received, on 8 September 2006 in the early morning, the offices of Ansar Al-Sajeen in Tirah, Majd El-Kurum and throughout the West Bank were raided and closed down by the police and the Israeli Shin Bet following the issuance by the Israeli Defense Minister of an administrative order, in accordance with article 84-2B of the Defense (Emergency) Regulations (1945), declaring Ansar al Sajeen as illegal. The police reportedly confiscated the organisation's assets, including 14,000 shekels dedicated to prisoners and their families, hundreds of legal files and documents, telephones, photocopying machines and computers. It is reported that the closure occurred soon after the association launched a campaign to include the cases of 1948 Palestinian prisoners, citizens of Israel, in the current talks for the exchange of prisoners. The organisation would have reportedly decided to appeal the order. On the same day, reports indicate that the house of Mr. Mansour, Chairperson of Ansar Al-Sajeen, was searched by the police and members of the Shin Bet. Mr. Mansour was reportedly questioned for one and half hour, and his mobile telephone was confiscated. Concerns were expressed that the closing down of the offices of Ansar Al-Sajeen in Israel and in the West Bank as well as the search of the house of its Chairperson may be in retaliation for the legitimate activities of the organization in defence of the rights of Palestinian prisoners detained in Israel.

178. On 25 October 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, concerning the detention of Mr. Ahmad Abu Haniya, a Palestinian human rights activist and Youth Project Coordinator in the Alternative Information Centre, a joint Palestinian-Israeli

organisation based in Jerusalem which promotes human rights and advocates social change in the region. According to the information received, on 22 May 2005 Mr. Haniya was arrested at an Israeli military checkpoint on his way to work. He was subsequently detained under an administrative detention order and has been accused of membership of the Palestinian Front for the Liberation of Palestine (PLFP) and also membership of a group called Al-Islamia. He is reported to be detained at Ketziot detention centre in the Negev. The administrative detention order against him has been renewed twice since he was first detained. Under the terms of an administrative detention order, the authorities are neither required to file charges against the detainee nor to bring the case to trial. The order is usually for a determined period of time but is often renewed before it expires and it can be renewed indefinitely. Neither the defendant nor his legal representative are entitled to view the "classified" evidence against the defendant. The current order is due to expire on 15 November 2006 but it is feared that it may be renewed. Concern is expressed that Mr. Ahmad Abu Haniya may be detained in order to prevent him from carrying out peaceful activities in defence of human rights.

Communications received

179. On 7 February 2007, the Government responded to the joint allegation letter of 17 October 2006, stating that on 31 August 2006, based on the authority granted to him by Regulation 84 of the Defense Regulations (Emergency) 1945, Minister of Defense Mr. Amir Peretz declared Ansar al-Sajeen, an association registered and incorporated in Israel, to be an illegal organization. Soon after the above declaration of the Defense Minister, the Commander of the Israeli Defense Forces (IDF) in Judea and Samaria also declared the organization to be illegal in the West Bank, and ordered the shutdown of all eight branches of the association in Hebron, Bethlehem, Ramallah, Nablus, Salfit, Qalgilya, Tul Karem and Jenin. Ansar Al-Sajeen is headed by Munir Mansour, a former security prisoner who currently resides in Majad al-Karum. Its branches in the West Bank are operated by known members of Hamas, some of whom are also former security prisoners. On the night of 7 September 2006, following the outlawing of the association, Israeli police from the Galilee district, together with the Israel Security Agency (ISA), seized the association's property in Israel. At the same time, IDF closed down its branch offices and seized its property in the West Bank. The association was outlawed due to the fact that it operates a well-oiled apparatus for the transfer of money primarily from Hamas to security prisoners in Israeli prisons and their families. The ISA and Israel's security apparatus view the transfer of money from Hamas to security prisoners in Israel as a reward for committing terrorist acts and an encouragement to others to follow suit. Therefore, Israel's security services are compelled to continue their operations in an effort to thwart this kind of support for terrorist activity. However, it should be emphasized that the right to assembly is recognized as a fundamental right in Israel which can be limited only in extreme cases due to security considerations and concerns about public safety. Such decisions to limit this right must be based on concrete information and reviewed by the Minister of Defense. Any decision regarding such decisions can be challenged by the association in question and brought before the Israeli Supreme Court, sitting as the High Court of Justice.

180. On 9 August 2007, the Government replied to the joint urgent appeal of 25 October 2006, explaining that Israel has been struggling with terrorism from the day it was founded. In recent years, the number of terrorist attacks grew significantly, and Palestinian terrorists have been targeting Israeli civilians more viciously than ever before, including in pizzerias, shopping malls,

cafeterias, and buses. Particularly horrendous was March 2002, when more than 80 Israeli civilians were killed, and more than 400 were injured. Overall, from September 2000 until February 2007, 1,121 Israeli civilians were killed and 8,147 were injured. One of the most effective and lawful counter-measures against such continuous terrorist attacks is the use of administrative detentions. However, it is important to note that this measure is only used in exceptional circumstances. Where sufficient and admissible evidence exists against an individual, the authorities are required to bring that individual to trial, rather than adopt such measures as administrative detention. Nonetheless, in some situations, there may be clear, concrete and trustworthy evidence against an individual, but for reasons of confidentiality and protection of intelligence sources, it cannot be presented as evidence in ordinary criminal proceedings. It is under such circumstances that administrative detentions are imposed. Issuance of administrative detention orders against detainees who pose a danger to public security in a defined area, in situations such as outlined above, are recognized by international law and are in full conformity with article 78 of the Fourth Geneva Convention 1949. Moreover, the measure is only used in cases where there is corroborating evidence that an individual is engaged in illegal acts that endanger the security of a particular area and the lives of civilians, and each order is subject to judicial review. It is important to note that an administrative detention order is limited to six months in duration, and its extension requires a re-evaluation of the relevant intelligence material, as well as further judicial review. Furthermore, local legislation governing the process grants all relevant individuals the right to appeal the order to the Military Court of Appeals, for judicial review. Petitioners may be represented by counsel of their choice at every stage of these proceedings. All detainees have the additional right to petition the Israeli High Court of Justice for a repeal of the order. The judicial organs reviewing each and every order carefully examine whether the criteria outlined in case law and legislation are fully met.

181. Regarding the case at hand, according to information forwarded to us by the relevant authorities, Mr. Abu Haniya was arrested on 18 May 2005, and an order for his administrative detention was issued for six months. This order was extended three times and on 13 November 2006, the military commander of the Area issued an order renewing Mr. Haniya's administrative detention for a further six months, until 14 May 2007. The order was renewed in light of the danger Mr. Haniya posed to the security of the Area, as an activist in the Popular Front terror organization. The order was judicially reviewed by a military court on 20 November 2006, who ruled that the detention period should be reduced, until 30 November 2006. The prosecution appealed this decision, and on 28 November 2006, it was overturned by the military court of appeals. The court examined confidential material and stated that it included many details, from various credible sources, some of which intersected and verified each other. Some of the details were of substantial severity. The court examined the information in the presence of agents from the Israel Security Agency. Based on it, and the agents' clarifications, the court concluded that the military commander of the Area had reasonable grounds to assume that in light of decisive security justifications and the future danger assessment, the safety of the Area and the public required that Mr. Haniya remain in custody. Thus the military court of appeals ruled that the detention order, as it was originally issued by the military commander of the Area, should remain in effect until 14 May 2007. When this administrative detention order expired on 14 May 2007, it was not renewed and Mr. Haniya was accordingly released.

Special Rapporteur's comments and observations

182. The Special Rapporteur thanks the Government of Israel for its cooperation and values its efforts to provide substantive information in response to the concerns expressed on letters sent on 17 October 2006 and on 25 October 2006.

Italy

Communications sent

183. On 25 September 2007, the Special Rapporteur sent an allegation letter, concerning intelligence and espionage activity in relation to Italian and European magistrates and magistrates' associations, including the Italian association Magistratura democratica (Md) and the European association Magistrats européens pour la démocratie et les libertés (MEDEL). According to the information received: on 5 July 2006, the Office of the Prosecutor of Milan, during a search in the offices of the Italian Intelligence and Military Security Services (SISMI), found material that reveals illegal espionage activity by SISMI concerning judges and judges associations in Italy and in Europe. As a consequence, on 7 November 2006, the Consiglio Superiore della Magistratura (CSM) opened an investigation in relation to those allegations, and requested the Office of the Prosecutor of Milan to provide it with documentation relating to the above-mentioned search and the related investigation. On the basis of the material received, which includes documents taken during that search, on 4 July 2007 the CSM unanimously adopted a resolution condemning the alleged serious illegal espionage activities undertaken by SISMI, which were aimed at interfering with the independence of the Italian judiciary. In particular, according to that resolution, from July 2001 until May 2006 SISMI conducted intelligence activity vis-à-vis Italian and European judges, as well as the judges' associations they had joined, in particular Magistratura democratica and MEDEL. The director of SISMI was regularly informed of this activity. It appears that no specific or illegal act was reproached to the magistrates that have been included in the SISMI list: the only justification for this intelligence activity was that the magistrates were considered to be from the "centre-left", based on decisions they had taken or opinions they had expressed in public fora. The activity of SISMI consisted in filing information about each of these magistrates, closely monitoring their activities, their movements and their electronic correspondence, including through infiltrating the internal mailing list of judges' associations such as MEDEL. This appears to amount to a serious violation of the right to privacy of the mentioned magistrates. Moreover, the SISMI activity also specifically aimed at obstructing the professional activity of those magistrates and associations, by dissuading them from carrying out activities or taking decisions considered to be against the interest of the Government. Among others, the documents would explicitly refer to neutralizing politico-judicial activities of Italian magistrates, or coming from abroad, that directly concern members of the Governmental coalition in place at that time and/or members of their families. They would also refer to trying to prevent the financing of such activities, at the national and European level. This strategy was followed by concrete interventions, such as accessing confidential emails of magistrates and mailing lists of MEDEL, disseminating reports containing false information about activities of MEDEL, preventing magistrates from participating in the work of international institutions, or discrediting them thus damaging not only their dignity but also the independent exercise of their profession. As a matter of fact, the Special Rapporteur expressed his deep concern to note that such kind of activities, which do not seem to fall within the sphere of competency of SISMI, a body in charge of informative and security tasks aimed at

protecting, from the military perspective, the independence and integrity of the State from any threat or aggression, have been conducted for almost 5 years in the country, the Director of SISMI being allegedly aware of it. As you're the Government is fully aware, monitoring, influencing and blocking judicial activities and opinions expressed by magistrates, as well as interfering in their nomination, amount to a very serious violation of the basic principle of the independence of the judiciary, which is a cornerstone of the Italian Constitution and its democratic system, and of the human rights conventions ratified by Italy.

Communications received

None.

Special Rapporteur's comments and observations

184. The Special Rapporteur regrets the absence of an official reply and urges the Government of Italy to provide substantive detailed information to the allegation letter sent on 25 September 2007 at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council.

Jordan

Communication sent

185. On 13 June 2007, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on the question of torture regarding Mr. Issam Mahamed Tahar Al Barquaoui Al Uteibi, aged 49, writer and theologian, detained at an unofficial place of detention. According to the allegations received, he was arrested on 5 July 2005 following an interview with Al Jazeera, in which he criticised the US occupation of Iraq. The Vice Prime Minister indicated in a public statement that he was charged with "contacts with foreign entities considered terrorist". He was then held incommunicado for more than a year, following which the General Intelligence Directorate authorized his family to visit him. Mr. Al Uteibi was repeatedly ill-treated while in detention. Notably he was severely beaten in his cell on 25 April 2007 because he asked to see a judge or be released. He went on a hunger strike on 15 May 2007 to protest his detention without a judicial decision and lack of access to a lawyer. Mr. Al Uteibi had been arrested already on 28 November 2002 together with 11 other persons and accused of "plotting to commit terrorist acts". He was acquitted by the State Security Court on 27 December 2004. However, after the acquittal he was transferred to a secret detention centre, where he was held without new charges until 28 June 2005. He was repeatedly ill-treated while in secret detention. With a view to the allegations of repeated ill-treatment, the detention at an unofficial place without access to a lawyer and the reportedly deteriorating health of Mr. Al Uteibi, concern was expressed for his physical and mental integrity.

Communications received

186. On 26 July 2007, the Government replied to the joint urgent appeal of 13 June 2007, indicating that Mr. Al Barqaoui is neither a writer nor a theologian as he has not acquired, to the best of my knowledge, any academic or intellectual qualifications to justify calling him so. Conversely, he is well known for his radical ideas and extreme statements which constituted a

platform that has been widely used by many radical groups around the globe propagating hatred and intolerance. He was arrested after an arrest warrant that had been issued by the public prosecutor on charges of conspiring with the objective to commit terrorist acts. On the time of arrest, he was promptly informed of charges against him and had been shown the arrest warrant as required by article 9(2) of ICCPR. Mr. al Barqaoui was not deprived of the right of the visit by his family members or any national or international human rights organization. Indeed, Mr. Barqaoui has been granted the right to be visited like any other inmate in the correctional and rehabilitation center. Representatives of the ICRC and the National Center for Human rights have been visiting Mr. al Barqaoui regularly. As for the legality of Mr. al Barqaoui arrest, it was according to applicable laws and regulations and he has a lawyer who is acting on his behalf and communicating with him.

Special Rapporteur's comments and observations

187. The Special Rapporteur thanks the Government of Jordan for its cooperation and values its efforts to provide substantive information in response to the concerned expressed on letter sent on 13 June 2007. He requests the Government to inform him about Mr. Al Barqaoui's current situation, as well as about the developments of his judicial proceeding.

Kenya

Communication sent

188. On 14 February 2007, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on Human Rights and counter terrorism and the Special Rapporteur on the question of torture regarding the detention of over 70 persons, Kenyans and non-Kenyans. According to the information received, during the month of January 2007, about 70 individuals of Kenyan and other nationalities were arrested by units of the Kenyan Police apparently for terrorism-related reasons. A significant number of these individuals have been held or continue to be held incommunicado. In view of their incommunicado detention concern is expressed for their physical and mental integrity. In this context, we have also received information about Bashir Ahmed Makhtal, aged 42, Canadian citizen, born in Dagahbur, Ogaden, Abdi Abdulahi Osman, aged 41, Somali citizen, born in Gunagado, Dagahbur, Ogaden, Ali Afi Jama, aged 33, Somali citizen, born in Godey, Ogaden and Hussein Aw Nuur Gurraase, aged 35, Somali citizen, born in Gunagado, Ogaden., all ethnic Ogadenis trading in second hand clothing in the Horn of Africa. According to the information received, the four men were arrested by Kenyan authorities on 31 December 2006. They were held in custody for three weeks without official charges. For two weeks the authorities interrogated them in the absence of lawyers, or Canadian Embassy officials for Mr. Makhtal, who holds a Canadian passport. Mr. Makhtal was denied access to the Canadian High Commission for the first two weeks. Only on 15 January 2007 Mr. Makhtal was granted a brief meeting with a Canadian High Commission Official and a lawyer his family hired for him. On 21 January 2007, Mr. Makhtal, Mr. Osman, Mr. Jama and Mr. Gurraase were transferred to the Ethiopian armed forces in Mogadishu without any legal basis and without having been given the opportunity to appeal the transfer.

Communications received

None.

Special Rapporteur's comments and observations

189. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Kenya to provide at the earliest possible date, and preferably before the end of the 9th session of the Human Rights Council, a detailed substantive answer to the above urgent appeal. Particularly, the Special Rapporteur expresses his concern over the detention for apparently terrorism-related reasons of about 70 individuals that have been held or continue to be held for a long period incommunicado. While being conscious of the fact that States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism, the Special Rapporteur would like to underline that General Assembly resolution 591191, in its paragraph 1, stresses that: "States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law", as does Security Council resolution 1456 (2003) in its paragraph 6.

Kyrgyzstan

Communication sent

190. On 23 November 2006, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the question of torture and Special Rapporteur on trafficking in persons, especially women and children, regarding Ms. Raisa Germanovna Dergousova, an 82-year-old woman living in Ananievo, Issyk-Kul. According to the information received, during the night of April 22, 2005, Ms. Dergousova was raped in her home by a man she was able to identify as Mr. Salamat Avasovich Akmatyaliyev. The alleged perpetrator ordered her to cover her eyes with a blanket and demanded to know whether she recognized him. She denied knowing him, and promised not to report him to the police, fearing for her life. The next morning, Ms. Dergousova reported the incident to the police. She underwent a physical examination, which confirmed that she was raped. Ms. Dergousova then turned to the Oblast Prosecutor's office. The Prosecutor informed her that Mr. Akmatyaliyev was under investigation, and that he had provided a written undertaking not to leave the area. He claimed that the case would be sent to court once the investigation was completed. Later, however, the Assistant Prosecutor in Cholpon-Aty Mairambek informed Ms. Dergousova that her case had been transferred to the Oblast authorities. To date, there has been no trial regarding this matter. Reportedly, Mr. Akmatyaliyev was interrogated by three investigators, but bribed them in order to terminate the investigation. Sources allege that Mr. Akmatyaliyev publicly boasted that he has enough money to guarantee his impunity. According to information received, the rape case referred to above is not a singular incident. Rather, we understand that impunity for rape and alleged impunity in the other forms of sexual violence has recently intensified. Specifically, we are concerned about the increasingly widespread practice of "bride-kidnapping", whereby a woman or girl is taken against her will through deception or force and forced to marry one of her abductors. Sources allege that the abductors are often intoxicated and act in groups, using physical or psychological coercion to compel the woman to "agree" to the marriage. These marriages are reportedly rarely registered with the state. Instead, a Muslim cleric conducts the ceremony or the occasion is privately celebrated. It is further alleged that kidnapped women are often raped by the abductors, but fail to report the crime for fear of repercussions. The abductions occur within all parts of Kyrgyzstan, both urban and rural. The women involved are typically under the age of 25. Some victims are

also minors. Despite the fact that article 155 of the Criminal Code, outlaws non-consensual marriage by force or kidnapping, it is reported that the perpetrators are typically not prosecuted for the crime and enjoy impunity for the sexual abuse and sexual exploitation that is committed. It was also informed that the police often fail to even investigate reported cases of bride kidnapping. Sources state that many police officers do not view bride-kidnapping as an issue for law enforcement, but consider it to be a legitimate traditional practice.

191. On 5 July 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture regarding Mr. Mukumdzhon Makhmudov, aged 43, currently in custody of the Committee of State Security in Osh. According to the information received, Mr. Makhmudov was arrested around end of June 2007 by officials of the Committee of State Security in the city of Jalalabad. The charges against him include terrorism, sabotage and the establishment of a criminal organization under Sections 155, 161 and 242 of the Criminal Code for his involvement in an organization calling it self “Hizb ut Tahrir”. Mr. Makhmudov faces extradition to Uzbekistan. The authorities deny him access to a lawyer and his arrest has not been confirmed by court. The Committee on Migration and Employment, the state body responsible for registration of asylum claims, has not responded to the request to see Mr. Makhmudov and he is therefore unable to file an asylum claim. UNHCR is equally denied access to Mr. Makhmudov. Concern is expressed that Mr. Makhmudov may be at risk of torture or ill-treatment if he is returned to Uzbekistan.

Communications received

192. On 22 March 2007, the Government replied to the joint urgent appeal of 23 November 2006 regarding Raisa Derguzova, aged 82. In accordance with the requirements of Kyrgyz criminal procedural legislation, a police line-up of suspects was held, during which Ms. Derguzova identified Mr. S. Akmatyaliyev. Forensic medical and biological examinations were ordered. Subsequently, Mr. D. Kasymalyev, an investigator of the district internal affairs office repeatedly took unwarranted decisions to terminate criminal proceedings against Mr. Akmatyaliyev on the grounds of lack of sufficient evidence. The Issyk-Kul district procurator's office made a recommendation to the Issyk-Kul provincial internal affairs office concerning investigator D. Kasymalyev; as a result, Mr. Kasymalyev was subjected to a disciplinary measure, which took the form of a reprimand. On 20 December 2006, Mr. Akmatyaliyev was indicted for the commission of an offence contrary to article 129, paragraph 1, of the Code of Criminal Procedure and was placed under house arrest. On 23 December 2006, Mr. Akmatyaliyev was arrested and, on the basis of article 94 of the Code of Criminal Procedure, placed in pretrial detention. On 21 December 2006, the criminal case involving the rape of Ms. Derguzova was referred to the Issyk-Kul interdistrict court, where it is being heard. With regard to the enquiry concerning “bride-kidnapping” in Kyrgyzstan, the following information is provided. In 2006, 73 statements and communications from citizens concerning the coercion of women into marriage were registered. With regard to 57 of the reported incidents, investigators of internal affairs offices took decisions not to institute criminal proceedings because citizens withdrew their original statements. Criminal proceedings were instituted in connection with the remaining 16 incidents. The results of investigations of nine incidents were referred to the courts (in five cases, the courts handed down the verdict of guilty; four cases are still being heard). In two

criminal cases, the investigation was suspended in connection with the search for the accused persons. Five criminal cases are being investigated. For the period under consideration, no criminal cases have been terminated and no defendants have been acquitted by the courts.

Special Rapporteur's comments and observations

193. The Special Rapporteur thanks the Government for its reply of 22 March 2007. He is however concerned about the absence of an official reply to his communication of 5 July 2007, and urges the Government of Kyrgyzstan to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, detailed substantive answer to the above allegation.

Lebanon

Communications envoyées

194. Le 3 octobre 2007, le Rapporteur spécial a envoyé au Gouvernement libanais, conjointement avec le Rapporteur spécial sur la torture, un appel urgent sur la situation de M. Ghassam Sulayman Al Sulaiby, âgé de 46 ans, comptable, demeurant à Baabda, Sibani-Al Ouarouar, de M. Mohamed Ghassan Al Saulaiby, âgé de 21 ans, collégien, son fils, demeurant à Baabda également, de M. Ibrahim Sulayman Al Sulaiby, âgé de 37 ans, demeurant à Baabda, Siradj Eddine Mounir Sulayman Al Sulaiby, âgé de 25 ans, pâtissier, demeurant à Baabdi, de M. Zyad Tarek Yamout, âgé de 27 ans, comptable, demeurant Corniche Al Mazraa, de M. Youcef Mounir Koubrously, âgé de 23 ans, demeurant avenue principale, Camp de Sabra, Safy Ibrahim Al Arab, âgé de 26 ans, chauffeur de camion, demeurant Corniche Al Mazraa, Route neuve, de M. Ahmed Issam Rachid, âgé de 23 ans, palestinien, demeurant au Camp de Sabra, Carrefour du centre pour les personnes âgées et Ali Amine Khaled, âgé de 21 ans, demeurant Ard Jelloul, Camp de Chatila. Selon les sources, MM. Ghassam Sulayman Al Sulaiby, Mohamed Ghassan Al Saulaiby et Ibrahim Sulayman Al Sulaiby auraient été arrêtés à leur résidence par les services de renseignement militaire le 31 mars 2006 vers 21h00. MM. Siradj Eddine Mounir Sulayman Al Sulaiby et Zyad Tarek Yamout auraient été arrêtés par les services de renseignement militaire le 2 avril 2006 au domicile de M. Ghassan Sulayman Al Sulaiby. MM : Safy Ibrahim Al Arab et M. Ahmed Issam Rachid auraient, quant à eux, été arrêtés le 3 avril 2006 à leurs domiciles respectifs. M. Ali Amine Khaled aurait été convoqué au siège du Ministère de la défense, où il se serait rendu le jour même et où il aurait été arrêté immédiatement. Toutes ces arrestations auraient eu lieu sans mandat de justice et sans que les motifs ne soient notifiés. Toutes les personnes mentionnées ci-dessus auraient été emmenées au siège du Ministère de la défense à Beyrouth où elles auraient été détenues au secret. Au bout de 15 jours, elles auraient été transférées à la prison civile de Roumié. Au cours de leur détention au secret au Ministère de la défense, ces personnes auraient été battues à coups de poing et de pied sur toutes les parties du corps et fait l'objet d'insultes et de menaces. Elles auraient aussi été contraintes de rester debout contre un mur durant de longues périodes ou assises parfois pendant plusieurs jours sur un petit tabouret. Elles auraient aussi été privées de sommeil. Le but de ces traitements aurait été de leur faire faire des aveux ou des témoignages. M. Ghassan Sulayman Al Sulaiby aurait fait l'objet de chocs électriques, des électrodes étant branchées sur ses parties génitales pendant 15 jours, en présence de son fils. Il aurait aussi été forcé d'assister aux « séances » de mauvais traitements pratiqués sur son fils. Ils n'auraient pas eu accès aux soins

médicaux pendant leur détention à la prison et le juge d'instruction aurait refusé de déférer à leur demande de désignation d'un expert médical pour les examiner et constater les traces de mauvais traitements qu'ils auraient subis. M. Mohamed Ghassan Al Sulaiby aurait été libéré au mois d'août 2006. Leurs procès seraient actuellement en cours devant le tribunal militaire de Beyrouth, bien qu'aucune de ces personnes n'ait pas qualité de militaire et que les charges retenues ne se rapportent pas à des infractions à caractère militaire. Les sources exprimaient la crainte que les aveux et témoignages obtenus suite à de mauvais traitements ne soient invoqués comme éléments de preuve pendant les procédures devant le tribunal.

195. Le 4 octobre 2007, le Rapporteur spécial a envoyé au Gouvernement libanais, conjointement avec le Rapporteur spécial sur la torture, un appel urgent sur la situation de M. Houssam Issam Dallal, âgé de 21 ans, étudiant à l'Université de Beyrouth, demeurant à Tripoli, arrêté le 1er avril 2007 à son domicile par les services de renseignement militaire, M. Naif Salem Al Baqqar, âgé de 23 ans, étudiant à l'Université de Sidon (Tripoli), convoqué le 23 mars 2007 par les services de renseignement militaire et arrêté lorsqu'il s'est présenté à cette convocation, M. Mahmoud Ahmed Abdelkader, âgé de 29 ans, mécanicien auto, arrêté le 31 mars 2007 près de son domicile à Al Qubba (Tripoli), M. Ahmed Fayçal Arradj, âgé de 24 ans, fonctionnaire, arrêté le 31 mars 2007 à 12 heures sur le lieu de son travail à Akkar (Tripoli), M. Billal Ahmed Al Badwi Assayed, âgé de 30 ans, comptable, arrêté à son domicile le 4 mars 2007, M. Assad Mohamed Al Nadjar, Palestinien né au Liban âgé de 32 ans, employé dans une entreprise de construction, arrêté à son domicile à son retour du travail le 2 avril 2007, M. Omar Azzedine Al Ali, âgé de 33 ans, chauffeur de taxi, arrêté à son domicile le 23 mars 2007, M. Omar Mohamed Ghenoum, âgé de 28 ans, comptable, arrêté le 31 mars 2007 sur son lieu de travail, M. Ahmed Mohamed Ghazi Al Ratl, âgé de 34 ans, arrêté à son domicile le 31 mars 2007 et M. Tarek Mamdouh Al Hadjamine, âgé de 24 ans, menuisier, arrêté à son domicile le 31 mars 2007. Les sources alléguaient que toutes les personnes précitées, toutes résidant à Tripoli, avaient été arrêtées par les Services de renseignement militaire sans mandat de justice et sans recevoir notification des motifs de leur arrestation. Tous auraient été détenus d'abord au siège régional des Services de renseignement de l'armée, à Tripoli, avant d'être transférés quelques jours plus tard au siège du Ministère de la défense à Beyrouth où leur détention au secret aurait été prolongée jusqu'à une quinzaine de jours. Au cours de ces détentions au secret, ils auraient tous été battus soit à l'aide de bâtons soit avec un tuyau en caoutchouc sur toutes les parties de leurs corps. Tous auraient été privés de sommeil durant parfois plusieurs jours de suite et empêchés de se rendre aux toilettes pour leurs besoins naturels. Egalement ils auraient été contraints de rester debout contre un mur durant de longues périodes ou assis plusieurs jours sur un tabouret. Ainsi, M. Naif Salem Al Baqqar aurait été obligé de rester assis sur un tabouret pendant six jours ininterrompus. Il aurait été violemment battu dès qu'il aurait montré un signe de faiblesse ou de fatigue. Il aurait ensuite été pendu au plafond par les poignets durant plusieurs heures et menacé par les militaires de faire venir son épouse pour qu'elle soit violée. Malgré son état de santé déficient, M. Omar Azzedine Al Ali aurait lui aussi été contraint de rester debout durant 48 heures, puis assis sur un tabouret durant trois jours consécutifs et enfin pendu par les poignets lorsqu'il serait tombé évanoui sur le sol. Il aurait également été menacé de viol ainsi que son épouse. Certains auraient reçu des coups de bâtons sur la plante des pieds. A l'issue de leur détention au siège du Ministère de la défense, ils auraient été traduits devant un magistrat militaire qui les aurait inculpés de tentative de constitution de groupe armé et d'atteinte à la sûreté de l'Etat. Ils auraient ensuite été transférés

dans une division spéciale de la prison de Roumié où ils étaient dits se trouver au moment de l'envoi de l'appel urgent. Ils auraient été privés de soins en dépit des blessures subies. Le juge d'instruction militaire sollicité par plusieurs d'entre eux pour désigner un expert médical à l'effet d'établir les mauvais traitements dont ils auraient fait l'objet, aurait refusé leur requête. Au moment de l'appel urgent, tous étaient dits faire l'objet de poursuites pénales devant le tribunal militaire de Beyrouth, bien qu'ils soient des civils et que les faits qui leur étaient prétendument reprochés par la juridiction militaire ne constituent pas des infractions à caractère militaire. Les sources exprimaient la crainte que les procès verbaux établis sur la base d'aveux obtenus sous les mauvais traitements ne soient pris en considération dans leur cas.

196. Le 17 octobre 2007, le Rapporteur spécial a envoyé au Gouvernement libanais, conjointement avec le Rapporteur spécial sur la torture, un appel urgent sur la situation de M. Mahmoud Abou Rafeh, âgé de 60 ans. Selon les informations reçues, le 7 juin 2006, aux environs de 5 heures, plusieurs hommes en civil auraient percuté la voiture de M. Mahmoud Abou Rafeh. Ils l'auraient emmené en laissant la voiture sur le lieu de l'accident. M. Mahmoud Abou Rafeh aurait été conduit au centre de détention du Ministère de la Défense à Beirut, où il aurait été détenu pendant plusieurs jours sans que cette situation n'ait été notifiée à sa famille. On lui aurait dit ensuite qu'il avait été arrêté par les Services de sécurité de l'armée car on le soupçonnait d'être membre d'un réseau libanais agissant dans l'intérêt des Services de sécurité israéliens. Sa famille aurait pu effectuer des visites sous surveillance entre juillet 2006 et mai 2007, mais à partir de mai 2007 les autorités leur auraient refusé toute visite en alléguant des motifs sécuritaires. L'avocat de M. Mahmoud Abou Rafeh n'aurait jamais pu obtenir de permission pour rencontrer son client. Celui-ci aurait eu plusieurs audiences devant une cour militaire sans la présence de son avocat. Au moment de l'appel urgent, compte tenu de la détention au secret de M. Mahmoud Abou Rafeh depuis mai 2007, des craintes étaient exprimées quant à son intégrité physique et mentale. Sans préjuger des faits l'appel urgent sollicitait des informations détaillées en réponse aux allégations ci-dessus, et le respect de l'intégrité physique et mentale de M. Mahmoud Abou Rafeh. A ce propos, il rappelait les dispositions pertinentes du droit international des droits de l'homme les dispositions de la résolution 61/153 dans laquelle l'Assemblée générale "rappelle à tous les États qu'une période prolongée de mise au secret ou de détention dans des lieux secrets peut faciliter la pratique de la torture et d'autres peines ou traitements cruels, inhumains ou dégradants et peut en soi constituer un tel traitement, et demande instamment à tous les États de respecter les garanties concernant la liberté, la sécurité et la dignité de la personne ».

Communications reçues de la part du Gouvernement

197. Le 7 janvier 2008, Le Gouvernement a envoyée une réponse aux appels urgents envoyés le 3 et 4 octobre 2007. Malheureusement, au moment de la finalisation de ce rapport, les dites réponses n'étaient pas encore traduites.

Commentaires et observation du Rapporteur spécial

198. Le Rapporteur Spécial remercie le Gouvernement de ses réponses à ses appels urgents des 3 et 4 octobre 2007, et regrette profondément que, pour des motifs liés aux délais de traduction, il n'ait pas été à même d'assurer le suivi immédiat qu'elles méritaient. Il espère pouvoir s'entretenir à fond de cette question avec les représentants du Liban à l'occasion de la neuvième session du Conseil des droits de l'homme. Il invite en outre le Gouvernement libanais

à lui faire parvenir le plus tôt possible, de préférence avant la fin de la neuvième session du Conseil des Droits de l'Homme, une réponse substantive et détaillée à son appel urgent du 17 octobre 2007.

Liberia

Communication sent

199. On 30 July 2007, the Special Rapporteur sent an allegation letter together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture and the Independent expert on technical cooperation and advisory services in Liberia concerning 37 persons, among them Ms. Oldlady Parker Geieh, aged 85, Ms. Kargonal Jargue, aged 75, Ms. Tuakarseh Gborgan, aged 70, Ms. Martha Suomie, aged 49 and Mr. Zaye Bonkre, aged 75, resident in Boutou, Nimba County. According to the information received, in September 2006, the Buotou Town Chief, Mr. George Olathe Morris, the Zone Chief, Mr. Deemie Zoue, and the Youth Leader, Mr. George Tomah, demanded money from various members of the community to cover the fees of a trial by ordeal practitioner, payment of which would save the victims from being subjected to the trial. 34 women and three men, who were unable to pay the fee demanded, were detained by local authorities in Buotou. A team of witchdoctors from Cote d'Ivoire, headed by Mr. Gbah Anthone, was hired to perform the trial by ordeal. The town authorities later claimed that the persons to be subjected to the trial by ordeal had committed witchcraft and were responsible for causing a lack of development and employment in Buotou. The 37 persons were then severely assaulted and forced to sit outside in the rain and sun and were denied food (only some received some food from their relatives). Their heads were shaved and mud and chilli pepper was rubbed on their heads, into wounds caused during the beating and into the women's vaginas. They were threatened that they would be subjected to the "sassywood procedure", wherein the victim must prove his or her innocence by consuming poison without dying, and were ordered to confess to being witches. They were released on 24 October 2006 following the intervention of LNP and UNPOL. On 24 December 2006, Tuakerseh Gborgan died in Sanniquillie, apparently as a result of the injuries sustained during the trial by ordeal. Hunger and lack of adequate medical treatment may also have contributed to her death. On 24 November 2006, police arrested eight people alleged to have participated in this procedure: Gbah Anthone, Tiah Francis, George Olathe Morris (Town Chief), Deemie Zoue (Zone Chief), Anthony Blah, Wesley Mobai, John Ola Alfred and Soun Wonue. The eight men were charged with aggravated assault on 27 November 2006 and released on bail by the Sanniquillie Magistrates' Court the same day. The Youth Leader was not arrested. On 22 June 2007, Gbah Anthone was indicted for murder in the Nimba County Circuit Court. However, on 16 July, he was acquitted after the Circuit Court Judge granted a defence motion to dismiss the case on the ground that there was inadequate evidence to prove the charge beyond a reasonable doubt. In his decision, the Judge referred to the lack of a valid coronial report and forensic investigation. There is neither a morgue nor a forensic practitioner in Nimba County. The prosecution case had also been weakened by a medical report it had tendered which was inconclusive in its findings regarding the deceased's condition at the time she first sought medical treatment. That medical report had been prepared by the son-in-law of one of the men who ordered the trial by ordeal, raising further concerns that the available medical evidence was neither impartial nor comprehensive. None of the other alleged perpetrators has been brought to justice as of now. In accordance with the Executive Law, the Ministry of Internal Affairs (MIA) has responsibility for overseeing "tribal Government" and "administering the system of tribal

courts” in Liberia. The MIA’s role includes the issuance of licences to sassywood practitioners and herbalists, among others, and it would appear that in practice this includes authorizing instances of trial by ordeal. Use of poison sassywood was publicly declared illegal at the end of 2006, but, in spite of the fact that the Ministry of Justice has initiated some prosecutions against practitioners of sassywood, it is reported that the Government has failed to send a strong and unambiguous message regarding the illegality of all forms of trial by ordeal and other arbitrary practices. Furthermore, MIA officials still authorize such ceremonies to go ahead. For example, in the case of Mr. Varney Quoy, a farmer and security guard who lives in the Po River area of Montserrado County, MIA officials allegedly were going to authorize a trial by ordeal to take place, until the Solicitor-General was seized of the matter and the case was transferred to the Office of the County Attorney in Monrovia. Judging by the description given by MIA personnel to UN personnel, the intended ceremony appeared to resemble a trial by ordeal in that there was a threat of serious harm as punishment, the procedure was arbitrary and it was to take place in the context of witchcraft or supernatural phenomena. It further appears that Mr. Varney had been deemed to be guilty and the aim of the ceremony was not to determine guilt or innocence but was an attempt to prevent alleged future crimes. He was to take an oath and consume a substance that would punish him in the future if he broke that oath. The ceremony, which would not be permitted even under the Revised Rules and Regulations of the Hinterland, clearly violates the human rights guarantees contained in the Constitution and the international human rights treaties ratified or acceded to by Liberia. It is also reported that trial by ordeal that is of a “minor nature” and does not “endanger life” is permitted by Art. 73 of the Regulations. Article 2 of those Regulations provides that they are to be applied to “such areas as are wholly inhabited by uncivilized natives”. The discriminatory basis of the Regulations is a breach of human rights guarantees under the Constitution and international treaties, such as the International Covenant on Civil and Political Rights, which has been ratified by Liberia. Moreover, the Regulations, which are subordinate legislation, are contrary to provisions of a variety of national Acts, including the Judiciary Law, the Penal Code and the Criminal Procedure Law.

200. On 26 October 2007, the Special Rapporteur sent an allegation letter concerning Justices of the Peace that continued to hear cases in spite of having been decommissioned. According to the information received, On 20 and 22 August 2007 respectively, a Justice of the Peace in Suakoko, Bong County, sentenced Gbeg Mu-Gang and Peter Tokpah to prison terms of two and three months respectively for theft of property. At a case-flow management meeting, the County Attorney declared the sentences illegal as the Justice of the Peace does not have jurisdiction over such cases, but apparently failed to address the fact that such courts should not be operating at all. On 17 September 2007, the Justice of the Peace in Foequelle, Bong County, allegedly arrested a man and handcuffed him overnight because he had failed to pay a L\$3,000 (US\$ 50) fine imposed by the Justice of the Peace earlier this year. The man reportedly escaped from the Justice of the Peace’s illegal detention facility and reported the incident to the Circuit Court and the President of Bong County Justice of the Peace Association. The President of the Justice of the Peace Association reportedly offered to mediate in the matter. On 3 September 2007, the Liberian National Police (LNP) reported that on 30 June 2007 they detained a rape suspect at the request of a Justice of the Peace in Lowee, Saclepea District, Lofa County, who later released the suspect on bail on 2 July 2007. The case was never transferred to the Magistrates’ Court or the Circuit Court. The suspect has reportedly returned to his community. Also, a Justice of the Peace in Soul Clinic, in Montserrado County, stated that he handles both civil and criminal cases, including cases of aggravated assault, terrorist threats, and theft of property. Finally,

following an altercation between a 63 year old man and 3 members of the Sande society on 13 September 2007, the matter was taken before a person who was posing as a Justice of the Peace in Compound # 3B in Grand Bassa County. The 63 year old man reportedly insulted the Justice of the Peace who subsequently ordered his beating. Following a report to the LNP by the 63 year old man, the Justice of the Peace was arrested on charges of aggravated assault. According to the New Judiciary Law of 1972 that governs their appointments and tenure, Justices of the Peace hold office for a term of two years. It is reported that the current Government has not appointed or otherwise extended the mandates of any Justice of the Peace since it came into power beginning of 2006. Justices of the Peace were working with the mandates issued by the previous Government, and all of them have now expired. In this context, the Special Rapporteur was concerned that persons continue to operate as Justices of the Peace even after they have been decommissioned, and that they operate even in areas that fall outside their competency and within the competency of the magistracy, in particular with regard to serious offences. It is also reported that the Government is planning to request that Justices of the Peace submit their applications for extension of mandate, and that it will then vet the applications. The Special Rapporteur urged the Government to do so, in particular against complaints made about some Justices of the Peace. In this context, the Government should put in place a new strategy concerning Justice of the Peace, to prevent abuses and to make sure that the Justices of the Peace are properly trained and act within a clearly established legal framework. Also, Justices of the Peace should not cover areas covered by magistrates and that therefore fall outside their competency, and their number should be limited to what is strictly necessary - against allegations that there would be too many and that in various cases two Justices of the Peace operate in the same area.

201. On 2 November 2007, the Special Rapporteur sent an allegation letter concerning Justices of the Peace that continued to hear cases even though their commissions had expired. According to the information received, on 20 and 22 August 2007 respectively, a Justice of the Peace in Suakoko, Bong County, sentenced Gbeg Mu-Gang and Peter Tokpah to prison terms of two and three months respectively for theft of property. At a case-flow management meeting, the County Attorney declared the sentences illegal as the Justice of the Peace does not have jurisdiction over such cases, but apparently failed to address the fact that such courts should not be operating at all. On 17 September 2007, the Justice of the Peace in Foequelle, Bong County, allegedly arrested a man and handcuffed him overnight because he had failed to pay a L\$3,000 (US\$ 50) fine imposed by the Justice of the Peace earlier this year. The man reportedly escaped from the Justice of the Peace's illegal detention facility and reported the incident to the Circuit Court and the President of Bong County Justice of the Peace Association. The President of the Justice of the Peace Association reportedly offered to mediate in the matter. On 3 September 2007, the Liberian National Police (LNP) reported that on 30 June 2007 they detained a rape suspect at the request of a Justice of the Peace in Lowee, Saclepea District, Lofa County, who later released the suspect on bail on 2 July 2007. The case was never transferred to the Magistrates' Court or the Circuit Court. The suspect has reportedly returned to his community. Also, a Justice of the Peace in Soul Clinic, in Montserrado County, stated that he handles both civil and criminal cases, including cases of aggravated assault, terrorist threats, and theft of property. Finally, following an altercation between a 63 year old man and 3 members of the Sande society on 13 September 2007, the matter was taken before a person who was posing as a Justice of the Peace in Compound # 3B in Grand Bassa County. The 63 year old man reportedly insulted the Justice of the Peace who subsequently ordered his beating. Following a report to the LNP by the

63 year old man, the Justice of the Peace was arrested on charges of aggravated assault. According to the New Judiciary Law of 1972, Title 17, that governs their appointments and tenure, Justices of the Peace hold office for a term of two years. It is reported that the Government has not appointed or otherwise extended the mandates of any Justice of the Peace since the beginning of 2006. Justices of the Peace were working with the mandates issued by the previous Government, and all of them have now expired. In this context, the Special Rapporteur expressed his concern that persons continue to operate as Justices of the Peace even after their commissions have lapsed and that they sometimes operate in areas that fall outside their competency and within the competency of the magistracy, in particular with regard to serious offences. It is also reported that the Government is planning to request that Justices of the Peace submit their applications for extension of mandate, and that it will then vet the applications. The Special Rapporteur urged the Government to do so, in particular against complaints made about some Justices of the Peace for abusing their power. In this context, the Government should put in place a new strategy concerning Justices of the Peace, to prevent abuses and to make sure that the Justices of the Peace are properly trained and act within a clearly established legal framework. Also, Justices of the Peace should not cover areas covered by magistrates and that therefore fall outside their competency, and their number should be limited to what is strictly necessary - against allegations that there would be too many and that in various cases two Justices of the Peace operate in the same area.

Communications received

None.

Special Rapporteur's comments and observations

202. The Special Rapporteur is concerned at the absence of an official reply to the above allegations. The Special Rapporteur strongly condemns any system of administration of justice that endangers physical and psychological integrity of the accused. He urges the Government of Liberia to take effective measures to ensure that trial by ordeal is no longer taking place. The Special Rapporteur is also concerned that the legal proceedings against eight of the perpetrators were not conducted in compliance with article 14 of the ICCPR, particularly the right to an impartial tribunal. Therefore, he recommends that the proceedings be reviewed. The Special Rapporteur urges the Government of Liberia to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Malaysia

Communications sent

203. On 23 August 2006, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on freedom of religion or belief, and the Special Representative of the Secretary-General on the situation of human rights defenders, concerning Mr. Malik Imtiaz Sarwar, one of two lawyers currently representing Ms. Lina Joy, in the Federal Court of Malaysia. Ms. Lina Joy is a Malay woman who has renounced her Muslim faith and embraced Christianity, and the court proceedings are concerned with whether she can renounce Islam and has the right to have the religious affiliation on her identity card deleted. According to the

information received, Malik Imtiaz is the subject of death threats by an unknown group, which openly calls for the death of Mr. Imtiaz because of his role as a lawyer in the Lina Joy court case. Such threats include posters, titled "Wanted Dead", that describes Mr. Imtiaz Sarwar as a betrayer of Islam for his involvement in the Lina Joy court case and an email message which circulates in the Internet and offers a monetary reward to anyone who is willing to kill him. Concern was expressed that such threats are linked to the lawful professional activity of Mr. Imtiaz Sarwar as a lawyer and may represent an attempt to intimidate lawyers who take on cases in defence of right to freedom of religion and belief.

Communication received

204. On 13 February 2007, the Government replied to the joint urgent appeal of 23 August 2006, stating that Mr. Sarwar had lodged a police report about the threat against him at the Dang Wangi Police Station (Report No. 24495/96) following his meeting with the Inspector-General of the Royal Malaysian Police, Tan Sri Musa Hassan, on 21 August 2006. During that meeting, Mr. Sarwar, who was accompanied by Ms. Ivy Josiah and Mr. Yeo Yang Poh, Chairman of the Malaysian Bar Council, informed the Chief of Police that two posters were being circulated through e-mails which incited action towards his death, thus constituting a direct threat to his life. 2. The police assigned Assistant Superintendent Sohaimi as the Investigating Officer of the case. Following initial investigations carried out by the Royal Malaysian Police, it was found that a poster entitled "Islam Denigrated! Muslims Threatened!" had been disseminated at the Kuala Lumpur Federal Territory Mosque on 23 July 2006. The same poster appeared on the Anti-Apostasy Action Front (FORKAD) website, at the following address: Forkadwahoo.Qfог2S.cOM. 3. The police has classified the case under Section 507 of the Penal Code (criminal intimidation by an anonymous communication), and is currently conducting further investigations to determine the identity of the person who had uploaded the posters onto the website. The police has also recorded statements from 13 witnesses about the case thus far. At the same time, the police also sought the assistance of Telekom Malaysia to ascertain the identity of the source of the e-mails circulated. 4. Mr. Sarwar has expressed satisfaction with the level of cooperation extended to him by the Royal Malaysian Police in finding a resolution to the case.

Special Rapporteur's comments and observations

205. The Special Rapporteur thanks the Government for its reply of 13 February 2007 and notes with satisfaction that police have conducted investigations to determine the identity of the authors of the threats to Mr. Sarwar. He would appreciate receiving further information on these investigations at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council.

Maldives

Communications sent

206. On 10 December 2007, the Special Rapporteur sent an urgent appeal regarding 21 members of the Maldivian Democratic Party (MDP): Mohamed Arif (branch president of MDP), Mohamed Manik (party member); Ahmed Ibrahim (party member), Abdul Majeed Shameem (branch president of MDP), Imran Zahir (Malé constituency secretary

of MDP), Hussain Shahid (branch president of MDP), Abdullah Zakariyya (party member), Ali Mohamed (party member), Abdul Razzaq Abdul Rahman (party member), Mohamed Adam (party member), Ahmed Ibrahim (party member), Fathimath Shiuna (secretary of an MDP constituency), Areesha Ali (party member), Mohamed Saeedh (branch president of MDP), Ali Riffath (party member), Mohamed Saleem Ali (president of an MDP constituency), Ali Shifah (party member), Ibrahim Sahreef (party member and Member of Parliament, Malé Atoll), Ahamed Rasheed (party member), Abdulla Hassan (party member), and Abdul Hameed (party member). From 2005 to 2007, these 21 members of the MDP have been arrested several times. Some of them had been held repeatedly for up to 2 months before being released. In most cases, the release has reportedly not been ordered after the lawfulness of the detention was reviewed by a court, but after an order made by the detaining officer exercising his discretion. Furthermore, in most cases, the above mentioned individuals had access to legal counsel only 15 to 20 days after the arrest, when they were brought to a detention centre close to the capital. Most recently, the 21 individuals have been charged with disobedience to order, unlawful assembly or obstructing duty of governmental officials. The verdicts were expected before 12 December 2007. Concern was expressed that the above mentioned individuals will not enjoy a fair trial because of their activities as members of the MDP.

207. On 2 March 2007, The Special Rapporteur issued the following press release:

**UNITED NATIONS EXPERT SUPPORTS CONSTITUTIONAL REFORM TO
ESTABLISH AN INDEPENDENT JUDICIARY IN THE MALDIVES**

“The United Nations Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, conducted a visit to the Maldives from 25 February to 1 March 2007 at the invitation of the Government. He thanks the Government of the Maldives for the excellent cooperation they extended to him.

During his visit in the capital, Malé, the Special Rapporteur met with the President of the Maldives, Mr. Maumoon Abdul Gayoom, a number of Government ministers, judges from various levels of courts, the Attorney General, prosecutors, lawyers, international organizations and non-governmental organizations. He travelled to Addu Atoll, in the south of the archipelago, to meet with judges of that region as well as civil society representatives. He also visited the Maafushi detention centre where he met with several detainees.

The Maldives is in the process of adopting fundamental constitutional and judicial reforms which are of key importance for the transition of the country towards democracy. The judiciary, which is presently under the control of the Executive, would under the reforms become independent. After a long time of isolation, the country has opened up due to tourism and foreign investments. This requires a modernization of society, including its institutions.

In this context, the Special Rapporteur would like to make the following preliminary observations:

(1) The Constitution puts the judiciary under the control of the President: this seriously affects the independence of the judiciary.

- (2) There is a serious lack of trained judges and lawyers.
- (3) The right to defence is seriously affected: most of the detainees are tried without the assistance of a lawyer.
- (4) Preventive detention is the rule rather than the exception.

All sectors of Maldivian society are conscious of the need for reform. Judges themselves recognize the need for change and are seeking better conditions of service, including training, greater independence and better personal and professional security. The Government authorities are committed to a far-reaching reform of the Constitution, and the various leading members of the opposition with whom the Special Rapporteur met are also convinced that there is no way these reforms can be delayed.

The Special Rapporteur, considering that the social and economic conditions to carry out the reforms are in place, presents the following preliminary recommendations:

- (1) The Special Rapporteur strongly encourages prompt adoption of the constitutional reforms and the urgent adoption of legislation which has already been submitted to Parliament, including the criminal code and the criminal procedure code. The adoption of an appropriate police bill is also of key importance to prevent current abuse cases. Constitutional and legislative reforms must conform to applicable international norms and principles.
- (2) He recommends that the constitutional reform consecrate the principle of real separation of powers. In this context, the independence of the judiciary should be guaranteed.
- (3) He recommends the establishment of an independent body that would be responsible for appointing, promoting and disciplining judges.
- (4) He recommends that financial autonomy be given to the judiciary, for example as a fixed percentage of the GDP, which should be managed by the judiciary itself. This would also imply higher salaries for judges.
- (5) He urges that posts be secured for women as judges, contrary to the current practice which has been criticised by international human rights bodies.
- (6) Judges and prosecutors should be involved in police investigations in order to ensure respect for human rights.
- (7) The status of the Attorney-General should be enhanced and a separate post of prosecutor established.
- (8) Noting that drug consumption affects almost every family, he recommends the strengthening of prevention and rehabilitation programmes, since criminalization has proved unsuccessful.

In this context, it is essential that the reforms be completed within the specified time period. It is therefore necessary to create an appropriate climate in which all sectors can participate and that a formal text be drawn up in accordance with the wishes for change of all Maldivians.

The Special Rapporteur will present his report on the mission to the Maldives to the Human Rights Council in the spring of 2007.”

208. On 13 July 2007, the Special Rapporteur issued the following press release:

**UN EXPERT WELCOMES FIRST-EVER APPOINTMENT OF WOMEN JUDGES
IN MALDIVES AND AGREEMENT ON NEW DEADLINE FOR ADOPTION
OF CONSTITUTION**

“The Special Rapporteur on the independence of judges and lawyers welcomes the appointment of the first-ever women judges in the Maldives. Two women were appointed judges on 11 July, and a third one is due to be appointed next week. The Special Rapporteur visited the Maldives in February this year to provide advice to the Government on the judicial and constitutional reforms it has embarked upon. In a report he presented to the Human Rights Council last month (document A/HRC/4/25/Add.2), the Special Rapporteur emphasized the urgent need to end gender discrimination within the Maldivian judiciary and to promptly nominate women judges. In this context, the Special Rapporteur congratulates the Maldivian authorities for having promptly implemented this very important recommendation, which is part of the broader judicial reform. He invites them to continue along this path by appointing other women judges, in order to reach an appropriate gender balance within the judiciary, in accordance with international obligations to which the Maldives have subscribed.

Moreover, with regard to the constitutional reform, the Special Rapporteur welcomes the decision of the Special Majlis (constitutional assembly) to adopt the new Constitution of the Maldives by 30 November 2007. The decision was adopted with a vast majority of votes from both the ruling party, the Dhivehi Rayyithunge Party (DRP), and the main opposition party, the Maldives Democratic Party (MDP). In his mission report, the Special Rapporteur emphasized the importance and urgency of the adoption of a new constitutional framework for the country, to allow it to make a successful transition towards a democratic system of governance, based on a separation of powers. The earlier deadline of May 31 2007 set by the Government was not met because of the inability of both parties to reach an agreement on various aspects of the draft constitution.

The Special Rapporteur believes that the adoption of a new Constitution is essential in order to guarantee to the Maldivian people the establishment of democratic institutions and the respect for human rights in their country. Moreover, the timely adoption of the new Constitution is a key prerequisite for the first ever multi-party elections of the country, planned for the end of 2008, to take place in an appropriate institutional and legal setting. The Special Rapporteur notes however with concern that the constitutional reform process has been held up again since last Sunday 8 July, and that the Special Majlis speaker

indicated his intention not to resume the work of the body before ten days, although the Special Majlis had recently agreed to convene four times a week in order to meet the November deadline.

In this crucial point in time in the history of the country, the Special Rapporteur calls upon all members of the Special Majlis, and in particular the representatives of the two main political parties, urgently to resume their work and to spare no efforts, in a spirit of consensus, to reach the fundamental goal of adopting the new Constitution by the end of November.”

209. On 14 March 2008, the Special Rapporteur issued the following press release:

UN EXPERT WELCOMES ACQUITTAL IN THE MALDIVES

“The Special Rapporteur on the independence of judges and lawyers welcomes the decision of the Criminal Court on 5 March 2008 to acquit a Maldivian Democratic Party (MDP) member, Imran Zahir, of the accusation made earlier of ‘causing disharmony through an unlawful assembly’, which is punishable under the penal code. It demonstrates the progress made by Maldives towards the independence of the judiciary since the Special Rapporteur visited the country in February last year. Since 2004, a number of political activists were charged under the current penal code with offences such as disobedience to order, disruption of religious harmony, unlawful assembly, peace disruption and obstructing police duty. The current effort of the Government of the Maldives, through the Attorney General’s Office, to review these cases represents an important step towards the effective implementation of the human rights obligations of Maldives under the International Covenant on Civil and Political Rights.

The political determination of the Government of the Maldives to comply with its international human rights obligations prior to the first multi-party election is very encouraging. The Special Rapporteur is committed to offer his assistance to support the current effort of the Government to review the remaining cases.”

Communications received

None.

Special Rapporteur’s comments and observations

210. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Maldives to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Mexico

Comunicaciones enviadas

211. El 18 de Julio 2007, el Relator Especial envió un llamamiento urgente junto con el Representante Especial del Secretario-General para los defensores de los derechos humanos en

relación con las supuestas amenazas en contra de la Sra. Maria Luisa García Andrade y la Sra. Marisela Ortiz Rivera, miembros de la organización Nuestras Hijas de Regreso a Casa con sede en Ciudad Juárez, y de los miembros de la Asociación Nacional de Abogados Democráticos (ANAD). La organización Nuestras Hijas de Regreso a Casa y ANAD trabajan para pedir justicia para las mujeres secuestradas y asesinadas en Ciudad Juárez, estado de Chihuahua. De acuerdo con la información recibida, el 22 de junio de 2007, la Sra. Ortiz Rivera habría recibido un mensaje de texto amenazante en su teléfono móvil, el cual supuestamente decía lo siguiente: 'Disfruta de la vida mientras puedas'. Asimismo, el 20 de junio de 2007, desconocidos habrían forzado el coche de la Sra. García Andrade, sustrayendo documentación sobre el asesinato de su hermana, la Sra. Lilia Alejandra García Andrade, perpetrado en el año 2001. Según se informa, cuando la Sra. García Andrade denunció el incidente en la Procuraduría General de Justicia del Estado de Chihuahua uno de los funcionarios le habría preguntado por qué no dejaba las cosas por las paz advirtiéndole que "total mañana apareces muerta, o yo muerto!" Además, el 10 de junio de 2007, una abogada de ANAD habría recibido un mensaje en el móvil que contenía el siguiente texto 'Tú serás eliminada'. Según la información recibida, desde el 10 de junio de 2007, tanto los miembros de la organización Nuestras Hijas de Regreso a Casa como los abogados y abogadas de ANAD habrían estado recibiendo mensajes vía correo electrónico amenazándoles con que les sucedería algo si no dejaban su actividad.

La Sra. Ortiz Rivera, ha sufrido presuntas intimidaciones desde el 2003. De hecho, el 24 de octubre de 2003, dos individuos encañando armas de fuego le habrían atacado mientras viajaba en coche con sus dos hijas. Se alega que los perpetradores, le habrían apuntado con un arma a la cabeza y otra en la boca, amenazándole con que iba a conocer lo que sufren 'las muertas de Juárez'. Después de un tiempo los agresores la dejaron marcharse. Los expertos manifestaron que se teme que estos eventos puedan estar relacionados con la actividad en defensa de los derechos humanos de la organización Nuestras Hijas de Regreso a Casa, y en particular la de la Sra. Maria Luisa García Andrade y de la Sra. Marisela Ortiz Rivera y se expresaron profunda preocupación por su seguridad e integridad física así como la del resto de los miembros de dicha organización y los abogados de la Asociación Nacional de Abogados Democráticos (ANAD).

212. El 12 de Septiembre de 2007, el Relator Especial envió una carta de alegación junto con el Representante Especial del Secretario-General para los defensores de los derechos en relación con supuestos actos de hostigamiento contra los miembros del Corporativo de Estudios y Asesoría Jurídica A.C., organización que trabaja para la defensa de los derechos laborales y contra las violaciones graves a los derechos humanos. Según las informaciones recibidas: en la mañana del 3 de septiembre, los abogados del equipo del Corporativo de Estudios y Asesoría Jurídica A.C. se habrían percatado de que la chapa de la puerta de sus oficinas había sido forzada y los archiveros que normalmente se encuentran cerrados bajo llave, habían sido también abiertos y rebuscados. Según las informaciones recibidas, debido al desorden, aún no se habría podido determinar con exactitud qué documentos o expedientes habrían sido sustraídos. A excepción de una computadora portátil y dos memorias usb, ningún otro objeto de valor habría sido robado a pesar de que se habrían abierto cajones cerrados con llave donde había dinero en efectivo. Ese mismo día, el equipo de abogados que integra el Corporativo habría presentado una denuncia penal ante la cuarta Agencia del Ministerio Público de la Procuraduría General de Justicia del Distrito Federal. Los expertos independientes manifestaron preocupación de que estos supuestos actos cometidos contra el Corporativo de Estudios y Asesoría Jurídica A. C. estén directamente vinculados a sus actividades profesionales.

213. El 14 de Noviembre de 2007, el Relator Especial envió una carta de alegación junto con el Representante Especial del Secretario-General sobre la tortura en relación con el defensor de derechos humanos, Pedro Alvarado Delgado, mexicano y de 59 años de edad, se encontraba tomando fotos e imágenes en video de la operación policial llevada a cabo en San Salvador Atenco, en la que resultaron detenidas y agredidas más de 150 personas, cuando fue detenido de forma arbitraria por agentes de la policía. Según fuentes, al ser detenido, el Sr. Alvarado alegó su condición de observador de derechos humanos. Los agentes de la policía lo habrían golpeado repetidas veces en diversas partes de la cabeza y le habrían propinado patadas hasta arrojarlo al suelo, donde habrían vuelto a golpearlo y lo habrían amenazado de muerte. Al igual que a otros detenidos, después de esposarlo y obligarlo a taparse la cabeza, lo habrían obligado a permanecer acostado boca abajo, encima de las otras personas detenidas, durante las cinco horas que duró el trayecto en autobús hasta la prisión de Santiaguito. Según las informaciones recibidas, durante el trayecto, le habrían golpeado y amenazado. El Sr. Alvarado habría escuchado a la policía amenazar a las mujeres detenidas con violarlas así como los gritos de dolor de las otras personas que se encontraban a su alrededor. Posteriormente, en la cárcel, se le habría denegado el acceso a una atención médica adecuada, a pesar de las heridas que presentaba, así como también se le habría denegado el derecho a un abogado defensor elegido por él. Según las informaciones recibidas, tampoco se le habría informado de los motivos de su detención. El 5 de mayo de 2006, representantes de la Comisión Nacional de los Derechos Humanos habrían documentado las lesiones físicas que había sufrido el Sr. Alvarado. El 8 de mayo el Sr. Alvarado habría prestado declaración judicial pero sin la presencia de un juez. El 10 de mayo de 2006, en una audiencia conjunta de más de 200 personas detenidas en San Salvador Atenco, se le habría acusado formalmente del delito de ataques a las vías de comunicación y medios de transporte. El juez no habría tenido en cuenta las pruebas de malos tratos de que fue objeto el Sr. Alvarado, las cuales constan en un certificado médico, ni su declaración, según la cual, en el momento de la detención, llevaba a cabo actividades legítimas de derechos humanos. El 13 de mayo de 2006, quedaría en libertad bajo fianza. El proceso en su contra continúa abierto. A pesar de que habría sido presentada una solicitud presentada por parte de la defensa para dar vista al Ministerio Público, a efectos de investigar la alegación de torturas, el juez estatal negó dar intervención al Ministerio Público para que fueran investigadas las supuestas violaciones de las que fue objeto el Sr. Pedro Alvarado. Según las informaciones recibidas, la defensa habría pedido juicio de amparo. En el fallo, el juez federal de amparo no habría reconocido la obligación del juez estatal de informar a la Procuraduría General de Justicia del Estado, de las pruebas sobre las supuestas torturas sufridas por Pedro Alvarado. El tribunal federal habría resuelto que los tribunales estatales no están obligados a informar al Ministerio Público sobre la necesidad de iniciar una investigación por tortura. Según las informaciones, no existen pruebas que vinculen al Sr. Alvarado con los delitos que se le imputan. El juez habría sostenido que corresponde al Sr. Alvarado probar su negativa de haber participado en el delito que se le imputa, lo cual podría transgredir sus derechos a un debido proceso y a la presunción de inocencia. En tal virtud, inconforme con su procesamiento, el señor Alvarado promovió un juicio de amparo contra la resolución del 10 de mayo de 2006. El Sr. Alvarado ganó dicho juicio, en el que el juez federal habría reconocido la ausencia de pruebas en la acusación formal y habría ordenado que el juez competente precisara los elementos de prueba que acreditaran su responsabilidad y dictara una nueva resolución sobre el formal procesamiento. Sin embargo, el juez estatal habría dictado una nueva resolución el 28 de noviembre de 2006, ordenando de nuevo el procesamiento de Pedro Alvarado, sin precisar las pruebas de la imputación como lo ordenaba la autoridad federal.

El Sr. Alvarado habría vuelto a promover juicio de amparo contra esa resolución, volviendo a ganar dicho juicio. La autoridad federal habría ordenado al juez estatal, por segunda vez, precisar las circunstancias específicas que demostraran la supuesta responsabilidad del Sr. Alvarado. No obstante, el 10 de mayo de 2007, el juez estatal habría emitido una resolución en la que se ordena el formal procesamiento de Pedro Alvarado, omitiendo nuevamente precisar los elementos probatorios que acreditan su supuesta responsabilidad. Contra dicha resolución, Pedro Alvarado se inconformó ante un tribunal federal, por considerar que el juez estatal omitió dar cumplimiento a la sentencia de amparo en la que se ordenaba precisar las circunstancias específicas de la conducta que se le imputaba. Sin embargo, el tribunal federal declaró improcedente tal inconformidad. El Sr. Alvarado, por tercera vez, habría promovido juicio de amparo por no existir prueba que acreditara su participación en el delito que se le imputa. Dicho juicio se encuentra pendiente de resolver. Tras haber transcurrido más de un año desde que tuvo lugar la detención, acusación y torturas del Sr. Alvarado, los responsables aún no han sido enjuiciados y no existe una investigación al respecto.

Comunicación recibida

214. El 17 de Septiembre 2007, el Gobierno envió respuesta a la comunicación de 18 de Julio 2007. Según dicha respuesta, el Estado mexicano solicitó a la Comisión Interamericana de Derechos Humanos que convocara una reunión con los familiares de las víctimas y los representantes de la Asociación “Nuestras hijas de regreso a casa” con el fin de llegar a un acuerdo sobre las medidas a implementar para proteger su integridad física. De acuerdo con la respuesta, al momento de la misma, la Comisión no había respondido a dicho pedido. De otra parte, el Gobierno informa que en julio de 2007 la Comisión para prevenir y erradicar la violencia contra las mujeres en Ciudad Juárez, solicitó al Secretario de Seguridad Pública de Ciudad Juárez que proporcionara vigilancia policiaca en los domicilios de Maria Luisa García Andrade y la Sra. Marisela Ortiz Rivera, así como a la oficina de la asociación “Nuestras hijas de regreso a casa”, solicitud que fue aceptada y desde entonces se les presta protección policiaca. Finalmente, el Gobierno afirma que la procuraduría General del estado de Chihuahua se reunió con las interesadas y está adelantando investigaciones de los hechos denunciados.

215. El 12 de Noviembre 2007, el Gobierno envió respuesta a la comunicación de 12 de Septiembre 2007. Según dicha respuesta, el 3 de Septiembre de 2007, la Procuraduría General de Justicia del DF (PGJDF), inicio una averiguación previa FCH/CUH-8T3/2863/07-09 con motivo de una denuncia presentada por el Sr. Manuel Eduardo Fuentes Muniz por el delito de robo ocurrido en las oficinas del Corporativo de Estudios y Asesoría Jurídica A.C. Para dar con los probables responsables, el Ministerio Público desahogó las siguientes diligencias: inspección ocular, periciales en materia de evaluación, citatorios girados al denunciante para la recepción de su ampliación de declaración y, en su caso, presentación de testigos. Las investigaciones no tuvieron resultados conclusivos. Por ello, la averiguación previa se encuentra en proceso de ser remitida al archivo de concentración de la PGJDF, a menos que pudieran recibirse mayores elementos a través de la ampliación de la declaración, y con ello, ayudar al desarrollo de la investigación.

Comentarios y observaciones del Relator Especial

216. El Relator Especial agradece al Gobierno de México su grata cooperación y aprecia que el mismo haya tenido a bien enviarle en un corto plazo informaciones sustantivas en respuesta a las alegaciones que les transmitió el 18 de julio y el 12 de septiembre de 2007.

217. En lo que se refiere al llamado urgente enviado el 18 de Julio de 2007, el Relator Especial toma nota de las medidas que ha tomado el Gobierno para proteger a las Sras Maria Luisa García Andrade y Marisela Ortiz Rivera. El Relator solicita al Gobierno que le informe en el más breve plazo sobre las gestiones realizadas ante la Comisión Interamericana de Derechos Humanos y que indique qué medidas concretas se han tomado para investigar los hechos denunciados por las Sras Maria Luisa García Andrade y Marisela Ortiz Rivera. En lo que se refiere al llamado urgente enviado el 12 de Septiembre de 2007, el Relator Especial solicita al Gobierno que le informe si se han adelantado diligencias con el fin de encontrar nuevos elementos que permitan establecer responsabilidad penal de los autores de los hechos denunciados. En caso de no haberse realizado ninguna diligencia, explicar el porqué.

218. Asimismo, el Relator Especial manifiesta su preocupación por la ausencia de respuesta oficial a la carta de alegación enviada el 14 de Noviembre de 2007 y urge al Gobierno de México para que envíe lo más pronto posible, preferiblemente antes de la finalización de la novena sesión del Consejo de Derechos Humanos, una respuesta sustantiva a las alegaciones arriba mencionadas.

Morocco

Communications envoyées

219. Le 27 juillet 2007, le Rapporteur Spécial a envoyé au Gouvernement marocain, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, un appel urgent sur la situation de M. Abderrahim Ariri, directeur de publication de l'hebdomadaire arabophone « Al Watan Al An » (« La Nation maintenant »), et M. Mostapha Hurmatallah, journaliste. Les sources alléguaient que, le 24 juillet 2007, M. Abderrahim Ariri, d'abord arrêté, aurait été placé en liberté provisoire tandis M. Mostapha Hurmatallah aurait été, quant à lui, écroué à la prison de Okacha, dans l'attente de leur procès, dont la première audience aurait eu lieu le 26 juillet 2007. Il était allégué que les deux journalistes étaient poursuivis pour « recel de documents obtenus à l'aide d'un crime », en vertu de l'article 571 du Code pénal qui prévoit pour une accusation de cette nature une peine d'emprisonnement d'une à cinq années. Les sources indiquaient que la décision du Parquet de Casablanca avait été prise suite à une garde à vue de 96 heures, renouvelée une fois, au siège de la Brigade nationale de la Police Judiciaire de Casablanca, au cours de laquelle les deux hommes auraient été continuellement interrogés sans la présence d'un avocat. Suite à la publication d'un dossier intitulé « Les rapports secrets derrière l'état d'alerte au Maroc » dans l'édition numéro 253 d' « Al Watan Al An », parue le 14 juillet 2007, les deux journalistes auraient été interpellés par des policiers en civil le 17 juillet 2007 vers 7 heures du matin (heure locale), à leur domicile respectif à Casablanca. Ensuite, ils auraient été conduits à la Préfecture de police où ils auraient été interrogés. En milieu de matinée, ils auraient été accompagnés au siège de la rédaction d' « Al Watan Al An » où une fouille aurait été menée, au cours de laquelle un nombre très important d'archives du journal, ainsi que l'ordinateur, le téléphone portable et l'agenda de

M. Abderrahim Ariri auraient été confisqués. L'un des articles du dossier publié se serait appuyé sur une note interne de la Direction Générale de la Surveillance du Territoire (DGST), publiée dans le journal, qui avisait tous les services de sécurité de faire preuve de vigilance après la diffusion sur Internet d'un enregistrement vidéo d'un groupe terroriste lançant « un appel solennel au jihad contre les régimes maghrébins, en désignant particulièrement le Maroc ». Selon les informations reçues, le contenu de ladite note publiée par cet hebdomadaire ne révélait aucune information confidentielle mais relatait des informations déjà publiées sur internet et donc publiques.

220. Le 7 mars 2008, le Rapporteur Spécial a envoyé au Gouvernement du Maroc, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, le Rapporteur spécial sur la torture et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, un appel urgent concernant l'arrestation de M. Yahya Mohamed el Hafed Aaza, un membre de l'Association Marocaine des Droits de l'Homme (AMDH) et membre de l'Assemblée Constitutive du Collectif des Défenseurs Sahraouis des Droits de l'Homme (CODESA). Selon les informations reçues, le 29 février 2008, M. Yahya Mohamed el Hafed Aaza aurait été arrêté alors qu'il travaillait dans son magasin de Tan-Tan, dans le sud du pays. Cette arrestation serait liée à des manifestations pro-indépendance qui se seraient déroulées le 27 février dans la ville. Au moment de l'appel urgent, il était allégué que M. Yahya Mohamed el Hafed Aaza était détenu au poste de police de Tan-Tan pour interrogatoire ; il était alors indiqué qu'il n'avait pas encore été inculpé et n'avait pas eu accès à son avocat ainsi qu'à sa famille. M. Yahya Mohamed el Hafed Aaza aurait par le passé déjà été arrêté par les services de renseignement de l'armée marocaine en 2004 et 2006, et en 2005, ces mêmes services l'auraient enlevé et retenu pendant deux semaines, au cours desquelles, il aurait été soumis à la torture.

Communications reçues de la part du Gouvernement

Aucune.

Commentaires et observation du Rapporteur spécial

221. Le Rapporteur Spécial regrette de devoir constater l'absence de coopération du Gouvernement du Maroc et l'invite instamment à lui transmettre au plus tôt, et de préférence avant la fin de la neuvième session du Conseil des droits de l'homme, des informations précises et détaillées en réponse aux graves allégations ci-dessus et concernant la situation actuelle des personnes qui en sont l'objet.

Myanmar

222. On 19 February 2008, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on the question of torture and Special Rapporteur on the situation of human rights in Myanmar, regarding Ms. Khin Sanda Win, a 21 year-old university student, who is being tried under section 336/511 of the Penal Code in connection with the protests of September 2007. According to the information received, on 29 September 2007, a group of men in plain clothes stopped Ms. Win and searched her bag. Although they did not find anything, they tied her hands behind her back and took her to the Yangon Town Hall, where they put her together with ten unknown men and photographed each along with various weapons. They

forced them to sign confessions that the weapons had been found in their bags. Ms. Win refused to sign and subsequently one of the men in plain clothes hit her on the head with a bamboo rod. That night Ms. Win was sent to the Kyaikkasan Interrogation Camp, where she was kept without charge or warrant until 7 October. Afterwards, she was transferred to Insein Prison and held there until 25 October without charge, warrant or any other legal orders. On 25 October, she was sent to the Hlaing Township Peace and Development Council office where she was told to sign a pledge that she would not take part in any anti-state activities, after which she was released. During the 26 days of her detention, she was denied access to a lawyer and not allowed to contact her family. On 1 November, two police officers from Kyauktada Township Station came to Ms. Win's house and informed her that she would be charged with illegal possession of arms as per section 19(e) of the Arms Act, although the "arms" they claimed to have found were a slingshot and some pellets, which are not listed under the act. Instead, when Ms. Win went to court the next day, the charge put against her was acting "to endanger human life or the personal safety of others" under section 336/511 of the Penal Code. She was granted bail for five million kyat, an amount that exceeds what a judge can legally order in such a case. On 12 November, the judge unilaterally revoked the bail on the grounds that Ms. Win constituted a threat to security forces personnel because the charge against her relates to the disturbances of September. Since then, she has been held in Insein Prison in solitary confinement.

Communications received

None.

Special Rapporteur's comments and observations

223. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Myanmar to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegation. Particularly, the Special Rapporteur is deeply concerned on the alleged long period in solitary confinement of Ms. Khin Sanda Win. He urges the Government to provide information whether there has been a judicial review of this detention, as required under international law; and whether she could have access to a lawyer and could be visited by her family.

Nepal

Communications sent

224. On 12 June 2007, the Special Rapporteur sent an urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights regarding alleged threats against Mr. Jitman Basnet, a lawyer, journalist and human rights defender. Mr. Basnet has been involved in working for the victims of conflict in Nepal for a number of years and in September 2006 he filed a writ of mandamus before the Supreme Court, requesting that a High Level Committee be established to investigate human rights abuses that took place during the recent conflicts in the country. Mr. Basnet was the subject of an allegation letter sent by the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the question of torture and the Special Rapporteur on the right to freedom of opinion and expression on 26 January 2005. According to information received, on 21 May 2007, at approximately 18:15pm, Mr. Basnet received a threatening phone-call in which

the caller informed him that he would “bear the consequences” of his work in defence of human rights in Nepal. The call was allegedly made from a public phone booth in Swayambhu, Kathmandu. In March 2007, Mr. Basnet published a book entitled *258 Dark Days*, in collaboration with Advocacy Forum Nepal and the Asian Human Rights Commission (AHRC). The book provides an account of the 258 days he spent in incommunicado detention and the alleged torture and mistreatment he was subjected to during his time at Bhairabnath Battalion’s facilities. He was arrested in Kathmandu by members of the Bhairabnath Army Battalion on 4 February 2004. The book also refers to allegations of torture, rape, killings and/or disappearances at the hands of the Bhairabnath Barracks’ personnel.

225. On 24 August 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Mr. Jitman Basnet. Mr. Jitman Basnet is a lawyer, journalist, and the Secretary General of the Lawyer’s Forum for Human Rights (LAFHUR), in Babarmahal, Kathmandu. Mr. Jitmas Basnet was the subject of a communication sent by the Special Rapporteur on the question of torture on 16 February 2004. Mr. Basnet was also the subject of an allegation letter sent by the Special Rapporteur on the question of torture, together with the Special Representative to the Secretary-General on the situation of human rights defenders, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 26 January 2005, and of a communication sent by the Special Rapporteur on the independence of judges and lawyers, together with the Special Representative to the Secretary-General on the situation of human rights defenders on 12 June 2007. According to information received, on 7 August 2007, Mr. Jitman Basnet received a threatening telephone call from an unidentified woman. On 11 August 2007, Mr. Basnet received another call from a different unidentified woman who informed him that both he and his wife would be killed. Mr. Basnet officially reported these calls to the authorities on 13 August 2007, filing a complaint at Tinkune police station. On 18 August 2007, Mr. Basnet received another telephone call, this time from an individual identifying himself as both Khadga Mahato and Mahat, who informed him that he had been named in a book entitled *258 Dark Days*, written by Mr. Basnet in 2007. The book chronicles his period of extended custody in Bhairabnath Batallion’s facilities and also details human rights violations allegedly committed against other detainees by personnel at the Bhairabnath Barracks. Concern was expressed that the aforementioned incidents may be directly related to Mr. Jitman Basnet’s legitimate and non-violent human rights work, in particular his work to investigate the human rights violations that have allegedly been committed during times of recent conflict in Nepal. Further concern is expressed for the physical and psychological integrity of Mr. Jitman Basnet and his family.

Communications received

None.

Special Rapporteur’s comments and observations

226. The Special Rapporteur regrets the absence of an official reply and invites the Government of Nepal to provide substantive and detailed information on the urgent appeals of 12 June 2007 and 24 August 2007 at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council. With this respect, the Special Rapporteur expresses his

concern in relation to intimidation, hindrance, harassment or improper interference suffered by lawyers while performing their professional duties. In this regard, the Special Rapporteur wishes to be advised whether Mr. Basnet has received adequate safeguards by the authorities, in accordance with the Basic Principles on the Role of Lawyers, in particular principle 17.

Pakistan

Communications sent

227. On 9 March 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on [torture](#) and other cruel, inhuman or degrading treatment or punishment and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Mr. Khalid Khawaja, a resident of Rawalpindi, currently detained in a high security detention facility in Faisalabad. Mr. Khawaja has reportedly been active with an organization called Defence for Human Rights, which brings together relatives of people who were subjected to enforced disappearance, especially those who were allegedly held by the security forces on suspicion of having links with terrorist networks. According to the information received, Khalid Khawaja was taken into custody by security forces at daybreak on 26 January 2007 outside his family home in Rawalpindi. After some hours of inquiries his family was told that he was held in Adiala Jail, in Rawalpindi, charged with “distributing pamphlets that incite sectarian violence”. On 21 February 2007 the Islamabad Additional and Sessions Court granted him bail, but instead of being released that night he was moved to a different detention facility on the orders of the Home Secretary of Punjab. News reports claimed that he had been moved to a high-security detention facility in Faisalabad, but when his lawyer called the detention centre to confirm the reports, he was told that no one by that name was in custody there. On 22 February 2007 the District Magistrate of Islamabad ordered that Mr. Khawaja’s detention be extended by 30 days under the Maintenance of Public Order Act 1960. Mr. Khawaja’s family and lawyer filed an appeal at the Lahore High Court (Rawalpindi Bench). On 28 February 2007 the High Court directed the provincial and federal authorities to establish Khalid Khawaja’s whereabouts and produce him in court by 2 March 2007, and make known the charges against him. The authorities did not present Mr. Khawaja in court. However, in a hearing on 2 March 2007 they disclosed that he is currently held in a high security detention facility in Faisalabad. The High Court ordered that he be transferred to Adiala Jail in Rawalpindi by 5 March at the latest. Mr. Khawaja remains detained incommunicado with no access to his lawyer or family. Concern was expressed that Mr. Khawaja’s detention might be linked to his human rights activities on behalf of persons allegedly subjected to enforced disappearance and their families. Further concern was expressed about his physical integrity, both in the light of his prolonged incommunicado detention and especially because he is diabetic and might not be receiving adequate medical care.

228. On 16 March 2007, the Special Rapporteur sent an allegation letter concerning the suspension of Chief Justice of Pakistan, Iftikhar Chaudhry, who on 9 March 2007 was removed by President Pervez Musharraf for alleged “misuse of office”. According to the information received, Chief Justice Iftikhar Chaudhry, after being summoned to President Pervez Musharraf’s Camp Office in the military premises, was declared non-functional and subsequently suspended by President Musharraf on 9 March 2007. This was followed by another decision referring Mr. Iftikhar Chaudhry’s case to the Supreme Judicial Council to investigate

allegations of the Justice's misconduct under article 209 of the Constitution. When the communication was sent, details about the actual allegations had not been made public by the authorities. At the time of his removal, Chief Justice Iftikhar Chaudhry was involved in the hearing of several cases relating to disappearances allegedly conducted by intelligence agencies, gang rape and torture. After his suspension, Justice Iftikhar Chaudhry is said to being prevented from meeting anyone including his closest relatives, being held in house arrest. On 13 of March 2007, Mr. Chaudhry was expected to appear before a panel of senior judges who were investigating allegations that he misused his authority. A large number of lawyers were present at Supreme Court building, waiting for his arrival. Justice Iftikhar Chaudhry has named Munir A Malik, Tariq Mehmood, Aitizaz Ahsan and Hamid Khan to assist him during hearing of presidential reference against him. Mr. Chaudhry was stopped by police trying to walk to court and was taken to another official building before being forced into a car and taken to the court buildings. The lawyers that had gathered outside and around the court building were also demanding that the hearings be made open to the public. Furthermore, information has been received that on 12 March 2007 Pakistani lawyers took part in a demonstration, which was said to be one of the largest ever by High Court lawyers in Lahore. The lawyers were marching down the main road when police used batons to try and break up the procession. More than 20 lawyers were injured. Rallies attended by hundreds of lawyers were also held in the capital, Islamabad, and in other cities including Karachi and Quetta. Several courts are said to have discontinued functioning as a reaction to the suspension of the Chief Justice.

229. On 7 May 2007, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders in relation to Mr. Ali Ahmed Kurd, Vice-President of the Pakistan Bar Council (PBC) and a lawyer acting on behalf of Mr. Iftikhar Muhammad Chaudhry, Chief Justice of the Supreme Judicial Council who was removed from his position as Chief Justice on 9 March 2007; and Mr. Ghulam Mustafa Kundwal, a member of the Bar Association in Pakistan. Both Mr. Kurd and Mr. Kundwal have been involved in a campaign advocating for the independence of the judiciary in Pakistan. According to the information received, on 28 April 2007, Mr. Kurd was arrested at the district court in Quetta for his alleged involvement in a violent incident during the funeral of Mr. Nawab Akbar Khan Bugti, a political leader in Balochistan who was killed on 30 August 2006. Mr. Kurd was detained at Quetta district court before being released later the same day after lawyers across Pakistan staged protests at various locations throughout the country against his detention. It is reported that unknown individuals had made several failed attempts to abduct Mr. Kurd prior to his arrest. According to reports, in a separate incident on the evening of 27 April 2007, Mr. Kundwal, was severely beaten by uniformed men and left for dead in a ditch near the Cantonment area in Rawalpindi. Concern was expressed that the aforementioned events are directly related to the work of Mr. Kurd and Mr. Kundwal defending human rights in Pakistan and in particular their attempts to ensure independence of the judiciary in the country.

230. On 14 May 2007, the Special Rapporteur sent an urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding Mr. Munir Malik, President of the Supreme Court Bar Association, and one of the lawyers representing, Mr. Iftikhar Muhammad Chaudhry, Chief Justice of the Supreme Judicial Council who was suspended on 9 March 2007. Mr. Malik has also been instrumental in leading the movement for the protection of the independence of the judiciary in Pakistan. According to the information received, on 9 May 2007, Mr. Malik's office, in the Southern Port of Karachi, was

blockaded, without prior warning, by the Karachi Building Control Authority (KBCA) on the grounds that the building was being used for commercial purposes in a residential area. Later that same day the Sind High Court issued an interim order in favour of Mr. Malik, stating that the authorities had no legal basis on which to close the office considering that the office had been in use since 2002, and the premises were restored. The closure took place three days before the office was due to host a reception for the suspended Chief Justice Chaudhry. According to reports, in the early hours of the morning, on 10 May 2007, Mr. Malik's house was sprayed with bullets. Mr. Malik was at home at the time along with his wife and young children. A complaint has been lodged with Darakhshan Police Station, Karachi, however as yet the perpetrator has not been identified.

231. On 6 November 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on human rights and counter terrorism, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding the imposition of the state of emergency by the President of Pakistan on 3 November 2007 and the suspension of fundamental freedoms, including the right not to be deprived of one's liberty, save in accordance with the law and to the enjoyment of safeguards as to arrest and detention, the right to freedom of movement, the right to assemble in public and the freedom of expression. Further, the proclaimed state of emergency entails an attack on the independence of the judiciary. The State of Emergency declared by President Musharraf is said not to be a constitutional emergency envisaged in the Constitution, which has now been declared to remain in abeyance and replaced by a "Provisional Constitution Order". According to the information received, seven members of the Supreme Court issued a declaration against the emergency rule order stating that it appears not to be legal, neither under the Constitution nor under international law. In particular, the mandate holders expressed their concern about the situation of some 70 human rights defenders who were arrested during a meeting inside the premises of the NGO Human Rights Commission of Pakistan (HRCP) in Lahore. They were taken to the police initially, and requested to sign a declaration not to engage in any human rights activities. They all refused to sign it and were verbally abused by police officers. Those arrested on 4 November include the following 55 human rights activists (31 male and 24 female): Mr. I.A. Reham, Director of HRCP, Mr. Syed Iqbal Haider, Secretary General of HRCP, Ms. Shahtaj Qazalbash, Mr. Mehboob Khan, Mr. Nadeem Anthony, Ms. Saleema Hashmi, Ms. Rubina Saigol, Ms. Samina Rehman, Brig Rao, Abid Hameed, Faisal Akhtar, Waseem Majeed Malik, Irfan Barkat, Dr. Naseem Ali, Dr. Khurram Iftikhar, Dr. Yousaf Yaseen, Mr. Irshad Choudhry, Imran Qureshi, Shams Mahmood, Zaffar ul Hassan, Khalid Mehmood, Bilal Hassan Minto, Muhammad Bashir, Ali Cheema, Shahid Hafeez, Syed Mozam Ali Shah, Mansoor Ali Shah, Shahzeb Masood, Javed Amin, Suleman Akram, Muhammad Bilal Sabir, Shahid Amin, Khawaja Amjad Hussain, Mahmood Ahmed, Rahim ul Haq, Ashtar Ausaf Ali, Alia Ali, Samia Ali, Azhra Irshad, Jona Anderyas, Ayra Anderyas, Zeba, Neelam Hussain, Gulnar, Sonobar, Sadaf Chughtai, Nasreen Shah, Shaista Parvaiz Malik, Iram Sharif, Amina Sharif, Taina Sabah ud Din, Tamkant Karim, Lala Raukh, Huma Shah, Nasreen Shah, and Samia Ameen Khawaja. All 55 human rights activists were produced before the Judicial Magistrate on 5 November 2007 and were sent to Kot Lakhpat Jail Lahore. A hearing took place on 6 November 2007 and these 55 activists have reportedly been released on bail. The practising lawyer and United Nations Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir, has

been placed under house arrest for a period of 90 days, and her house has been declared a sub-jail were some of the activists mentioned above are currently detained. Two women defenders, Ms. Shahtag Qizilbash and Ms. Salima Hashmi, were shifted to a police owned residence at an unknown location. None of them have been charged. Neither a warrant, nor a judicial order were issued. The activists have not had access to lawyers or to their families and were detained for several hours without receiving food. Concern was expressed at the health of some of these leaders who are rather elderly. One of the detained activists, Mr. Ashtar Ausaf Ali advocate was sent to the hospital after suffering a heart attack in police custody. The Proclamation of emergency states that some members of the judiciary have undermined the executive and legislative branches in the fight against terrorism and extremism, thereby weakening the Government's ability to address this grave threat. Immediately after the imposition of the State of emergency judges were required to take an oath of allegiance to the Provisional Constitutional Order to continue exercising their functions as judges. A high percentage of the judges refused to take the oath, as they refused to accept the state of emergency order, declaring it unconstitutional. In particular, only four out of the 17 judges of the Supreme Court took the oath. The Chief Justice of the Supreme Court was among those who did not accept taking the oath. All the judges of the Supreme Court who refused to take oath have been immediately replaced by new judges. They are not allowed to leave their homes and are prevented by Government forces from doing so. Eight out of the 27 judges of the High Court of the Sindh Province took oath, while the other, including the Chief Judge, refused. In Balochistan, all five judges of the High Court accepted to take oath. In the Punjab Province, 17 out of the 31 judges of the High Court, including the Chief Judge, took oath. The most senior judge among those who refused to take oath, Mr. Bokhari, is now under house arrest. In the North West Frontier Province, around 50% of the 17 judges have not taken oath. On 5 November 2007, lawyers protested against the declaration of the state of emergency. There are indications of extreme brutality in the repression by the police and extensive arrests of lawyers. Some 150 lawyers have been arrested in Karachi and 50 in Lahore, including Ms. Hifza Aziz and Ms. Abid Saqi. Lawyers have been attacked by the police also inside the Court and the bar premises. All office bearers of the Bar Associations have been arrested. The Government has suspended the transmission of privately owned local and international television channels, in particular news stations. Agents of the Electronic Media Regulatory Authority (PEMRA) alongside police officers raided the premises of television and radio channels to confiscate equipment. Internet service providers were also ordered to stop their service, interrupting Internet access for a large number of users. The President promulgated a new ordinance under which the print and electronic media have been barred from printing and broadcasting "anything which defames or brings into ridicule the head of state, or members of the armed forces, or executive, legislative or judicial organ of the state". The ordinance stipulated up to 3 years in prison as punishment for non-compliance.

232. On 14 November 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism regarding the Pakistan Army (Amendment) Ordinance, 2007. According to the information received, on 10 November 2007, President Pervez Musharraf issued Ordinance No. LXVI amending the 1952 Army Act. This measure was taken in the context of the proclamation of a state of emergency by President Musharraf on 3 November this year. This amendment will broaden the scope of the Act for civilians to be tried and convicted by military tribunals. Previously, the Army Act contained provisions enabling the army to try civilians, but only if at least one of the accused belonged to the armed forces. Under the

amendment, a sub-clause (iia) was be inserted into the sub-clause (ii) which reads: “Any offence, if committed in relation to defence or security of Pakistan or any part thereof or Armed Forces of Pakistan, punishable under the Explosive Substance Act, 1908 (VI of 1908), prejudicial conduct under the Security of Pakistan Act, 1952 (XXXV of 1952), the Pakistan Arms Ordinance, 1965 (W.P.Ord. XX of 1965), the Prevention of Anti-national Activities Act, 1974 (VII of 1974) or Anti-terrorism Act, 1997 (XXVII of 1997), Sections 109 (punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment), 117 (abetting commission of offence by the public, or by more than ten persons), 120B (punishment of criminal conspiracy), 121 (waging or attempting to wage war or abetting waging of war against Pakistan), 121A (conspiracy to commit offences punishable by Section 121), 122 (collecting arms, etc., with intention of waging war against Pakistan), 123 (concealing with intent to facilitate design to wage war), 123A (condemnation of the creation of the state and advocacy of abolition of its sovereignty), 124 (assaulting president, governor, etc., with intent to compel or restrain the exercise of any lawful power), 124A (sedition), 148 (rioting, armed with deadly weapon), 302 (punishment of Qatl-i-amd), 353 (assault or criminal force to deter public servant from discharge of his duty) and 505 (statement conducive to public mischief) of the Pakistan Penal Code or attempt to commit any of the said offences.” Under the amended Army Act, the military courts will not have to honour the strict requirements of due process of law and the examination of evidence as under civil adjudication. Moreover, lawyers would only be allowed to represent the accused in the capacity of a “friend”. Furthermore, according to the ordinance, the amendment will have retroactive effect and include any of the above mentioned offences that have been committed since 1 January 2003. Government officials state that one of the reasons for the amendment to the Army Act is the inability of the existing anti-terrorism courts to hold proper or speedy trials of the people involved in acts of terrorism or armed militancy in the country. Concern was expressed that the new amendment be used to curb protest against the Government and the proclamation of the state of emergency, and to prevent individuals from pursuing political activities. With respect to the retroactive effect, concern was expressed that the amendment be used to cover the hundreds of cases of “disappearance” that the Supreme Court under Chief Justice Iftikhar Muhammad Chaudhry was inquiring into.

233. On 23 November 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on torture and Special Representative of the Secretary-General on the situation of human rights defenders, regarding the situation of lawyers and judges in Pakistan, including the lawyers Mr. Munir A. Malik, Mr. Aitzaz Ahsan, Mr. Tariq Mahmood, Mr. Ali Ahmed Kurd, Mr. Abrar Hassan and Mr. Ahsan Bhoon, and Mr. Iftikhar Choudhry, chief justice of Pakistan, other judges of the Supreme Court, Mr. Sabih Uddin Ahmed, Chief Justice of Sindh, Mr. Justice Shahani, Mr. Justice Musheer Alam and Ms. Noor Naz Agha, judges of the Sindh High Court. According to the information received on 3 November 2007 President Musharraf declared the state of emergency. Since then, more than 3000 lawyers have been arrested and detained, which constitutes an unprecedented attack to the legal profession in Pakistan. Many of them are being held for up to 90 days under the Maintenance of Public Order law. Among them are numerous lawyers affiliated with political movements striving for the restoration of the constitution. It is reported that these lawyers have been arrested and put in detention without having committed any offense, for the sole fact of having expressed their opinion about the recently promulgated state of emergency. Furthermore, it is reported that a

new professional ordinance is to be passed giving the High Courts and the Supreme Court the power to remove the licences of practicing lawyers, which would be in violation of the independence of lawyers and their right to exercise their functions without interference. In this context, information was received about the situation of senior lawyers Mr. Munir A. Malik, Mr. Aitzaz Ahsan, Mr. Tariq Mahmood, Mr. Ali Ahmed Kurd, Mr. Abrar Hassan and Mr. Ahsan Bhoon. It is reported that Mr. Munir A. Malik, former president of the Supreme Court Bar Association (SCBA), is being held in Attock Fort under the custody of the military intelligence service. Numerous instances of torture are said to have occurred at Attock Fort during the past months. Munir A. Malik, who is known to suffer from a heart condition, was reportedly visited by Government doctors on 10 November. There have been no further reports on his current condition. Aitzaz Ahsan, current president of the SCBA, is being held in Adiala prison in Rawalpindi. His lawyer has repeatedly been denied access to him. On 6 November, the authorities at the Adiala prison are said not to have admitted Aitzaz Ahsan's lawyer, even though the Deputy Commissioner of Islamabad Administration had given permission for the visit. Mr. Tariq Mahmood, former President of the Supreme Court Bar Association had allegedly been imprisoned in Adiala prison. No one has been allowed to see him and it is reported that he has been transferred to an unknown place. The whereabouts of Ali Ahmed Kurd, former Vice Chair of the Pakistan Bar Council, who was also detained on 3 November, continue to be unknown. Information received suggests that Mr. Ali Ahmed Kurd has been handed over to intelligence agencies and has been maltreated. Mr. Abrar Hassan and Mr. Ahsan Bhoon are said to be held incommunicado since their arrest on 3 November. The mandate holders have also received worrying information according to which not less than 417 lawyers have been arrested and are detained in the city of Lahore. The list of the detained Lahore based lawyers is included in the annex. Many more lawyers have been arrested in the rest of the province of Punjab. Although some lawyers would have been freed on 20 November, it appears that many of them have been re-arrested, and that many others remain in detention. It is also reported that lawyers have been severely beaten during demonstrations, including women lawyers, and that they would be subjected to cruel and degrading treatment while in detention. Concerning the situation of judges, it is reported that Mr. Ifetkhar Choudhry, Chief Justice of Pakistan, remains in detention, as well as other judges of the Supreme Court who have refused to take the new Oath under the new state of emergency regulations. Other judges are detained in the country, including the following judges of the Sindh High Court that have been brought under house arrest: Mr. Sabih Uddin Ahmed, Chief Justice of Sindh, Mr. Justice Shahani, Mr. Justice Musheer Alam and Ms. Noor Naz Agha. Finally, the mentioned judges have been dismissed in violation of the Pakistan Constitution and legislation that do not provide the President of Pakistan with the authority to dismiss judges and that guarantee the security of tenure of judges, in particular of Supreme Court judges. Grave concern was expressed at the numerous arrests and detentions of lawyers and judges under provisions that allow detention without charge or trial. Of further concern is the reported frequent incommunicado detention, which includes denial of visits by family and lawyers. With respect to the lawyers and judges mentioned above and in the annex, grave concern was expressed that they are at risk of torture or other ill-treatment. As regards Mr. Malik, concern is expressed with regard to his health. Great concern is also expressed at the dismissal of judges. In this regard, we call upon the Government to reinstate all judges that have been illegally dismissed.

234. On 21 March 2007, the Special Rapporteur issued the following press release:

UNITED NATIONS EXPERTS EXPRESS DISTRESS ABOUT RECENT EVENTS IN PAKISTAN

“The Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on the situation of human rights defenders express serious distress about recent events in Pakistan. On 9 March 2007, President Pervez Musharraf suspended the Chief Justice of Pakistan, Iftikhar Chaudhry, over unspecified allegations of ‘misuse of office’.

Demonstrators, including lawyers, journalists, political activists and civil society actors, have taken to the streets since 12 March to protest against this presidential decision, which is broadly seen as constituting an attack against the independence of the judiciary. Law enforcement authorities, in some instances, have used force in an excessive manner against peaceful demonstrators, and have arrested several of them. Also, journalists were physically hindered from reporting on the events.

In this context, several judges have resigned in the past few days and lawyers in various parts of the country are boycotting court proceedings in sign of protest against the suspension and against police abuses against demonstrators.

The Special Rapporteur and the Special Representative wish to remind the Government of provisions enshrined in the Constitution of Pakistan that establish a specific procedure as a safeguard to guarantee the independence of the judiciary and to protect judges from undue interference by the executive branch. In the present case, it is widely believed that the Chief Justice was suspended without respect for these procedures.

The circumvention of the Constitution constitutes a serious interference of the executive with the independence of the judiciary. This threatens the proper functioning of the country’s judicial system.

Furthermore, the experts are concerned about the excessive force used against peaceful demonstrators. This is contrary to international standards, which guarantee the right to peaceful assembly for the purpose of promoting and protecting human rights and fundamental freedoms. It is the duty of the State to ensure the protection of everyone against any violence, threats or any other arbitrary action as a consequence for his or her exercise of these rights.

The two United Nations experts call upon the Government of Pakistan to follow scrupulously the constitutional procedures for an inquiry related to the Chief Justice’s conduct, to immediately halt the excessive force applied by law enforcement authorities and to investigate thoroughly these actions, and to do its utmost to ensure a continued functioning of the administration of justice in conformity with international standards.”

235. On 6 August 2007, the Special Rapporteur issued the following press release:

UN EXPERTS WELCOME REINSTATEMENT OF CHIEF JUSTICE CHAUDHRY OF PAKISTAN

“The Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary General on the situation of human rights defenders welcome the reinstatement of the Chief Justice of Pakistan, Iftikhar Chaudhry, after a majority decision of the Supreme Court on 20 July 2007.

The Special Rapporteur and the Special Representative see this decision of the Supreme Court as a significant step towards restoring confidence in the rule of law, but still wish to stress the importance of keeping the independence of the judiciary.

In a press release issued on 21 March 2007, the Special Rapporteur and the Special Representative had expressed their concerns regarding the events that took place in Pakistan after 9 March 2007, when President Pervez Musharraf suspended the Chief Justice over unspecified allegations of ‘misuse of office’. The Special Rapporteur and the Special Representative called upon the Government of Pakistan, among others, to follow scrupulously the constitutional procedures for an inquiry related to the Chief Justice’s conduct and to do its utmost to ensure a continued functioning of the administration of justice in conformity with international standards. Furthermore, they called upon the Government to investigate thoroughly the reported cases of excessive force applied by law enforcement authorities against peaceful demonstrators.”

Communications received

None.

Special Rapporteur’s comments and observations

236. The Special Rapporteur regrets the absence of an official reply and urges the Government of Pakistan to provide substantive answers to the above allegations at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council. The Special Rapporteur is deeply concerned at the interference of the executive in the judiciary, in breach of the Principle 1 of the Basic Principles on the Independence of the Judiciary. The suspension of judges and their effective house arrest violates international norms and standards for the independence of the judiciary. Judges should not be removed by the executive, except in cases of incapacity or if they are unfit to discharge their duty. He also expresses grave concern at the declaration of the state of emergency, which is said not to be constitutional. The Special Rapporteur is also deeply concerned about the numerous arrests and detentions of judges, lawyers and human rights activists under emergency provisions, which allow detentions without charges or trial, in the form of incommunicado detention. Detainees have neither access to lawyers, nor to their families. Furthermore, the Special Rapporteur urges the Government to repeal the Pakistan Army (Amendment) Ordinance, 2007, since it allows military courts to try civilians. This Ordinance does not comply with international human rights norms and standards on the right to fair trial.

Peru

Comunicaciones enviadas

237. El 12 de abril 2007, el Relator Especial envió un llamamiento urgente junto con la Representante Especial del Secretario-General para los defensores de los derechos humanos en relación con la Sra. Iskra Chavez Loaiza y la Sra. Evelyn Cevallos Enriquez, abogadas defensoras de derechos humanos de la Institución APORVIDHA, una organización miembro de la Coordinadora Nacional de Derechos Humanos con sede en Cuzco. La Coordinadora Nacional de Derechos Humanos es un colectivo nacional que agrupa a 66 organismos no gubernamentales dedicadas a la defensa y la promoción de los derechos humanos en Perú. El 13 de enero de 2006, la Representante Especial para los defensores de derechos humanos envió un llamamiento urgente al Gobierno señalando informaciones recibidas en relación con amenazas en contra de la Sra. Iskra Chavez Loaiza y la Sra. Evelyn Cevallos Enriquez. De acuerdo con la información recibida, el 29 de marzo de 2007, hacia las 18:30, la Sra. Enríquez habría recibido un mensaje anónimo en su móvil amenazándole con que algo le sucedería si no dejaba su actividad. Ese mismo día, la Sra. Loaiza habría recibido en su móvil un mensaje de texto proveniente de alguien anónimo, con el siguiente contenido 'cuídate te estoy chequeando'. La Sra. Enríquez y la Sra. Loaiza atienden el caso de la matanza de 34 campesinos, ocurrida en Lucmahuayco, Cuzco en 1984. El proceso penal ha sido remitido a la Sala Penal Nacional, en Lima, para que se especifique si se inicia el juicio oral. Según se informa, en enero de 2006 la Sra. Enríquez, la Sra. Loaiza y el Sr. Freddy Rodríguez Olivera, otro miembro de APORVIDHA, habrían recibido amenazas de muerte a través de mensajes de texto anónimos en sus móviles. Se habrían denunciado las amenazas ante la Fiscalía Provincial del Cuzco.

238. El 10 de Enero 2008, el Relator Especial envió un llamamiento urgente junto con la Representante Especial del Secretario-General para los defensores de los derechos humanos respecto de con el hostigamiento de los familiares de las víctimas de las masacres de Barrios Altos y La Cantuta, de la Sra. Gloria Cano, abogada y representante de las mismas, y de la Sra. Jo Marie Burt, representante del Washington Office for Latin America (WOLA). La Sra. Cano ya había sido objeto de un llamamiento urgente enviado por el Relator Especial sobre la independencia de magistrados y abogados, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario-General para los defensores de los derechos humanos el 22 de noviembre de 2004 y de un llamamiento urgente enviado por el Relator Especial sobre la independencia de magistrados y abogados y la Representante Especial del Secretario-General para los defensores de los derechos humanos el 28 de febrero de 2005. Según la información recibida entre el 10 y el 17 de diciembre del 2007, familiares y abogados de las víctimas de varias masacres perpetradas durante la presidencia de Alberto Fujimori, habrían sufrido agresiones verbales y físicas durante el juicio del ex Presidente Fujimori por, entre otras, las masacres de Barrios Altos y La Cantuta. El día 10 de diciembre, un grupo de individuos habría agredido a los abogados y familiares de las víctimas a unos 50 metros de la Dirección de Operaciones Especiales (Diroes), lugar donde transcurre el juicio. El 14 de diciembre, las Sras. Gloria Cano y Jo Marie Burt habrían sido verbalmente agredidas y amenazadas por simpatizantes de Fujimori. Gloria Cano habría sido nuevamente agredida verbalmente el día 17 de diciembre y los familiares de las víctimas habrían

sido insultados. Según se informa, incidentes de agresiones y amenazas se producirían de manera continua durante el juicio. El día 18 de diciembre, los miembros de las oficinas de la Asociación Pro Derechos Humanos habrían recibido una llamada telefónica amenazándoles por ser terroristas y amenazando de muerte a la Sra. Gloria Cano.

Comunicaciones recibidas

239. El 8 de Agosto de 2007, el Gobierno respondió a la comunicación enviada el 12 de Abril de 2007. Según dicha respuesta, el 24 de Abril de 2007 se solicitó información relativa a la situación de las señoras Iskra Chavez Loaiza y Evelyn Cevallos Enriquez, a la representante del Ministerio Público ante el Consejo Nacional de Derechos Humanos, específicamente sobre las investigaciones que se hubieren realizado respecto de las amenazas arriba mencionadas. El 24 de Abril de 2007 se hizo una solicitud similar al Ministerio del Interior, en el sentido de indicar si se habían tomado medidas de seguridad personal a favor de las mencionadas abogadas. El 17 de Mayo de 2007 el Ministerio del Interior remitió un informe con fecha 26 de Enero 2006 en el que se da cuenta de las investigaciones realizadas respecto de las amenazas relacionadas con la denuncia interpuesta por la Sra. Iskra Chavez Loaiza ante la Segunda Fiscalía Provincial Mixta de Wanchacq - Cusco. Se informa que la Unidad X DIRTEPOL - CUSCO a cargo de la investigación de los hechos se entrevistó con la Sra. Iskra Chavez Loaiza y llegó a la conclusión de que las amenazas eran mensajes de texto efectuadas desde una cabina de Internet. Se determinó que dos de los mensajes se habrían emitido desde una cuenta de la empresa CLARO y que no ha sido posible identificar a la persona autora de las amenazas, puesto que la empresa exige que se presente una orden judicial para proporcionar las informaciones relativas a la cuenta de Internet. Posteriormente se abrió investigación por parte de la Quinta Fiscalía Provincial de Cusco, la cual también fue enviada a la Segunda Fiscalía penal de Wanchaw, en vista de que las agraviadas habían interpuesto denuncia ante dicho organismo. Esta última, en resolución de 23 de Febrero de 2006 decidió archivar provisionalmente la investigación, debido a que técnicamente no era posible identificar a las personas autoras de los mensajes de texto. Además, el 4 de abril de 2007 se recepcionó otra denuncia interpuesta por las Señoras Iskra Chavez Loaiza y la Sra. Evelyn Cevallos Enriquez, la cual fue derivada a la comisaría PNP del Distrito de Wanchaq para investigación preliminar. Posteriormente la Segunda Fiscalía dispuso que se continuara con la investigación, a pesar de que la Sra. Iskra Chavez Loaiza no se había presentado a rendir declaraciones y de haber sido notificada varias veces. Finalmente el Gobierno afirma que la Quinta Fiscalía Provincial de Cusco viene realizando investigación policial del caso desde el 12 de abril de 2007, con el fin de identificar a los responsables del envío de los mensajes de texto. Para ello estableció contactos con el Ministerio del Interior y la Unidad de Inteligencia X DIRTEPOL CUSCO, en concurso con la Comisaría PNP de Wanchaq - Cusco y la Fiscalía de la Prevención del delito.

240. El 4 de Abril de 2008, el Gobierno respondió a la comunicación enviada el 10 de Enero de 2008. Según dicha respuesta la Corte Suprema de Justicia realiza todos los esfuerzos necesarios para garantizar la seguridad de los actos del juicio oral llevados a cabo en la sede judicial de Ate Vitrtte, ubicada al interior del cuartel de policial de la Dirección de Operaciones Especiales de la Policía Nacional del Perú - DIROES. Se emitió un instructivo que establece las reglas de conducta a cumplir y se coordinó con DIROES que se asigne un oficial de policía para dicho fin. Con respecto a las supuestas agresiones verbales por parte del acusado,

Sr. Alberto Fuji Mori, se descarta la posibilidad de que ellos se haya presentado, con base en un informe presentado por la Sala Penal de la Corte Suprema de Justicia, Dicho informe afirma que ninguno de estos hechos fueron reportados al tribunal. Sin embargo, tomando en cuenta los hechos relatados en la comunicación, se ha dispuesto que se redoblen los esfuerzos por garantizar la libertad de movimiento y tranquilidad del público, de los abogados y de las partes. Además, se puso en conocimiento de los hechos al Señor Fiscal Supremo para que tome las acciones correspondientes. Igualmente se requirió información a la Policía sobre los acontecimientos que supuestamente están teniendo lugar al exterior de la sede judicial. Respecto de las medidas de seguridad que se han tomado respecto de la sede de APRODEH, el gobierno informa que se dispuso desde el 19 de Diciembre 2007 que en forma permanente se realice una ronda móvil y estacionamiento táctico; también se realiza patrullaje petonal en las zonas adyacentes a dicha sede, con el fin de prevenir, neutralizar y contrarrestar cualquier acción violenta en contra el local, personal y enseres de la organización. Además, el grupo de Inteligencia Operativa (GIO) está realizando una intensa búsqueda de información con el fin de identificar y capturar a los presuntos individuos que están realizando los actos de hostigamiento en contra de APRODEH. De otra parte el Ministerio Público ante el Consejo Nacional de Derechos Humanos en oficio de 6 de marzo de 2008 da fe de que no se ha presentado ninguna denuncia de amenazas en contra de la Sra. Gloria Cano. Igualmente el 6 de Marzo de 2008, la Ministra de Justicia solicitó al Ministro del interior evaluar la posibilidad de brindar protección individualizada a la abogada Gloria Cano, con su consentimiento, por el tiempo que sea necesario.

Comentarios y observaciones del Relator Especial

241. El Relator Especial agradece al Gobierno de Perú su grata cooperación y aprecia que el mismo haya tenido a bien enviarle en un plazo corto informaciones sustantivas en respuesta a las alegaciones que les transmitió el 8 de Agosto de 2007 y el 10 de Enero de 2008.

242. En lo que se refiere al llamado urgente enviado el 8 de Agosto de 2007, el Relator Especial toma nota de todas las diligencias policiales y judiciales que se han venido adelantando con el fin de esclarecer quienes son los autores de las amenazas a las abogadas Iskra Chavez Loaiza y Evelyn Cevallos Enriquez. El Relator Especial expresa su preocupación puesto que después de más de dos años de investigaciones no se ha llegado a identificar a los responsables de dichas amenazas. Tampoco se ha tomado ninguna medida para proteger la vida e integridad personal de las abogadas. El Relator Especial hace un llamado para que se tomen todas las medidas necesarias para proteger a las señoras Iskra Chavez Loaiza y Evelyn Cevallos Enriquez, y llama a las autoridades para que redoblen esfuerzos con el fin de realizar investigaciones más efectivas que permitan identificar a los autores de las amenazas.

243. Respecto del llamado urgente de 10 de Enero de 2008, el Relator Especial recibe con satisfacción las varias iniciativas que ha puesto en marcha el Gobierno, con el fin de proteger a la abogada Gloria Cano. Sin embargo, el Relator Especial expresa su preocupación por el hecho de que no se han tomado medidas concretas que protejan su integridad física. Por ello urge al Gobierno para que dé curso en el corto plazo a la solicitud realizada por la Ministra de Justicia al Ministerio del Interior en el sentido de brindarle protección personalizada.

Philippines

Communications sent

244. On 8 February 2007, the Special Rapporteur sent an allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders in relation to repeated killings of lawyers and judges in the country. During the past two months only, four individuals have been killed, namely Nathaniel Pattugalan, judge, shot dead by men on a motorcycle on 19 January 2007; Gil Gojol, human rights lawyer, killed in a similar manner on 12 December 2006, and Froiland Siobal and Leonito Tapel, attorneys, ambushed and killed on 19 November 2006 and 2 December 2006 respectively. Furthermore, we have been informed that an International Fact Finding Mission concluded in its report "From Facts to Action. Report on the attacks against Filipino Lawyers and Judges" issued on 24 July 2006, that your Excellency's Government has not taken sufficient measures to address the continuing extrajudicial killings of lawyers and judges effectively. In particular criticism has been expressed that your Government has not responded seriously to strong allegations that its own security forces are involved in the killings nor taken effective measures to ensure that appropriate investigations and prosecutions of the perpetrators be conducted. It was also brought to our attention that a Special Commission of Inquiry, headed by former Supreme Court Justice Jose Melo, had been established to investigate the killings. According to information received, the Commission concluded its work in December 2006 and was expected to report its findings to your Excellency's Government in the first week of 2007. So far, however, the findings and recommendations of the Commission appear not to have been made public.

245. On 3 September 2007, the Special Rapporteur sent an allegation letter in relation to continuous killings of lawyers in the country. According to the information received, on 17 June 2007, Mr. Demetrio Hilbero, a lawyer, was killed in an ambush by two men on board a motorcycle in front of his office in Barangay Poblacion, as he was opening the gate of his law office near the public market. He was shot several times at close range. According to the police chief, the killing of Mr. Hilbero may have been related to the cases he was handling in Calamba City where he was working as a lawyer at the time of his death. On 18 June 2007, Mr. Luis Dote, also a lawyer, was killed by two unidentified men who fired multiple gunshots while he was onboard a passenger van, upon reaching Maingaran village. Mr. Dote was a lawyer connected with the Public Attorney's office serving Philippine citizens with limited resources in Masabate City in eastern Philippines. According to the information received, the police have reason to believe that the attack was related to his work. Since 2001, dozens of prosecutors, judges and lawyers have been subject to murderous attacks of which Mr. Dote and Mr. Hilbero were the latest victims. In addition to the arbitrary violation of the right to life of the numerous lawyers that have been killed, those murders are depriving an innumerable number of citizens of their right to legal representation before the courts.

Communications received

246. On 4 April 2007, the Government replied to the joint allegation letter of 8 February 2007, indicating that Judge Nathaniel Pattugalan, 60 years old and married, was killed on 19 January 2007 at about 6:15 p.m. The incident occurred along Elliptical Road, in front of the Department of Agrarian Reform (DAR) Building in Quezon City. Initial investigation conducted by the Philippine National Police - Criminal Investigation and Detective Group (PNP-CIDG)

disclosed that the victim boarded a passenger jeepney and sat beside the driver. Two unidentified male suspects on board a motorcycle suddenly approached the right side of the jeepney and one of them shot Judge Pattugalan at close range. The suspects then sped off in an unknown direction. The victim was immediately rushed by the responding elements of the Quezon City Police District to Emilio Aguinaldo Medical Hospital where he was declared dead on arrival by the attending physician at about 6:55 p.m. on that same day. On 22 January 2007, the widow of the Judge, Mrs. Anastacia Pattugalan, was invited by the PNP to shed light on the circumstances prior to her husband's death. She revealed that her husband was designated Acting Presiding Judge of the Quezon City Metropolitan Trial Court (MTC) Branch 35 in September 2006. According to Mrs. Pattugalan, three days prior to Judge Pattugalan's death, they had been receiving numerous anonymous phone calls, usually between 3:00 a.m. to 6:00 p.m. Whenever they attempted to talk to the caller, the caller would hang up. In one instance, Judge Pattugalan volunteered to answer the call, but refused to discuss with his wife what the call was about. On 15 January 2007, Judge Pattugalan sent a letter to Supreme Court Chief Justice Reynato Puno, requesting to be transferred to another Court in Manila. In said letter, he mentioned, among other things, the continuous threats to his life that may possibly be conducted to the ambush incident in which he survived unharmed on 27 October 2006 in Baggao, Cagayan. PNP is still validating information regarding the motorcycle used by the assailants as it was seen parked near a sidewalk at the vicinity of the DAR Building, a few hours before the incident. Continuous coordination among PNP Units is being undertaken for the early solution of the case.

Atty. Gil Gojol, human rights lawyer and former legal counsel of the different labor unions in Sorsogon, was killed in December 2006 at around 12:09 p.m., along the national road at Barangay Beriran, Gubat, Sorsogon. Reports from the Police Regional Office 5 disclosed that after attending a court hearing in Gubat, Sorsogon, Atty. Gojol's van, driven by Danilo M. France, was blocked by a black Yamaha motorcycle driven by an unidentified person wearing a helmet along with two male backriders wearing caps. One of the backriders shot the driver causing the vehicle to stop. Seeing his driver wounded, Atty. Gojol jumped out of the vehicle and ran about 35 meters away towards the grassy portion of the road, but was chased alter by two gunmen who shot him in different parts of his body. The motive behind Atty. Gojol's murder is said to may have been politically motivated. Atty. Gojol's driver was also killed during the incident. One of the three suspects was identified as Mario Fortun, a.k.a. Omar. A case has been filed against the suspects at the Sorsogon Provincial Prosecutor's Office under IS No. 2007-1411. Results of the investigation conducted by Task Force Siobal headed by Police Sr. Supt. Noli G. Talino revealed that Atty. Froilan Siobal and his wife, Mrs. Erlinda Siobal were killed on 19 November 2006 at about 10:00 a.m. along Siobal St., Barangay Inerangan, Alaminos City, Pangasinan. Based on sworn statements by witnesses Reynaldo A. Dacon and Bernald A. Caballero, spouses Froilan and Erlinda Siobal were on board their vehicle when SPO1 Agapito "Pitong" Celino, member of the PNP and assigned at 106th Police Mobile Group (PMG) based in Alaminos City, Pangasinan, together with Ojing Olivarez, both armed, suddenly appeared and shot the victims. Mrs. Siobal still managed to get out of their vehicle and tried to run but she stumbled on the ground. At this juncture, SPO1 Celino drew a short firearm and shot Mrs. Siobal twice killing her instantly. After the incident, the suspects casually walked away towards the north direction bringing with them the weapons they used in the killings. Witness Reynaldo A. Dacon further stated that he also saw Barangay Councilman Donald Sison and Edgar Parang at the crime scene, who also left after the incident. In a sworn statement by Froilan Francisco A. Siobal, eldest son of the victims, other persons alleged to be the conspirators in the killings of his parents were indicated. These persons,

according to him, threatened his father by means of direct and indirect utterances and were seen near their place of residence before his parents were killed. The suspects allegedly used a red van with plate number XDL 564 usually driven by SPO1 Celino. The eldest son identified the conspirators of SPO1 Celino as Boyet Medrano, Bong Grate, Barangay Chairman Rico Aquino, Mading "Mading" Tobias, Daniel Luciano, Landong Losendo and a certain "Taba", all residents of Barangay San Miguel, Bani, Pangasinan. He further stated that the motive behind the killings of his parents could be that his father was being suspected as one of the masterminds in the killing of one Rommel Rolda, a native of Vigan, Ilocos Sur, residing at Barangay San Miguel, Bani, Pangasinan, who was shot to death on 10 October 2003. On 29 November 2006, a case of double murder was filed before the Provincial Prosecutor's Office, Alaminos City, Pangasinan against suspects SPOT Agapito Celino, Ojing Olivarez, Barangay Councilman Edgar Parang and other John Does under ID No. AC-06-341. SPO1 Celino is being re-assigned from the 106th PMG to Pangasinan Police Provincial Office and will be restricted inside the camp pending the disposition of an administrative case against him.

Special Rapporteur's comments and observations

247. The Special Rapporteur thanks the Government of Philippines for its cooperation and its response to his communication of 8 February 2007. However, he remains concerned by the fact that the investigations of the killings are being held by the Philippines National Police, security force suspected to be involved in the crimes. The Special Rapporteur urges the Government to take effective measures to ensure that appropriate investigations be conducted.

248. Moreover, the Special Rapporteur is concerned about the lack of publicity of the findings and recommendations of the Special Commission of Inquiry, headed by the former Supreme Court Justice Jose Melo. He urges the Government to make them public. In addition, the Special Rapporteur is concerned at the absence of an official reply to the allegation letter sent on 3 September 2007 and urges the Government of Philippines to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Russian Federation

Communications sent

249. On 10 October 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders, regarding acts of harassment against human rights defenders in the Russian Federation including threats made against Mrs. Svetlana Gannuchkina, President of the Committee of Civil Assistance, Mr. Sergey Kovalov, a founder of the Memorial Society in Grozny and Mrs. Lidia Yusupova, lawyer, director of the Memorial Society and Nobel Peace Prize nominee. Further reports have also been received in relation to the harassment of Mr. Stanislav Dmitrievsky and the subsequent closure of the Russian-Chechen Friendship Society (RCFS), a non-governmental organization that monitors human rights violations in Chechnya and other parts of the North Caucasus. Mr. Stanislav Dmitrievsky, Executive Director of RCFS, and Ms Oksana Chelysheva, Deputy Director of RCFS, were the subjects of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders on 15 November 2005, and of an allegation letter sent by the Special Rapporteur

on the promotion and protection of the right to freedom of opinion and expression and Special Representative of the Secretary-General on the situation of human rights defenders on 9 June 2005. According to new information received, an ultra-nationalist group calling themselves “The Russian Will”, have recently published a list of 89 individuals on a website which include the names of several human rights defenders, including Svetlana Gannuchkina and Sergey Kovalov. According to reports the named individuals were categorized as “friends of foreigners” or “traitors to the Nation” and their personal data appears on a website where the group reportedly calls for the physical elimination of the listed individuals. It has also been reported that on 12 October 2006, Lida Yusupova reportedly received a threatening phone call on her mobile phone from an unidentified caller who said in Chechen: “Are you pleased to be a nominee for the Nobel Peace Prize? Presuming you’ll still be alive then!” Furthermore on 13 October 2006, a court in Nizhny Novgorod reportedly ordered the closure of RCFS, in accordance with a request from the regional Prosecutor’s office, on the basis that Stanislav Dmitrievsky had remained as Executive Director of RCFS despite being sentenced in February 2006, to a two year suspended sentence for “incitement to national hatred”. The court allegedly based its decision to close the RCFS on the “law to combat extremist activities”. Concern was expressed that the threats made against Mrs. Svetlana Gannuchkina, Mr. Sergey Kovalov and Mrs. Lida Yusupova should be treated as being serious, particularly in the light of the recent killing of Ms Politkovskaya and may represent attempts to deter human rights defenders in the Russian Federation from carrying out their legitimate activities. Furthermore, serious concerns were expressed that the amendments adopted this summer to the “law to combat extremist activities” may be used against human rights defenders, and the charges brought against the RCFS based on this law may set a precedent under which other human rights non-governmental organizations may also be closed.

Communications received

250. On 20 February 2007 the Government replied to the urgent appeal sent on 10 October 2006, stating that the Russian-Chechen Friendship Society was dissolved by the decision of the Nizhny Novgorod provincial court of 13 October 2006. After the decision was handed down, the respondent appealed against it by way of cassation. In January 2007, the Supreme Court of the Russian Federation upheld the decision. The Russian-Chechen Friendship Society was dissolved in accordance with article 44 of the Federal Act on Voluntary Organizations in connection with “repeated or gross violations of the Constitution of the Russian Federation, federal constitutional acts, federal acts or other laws and regulations”. The court found that the activities of the Russian-Chechen Friendship Society were not in keeping with the declared aims of the organization as contained in the Society’s statute; the Society’s activities grossly violated the legislation of the Russian Federation and had extremist tendencies. In accordance with the procedure contained in articles 144 and 145 of the Code of Criminal Procedure of the Russian Federation, the Maryinsky park district internal affairs office in Moscow is investigating the threats made against Ms. L. Yusupova. The Moscow procurator’s office is monitoring the investigation. The Office for Special Technical Measures of the Central Internal Affairs Office is taking the necessary measures to investigate the placement, on the Internet site of the magazine Russian Will, of the publication “Enemies of the nation”, containing basic information about, and the addresses and contact telephone numbers of, Mr. S.A. Kovalev, Ms. S.A. Gannushkina and other Russian human rights defenders.

Special Rapporteur's comments and observations

251. The Special Rapporteur thanks the Government of Russia for its cooperation and values its efforts to provide in a timely manner substantive information in response to the concerned expressed on communication sent on 10 October 2006. He requests the Government to provide him with information regarding the results of the investigations on the threats against the persons mentioned above.

Saint Vincent and the Grenadines

Communications sent

252. On 13 February 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding Ms. Nicole Sylvester, President of the St Vincent and the Grenadines Human Rights Association (SVGHRA), and the President of the St Vincent and the Grenadines Bar Association. According to the information received, on 25 January 2008, Ms. Nicole Sylvester received an anonymous telephone call at her home. The caller reportedly warned her to cease working on a particular case and reminded her that she had a family. On 2 February, Ms. Sylvester's vehicle was followed by a white jeep, reportedly of the type used by the police's Special Services Unit. On 4 February, she was approached near her office by a police officer who advised her to be careful as she was being followed. According to reports, Ms. Kay Bacchus-Browne, a lawyer and member of the SVGHRA, was also followed by a white jeep on the morning of 4 February. Ms. Sylvester and other lawyers from the SVGHRA have been representing a woman police officer who has alleged that she was raped by the Prime Minister of St Vincent and the Grenadines on 3 January 2008. The police reportedly refused to file her complaint and advised her to leave the country for a while. Her lawyers filed two private criminal complaints at the Magistrate's Court on 31 January. The Director of Public Prosecutions reportedly halted the investigation, as permitted under the country's Constitution, claiming that there was not sufficient evidence for the case to go to court.

Communications received

253. On 5 March 2008, the Permanent Mission of Saint Vincent and the Grenadines to the United Nations responded to the communication sent on 13 February 2008. The Government affirms that the allegations contained in the communication sent on 14 February 2008 are false. According to the Government, Police investigations have revealed no evidence to suggest that either Ms. Sylvester or Ms. Bacchus-Browne, have been intimidated. In addition, the Commissioner of Police stated that no vehicles have been assigned to follow Ms. Sylvester or Ms. Bacchus-Browne. The alleged anonymous telephone call to Ms. Sylvester occurred prior to her notifying the Police Force that she was involved in the case. Moreover, to imply that the Police acted improperly in the handling of the accuser's allegations against the Hon. Prime Minister, given the dearth of corroborating evidence and the accuser's own refusal to provide the Police with their statement. The Government also states that a number of investigations have been undertaken, a medical examination has taken place and two judicial procedures are ongoing. Regarding the investigations, it is stated that the Police has investigated the accuser's - Ms. Sylvester- allegations, even though the accuser requested the Police to refrain from doing so. All the evidence pointed out to the innocence of the accused - The Hon,

Prime Minister- In consequence, the Police declined to arrest him. The Director of Public Prosecutors could not uncover sufficient evidence upon which to base a prosecution against the Hon. Prime Minister, thereby it exercised his Constitutional power to discontinue the criminal proceedings against him. The two ongoing procedures are a judicial review of the Director of Public Prosecutors decision of discontinuing the procedures against the Hon. Prime Minister, initiated by Ms. Sylvester and a civil proceeding against the Hon. Prime Minister, also initiated by Ms. Sylvester. The Government considers that neither the Special Rapporteur, nor the Special Representative can predict the outcome of a litigation.

254. On 17 March 2008, the Permanent Mission of Saint Vincent and the Grenadines informed that the High Court of Justice in St Vincent and the Grenadines has dismissed the application for judicial review of the decision of the Director of Public Prosecutors to discontinue private criminal complaints against the Hon. Prime Minister. The High Court found that the application had "... no arguable grounds for judicial review having a realistic prospect of success".

Special Rapporteur's comments and observations

255. The Special Rapporteur thanks the Government of Saint Vincent and the Grenadines for its answers to the communication. However, he remains concerned by the fact that the Government's response mainly concerns the actions taken in the case in which the Prime Minister is accused of rape. However, the Government does not answer the questions related to the harassment suffered by Ms. Sylvester and Ms. Bacchus-Browne, attorneys of the alleged victim of the rape case. The Government only states that "Police investigations have revealed no evidence to suggest that either Ms. Sylvester or Ms. Bacchus-Browne, have been intimidated" without explaining why or what are the bases of this conclusion. In addition, the Government states that "the Commissioner of Police stated that no vehicles have been assigned to follow"; however, the Special Rapporteur considers this not constitutes a sufficient prove that Ms. Sylvester and Ms. Bacchus-Browne were not harassed by the police or other individuals. The Special Rapporteur requests the Government to provide him with information on the measures taken by authorities to protect these two attorneys.

Saudi Arabia

Communications sent

256. On 24 January 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the question of torture regarding the case of Sufun Muhammed Ali Ahmed al-Zafifi, a Yemeni national who is reportedly at risk of imminent execution. He was arrested on 25 April 2006 and allegedly confessed to the abduction and rape of a boy. He was convicted and sentenced to death on 11 July 2006 and his sentence was upheld on appeal. The experts received reports alleging that his confession was extracted under duress, that the trial took place behind closed doors and that he was not afforded defense counsel. According to the information received, the only remaining option for Mr. al-Zahifi was to seek a pardon from His Majesty, the King. If these allegations are correct there would be grounds for serious concern. The experts asked the Government to provide them with information indicating whether or not the defendant in this case was given the right to formal representation by a lawyer, and providing details of any

such access. In addition, they expressed their wish to establish whether the proceedings were open to observers including representatives of the Government of Yemen. Finally, they asked for information as to the nature of any right to an effective appeal which was exercised in this case.

257. On 8 February 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on Human Rights and counter terrorism, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Mr. Sulieman al-Rushudi, lawyer, Mr. Essam al-Basrawi, lawyer, Dr. Saud al-Hashimi, medical doctor, Mr. Al-Sharif Saif al-Ghalib, Dr. Musa al-Qirni, university professor, Dr. Abdel Rahman al-Shumayri, university professor, Mr. 'Abdelaziz al-Khariji, and at least three other persons, whose identities are yet to be confirmed. All these individuals have been active as human rights defenders. In particular, they engaged in the past in signing petitions addressed to His Majesty King Abdullah Bin Abdulaziz Al-Saud calling upon him to initiate political and democratic reforms and to respect human rights. According to the information received, the above-mentioned persons were arrested in the cities of Jeddah and Madinah on 3 February 2007 where they had met to discuss the organisation of peaceful activities in favour of political and democratic reforms in Saudi Arabia. The 10 men by the moment when the communication was sent, were being held incommunicado at the offices of the General Intelligence Service (al-Mabahith al-'Ammah) in Jeddah. Requests for access by their families and to appoint lawyers have been denied by the General Intelligence Service. On 5 February 2007 Mr. Al-Basrawi's son asked for a visit and attempted to hand over medicine for his ill and disabled father. He was ordered to return home and warned never to ask again to meet with Mr. Al-Basrawi. The Ministry of the Interior has issued a statement alleging that the detainees were arrested on suspicion of fund raising to support terrorism. Mr. Al-Rushudi and Mr. Al-Ghalib had been detained before and released after several weeks following the signing of a petition in March 2004 calling for political change in Saudi Arabia. Concern was expressed that the detention of Mr. Al-Rushudi, Mr. Al-Basrawi, Dr. Al-Hashimi, Mr. Al-Ghalib, Dr. Al-Qirni, Dr. Al-Shumayri, Mr. Al-Khariji, and the three other persons mentioned above may be related to their legitimate and peaceful activities in defence of human rights. In view of their incommunicado detention concern was expressed that these individuals may be at risk of ill-treatment. Further concerns were expressed as regards Mr. Al-Basrawi's status of health since he has reportedly been denied to receive medication from his son. Concern was also expressed that the charge of "terrorism" is used in order to prevent them from pursuing human rights and political activities.

258. On 16 March 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of regarding Mr. Tallal Nedjm Abdullah Al Majed, aged 31, born in Kuwait, where he lived with his parents close to Al Dahr. According to the information received, he was arrested at Doha in Qatar on 20 June 2002 at 7.00 by several persons in plain clothes and taken to the airport to be sent to Riyadh in Saudi Arabia. Since then he has been allegedly held in solitary confinement at the prison of Al Hayr, where he has frequently been subjected to ill-treatment. He has reportedly not had access to a lawyer and no charges have been brought against him. He has not been brought before a judge. On 1 March 2007 he went on a hunger strike to protest against his prolonged detention without any judicial procedures having commenced.

259. On 5 April 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the execution on 19 February 2007 of four Sri Lankan citizens, Messrs. Ranjith de Silva, Victor Corea, Sanath Pushpakumara and Sharmila Sangeeth Kumara. The Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special rapporteur on the human rights of migrants had previously raised their concerns about this case in a communication to your Government of 13 April 2005, which unfortunately has remained without reply. In the previous communication it was explained that, according to the information received, three Sri Lankan migrant workers - Mr. Victor Corea, Mr. Ranjith de Silva and Mr. Sanath Pushpakumara - had been involved in a series of armed robberies and had been arrested by the Riyadh police on 10 March 2004. In October 2004 they were sentenced to death on charges of possession of illegal firearms and attempted robbery by the Saudi Arabian High Court. Their sentences were reportedly upheld in March 2005 and an appeal for mercy was at the time pending before His Excellency, the King of Saudi Arabia. On the basis of the information received, the experts expressed their concern that “the three men were sentenced to death after trials that appear[ed] to have fallen short of international fair trial standards. It is reported that they did not have any legal representation during their trials, although a translator was provided. The translation of proceedings is no substitute for adequate legal representation as required by international standards. In addition, it is alleged that after their trial, the three men were asked to sign a document in Arabic, stating their acceptance of the death sentence which only Mr. Silva reportedly refused to sign”. More detailed reports we have recently received have added the name of a fourth defendant in the same case, Sharmila Sangeeth Kumara, state that the execution took place on 19 February 2007, and confirmed the concerns raised two years ago with regard to the lack of due process. It is reported that around nine months after their arrest in March 2004, an official in al-Ha’ir prison where the four men were held informed them that they had a court hearing. The hearing lasted around three hours. The judge interrogated the four men, who were allowed only to speak in reply to his questions. The judge also asked whether they had suffered beatings during interrogation, to which they replied that they had. Minutes were taken and proceedings were interpreted, but no prosecutor was present and the defendants did not have legal or consular assistance. At no time were the defendants told that they might face the death penalty, nor were they ever informed that they had a right to a lawyer or a right not to incriminate themselves. Several months after the first hearing, prison officials brought the four defendants to court a second time, again without prior notice. At this second hearing, two judges conferred for 20 minutes, then sentenced all four to death. In response to a query from the court, all four defendants refused to accept the verdict, and the court sent the case for review to the Court of Cassation. The four men were unaware how to conduct an appeal and were not invited to make any submissions to the Court of Cassation or informed whether there would be any hearing. Three months later, the men were advised by a judge in a third trial session that the cassation court had upheld the verdict. No copy of the judgement was given to the four defendants. The four defendants managed to contact the Sri Lankan embassy from prison after the trial. The Sri Lankan diplomats informed them that it was too late to appoint a lawyer and that instead they would issue an appeal for clemency. On 19 February 2007, however, a royal order affirmed the death sentence. Ranjith de Silva, Victor Corea, Sanath Pushpakumara and Sharmila Sangeeth Kumara were executed on the same day. The mandate holders affirmed that International law further requires that the death penalty be imposed only for the most serious crimes. They stated that they certainly do not underestimate the seriousness of the crime of armed robbery. However, according to the information received, only one of the four defendants, Mr. Corea, has in fact caused bodily harm in the course of a

robbery. The two persons shot by Mr. Corea have reportedly recovered from their wounds, and one of the victims, an Indian man named Muhi al-Din, reportedly told the judge in a civil suit that he did not seek any damages and asked for clemency for the four Sri Lankan men after learning that they had been sentenced to death. If this information was confirmed, doubts could be raised as to whether the offences committed by the four defendants actually attained the seriousness required by international law for the imposition of the death penalty. The mandate holders asked the Government to answer if the proceedings were open to observers, including particularly representatives of the Government of Sri Lanka; if the proceedings in this case were in accordance with the laws of the Kingdom of Saudi Arabia; and finally reiterated the request made by the Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the independence of judges and lawyers in a communication of 24 January 2007 for clarification of which offences carry the death penalty in the Kingdom of Saudi Arabia, which courts can impose it, and what percentage of those sentenced to death and executed are foreigners.

260. On 20 April 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the human rights of migrants, regarding the case of Mr. Suliamon Olyfemi, a citizen of Nigeria, who is reportedly at imminent risk of execution. The case of Suliamon Olyfemi was previously brought to the attention of your Excellency's Government (together with the cases of 12 other Nigerian migrant workers) by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture in a communication dated 30 November 2004. Regrettably, this communication has remained without reply. According to the communication of 30 November 2004, Suliamon Olyfemi and 12 other Nigerian migrant workers resident in Jeddah, "[...] were among hundreds detained in Jeddah on 29 September 2002 after a policeman was killed in a fight between local men and African nationals. All the other men arrested on that occasion have been deported, including 21 who served prison sentences ranging from six months to two years and flogging. Subsequent to their arrest, the 13 Nigerian nationals were tortured and ill-treated, including being hung upside down and beaten and subjected to electric shocks to the genitals. Since their arrest over two years ago, the men have not had access to a lawyer or consular assistance. Moreover, translators were present on only two of the four previous court appearances, and all proceedings and court documents are in Arabic. On 22 November 2004, a hearing in the case of the 13 men took place before three judges in a closed session, without the assistance of a lawyer, a consular representative or adequate translation facilities. They could not fully understand the proceedings, which were conducted in Arabic, and were not able to fully understand whether the hearing concerned the prolongation of their detention or constituted their trial." According to information received since then, Suliamon Olyfemi was sentenced to death at a closed trial in May 2005. The twelve other Nigerian men were sentenced to prison terms and corporal punishment. During the trial, Suliamon Olyfemi and his co-defendants neither had access to legal representation nor to consular assistance, nor did they benefit from adequate translation. During interrogation they had been told to put their fingerprints, which can act as a signature, on statements written in Arabic, which they do not read. It is possible that these statements were used as evidence against them during the trial proceedings. Staff from the Nigerian consulate in Jeddah attempted to visit the men in prison, on 19 May 2005, but was not allowed to see them. The death sentence imposed on Suliamon Olyfemi has recently been upheld by the Court of Cassation and ratified by the

Supreme Judicial Council. The mandate holders urged the Government to take all necessary measures to guarantee that the rights under international law of Suliamon Olyfemi are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the execution until the complaints regarding his right to a fair and public hearing by a competent, independent and impartial tribunal established by law have been thoroughly investigated and all doubts in this respect dispelled. They also reiterated the request made by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers in communications to the Government of 24 January 2007 and 5 April 2007 for clarification of which offences carry the death penalty in the Kingdom of Saudi Arabia, which courts can impose it, and what percentage of those sentenced to death and executed are foreigners.

261. On 23 August 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Mr. Saad Ben Zair, aged 28, resident in Riyadh, defense lawyer, human rights defender, active in the Reform Movement and his father, Dr. Said Ben Zair. According to the allegations received, Mr. Saad Ben Zair's car was stopped on 10 April 2007 when he was driving along King Abdullah Avenue in Riyadh with his wife and his one year old daughter. The three of them were taken to the Secret Services premises and detained separately. Some days later Mr. Saad Ben Zair's wife and daughter were released, but he is still being held in secret detention. When his father, Dr. Said Ben Zair, another prominent human rights defender, publicly protested against his son's detention, he was arrested himself on 6 June 2007 and at the moment when the communication was sent, remained in secret detention as well. Before his arrest in April, Mr. Saad Ben Zair had worked as lawyer defending proponents of constitutional reform and other critics of the Government. In connection with his work as lawyer, he had regularly demanded that Royal decree n. M 39, which guarantees basic rights to detainees, including that a specific term of detention should be determined by a competent authority, and prohibits torture. He had already spent three years in secret detention without any judgement starting from 17 July 2002 presumably for having protested against the imprisonment of his father, who had been imprisoned for 8 years without any legal process. He had been secretly detained again for several months starting from 19 June 2006. With a view to Mr. Saad Ben Zair and Dr. Said Ben Zair's secret detention, concern was expressed for their physical and mental integrity. Further concern was expressed that their detention is related solely to their work in protecting and promoting human rights.

262. On 22 November 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture, Special Rapporteur on freedom of religion or belief and Special Rapporteur on violence against women, its causes and consequences regarding a 19-year-old Shiite woman from Al-Qatif. According to the allegations received, in 2006, the Shiite woman and a male companion were kidnapped at knifepoint by a gang of seven Sunni men. The male companion was attacked by the gang, and later released. The woman, however, was repeatedly raped by the gang. Four members of the gang were at the time sentenced by the Qatif General Court to prison terms ranging from one to five years, with floggings of up to 1,000 lashes. Three other gang members reportedly turned themselves in before the conclusion of the trial. The victim of the gang rape and her male companion were convicted in 2006 of being alone in private with a member of the opposite sex who was not an immediate family member, under an offence known as *Khilwa* in sharia law. Following the request of the review of

the verdict by the woman and her lawyer, on 15 November 2007, a court in eastern Saudi Arabia increased the original sentence against the seven members of the gang, and also increased the sentence against the 19-year old woman from 90 lashes to 200 lashes and a six month prison term. In addition, it is reported that the court revoked the professional license of her lawyer and banned him from defending her. The mandate holders requested the Government to provide substantive detailed information on the grounds and the legal basis on which the lawyer of the victim had his professional license revoked and was banned from defending her.

Communications received

263. On 16 July 2007, the Government replied to the joint urgent appeal of 5 April 2007, stating that the charges brought against the said persons, namely burglary and armed robbery, the possession of unlicensed firearms and the fixing shots at a number of persons, were substantiated by cogent and conclusive evidence of their commission of the crime, including their legally certified confessions, the medical reports, the factual report on the crime, identification of the weapons used in its commission, the report on the examination of the accused, and reports on a visit to, and inspection of, the scene of the crime. Articles 155 and 182 of the Code of Criminal Procedure stipulate that court hearings should be held in public and judgements should be read out in detail at a public hearing. Article 140 of the Code further stipulates that a person accused of a major offence should appear in person before the court, without prejudice to his right to defence counsel. Accordingly, judicial proceedings are open to observers. Judicial proceedings in the Kingdom are governed by a number of regulations (laws), the most important of which are the Basic Law, the Code of Criminal Procedure, the Code of Civil Procedure, the Statutes of the Public Investigation and Prosecution Department and the Code of Practice for Lawyers. In this case, as in others, the judicial procedures were strictly observed with meticulous care in all their formal and legal aspects and were conducted in accordance with the above mentioned regulations. Death sentences are handed down by the general courts in cases entailing the fixed penalties prescribed in the Islamic Shari'a and in cases of *lex talionis* and crimes involving repeated offences of drug smuggling and trafficking.

264. On 22 January 2008, the Government replied to the urgent appeal sent on 23 August 2003. According to the response, Mr. Saad Ben Zair was detained under the provisions of article 35 of the Code of criminal Procedure, in accordance with an arrest warrant issued by the competent authority, for involvement in the crime of conspiring to blow up a refinery. The investigating authority deemed it advisable to extend his detention by up to one year. This decision was adopted according to the law, which establishes this possibility for crimes involving terrorism and State security (article 114 Code of Criminal Procedure and Royal Order N. 7560/MB of 5/6 and 1426 A). The said person is being well treated, according to Code of Criminal Procedure, which prohibits subjection to torture.

Special Rapporteur's comments and observations

265. The Special Rapporteur thanks the Government of Saudi Arabia for its cooperation and values its efforts to provide in a timely manner substantive information in response to the concerned expressed on communications sent on 5 April 2007 and on 23 August 2007.

266. However, the Special Rapporteur is deeply concerned at the absence of an official reply regarding the communications sent on 24 January, 8 February, 16 March, 20 April

and 22 November 2007, especially considering the seriousness of the above allegations in regards to Mr. Sufun Muhammed Ali Ahmed al-Zafifi who is reportedly at risk of imminent execution, Mr. Sulieman al-Rushudi, Mr. Essam al-Basrawi, Dr. Saud al-Hashimi, Mr. Al-Sharif Saif al-Ghalib, Dr. Musa al-Qirni, Dr. Abdel Rahman al-Shumayri, Mr. 'Abdelaziz al-Khariji, and at least three other persons which are being held incommunicado, and Mr. Suliamon Olyfemi reportedly at risk of imminent execution. The Special Rapporteur urges the Government of Saudi Arabia to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

267. Regarding the response sent on 22 January 2008, the Special Rapporteur further asks the Government to provide information on the legislation regarding the guarantees to the detainees accused of crimes involving terrorism and State security (article 114 Code of Criminal Procedure and Royal Order N. 7560/MB of 5/6 and 1426 A). Moreover, The Special Rapporteur would like to reiterate the request made by him and the Special Rapporteur on extrajudicial, summary or arbitrary executions a in communications to the Government of 24 January 2007 and 5 April 2007 for clarification of which offences carry the death penalty in the Kingdom of Saudi Arabia, which courts can impose it, and what percentage of those sentenced to death and executed are foreigners.

Sri Lanka

Communication sent

268. On 5 April 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding Mr. Dushyantha Basnayake, human rights defender and financial director of Standard Newspapers Private Limited (SNPL), which publishes the Sinhalese-language weekly Mawbima, in Colombo and Ms. Parameswarae Munusamy, journalist with Mawbima. According to information received: on 26 February 2007, Mr. Basnayake was arrested at his office in Colombo by officials from the Terrorist Investigation Division (TID). He is reportedly being detained incommunicado at the Terrorist Investigation Unit in Colombo where he has been denied access to a lawyer. Mr. Basnayake was questioned by officials from the Criminal Investigations Division (CID) several months prior to his arrest. He was later released without charge and the authorities allegedly apologised for any inconvenience caused. On 13 March 2007 Mr. Basnayake's bank accounts were frozen. Previously on 24 November 2006, Ms. Munusamy was detained under the Prevention of Terrorism Act (PTA) at the Terrorist Investigation Unit in Colombo. She was reportedly held without charge by the police Terrorist Investigation Division (TID). On 21 March 2007, an order was issued by the Supreme Court to release Ms. Munusamy on the basis that her arrest was illegal and that there was insufficient evidence in order to convict her. She was released on 22 March 2007. Ms. Munusamy is the only Tamil speaking journalist working for Mawbima and her arrest was related to the publication of articles by Mawbima in Tamil, which highlighted human rights abuses in Sri Lanka. On 24 February 2006, President Rajapaksa reportedly criticised the management and journalists of Mawbima newspaper for their coverage of human rights violations in Sri Lanka during a press conference. Newspaper staff has been receiving death threats since February. Concern is expressed that arrest and detention of Mr. Dushyantha Basnayake along with the

arrest, detention and subsequent release of Ms. Parameswaree Munusamy forms part of an ongoing campaign to silence human rights defenders in Sri Lanka, and in particular those who aim to highlight human rights violations in the country.

269. On 14 March 2008, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the promotion and protection of human rights while countering terrorism, regarding the case of Mr. N. Jasikaren, a former journalist with the Tamil language bi-monthly “Sarinher” and journalist with the web news service “Outreachsl.com” and owner of the Outreach Multimedia and E-Kwality Graphics, a printing press; Ms. Valarmathi Jasikaren, his wife; Mr. J.S. Tissanaygam, journalist with the “Sunday Times” and the “Daily Mirror” and chief editor of the “Northeastern - Herald” an English-language regional newspaper and “Outreachsl.com”; Mr. K. Wijayasinghe, a freelance journalist, who writes for the weekly newspaper “Ravaya”, the daily “Mawbima” and “Outreachsl.com”; Mr. Udayen, a video editor for “Outreachsl.com”; and Mr. A.G. Lasantha Ranga, a video journalist for “Outreachsl.com”. According to information received, Mr. N. Jasikaren was arrested by the Terrorist Investigation Department (TID) (a special police division that reports directly to the Secretary of the Ministry of Defence) at his office on the evening of 6 March 2008; during his arrest, his laptop and printed materials were seized by the TID. Mr. Jasikaren was being held at the TID offices in Colombo, by the moment when the urgent appeal was sent. Mr. Jasikaren’s wife, Valarmathi Jasikaren, a marketing officer with Maharaja Broadcasting, was arrested on 6 March at their home on the same day. Mr. Jasikaren was assaulted by TID officers. J.S. Tissanaygam and K. Wijayasinghe were arrested by TID officers on 7 March at 11.30 a.m. when they went to TID offices to inquire about the arrests of Mr. Jasikaren and his wife. Mr. Tissanaygam was detained incommunicado until late in the evening of 7 March, when his family was informed of his whereabouts. Both men were being detained at the TID offices in Colombo. Mr. Tissanaygam and Mr. Wijayasinghe’s wives were allowed to visit them. Udayen was arrested at his home on 7 March. He was detained incommunicado until midnight and by the moment when the urgent appeal was sent, he was being held at the TID offices in Colombo. A.G. Lasantha Ranga was requested to report to the TID offices before 3 p.m. on 8 March. When the urgent appeal was sent he was detained at the TID offices in Colombo. Mr. Ranga’s wife visited him on 10 March. Mr. Ranga was threatened by TID officers in front of her, stating that if Mr. Ranga had seen how Jasikaren and Tissanayagam were tortured “he would die on the spot”. TID officers told her that she should not visit her husband with a lawyer. A seventh person, Mr. Siva Sivakumar, journalist and spokesperson for the Free Media Movement and chief editor of the Tamil-language newspapers “Sarinher” and “Adhavan”, was also arrested on 8 March 2008. He was, however, released after a detention period of 12 hours during which a statement was taken from him. TID officers had gone to his home on the evening of 7 March to arrest him, but took his cousin into custody instead as he was absent. TID officers informed Mr. Sivakumar’s relatives that his cousin would be released when he presents himself to TID offices, which he did in the morning of 8 March. The experts informed the Government that detention orders of the above mentioned persons have reportedly been prepared pursuant to Regulation 21 of the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 7 of 2006. However, to date none of the accused has seen the detention order. It is also not clear if it was the Secretary of the Ministry of Defence or a Deputy Inspector General (DIG) of the police who issued detention orders in this case. If

detention orders have been issued, the detainees must be brought before a magistrate at least once every 30 days, but this is only to verify that the person is still being detained. Magistrates have no power to question, cancel or renew a detention order. Only the person issuing the detention order - the Secretary of Defence or the DIG - can renew, amend or cancel it. With regard to the cases of Mr. Jasikaren and his wife, TID officials have issued receipts acknowledging their arrests and citing as a reason aiding and abetting terrorist activities. The experts also stated that no information has yet been given concerning the reason for the detention of the remaining persons and their arrests and detention have not yet been acknowledged by the TID. However, a few weeks before the arrests, authorities proclaimed that some websites reporting on human rights violations were a hindrance to the ongoing war. Finally, the experts stated that all meetings with relatives were held in the presence of TID officers and that none of the above cited persons were allowed access to legal counsel.

Communications received

None.

Special Rapporteur's comments and observations

270. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Sri Lanka to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Sudan

Communications sent

271. On 21 March 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences regarding the sentencing to death by stoning of Ms. Amouna Abdallah Daldoum (23 years old) and Ms. Sadia Idries Fadul (22 years old from the Tama ethnic group), by the Criminal Court of Al-Azazi, in Managil province, Gazeera state. According to the information received: on 13 February 2007 and 6 March 2007 respectively, the Criminal Court of Al-Azazi, with Judge Hatim Abdurrahman Mohamed Hasan presiding, convicted Ms. Sadia Idries Fadul and Ms. Amouna Abdallah Daldoum on charges of adultery and sentenced them to death by stoning. The two women are currently in detention in Wad Madani women's prison in Wad Madani, Gazira State. Ms. Sadia Idriess Fadul has one of her children with her in prison. The two women were reportedly convicted under article 146 (a) of Sudan's 1991 Penal Code, which states that "whoever commits the offence of sexual intercourse in the absence of a lawful relationship shall be punished with: a) execution by stoning when the offender is married (muhsan); (b) one hundred lashes when the offender is not married (non-muhsan)". Sadia Idriess Fadul and Amouna Abdallah Daldoum do not fully understand Arabic, the language used during the entire judicial proceedings, and were not provided with an interpreter. The two women also had no legal representation. Although the death penalty is not prohibited under international law, the mandate holders reminded the Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner.

272. On 22 June 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders regarding the detention of eight persons in connection with protests against the construction of the Kajbar dam. These eight persons are: Mr. Saad Mohamed Ahmed, journalist with *Ilaf* weekly newspaper and activist on dam issue; two lawyers, namely Mr. Imad Al Deen Murgani and Mr. Alam Al Deen Abdulghani; Mr. Abdulaziz Mohamed Ali Khairi, engineer and head of foreign relations committee of the Kajbar Dam Popular Committee (a committee formed by the affected community which has not so far been recognized by the authorities); Mr. Raafat Hassan Abbas, information officer in the Khartoum support committee of the Kajbar Dam Popular Committee, Dr. Mohamed Jalal Ahmed Hashim, a leader of the Mahas community; Mr. Abdallah Abdelgayoum, a member of the Mahas community and former National Security officer; and Mr. Osman Osman, driver. According to the information received on 13 June 2007 four persons were reportedly killed and nine other civilians were injured when police used violence to disperse a protest by members of the Nubian population opposed to the building of the Kijbar Dam. Mr. Imad Al Deen Murgani, Mr. Alam Al Deen Abdulghani, Mr. Abdulaziz Mohamed Ali Khairi, Mr. Abdallah Abdelgayoum and Mr. Osman Osman were arrested on the same day in Dongola on their way to investigate and report on the demonstrations and the violence. After being questioned about the purpose of their trip, the five men were arrested. When the communication was sent, they were detained in the National Security Section in Kober prison. Mr. Raafat Hassan Abbas was arrested by National Security officers at a private house in El-Dim, southern Khartoum, at 2 a.m. on 15 June 2007. When the communication was sent he was believed to be in the custody of Khartoum State Security in Riyadh, but a member of his family has been denied permission to visit him. Dr. Mohamed Jalal Ahmed Hashim was arrested at his home in Riyadh after participation in a press conference organized by the SPLM on 16 June 2007. When the communication was sent his whereabouts were unknown. On 20 June, Mr. Saad Mohamed Ahmed was arrested at his office in Khartoum. When the communication was sent he was detained in the National Security Section in Kober prison. None of the detainees has been allowed to contact their families or a lawyer. Concern was expressed that the arrest and detention of the aforementioned persons may be related to their peaceful activities in defence of the human rights of the people protesting against the construction of the Kijbar dam. In view of the incommunicado detention of Mr. Saad Mohamed Ahmed, Mr. Imad Al Deen Murgani, Mr. Alam Al Deen Abdulghani, Mr. Abdulaziz Mohamed Ali Khairi, Mr. Raafat Hassan Abbas, Dr. Mohamed Jalal Ahmed Hashim, Mr. Abdallah Abdelgayoum, and Mr. Osman Osman, the mandate holders expressed their concern that they might be at imminent risk of torture or other treatment susceptible to cause extremely grave damage to their physical and mental health.

273. On 18 January 2008, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture on Mr. Marhui Gbryrham, Mr. Fitouy Fshai Yingbr Mikael, Mr. Dislby Tsfa Brhan Hagoss and Mr. Ablom Tfisty Gbry Slasy, all of whom are Eritrean nationals, and Mr. Haroun Idriss, Mr. Abdala Suliman, Mr. Badreldin Ali, Mr. Mohamed Amin Nardi, Mr. Ibrahim Atbana, and Mr. Argana Sifim, all of whom are Ethiopian nationals. According to the information received Mr. Marhui Gbryrham, Mr. Fitouy Fshai Yingbr Mikael, Mr. Dislby Tsfa Brhan Hagoss and Mr. Ablom Tfisty Gbry Slasy are

currently detained by the security forces at Port Sudan State Prison in Eastern Sudan after apparently evading compulsory military service in Eritrea. They were arrested around 2 November 2007 at the Sudanese border and are held without charge pursuant to the National Security Forces Act of 1999. Lawyers have been denied access to them. Mr. Haroun Idriss, Mr. Abdala Suliman, Mr. Badreldin Ali, Mr. Mohamed Amin Nardi, Mr. Ibrahim Atbana and Mr. Argana Sifim have been detained at Dabak Prison in Khartoum since 21 December 2007 under the National Security Forces Act. They were arrested at their homes in July 2007 together with three other individuals, namely Mr. Adam Pasilio, Mr. Minika Hailo, and Mr. Faisal Mohamed Osman. Mr. Adam Pasilio, Mr. Minika Hailo and Mr. Faisal Mohamed Osman were deported to Ethiopia on 27 September 2007 following a ruling by the Khartoum North Criminal Court after they had confessed to residing illegally in Sudan. When the communication was sent they were been detained by Ethiopian authorities at an unknown location. Mr. Haroun Idriss, Mr. Abdala Suliman, Mr. Badreldin Ali, Mr. Mohamed Amin Nardi, Mr. Ibrahim Atbana and Mr. Argana Sifim have been able to meet with at least one family member; however, they have been refused access to legal representation. Some of them have enjoyed refugee status in Sudan since 2004 and were granted permission to remain in the country, which was renewed periodically. All of the Ethiopians arrested are Muslims belonging to the Oromo ethnic group. Mr. Haroun Idriss suffers from irritable bowel syndrome, Mr. Abdala Suliman from diabetes mellitus, Mr. Badreldin Ali from rheumatism, and Mr. Mohamed Amin Nardi from diabetes mellitus, hypertension and a skin allergy. The fact that the ten individuals have been detained under the National Security Forces Act and the deportation of Mr. Adam Pasilio, Mr. Minika Hailo and Mr. Faisal Mohamed Osman to Ethiopia indicate a high risk that removal to their respective countries of origin is imminent. Concerns were expressed that the four above mentioned Eritreans as well as the six Ethiopians might be at risk of prolonged detention and ill-treatment in their respective home countries should they be returned. In view of their reported previous political activities further concern was expressed that the Ethiopian nationals might face the death penalty. Concerns were also expressed as regards Mr. Haroun Idriss', Mr. Abdala Suliman's, Mr. Badreldin Ali's and Mr. Mohamed Amin Nardi's state of health.

274. On 13 February 2008, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, regarding Mr. Afandy Farah Mohamed Issa, Ethiopian national, who has lived in Sudan since 2006 and is a member of a registered political party in Ethiopia called "Benishangul People's Liberation Movement". According to the information received, Mr. Afandy Farah Mohamed Issa was arrested on 22 September 2007 by members of the Sudanese Security Services in el-Showak in the eastern part of the country and detained in the prison of Dabak, in the north of Khartoum. Before entering the Sudan Mr. Issa spent two months in Asosa prison in Ethiopia for reasons of his political activities in the country. Since Mr. Issa was transferred to the custody of the immigration police in Khartoum on 4 February 2008 there were strong indications that his deportation to Ethiopia was imminent. Up to the date of the urgent appeal he has not been granted access to legal representation.

Communications received

275. On 20 April 2007, the Government replied to the joint urgent appeal of 21 March 2007 stating that on 26 June 2006, a report was filed with the Azazi police in Jazirah State against

Ms. Sadia Idries Fadul. Following the completion of inquiries, the report was referred to a court of first instance of Jazirah State, which delivered its verdict on 13 March 2007, in case No. 10/2007, convicting the accused under article 146 (1) (a) of the 1991 Criminal Code (the penalty for adultery) and based on her confession. The accused is married and engaged in intercourse with others during the husband's absence. Ms. Amouna Abdallah Daldoum was tried before a court of first instance of Jazirah State, in case No. 24/2007. She was convicted by the court on 6 March 2007 under article 146 (1) (a) of the 1991 Criminal Code (the penalty for adultery) and based on her confession. The accused is married and engaged in intercourse with others during the husband's absence. The two women appealed the verdicts and the Jazirah State Appeal Court issued a ruling overturning the convictions and sentences and returning the case files for a retrial of the two women for a number of reasons, including the fact that they had not had legal assistance during the proceedings. The two women know Arabic very well and so the court did not have to appoint an interpreter, in accordance with article 137 of the 1991 Code of Criminal Procedures. The case files are before the Jazirah State court of first instance with a view to the retrial of the two women on instructions from Al-Jazirah Appeal Court. The Government stated that it shall provide any information on this subject in due course.

276. On 17 September 2007, the Government replied to the joint urgent appeal of 22 June 2007 explaining that for several months, some inhabitants who had declared themselves as the representatives of the inhabitant of the Kajbar dam area, started rallying the inhabitants against the establishment of the Kajbar Dam the biggest developmental project in the long neglected area. When the Dam authorities started to conduct an initial survey, a big demonstration blocked such step. A group of people attacked the workers and the equipments and destroyed them. When the small group of police who escorts the equipments intervened, it was equally attacked. The police used force and as a result two individuals died. To prevent further escalation of the tensioned situation, the police arrested the leaders of the mob. Accordingly the security authorities took preventive measures under the provisions of the National Security Act in order to stop the escalation of violence by arresting some persons who incited the mobs to use violence through rumors and unauthentic information. All the detainees were released on 19/8/2007 except Dr. Mohamed Jalal Hashim who was released on 24/8/2007. All the detainees were treated humanly and according to the law.

Special Rapporteur's comments and observations

277. The Special Rapporteur thanks the Government of Sudan for its responses of 20 April and 17 September 2007. The Special Rapporteur is, however, concerned at the absence of reply to its communications of 18 January and 13 February 2008 and urges the Government to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Syrian Arab Republic

Communications sent

278. On 8 January 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture regarding Mr. 'Ali Nizar 'Ali, 21 years of age,

student, Mr. Husam 'Ali Mulhim, 21 years of age, student, Mr. Tarek Ghorani, student, Mr. Maher Ibrahim, around 25 years of age, shop owner, Mr. Ayham Saqr, around 30 years of age, employee of a beauty salon, Mr. 'Alam Fakhour, around 26 years of age, Mr. 'Omar 'Ali al-'Abdullah, around 21 years of age, student, Mr. Diab Sirieyeh, around 26 years of age, part-time student, all currently detained at Sednaya Prison near Damascus. The cases of Mr. 'Ali Nizar 'Ali and of Mr. Husam 'Ali Mulhim were already the subject matter of an urgent appeal by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture on 21 February 2006. The mandate holders asked the Government for further clarification in view of new information received. In a Government's reply of on 30 August 2006 it was explained that both persons have taken part in activities hostile to the State and incited public unrest using the Internet, which are acts penalized by article 307 of the Syrian Criminal Code as "any act, writing or correspondence aimed at, or resulting in, the creation of confessional or racial strife or encouragement of conflict between the confessional groups and different ethnic communities of the nation". According to the Government, these two persons have further established a cell of an organization that advocates acts of terrorism against society and the State and solicits support from abroad, which is punishable under articles 306 and 364 of the Syrian Criminal Code. They have accordingly been arraigned before the Higher State Security Court on 4 April 2006. In addition to the expert's request for additional information on the case of Mr. 'Ali Nizar 'Ali and Mr. Husam 'Ali Mulhim they drew the Government's attention to information received on the other persons concerned. According to (new) allegations received, the above mentioned individuals were arrested between 26 January and 18 March 2006 and have been detained incommunicado ever since, three months of which in solitary confinement. While in detention they were ill-treated during interrogation at the Air Force Intelligence Branch in the town of Harast near Damascus. The trial of the eight persons commenced on 26 November 2006 before the Higher State Security Court in Damascus. Each defendant denied the charges brought against him in court, since their confessions had been obtained by resorting to ill-treatment. The eight individuals named above had been denied access to counsel until the hearing in court, where they were able to meet briefly with their lawyers, in the presence of guards. At least one of the persons was allowed to meet with his parents inside the courtroom for three minutes with a guard present. The families of the defendants were not permitted to provide them with warm clothing on the occasion of the court hearing in order to protect them from the chilly conditions in prison. The trial has been adjourned until 14 January 2007. According to the Government's reply Mr. 'Ali Nizar 'Ali and Mr. Husam 'Ali Mulhim have been charged under articles 306, 307 and 364 of the Syrian Criminal Code. Reportedly however, all except Mr. 'Ali Nizar 'Ali are charged under article 278 of the Syrian Criminal Code, which makes it a criminal offence to take action or make a written statement or speech which could endanger the State or harm its relationship with a foreign country, or expose it to the risk of hostile action by that country. Furthermore, all eight are reportedly charged under article 287 of the Syrian Criminal Code, which penalizes the "broadcasting of false news considered to be harmful to the State". During the hearing the judge has accused the defendants of having established links with an opposition party based outside Syria. Concern was expressed as regards the physical integrity of the above-mentioned persons, particularly in view of their continued incommunicado detention and alleged ill-treatment in prison. Further concern was expressed with respect to their general status of health and well-being since they have reportedly not been provided with proper clothing against the cold or were allegedly not permitted to receive such clothing from their families.

279. On 16 May 2007, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders concerning the conviction of Mr. Anwar al-Bunni, a lawyer and human rights activist, currently held at Adra prison near Damascus. According to new information received, on 24 April 2007, Mr. Anwar al-Bunni was sentenced to 5 years in prison by the First Damascus Criminal Court for “spreading false or exaggerated information that weaken the spirit of the nation”, and ordered to pay a fine of US\$ 2,000 to the Ministry of Social Affairs and Labour for his membership in an unlicensed human rights centre. Earlier on, Mr. al-Bunni was charged with “spreading false news” for a statement he had made about the inhumane conditions that led to the death of a man in a Syrian prison. Furthermore, on 25 January 2007, prison guards made Mr. al-Bunni crawl on the ground and forcibly shaved his head as punishment during a crackdown on a ward where criminal detainees had mounted a protest after being excluded from a recent amnesty. Also, on 31 December 2006, Mr. al-Bunni was pushed down some stairs and then beaten up by another detainee in the presence of prison guards who failed to intervene. Concern was expressed that the arrest and conviction of Mr. al-Bunni may be in reprisal for his legitimate and peaceful work as a lawyer and human rights activist. Concern was also expressed about the repeated ill-treatment of Mr. al-Bunni in detention.

280. On 25 February 2008, sent a joint urgent appeal together with the Chairperson-Rapporteur 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 the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders, regarding Ms. ‘Aisha Afandi, aged 48, and Ms. Kawthar Taifour, aged 50, both members of the Kurdish minority in the Syrian Arab Republic. According to the information received, Ms. ‘Aisha Afandi and Ms. Kawthar Taifour were arrested by members of State Security Services on 28 November 2007. Ms. ‘Aisha Afandi was arrested at 4 a.m. at her home in ‘Ein al-‘Arab (Qoubani); the place and exact time of the arrest of Ms. Kawthar Taifour is not known. Both women are believed to be currently held in incommunicado detention at the women’s wing of al-Maslamieh Prison in Aleppo without charge or trial. Both do not have access to legal counsel or contact with their families. When the communication was sent, they were held together with convicted criminals and pretrial detainees. By the moment when the communication was sent, the authorities have not disclosed any reason for their arrest and detention. It is believed that these measures might be linked to non-violent demonstrations by members of the Kurdish minority on 2 November 2007 in the cities of Qamishli and ‘Ein al-‘Arab (Qoubani). Ms. ‘Aisha Afandi and Ms. Kawthar Taifour are members of an organisation calling itself “Democratic Union Party (PYD)”. Ms. Aisha Afandi’s husband, Mr. Saleh Muslim, is a leading member of the “PYD”.

Communications received

281. On 27 April 2007, the Government replied to the joint urgent appeal of 8 January 2007, stating that Mr. Ali Nizar Ali was released pursuant to a presidential amnesty issued on the occasion of Id al-Adha. He had been convicted under article 287 of the Syrian Criminal Code for broadcasting false information regarded as damaging to the State. As for the remaining persons

mentioned above, they were referred to the competent court after a public prosecution case was brought against them, under article 287 of the Syrian Criminal Code, for committing criminal offences involving acts that are prohibited by the Government, since such acts could expose the Syrian Arab Republic to the threat of hostilities and damage its relations with foreign States. These individuals are currently on trial.

Special Rapporteur's comments and observations

282. The Special Rapporteur thanks the Government of the Syrian Arab Republic for its response of 27 April 2007. The Special Rapporteur is, however, concerned by the ongoing judicial process regarding the rest of the defendants. The Special Rapporteur urges the Government to provide him with information regarding these judicial proceedings, in particular defendants' access to a lawyer, as well as how the measures taken in those proceedings are compatible with international norms and standards as contained, inter alia, in the International Covenant on Civil and Political Rights.

283. Moreover, the Special Rapporteur is also concerned at the absence of reply to its communication of 16 May 2007 and 25 February 2008, especially considering the seriousness of the above allegations in regards to Ms. 'Aisha Afandi and Ms. Kawthar Taifour who are believed to be currently held in incommunicado detention. The Special Rapporteur urges the Government to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Thailand

Communication sent

284. On 23 May 2007, the Special Rapporteur sent an allegation letter concerning the trial of Mr. Mah Dechanuphap, Mr. Nen Mahavilai, Mr. Apichit Angsutharangkul and Mr. Rangsan Torsuwan. According to the information received, on 16 July 1993, the four men were charged with planning to kill the then-Supreme Court president, Pramarn Charnsue. The Police Crime Suppression Division (CSD) in Bangkok learned of this plan in May 1993. On 25 May 1993, Mr. Spomphon Mah Dechanuphap and Mr. Nen Mahavilai were arrested. On 28 May, the police arrested Apichit Angsutharangkul. Rangsan Torsuwan surrendered to the police on 9 June 1993 after having been charged on the previous day. Since 1993, the four men have been prosecuted in the Bangkok South Criminal Court under Penal Code sections 288, 289, 83 and 84 (Case No. 990/2536). Allegedly, between 1993 and the end of 2006, the case had been heard for 461 times, by a total of 91 different judges. Mah Dechanuphap and Nen Mahavilai were released on bail after having been detained for seven years. Concern was expressed at the extremely long duration of this trial, which has been lasting for 14 years, and at the very long period of detention of Mah Dechanuphap and Nen Mahavilai, who have been on pretrial detention for 7 years.

Communications received

None.

Special Rapporteur's comments and observations

285. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Thailand to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Tunisia

Communication envoyée

286. Le 4 mai 2007, le Rapporteur spécial a envoyé au Gouvernement, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, une lettre d'allégations concernant la situation de Maître Abderraouf Ayadi, avocat, ancien membre du Conseil de l'Ordre des avocats et ancien Secrétaire Général du Conseil National pour les Libertés en Tunisie. Des appels concernant M. Ayadi avaient précédemment été envoyés le 25 janvier et 12 mai 2005 par le Rapporteur spécial conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la liberté d'expression, puis le 21 octobre 2005 conjointement par le Rapporteur spécial sur la liberté d'expression et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, et enfin le 11 novembre 2005 conjointement par le Rapporteur spécial sur la liberté d'expression et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la torture. Les sources affirmaient que, le 14 avril 2007, Me Ayadi avait été victime d'une agression physique de la part d'un agent de la police politique devant la salle d'audience du Tribunal de première instance à Tunis. Elles précisait que Me Ayadi s'apprêtait à plaider dans une affaire où comparaissaient des prévenus dans le cadre de la Loi anti-terroriste. Il aurait alors été frappé à coups de pieds tandis que d'autres agents auraient formé un barrage devant la porte pour l'empêcher de pénétrer dans la salle d'audience. Les sources manifestaient leurs préoccupations que l'interdiction à l'encontre de Me Ayadi d'exercer sa fonction d'avocat ainsi que l'usage de la force à son encontre ne soient liés à ses activités de défense des droits de l'homme et ne s'inscrivent dans un contexte d'intimidation et de répression systématique à l'encontre des avocats engagés dans cette défense.

287. Le 27 juillet 2007, le Rapporteur spécial a envoyé au Gouvernement, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, une lettre d'allégation concernant la situation de Me. Abderraouf Ayadi, avocat, ancien membre du Conseil de l'Ordre des avocats et ancien Secrétaire Général du Conseil National pour les Libertés en Tunisie. Selon les sources, une information judiciaire pour agression sur la personne du chef de poste de Bab Bnet, dont dépend le Palais de justice, aurait été ouverte contre Me Ayadi. Ceci se serait produit peu après une audition, le 12 juillet 2007, de Me Abdelfattah Mourou, collègue de Me Ayadi, qui était entendu par le Procureur de la République comme témoin d'une agression dont avait été victime Me. Ayadi au mois d'avril. En effet, le 14 avril 2007, Me. Ayadi aurait été violemment agressé par un fonctionnaire de la police politique devant la salle d'audience du Tribunal de première instance à Tunis, alors qu'il s'apprêtait à plaider dans une affaire où comparaissaient des prévenus dans le cadre de la Loi anti-terroriste. Les sources affirmaient aussi que Me. Ayadi continuait de faire l'objet d'actes de harcèlement de la part d'agents du Ministère de l'Intérieur. Ainsi, le 7 juillet 2007, Me. Ayadi

aurait aperçu un homme en train de déposer une enveloppe sur sa boîte aux lettres et puis s'enfuir. Ayant reçu une enveloppe similaire une semaine auparavant, contenant un photomontage mettant en scène son épouse, il se serait rendu dans un poste de police, où il aurait demandé à un agent de procéder à l'ouverture de l'enveloppe, qui contenait un DVD. Alors que Me. Ayadi aurait demandé à ce que cet acte soit consigné dans un procès-verbal afin d'engager une plainte, l'agent aurait refusé de le faire, en indiquant qu'il s'agissait d'un ordre de sa hiérarchie. Son chef aurait indiqué avoir reçu des consignes à cet effet. Me. Ayadi aurait protesté contre l'illégalité de ce refus, et serait parti en laissant l'enveloppe avec son contenu sur le bureau de l'agent. Un peu plus tard dans la journée, la secrétaire de Me. Ayadi aurait retrouvé la même enveloppe dans la boîte aux lettres. Le Rapporteur spécial signalait les préoccupations exprimées par les sources que l'information judiciaire ouverte contre Me. Ayadi ainsi que les présumés actes de harcèlement à son encontre de la part d'agents du Ministère de l'Intérieur ne soient liés à ses activités de défenseur des droits de l'homme et ne s'inscrivent dans un contexte d'intimidation et de répression systématiques à l'encontre des avocats engagés dans cette défense.

288. Le 5 septembre 2007, le Rapporteur spécial a envoyé au Gouvernement, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, une lettre d'allégations concernant la situation de Me. Ayachi Hammami, défenseur des droits humains en Tunisie, membre du Collectif 18 octobre pour les droits et libertés, et Secrétaire Général de la section de Tunis de la Ligue tunisienne pour la défense des droits de l'homme. Ce cas avait déjà fait l'objet, en 2005 et 2006, de plusieurs communications adressées au Gouvernement tunisien conjointement par le Rapporteur spécial, la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Rapporteur spécial sur la torture. Selon les sources, le 31 août 2007, Me. Ayachi Hammami aurait été victime d'un incendie qui aurait ravagé son cabinet et dont l'origine serait vraisemblablement criminelle. Lorsque Me. Ayachi Hammami serait arrivé à son bureau, il aurait constaté que la porte d'entrée était ouverte, alors qu'il se souvenait l'avoir fermée la veille en partant. En revanche, la porte de son bureau personnel serait restée fermée, sans doute dans le but de détruire un maximum de documents avant que les pompiers ne puissent entrer et éteindre le feu. Le cache de l'ordinateur professionnel de Me. Ayachi Hammami aurait été ôté et des journaux auraient été introduits dans le lecteur. Cela semblerait indiquer la volonté de s'assurer de la destruction de toutes les données qu'il contenait. Les sources alléguaient que le fait que le cabinet de Me. Ayachi Hammami ait été soumis à une surveillance policière permanente semblerait indiquer que les personnes qui mirent le feu l'auraient fait grâce à l'aide de complices travaillant au sein des autorités de surveillance. Elles exprimaient leur crainte que cet acte ne vise à intimider Me. Ayachi Hammami et à l'empêcher de poursuivre son travail d'avocat et de défenseur des droits de l'homme.

289. Le 2 novembre 2007, le Rapporteur spécial a envoyé au Gouvernement, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, une lettre d'allégations sur la situation de Me. Mohamed Abbou, avocat, membre du Conseil national pour les libertés en Tunisie et de l'Association internationale de soutien aux prisonniers politiques. Me Abbou avait été libéré le 25 juillet 2007 après 30 mois d'emprisonnement. Sa situation avait déjà motivé plusieurs communications envoyées par le Rapporteur spécial conjointement avec le Rapporteur spécial

sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, les 17 mars, 3 avril 2005, 12 mai et 16 juin 2006, puis conjointement par le Rapporteur sur la torture et la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire le 11 novembre, le 9 mars 2005 et le 6 avril 2006. Les sources alléguaient que le 23 octobre 2007, la police de l'air et des frontières aurait interdit à Me Abbou de voyager vers le Caire où il devait se rendre afin de suivre le procès de M. Ibrahim Essa, éditeur-en-chef du journal indépendant Aldostur, qui devait se tenir le 24 octobre. La police aurait prétexté que, étant en liberté conditionnelle, Me Abbou ne pourrait circuler librement. Le 24 août 2007, Me Abbou aurait une fois de plus été empêché de voyager vers Londres où il devait participer à une émission sur la démocratie et les droits de l'homme dans les studios de la chaîne Al-Jazeera. En vertu de l'article 357 du Code de procédure pénale tunisien, la liberté de mouvement d'une personne en liberté conditionnelle ne peut être restreinte qu'au moment de sa libération, soit en l'assignant à résidence (art. 357 (a)), soit en la plaçant d'office dans un service public ou une entreprise privée (art. 357 (b)). Or, à aucun moment Me Abbou ne se serait vu signifier l'une ou l'autre de ces restrictions. Les sources exprimaient la crainte que ces atteintes à sa liberté de mouvement ne soient liées à ses activités non-violentes de défenseur des droits de l'homme.

290. Le 10 décembre 2007, le Rapporteur spécial a envoyé au Gouvernement, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, une lettre d'allégations concernant la condamnation à un an de prison du journaliste Slim Boukhdar, âgé de 39 ans et correspondant du journal panarabe basé à Londres Al Quds Al Arabi et du site internet de la chaîne de télévision satellitaire Al-Arabiya. Ce journaliste publie aussi des articles sur plusieurs sites Internet dont Tunisnews et Kantara. Selon les informations reçues, M. Boukhdar devait se présenter au service compétent pour récupérer son passeport, dont il aurait été privé depuis 2004 et pour la remise duquel il aurait mené une grève de la faim pendant deux semaines jusqu'au 14 novembre 2007. Le 26 novembre, alors qu'il se rendait au poste de police, il aurait subi un contrôle d'identité des passagers d'un taxi collectif reliant Sfax et il aurait été conduit au poste de police en état d'arrestation. Le 27 novembre, M. Boukhdar aurait été traduit devant le tribunal de Sakiet Ezzit (Sfax) et le 4 décembre 2007, le juge Hatem Ouarda, du tribunal cantonal de Sakiet Ezzit, l'aurait condamné à huit mois de prison pour « outrage à fonctionnaire dans l'exercice de ses fonctions », quatre mois pour « atteinte aux bonnes mœurs » et à verser cinq dinars d'amende pour « refus de présenter ses papiers d'identité ». Selon les sources, le journaliste aurait de même fait état de mauvais traitements et de mauvaises conditions de détention mais le juge aurait refusé d'enregistrer sa plainte et d'en tenir compte. Elles indiquaient un possible vice de forme pendant le procès, alléguant que le juge n'aurait pas voulu écouter les arguments de la défense et aurait auditionné les témoins à charge sans leur faire prêter serment. M. Boukhdar serait détenu depuis son interpellation, le 26 novembre, puisque le juge en charge du dossier aurait refusé de lui accorder la mise en liberté provisoire. Selon sources, il serait maintenu en détention jusqu'à la date du procès en appel.

Communications reçues de la part du Gouvernement

291. Le 1er février 2008, le Gouvernement tunisien a répondu à la communication du 27 juillet 2007, signalant que, après vérification il s'était avéré que Me Ayadi n'avait présenté aucune plainte au sujet de l'agression supposée à son encontre le 14 avril 2007 de la part d'un officier de police, et que, par contre, l'officier de police chargé de la sécurité dans l'enceinte du

tribunal avait déclaré avoir été victime d'agression physique et verbale de la part de Me Ayadi et avait porté plainte contre lui. Les témoins auditionnés dans le cadre de cette affaire par le Ministère public, y compris deux avocats qui étaient sur les lieux de l'agression, avaient tous affirmé que Me Ayadi avait offusqué et bousculé l'agent en question dans l'exercice de ses fonctions. L'instruction suit son cours. Enfin, quant au photomontage allégué mettant en scène l'épouse de M. Ayadi, celui-ci a, en septembre 2007, déposé une plainte devant le Procureur de la République auprès du Tribunal de première instance de Tunis. L'enquête a été confiée au Ministère public et suit son cours.

292. Le 1er février 2008, le Gouvernement tunisien a aussi répondu à la lettre d'allégation du 5 septembre 2007, indiquant que, dans le cadre de l'enquête judiciaire en cours au sujet de l'incendie qui s'était déclaré le 31 août 2007 à l'étude de Me Hammami, le juge d'instruction en charge de l'enquête s'était rendu sur les lieux dès sa saisine et avait procédé aux constats in situ, établissant l'absence de traces d'effraction au niveau des accès de l'étude. La lettre indiquait aussi que, de son côté, Me Hammami avait déclaré à l'enquêteur qu'il avait regagné son étude à 7h50 et qu'il avait découvert l'incendie dès qu'il avait ouvert la porte principale. Enfin, la lettre signalait que le juge d'instruction avait procédé à l'audition de l'intéressé qui s'était constitué partie civile ainsi que des témoins. L'enquête se poursuit en vue de cerner toutes les circonstances ayant entouré le déclenchement du sinistre.

Commentaires et observations du Rapporteur spécial

293. Le Rapporteur Spécial remercie le Gouvernement de ses réponses à ses communications datées des 27 juillet et 5 septembre 2007 et en prend note. Il le prie instamment de bien vouloir le tenir informé des suites des affaires en question, dont les caractéristiques demeureront une source de préoccupation jusqu'à leur plein éclaircissement. Par ailleurs, il regrette d'être encore sans réponse, au moment de la finalisation du présent rapport, à ses communications en date du 4 mai, 2 novembre et le 10 décembre 2007. Il prie instamment le Gouvernement de la Tunisie de fournir le plus tôt possible, de préférence avant la fin de la neuvième session du Conseil des Droits de l'Homme, une réponse de fond détaillée aux allégations rapportées dans lesdites communications et concernant la situation actuelle des personnes en faisant l'objet.

Turkey

Communication sent

294. On 5 April 2006, the Special Rapporteur sent an allegation letter together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Ms. Eren Keskin, a lawyer who works with the project "Legal Aid for Women Raped or Sexually Assaulted by State Security Forces" in Turkey. This project provides legal assistance to victims of sexual violence and is funded by the United Nations Voluntary Fund for Victims of Torture. Ms. Keskin was the subject of an urgent appeal sent by the Special Representative of the Secretary General on the situation of human rights defenders on 22 April 2005. According to the information received, on 14 March 2006 Ms. Eren Keskin was sentenced to ten months' imprisonment by the Kartal 3rd Court of First Instance. The sentence of ten years' imprisonment was converted into a fine of 6,000 Turkish lira. It is reported that Ms. Keskin has refused to pay the fine. The sentencing results from charges brought against

Ms. Keskin of insulting the armed forces. These charges were brought against Ms. Keskin after she gave a speech at a meeting in Cologne, Germany in 2002 about cases of sexual violence against women inmates by the Turkish State Security Forces. It is reported that Ms. Keskin has appealed this decision to the Court of Appeal. Concern was expressed that the above decision is connected with Ms. Eren Keskin 's activities in defence of human rights, in particular the rights of women who have been the victims of sexual violence.

295. On 19 February 2008, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Representative of the Secretary-General on the situation of human rights defenders, regarding Mr. Orhan Kemal Cengiz, a lawyer, human rights defender and newspaper columnist, by the time working on the case of three men killed at the Zirve Christian publishing house on 18 April 2007 and the killing of Mr. Hrant Dink, who was a Turkish journalist of Armenian origin and an activist for democratic reform. According to the information received, in November 2007, an article published in a local newspaper in the province of Malatya reportedly included details that could only have been learnt through the interception of Mr. Orhan Kemal Cengiz's telephone calls and e-mails concerning the aforementioned case. He later learned that a letter had been sent to the Malatya prosecutor accusing him of involvement in the murders. The letter also contained other false and defamatory information, the intention of which was reportedly to make him a target. In January 2008, Mr. Orhan Kemal Cengiz received a letter which contained both veiled and direct threats to his safety, which may have the same origin as the letter to the Malatya prosecutor. Reports inform that Mr. Orhan Kemal Cengiz has requested that authorities provide a bodyguard to protect him, but that this request has not yet been granted. He has reportedly been threatened and intimidated on a number of occasions, intensifying since November 2007, when the trial of those accused of killing the three men at the Zirve publishing house in Malatya began. The mandate-holders further referred to the case of the killing of Mr. Hrant Dink, who was shot dead on the street in front of his office in Istanbul on 19 January 2007. Mr. Dink had also reported death threats to the police on numerous occasions, who had allegedly been aware of a plan to assassinate him for some months prior to his death.

Communication received

296. On 25 May 2007, the Government responded to the joint urgent appeal of 5 April 2006 stating that with regard to the decision taken by the 3rd Court of First Instance of Kartal against Eren Keskin a fine was imposed in the amount of 6,000 Turkish Lira for insulting the armed forces. According to the decision of the Court, it was established that Eren Keskin, during her public speech in Germany, stated that "Members of the Turkish armed forces sexually assault and harass women. Soldiers conduct virginity tests on married women in order to torture them." The Court considered as to whether her statements could fall within the limits of criticism, which has been safeguarded in the fourth paragraph of article 301 of the Turkish Penal Code. On the basis of the elements contained in her statement regarding the armed forces, the Court concluded that the motivation in the case was to publicly denigrate the institution of the armed forces as a whole and that her allegations were groundless. In this regard, the Court decided that her speech cannot be considered within the framework of the right to freedom of expression and dissemination of thought, which was safeguarded in the Turkish Constitution and the international treaties to which Turkey is a party. Therefore, the Court convicted Eren Keskin of the indicted charge and imposed a fine in the amount of 6,000 Turkish Lira.

297. On 27 February 2008, the Government responded to the joint urgent appeal of 19 February 2008 that, with regard to the complaint lodged by Mr. Orhan Kemal Cengiz regarding the interception of his emails and telephone calls, it was referred to the relevant authorities for investigation. Moreover, the request for security measures to be taken was also transferred to the relevant authorities. Furthermore, the Government informs that the Office of the Public Prosecutor of Malatya received an anonymous letter accusing Mr. Orhan Kemal Cengiz for involvement in the murder.

298. On 25 March 2008, the Government informed that Mr. Orhan Kemal Cengiz was provided with close protection. A law enforcement official was instructed to ensure his personal security. Moreover, the Government informed that the trial on the murder of Mr. Hrant Dink is ongoing before the 14th Penal Court of Istanbul. 18 persons have been charged and 8 have been arrested pending trial. During the first hearing held on 25 February 2008 the defense was heard. The next hearing is scheduled for 28 April 2008.

299. On 23 April 2008, the Government informed that an investigation has been initiated by the Chief Public Prosecutor of Ankara following the complaint filed by Mr. Orhan Kemal Cengiz, regarding the anonymous threats related to his work on the murder case of the 3 employees of Zirve Publishing House in Malatya.

Special Rapporteur's comments and observations

300. The Special Rapporteur thanks the Government of Turkey for its cooperation and values its efforts in providing substantive and detailed information in response to the above allegations. He further wishes to ask the Government to provide information about the investigations undertaken by the Chief Public Prosecutor of Ankara, regarding the anonymous threats received by Mr. Orhan Kemal Cengiz.

Uganda

Communication sent

301. On 2 April 2008, the Special Rapporteur sent an allegation letter concerning the intrusion of armed police personnel and disregard for judicial independence and order at the High Court on 1 March 2007 in Kampala, which led to a decision by the judiciary to suspend all court activities nationwide since 2 March 2007. According to the information received, following the adjournment of the final decision by the High Court in respect of the bail application made by twelve alleged members of the People's Redemption Army (PRA), who had been held since November 2005 on charges of treason and conspiracy, and the decision of the High Court to grant them bail in the meanwhile, armed men in police uniform surrounded the Registry, where they intimidated and assaulted civilians and vandalised court property, before they prevented those released on bail from leaving the Court and proceeded to re-arrest them. All twelve co-accused men in the trial were returned to Luzira Prison despite being granted bail; some were forcibly removed from the High Court building. Furthermore, three of the accused were held incommunicado for nearly a day after being taken into police custody and were only returned to Luzira prison late on 2 March 2007. It is further reported that some of the defendants, a journalist and one counsel, who subsequently required medical treatment, were mistreated during the incident. Previously, on 16 November 2005, a group of armed security operatives

reportedly belonging to a specialized anti-terrorist unit, had invaded High Court during proceedings related to the same case, also in an attempt to intimidate and threaten judges and lawyers, and to disrupt judicial proceedings.

Communications received

None.

Special Rapporteur's comments and observations

302. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Uganda to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

United Arab Emirates

Communication sent

303. On 8 September 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, concerning Mr. Mohamed al-Mansoori, a lawyer, a human rights activist and President of the Independent Jurist's Association, and Mr. Mohamed' Abdullah al-Roken, a lawyer, a human rights activist and former President of the UAE's Jurists Association. According to the allegations received, on 17 June 2006, an arrest warrant was issued against Mr. Mohamed al-Mansoori, based on an accusation of "insulting the Prosecutor". It is alleged that the real motive of this order was to silence Mr. Mohamed al-Mansoori, after he gave several interviews to Arab satellite television in which he criticized the human rights situation in the country. Moreover, on 23 August 2006, Mr. Mohamed' Abdullah al-Roken has reportedly been arrested by members of the State Security, Amn al-Dawla. When the communication was sent the reasons of his detention remained unknown. Previously, Mr. Mohamed' Abdullah al-Roken had been arrested and held for one night on July 2006, after he gave an interview regarding the recent conflict in Lebanon, to an Arabic television channel. It is also alleged that both Mr. Mohamed al-Mansoori and Mr. Mohamed' Abdullah al-Roken have been banned for a number of years from giving interviews or writing articles to the media. In addition, in September 2005, the authorities of the Emirate of Fujairah allegedly banned a conference on civil rights, women's rights and democracy, organized by the Jurists' Association, without giving any reasons. Serious concerns have been expressed that Mr. al-Mansoori and Mr. al-Roken may be detained on account of their peaceful activities in defence of human rights, and that their detention may form part of a campaign of harassment and intimidation against defenders of human rights in the United Arab Emirates.

304. On 21 February 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the

Special Rapporteur on torture regarding Mr. Abdullah Sultan Sabihat Al Alili, aged 46, agricultural engineer and civil servant with the Ministry of Agriculture of Ajman Emirate, resident at Ajman. According to the information received, Mr. Abdullah Sultan Sabihat Al Alili was arrested without warrant by the State Security Forces (Amn Al dawla) on 15 February 2007 at his residence. His home was searched and his personal documentation and library confiscated. Since then neither his family nor his lawyer have received any information about his whereabouts or the reason for his arrest. Mr. Al Alili had been in detention between 8 August 2005 and 25 October 2005. No arrest warrant had been issued; when the communication was sent he was held in secret detention and has not been brought before a court. During that time he was interrogated about his political opinions and his criticism related to the state of democracy in the country. He was allegedly repeatedly beaten by the State Security Forces. In view of his incommunicado detention, concern was expressed for his physical and mental integrity.

305. On 1 November 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture, regarding Mr. 'Abdullah Sultan al-Subaihat, aged 46, agricultural engineer by profession and head of the agricultural administration department in the Emirate of 'Ajman. Mr. 'Abdullah Sultan al-Subaihat was already the subject matter of a joint urgent appeal by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture on 19 August 2005. According to new information received, Mr. 'Abdullah Sultan al-Subaihat was arrested on 8 February 2007 by State Security officers at the premises of the agricultural administration department in the Emirate of 'Ajman. The officers took him to his home and confiscated a number of books. After the search he was handcuffed and blindfolded and transferred to an unknown place of detention in Abu Dhabi. Mr. 'Abdullah Sultan al-Subaihat was held incommunicado for months before he was charged with "obtaining secret information on State security". He appeared before the Federal Supreme Court of the United Arab Emirates in Abu Dhabi for the first time on 25 June 2007. Mr. 'Abdullah Sultan al-Subaihat was granted access to a lawyer, however, the court sessions were closed and no family members were allowed to attend the hearings. His application for bail was denied. During the final court session on 10 September 2007 he alleged that he had been ill-treated in detention by members of the State Security forces. Mr. 'Abdullah Sultan al-Subaihat reported that he had been beaten with a hosepipe all over his body, deprived of sleep, forced to carry a chair above his head every day for two weeks, and threatened with sexual assault. The Federal Supreme Court did not investigate these allegations. Witnesses appearing for the prosecution during his trial were the very members of the State Security forces who had ill-treated him in detention and were the only evidence presented by the State. On 1 October 2007 Mr. 'Abdullah Sultan al-Subaihat was sentenced to a three years' term of imprisonment. There is reportedly no right to appeal. Mr. 'Abdullah Sultan al-Subaihat is currently being detained at al-Wathba Prison, located 60 km outside of Abu Dhabi, where he is allowed to receive family visits once a week. Mr. 'Abdullah Sultan al-Subaihat was previously arrested on 2 August 2005 for unknown reasons, held incommunicado and eventually released without charge on 25 October 2005. In view of reports about his previous incommunicado detention at an undisclosed location and further considering the allegations of ill-treatment, concern was expressed for the physical and mental integrity of Mr. 'Abdullah Sultan al-Subaihat.

Communications received

306. On 17 May 2007, the Government replied to joint urgent appeal of 8 September 2006, concerning a report about Mr. Mohammed Abdullah al-Rukn, a lawyer, the Permanent Mission has the honour to inform the Office that this man was brought in for questioning in connection with the commission of an act that constitutes a criminal offence under the Federal Criminal Code. He was presented to the public prosecution office in accordance with the prescribed legal procedures. His case is currently before the courts, pending the delivery of a verdict. He has been afforded all the legal guarantees required for the presentation of his defence.

Special Rapporteur's comments and observations

307. The Special Rapporteur thanks the Government of United Arab Emirates for its answer of 17 May 2007. However, he remains concerned at the absence of an official reply and urges the Government of United Arab Emirates to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the communications sent on 21 February and 1 November 2007.

United Kingdom of Great Britain and Northern Ireland

Communications sent

308. On 15 December 2005, the Special Rapporteur sent an allegation letter, concerning the new Constitution of Gibraltar that the Governments of Gibraltar and of the United Kingdom agreed to in London on 17th March 2006 and which has been approved by referendum on 30 November 2006, with 60% of votes. In this regard, the Special Rapporteur enumerated a number of concerns regarding the way in which the new Constitution would fail to guarantee the independence of the judiciary in Gibraltar. According to the information received, the principle of the independence of the judiciary is not enshrined in the Constitution: such lack is incompatible with a democratic system founded on the separation of powers, and with the international obligations subscribed by your Government on the need to guarantee the independence of the judiciary. The Special Rapporteur urged the Government to make sure this fundamental principle is included in this new Constitution. Also, various provisions of the new Constitution weaken the independence of the judiciary. Concerning the appointment of judges, he noted with satisfaction that the Constitution provides for the creation of a Judicial Service Commission. However, he expressed his concern regarding the role of the executive in the judicial appointment process. In particular, an imbalance appears between judicial and executive appointees in article 57 (1) which provides that the Judicial Service Commission of Gibraltar shall consist of the President of the Court of Appeal, who shall be the chair, the Chief Justice, the Stipendiary Magistrate, two members appointed by the Governor, acting in accordance with the advice of the Chief Minister, and two members appointed by the Governor, acting in his direction. He noted with deep concern the fact that executive appointees have the majority, the lack of criteria for selection of the non-judicial appointments by the Governor, and the lack of provision on the length of service of the members of the Commission. In addition, Section 58 provides that votes of the Judicial Service Commission can be taken in the absence of some of its members.

309. Furthermore, Section 57 (2) (b) fails to give proper protection to junior members of the judiciary in terms of tenure of office. According to this provision, the Governor, acting in accordance with the advice of the Judicial Service Commission, may terminate the appointments of the Stipendiary Magistrate, Justices of the Peace and Registrar of the Supreme Court. In this context, the Special Rapporteur underlined that security of tenure is fundamental to the independence of the judiciary and that this applies to all levels of the judiciary, including the Stipendiary Magistrate, Justices of the Peace and the Registrar. Moreover, the termination of any appointment and control over disciplinary matters should lie solely with the judiciary. He also expressed his concern by the lack of transparent, objectively justified, criteria, by which the power of removal may be exercised.

310. He also expressed his deep concern by Section 64 (7) which allows the appointment of a Chief Justice or Puisne Judge for a specified term only. "A person may be appointed to the office of Chief Justice or of Puisne Judge for such term as may be specified in the instrument of his appointment, and the office of a person so appointed shall become vacant on the day on which the specified term expires." The Special Rapporteur expressed his concern that this article may undermine the security of tenure of these persons, which is guaranteed by Section 64 (1) of the Constitution that provides for security of tenure to the Chief Justice and Supreme Court Judges until the age of 67. The Special rapporteur was informed that this provision has been justified by the need to replace a judge who would for any reason be unable to perform the functions of their office, and he believed that such specific cases are already covered by article 63. Therefore, article 64 (7), which is formulated in general terms, appears to threaten the security of tenure of these judges.

311. Moreover, Section 57 (2) (c) gives to the Governor, albeit with the advice of the Judicial Service Commission, the power to exercise disciplinary control over the Stipendiary Magistrate, Justices of the Peace and the Registrar. Finally, Section 57 (3) permits the Governor, acting with the prior approval of the Secretary of State, to disregard the advice of the Judicial Service Commission on appointments, terminations and discipline to the Executive, if compliance with that advice would prejudice Her Majesty's service. The Special Rapporteur expressed his deep concern over the ability that the Governor would possess under this article to control the appointments, terminations and disciplinary actions of judges and therefore exercise an undue influence on them. In addition, the Constitution does not limit the exercise of this control to very specific or exceptional circumstances.

312. Finally, the Special Rapporteur expressed his concern by the fact that the observations submitted by the Gibraltar Judiciary on the draft Constitution may not have been duly taken into consideration.

Communications received

313. On 15 February 2007, the Government replied to the allegation letter of 15 December 2006, informing the following: I disagree with the assertion that the new Constitution fails to guarantee the independence of the judiciary in Gibraltar. You will wish to be aware that it has always been envisaged that the judicial provisions of the Constitution would be supplemented by a Judicial Services Act. This Act will be enacted by the Gibraltar Parliament and provide detailed guidance on aspects of the Judicial Services Commission, and disciplinary matters. I therefore fear that the information that has been made available to you does not take

into account the additional provisions and safeguards that will be included in this Act. I note that you are satisfied with the creation of a Judicial Services Commission (JSC) but are concerned about the role of the executive in the judicial appointment process, and believe that the executive has a numerical advantage on the Judicial Services Commission. This is a misconception that ignores the careful construction of the Commission, which is in essence composed of three “constituencies”: (1) the 3 judicial members; (2) the 2 members nominated by the elected Chief Minister, who has a valid democratic interest in the good administration of justice; and (3) the 2 members independently selected by the Governor, who are not part of the local executive, and can thereby reflect the interest of the United Kingdom Government in the good administration of justice. None of these “constituencies”, however, has a majority and we consider it is unjustified to suppose that the appointed members would always form a blocking majority over the judicial-members. We therefore consider the Commission as a well-balanced representation of the relevant interests. Nor is there any established principle that preserving judicial independence requires the judiciary to be in a majority, or the executive in a minority, in any such Commission. You also raise concerns over the perceived lack of provision on the length of service of members of the Commission and on the voting procedures. These are matters that will be covered in the Judicial Services Act. We disagree with your assertion that section 57 (2) of the Constitution fails to give proper protection to junior members of the judiciary in terms of tenure. On the contrary, the tenure of office of junior members of the judiciary is protected by the constitutional requirement that appointments can only be terminated by the Governor acting on the advice of the Judicial Service Commission. The Gibraltar Government is committed to including in the Judicial Services Act a provision that junior members of the judiciary can only be removed from office on the grounds that they are unable to discharge the functions of his office (whether arising from infirmity of body, or any other cause) or for misbehaviour. We, therefore regard these arrangements as a significant advance on the previous Constitution where the power to remove junior members rested with the Governor’s discretion. You mentioned your deep concern over Section 64 (7), which you claim threatens the security of tenure of Puisne judges. Section 64 (7) was deliberately included to allow flexibility of appointments in small jurisdictions such as Gibraltar, where such mechanisms are not uncommon. It should be noted that a judge appointed for a specified term under section 64 (7), will enjoy throughout the term of his appointment, the security of tenure afforded by section 64 (2) to (4), which limits the grounds of possible dismissal and prescribes the (arduous) procedures to be followed for dismissal. You also express concern regarding Section 57 (2) (c), which gives the Governor power, on the advice of the JSC to exercise disciplinary control over junior members of the judiciary and Section 57 (3) where the Governor can, with the Secretary of State’s permission, disregard the advice of the JSC. We can see no difficulty whereby the JSC, a constitutionally independent body, on which members of the judiciary shall serve as the single largest constituency, should advise the Governor on disciplinary matters. When considering its disciplinary advice, the JSC shall give full regard to the judicial conduct and ethics code, which the Gibraltar Government has indicated the Judicial Services Act will call to be introduced. Section 57 (3) is required to reflect the continuing constitutional relationship between the United Kingdom and Gibraltar. The United Kingdom Government would only envisage this power (of veto) being used in extremely rare and - exceptional circumstances. This section is not intended to, and does not, give the Governor an enabling power. It is deliberately drafted as a veto power only, and this is clearly stated in the explanatory notes accompanying the Constitution. In the extremely rare event of this power being used, the JSC would be required to supply the Governor with further advice. Finally I have to dispute your concerns that the

observations of the Gibraltar judiciary were not taken into consideration. The United Kingdom Government and Gibraltar delegation took very full and detailed account of the Judiciary's submissions of March 2005 and February 2006. Indeed, many of the provisions suggested by the Judiciary were adopted in the Constitution. I should also point out that both the United Kingdom and Gibraltar Governments have gone to great lengths to explain our respective positions in correspondence with the Chief Justice and the Gibraltar Bar Council. Legal Advisers from 'the Foreign and Commonwealth Office, who helped draft the Constitution, met with the Chief Justice and a panel of legal experts appointed by him on 20 November 2006 to explain the United Kingdom Government's view. I am pleased to note that after this meeting the panel members left suitably reassured over the intentions.

Special Rapporteur's comments and observations

314. The Special Rapporteur thanks the Government of the United Kingdom for its timely cooperation and values its efforts in providing substantive and detailed information in response to the above allegation.

United States of America

Communications sent

315. On 25 February 2008, the Special Rapporteur sent a joint letter of allegation together with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on the question of torture, regarding the situation of six non-US citizens currently detained at the military detention facility at Guantanamo Bay, Mr. Khalid Sheikh Mohammad, Mr. Mohammad al-Qahtani, Mr. Ramzi bin al-Shibh, Mr. Ali Abd al-Aziz Ali (a.k.a. Ammar al-Baluchi), Mr. Mustafa Ahmed al-Hawsawi, and Mr. Walid bin Attash (a.k.a. Khallad). The mandate holders were informed that, pursuant to the Military Commissions Act of 2006 (MCA), all six will shortly be brought before military commissions on charges of conspiracy, murder in violation of the law of war, attacking civilians, attacking civilian objects, intentionally causing serious bodily injury, destruction of property in violation of the law of war, terrorism and providing material support for terrorism. The mandate holders affirmed that it is long overdue for Guantanamo Bay detainees allegedly responsible for or involved in the 9/11 attacks in the United States to be finally charged and prosecuted. However, they considered that the commissions established under the MCA lack the legal competence and procedural guarantees to conduct fair trials in accordance with international legal standards. This case highlights a number of concerns that have already been raised in the USA mission report of the Special Rapporteur on human rights and counter terrorism (A/HRC/6/17/Add.3) regarding the jurisdiction and composition of the military commissions, the use of evidence, the imposition of the death penalty for certain offences and shortcomings in securing a fair trial. According to the mandate holders, firstly, there is a jurisdictional issue related to the MCA and the intention to try these six detainees before military commissions rather than courts. Among the charges that are awaiting the approval of the convening authority for the military commissions are the charges of terrorism, conspiracy and providing material support for terrorism that go beyond offences under the laws of war. This combined with the notion of "unlawful enemy combatant" may result in some of these detainees who are actually civilians being tried by military commissions. Another concern regarding the offences of terrorism, conspiracy, and providing material support for terrorism is that, to the extent they were

not covered by the law applicable at the time of the commission of the actual acts and thus fall under the jurisdiction of US federal courts, the military commissions will be applying criminal law retroactively, in breach of article 15 of the International Covenant on Civil and Political Rights (ICCPR) and universally acknowledged general principles of law. Secondly, the mandate holders were concerned that, owing to their composition, the military commissions may lack independence and impartiality or the appearance thereof. The convening authority selects individual commission members for each trial and thus the appearance of an impartial selection is undermined. There is also the possibility of chains of command existing between members of the same commission which is a matter of concern. The ability of the convening authority to determine what charges will be referred to the military commissions and to have the authority to intervene during the negotiation of potential plea agreements is a serious concern as it gives a role to the executive to interfere before and during the proceedings. On the issue of the use of the evidence, the mandate holders were concerned about allegations that some, or even all, of the six detainees have been subjected to highly abusive interrogation techniques that may have amounted to torture, or to cruel, inhuman or degrading treatment, equally prohibited under the non-derogable guarantees provided by article 7 of the ICCPR and under article 15 of the Convention against Torture. The domestic law definition of torture for the purpose of the proceedings before the military commission is restricted, not catching all forms of coercion that amount to torture or cruel, inhuman or degrading treatment equally prohibited under the non-derogable terms of the above named articles. In addition, on 5 February 2008 Central Intelligence Agency Director-General Michael Hayden advised Congress that Mr. Khalid Sheikh Mohammad had been subjected to "waterboarding". There is reportedly other evidence contained in interrogation logs that may confirm that some, or perhaps all, of the six detainees were subjected to abusive interrogation techniques, including stress positions and sleep deprivation. An even more worrying point is that the wording of the MCA allows testimony obtained through abusive interrogation techniques that were used prior to the Detainee Act of 2005 if such evidence is found to be "reliable" and its use "in the interests of justice". This is contrary to the clear and well established principle of international law that excludes the use of evidence obtained by torture or cruel, inhuman or degrading treatment for the purpose of trying and punishing a person. The mandate holders also expressed their concern about the use of evidence based on classified information and by the admission of hearsay evidence in proceedings before military commissions, in the form of a written summary of the evidence, if the military judges consider it to be "reliable" and "probative". The admissibility of such evidence presents serious problems with regard to the right to fair trial since the accused is not secured the possibility of cross-examination of witnesses, as foreseen under article 14, paragraph 3 (e) of the ICCPR. If hearsay evidence was obtained through torture or coercion in respect of other persons and the interrogation techniques applied were themselves classified, the defendant would not know whether the evidence was obtained by such methods and therefore should be subject to a legal challenge. Finally they expressed their strong concern regarding the intention of the Government to request the death penalty regarding the six detainees on grounds of conspiracy and murder. They considered that the proceedings governed by the MCA seriously undermine the right to a fair trial provided under article 14 of the ICCPR. Furthermore, the right to appeal is limited to matters of law. Thus, in the context of fair trial concerns this means that the imposition of the death penalty, in the event of a conviction or convictions by the military commission in this case, is likely to be in violation of article 6 of the ICCPR.

Communications received

None.

Special Rapporteur's comments and observations

316. The Special Rapporteur is deeply concerned at the absence of an official reply to the above allegations, especially considering the Government's intention to request the death penalty regarding the six detainees. The Special Rapporteur urges the Government of the United States of America to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Uzbekistan

Communications sent

317. On 15 November 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture regarding Mr. Komiljon Usmanov. According to the allegations received, Mr. Komiljon Usmanov disappeared at the beginning of May 2006. With the assistance of human rights organizations, his relatives found out that he was detained incommunicado by the Tashkent city department of Internal Affairs (GUVD) for thirty days. During this time, he was detained without his relatives being notified, and was under investigation without access to a legal counsel. On 6 November, Mr. Kamiljon Usmanov was sentenced to ten years in prison on charges including attempting to overthrow the constitutional system after a trial which was conducted with numerous violations of the Criminal Procedural Code of the Republic of Uzbekistan and international human rights instruments. In particular, the public prosecutor (assistant to the Prosecutor of Shaikhontahourski district of Tashkent) Abdulazys Kalandarov did not attend the first phases of the trial. Also, the chairman judge in charge of the case, Mr. Abduvokhid Sharipov, allegedly performs the dual function of public prosecutor. During the trial the accusations were not confirmed with any fact or evidence in accordance with the Criminal Code of the Republic of Uzbekistan, and the court did not allow defence witnesses to appear, nor did it allow human rights defenders, journalists and many of the accused relatives to observe the proceedings. At the first court session, Mr. Komiljon Usmanov rejected the accusations, stating that his confessions had been obtained as a result of torture and ill-treatment. Four witnesses stated that they had witnessed Mr. Usmanov being subjected to torture in the GUVD facilities, including being hung from the ceiling from his feet and with his ears attached to electric wires. However, the judge refused to order any investigation into these allegations of torture. Kamiljon Usmanov and his lawyer, Rukhiddin Komilov, intend to appeal the case.

318. On 18 January 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Mr. Saidjahon Zainabitdinov, Chairman of the Andijan human rights group Apellatsia ("Appeal"), an organization working on religious and political persecution. Saidjahon Zainabitdinov was the subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur of

Freedom of Expression and Opinion, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention on 26 May 2005. According to the information received, it is alleged that, Saidjahon Zainabitdinov was arrested on 21 May 2005 by the Uzbek authorities after he had recounted his version of the events in Andijan on 13 May 2005 to some western media sources. It has been reported that on 4 January 2006 the trial of Saidjahon Zainabitdinov began in Chirchik, a town near Tashkent where he was reportedly charged with defamation and anti-government activities. It is believed that on 12 January Mr. Zainabitdinov was found guilty and sentenced to 7 years imprisonment in what appears to have been a closed trial as information about the proceedings did not become available until after the fact. It is further alleged that the trial was held at a secret location and that no official information concerning the proceedings was made available to relatives of Saidjahon Zainabitdinov. Concern was expressed that Saidjahon Zainabitdinov's trial may be linked to his activities in the defense of human rights, in particular his descriptions of the recent events in Andijan and of the general human rights situation in Uzbekistan which have appeared in the press.

319. On 2 February 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture regarding Mr. Sanjar Umarov. Mr. Umarov was already the subject matter of a joint urgent appeal to the Government by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, 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 and the Special Rapporteur on the question of torture dated 3 November 2005. While it was appreciated the Government's detailed response of 29 November 2005, in which the ongoing investigations by the General Procurator in connection with the criminal proceedings instituted against Mr. Umarov and his brother, the situation of Mr. Umarov's defense and the state of his mental health are explained, the mandate holders requested further information on new allegations received. Mr. Umarov's case is also pending before the Human Rights Committee with a request for interim measures of protection. According to new allegations received, Mr. Umarov was arrested on 22 October 2005 and convicted in March 2006 of a number of offences including fraud, embezzlement and membership in a criminal organization. On appeal Mr. Umarov's sentence was reduced from ten and a half years to seven years and eight months. He has been detained incommunicado since July 2006 when he was last allowed a visit by his son. On this occasion Mr. Umarov specifically requested to meet with his attorney, Ms. Olga Zimareva. Numerous attempts undertaken by Ms. Zimareva and lawyers Mr. Berdiev and Mr. Lisunov to gain access to their client since then were denied by the head of prison, Mr. Abdullaev, stating that it is the prison inmate who has to file a request for a meeting with counsel. These attorneys of Mr. Umarov's choice are not the two identified as his defence counsel in your Government's reply dated 29 November 2005, whose names are Mr. V.L. Krasilovsky and Ms. Burnasheva. Several attempts by members of his family to see him in prison since July 2006 were met with official denials for the reason that Mr. Umarov has been placed in solitary confinement for 15 days. Each time this period expired his family was notified that Mr. Umarov has been subjected to solitary confinement again for 15 days. Questions about his state of health were met with the standard reply as being "satisfactory". Beginning 22 October 2006 Mr. Umarov was placed under solitary confinement for a period of three months for inappropriate behaviour in prison. Although this period expired on 23 January 2007 his family members were refused a visit on this day. Prison officials informed his family that he has been subjected to solitary confinement for another 15 days

beginning 18 January 2007. Various letters addressed to the office of the General Procurator by Mr. Umarov's family, inter alia, questioning the actions of the prison head with respect to denials of family visits and access to counsel have so far remained without reply. In view of his alleged continued incommunicado detention in solitary confinement grave concerns were expressed as regards Mr. Sanjar Umarov's physical and mental integrity.

320. On 9 March 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture regarding Mr. Erkin Musaev, Uzbek national and a UNDP local staff member in Uzbekistan (UNDP Country Manager, Border Management Programme Central Asia). According to the information received, Mr. Musaev was arrested by the Uzbek National Security Service on 31 January 2006, when he was on his way to attend a United Nations Conference in Bishkek, Kyrgyzstan in his capacity as a United Nations staff member. His family was not informed about his whereabouts for 20 days. He was not allowed to see a lawyer of his choice. During detention he was subjected to various forms of pressure, including threats by the interrogators who tried to force him to sign a confession. He was also subjected to beating by fellow inmates at the instigation of the interrogators. Furthermore he was beaten on his chest three nights in a row, which resulted in pain in the inner organs. He was put on a bed with the hands tied up and hit him on his heels, which meant that he was unable to walk for several days. He was also subjected to a method called "Northern Aurora", which means hitting somebody hard on his head for a prolonged period. The beatings and other ill-treatment resulted in a broken jaw. First aid was provided by other inmates. On 13 June 2006, following a reportedly secret and flawed trial, Mr. Erkin Musaev was found guilty of high treason (article 157 of the Uzbek Criminal Code), disclosure of state secrets (article 162), abuse of office (article 301) and negligence (article 302) and sentenced to 15 years of imprisonment by the Uzbek military court in Tashkent. The verdict reads that the information that he provided was utilised by unfriendly forces in order to organize the disturbances in Andijan in May 2005. It took the presiding judge four hours to read the 72-page verdict. No family and no independent observers were allowed to be present at the trial. On 14 June 2006, a second trial against Mr. Erkin Musaev commenced. This time he was accused of embezzlement of UN funds. The presumed purpose of the second trial was that, in accordance with Uzbek law, a second sentence would make it impossible to ever get amnesty for the first sentence. Mr. Erkin Musaev was sentenced to 6 years of imprisonment. A related UNDP-statement, dated 4 July 2006, read: "... UNDP conducted its internal investigation on the matter and found no basis for the accusations ...". In view of the fact that he has recently been transferred to a different prison and that he has no access to his family and lawyers of his choice, serious concern was expressed for Mr. Musaev's physical and mental integrity.

321. On 23 April 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Ms. Umida Niyazova, a member of Veritas, an unregistered non-governmental organization which works for the protection of human rights in Uzbekistan. Ms. Niyazova also works as a journalist for the Central Asia website Oasis, a project of the Moscow-based media watchdog Centre for Journalism in Extreme Situations and as a translator for Human Rights Watch in Tashkent. Ms. Niyazova was included in an allegation letter sent by the Special Representative of the Secretary General on the situation of human rights defenders on 25 January 2007, and an urgent appeal sent on behalf of the Secretary General on the situation of human rights defenders on 1 February 2007. According to new information received,

on 22 January 2007, Ms. Niyazova was arrested in Uzbekistan whilst crossing the Uzbek-Kyrgyz border. She was reportedly detained in Andijan, before being transported to Tashkent four days later. Ms. Niyazova was denied access to her lawyer during this period. According to reports, Ms. Niyazova remains in detention at Tashkent prison where she is awaiting trial on charges of “illegal border crossing” and “smuggling subversive literature”. If charged, Ms. Niyazova could face up to ten years in prison. On Friday 13 April 2007, prosecutors issued a further charge for alleged “distribution of materials and threatening national security by using foreign financial aid”. This latest charge carries up to 15 years in prison along with the confiscation of property. Ms. Niyazova has reportedly been subjected to daily interrogations whilst in detention which can last up to 15 hours and sleeps three to four hours per night. Family who have visited Ms. Niyazova claim that she lost considerable weight and that loud music is constantly played when she is in her cell. Concern was expressed that the arrest and continued detention of Ms. Umida Niyazova forms part of an ongoing campaign against human rights defenders in Uzbekistan and that the aforementioned events may be an attempt to prevent her from carrying out her legitimate work in the defence of human rights. Concern was also expressed at reports that she is being detained in poor conditions and that her health is deteriorating as a result.

322. On 9 May 2007, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Ms. Gulbahor Turayeva, human rights defender and pathologist from Andijan. According to information received, on 25 April 2007, Ms. Turayeva was sentenced to six years in prison by the Andijan Regional Court on charges of alleged slander and the production and distribution of literature deemed threatening to public order. Ms. Turayeva was denied access to a defense lawyer of her choice throughout her detention and trial. According to reports, Ms. Turayeva was arrested on 14 January 2007 by Uzbek customs officers, whilst crossing the Uzbek-Kyrgyz border at the Dustlik post in Andijan, for carrying press material published by the opposition Erk party in her bag. Ms. Turayeva was subsequently detained at Andijan Region customs department before being transferred to the local office of the National Security Service detention centre on 16 January 2007. When the communication was sent, Ms. Turayeva was detained at the National Security Service Centre in Andijan. Concern was expressed that the afore-mentioned events are related to Ms. Turayeva’s work in defence of human rights and that her arrest and detention may form part of a pattern of harassment of human rights defenders in Uzbekistan.

323. On 24 July 2007, the Special Rapporteur sent a joint urgent appeal together with Special Rapporteur on the question of torture regarding Akhadov Gafur Gulamovich; Aliyev Dzhamsid Amriyevich; Usupov Azam Rakhimbayevich; Ekubov Rofe Nazhmiyevich; Ibodullayev Azam Hikmatullayevich; Dadamirzayev Ibromkhon Akhmadzhanovich; Batyrov Ilkhom Rakhmanovich; Gaphurov Sobir Uktamovich and several witnesses interrogated in connection with their criminal case, all resident in the Urgutsk region of Samarkand Oblast. According to the allegations received, on 29 April 2006, the Samarkand Oblast Department of Internal Affairs arrested the eight above mentioned persons, initiating criminal charges against them. In order to obtain confessions to support their case, several employees of the Oblast Department of Internal Affairs severely beat the eight arrested persons and several witnesses, including close relatives of the arrested, including women and children, some of them only 14 years old. They also subjected them to electric shocks. More specifically, policemen beat the heels of Gafur Akhadov

with a baton, sent electric shocks through parts of his body and drove needles under his nails. Mr. Akhadov fainted several times during the treatment. A forensic medical examination recorded that the injuries and bruises on his body and under his eyes, noticeable even after 6 months after the interrogation, resulted from “falling off a mulberry tree”. Police also beat Mr. Aliyev with a baton on his heels and all over his body and subjected him to electroshock. The forensic medical examination indicates that the injuries and bruises on his body were “the results of falling from the roof”. When he refused to sign a confession, the police officer threatened to throw him out of the third story window of the Department on Internal Affairs and register his death as suicide “during an effort to escape”. A. Usupov was equally subjected to beatings, resulting from which his feet and his body were covered with bruises. The forensic medical examination indicated that “the bruises on the body of the defendant resulted from falling from a hill”. Mr. Usupov also shows clear signs of trauma resulting from the treatment. The eight persons were charged under articles 159 (Encroachment on the constitutional status of the Republic of Uzbekistan), 244-1 (Production and distribution of materials against public security and public order), 242 (Organizing a criminal association), 165 (Extortion), 189 (Violation of trading and servicing rules), 190 (Practicing business without a license), 209 (Official forgery) of the Criminal Code because of alleged association with Hizb-ut-Tahrir. The eight young men were not allowed to consult with the attorneys their parents had hired and were given access to state appointed attorneys only on 1 May 2006. Among the 40 witnesses interrogated in connection with the above case, 28 were subjected to beatings and ill-treatment during their interrogations. Some of the women were stripped naked or forced to sit in their underwear in the presence of a large number of men. Several witnesses were forced to sign statements that they will refrain from filing official complaints and threatened with more violence should they file any.

324. On 24 August 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture regarding Mr. Jaksigeldi Nurlanovich Tashenov, aged 16, resident in Djavgashti village, Tashkent region, school student, and currently detained at UYA-64/IZ-1 in Tashkent. According to the allegations received, Jaksigeldi Tashenov was arrested by the police on 2 April 2007 and taken into custody in accordance with the order of the Prosecutor of Yukori-Chirchik district on 6 April 2007. At about 19.30 on 2 April, two men in civilian clothes and seven policemen beat him on different parts of his body with clubs, fists and plastic bottles. One of the uniformed men beat him with a rubber club on his heels and pushed him to the floor. As a result of this treatment, which went on until 3:00 the next morning, Jaksigeldi Tashenov confessed to having committed the homicide he was accused of. On the morning of 3 April 2007 Jaksigeldi Tashenov was told by the police post’s chief, whose first name was Salim that he should plead guilty when he will be presented to the Prosecutor. However, Jaksigeldi Tashenov withdrew his confession. Subsequently the police chief reminded him that “last night’s work would continue” and urged him again to confess his guilt. When Jaksigeldi Tashenov was interrogated for the first time by investigator R. Agzamov on 3 April, no defence lawyer was present, although the presence of a lawyer P. Niyazova is registered in the record. When he was interrogated for the second time on 4 April 2007, a defence lawyer, S. Pirmatova, was present. However, she remained passive and did not react to the fact that, as a result of the beatings, Jaksigeldi Tashenov was unable to walk and had bruises on visible parts of his body. This fact has been confirmed by medical personnel who were called for an examination on 4 April. When they asked how Jaksigeldi Tashenov had sustained the bruises,

the police replied that he had fallen. Moreover, on 4 April 2007 Jaksigeldi Tashenov's grandmother Z. Mashrapova was appointed his legal representative, yet in apparent violation of article 121 of Criminal Code, she was never allowed to be present during her grandson's interrogations. She did not sign the interrogation records, although she had repeatedly gone to the police department. Moreover, the investigator ignored the fact that Jaksigeldi Tashenov's mother tongue is Kazakh and that he is unable to read Uzbek. Petitions were filed with the Prosecutor of Tashkent region and the General Prosecutor of the Republic. Also, a complaint was filed with the Office of Internal Affairs of Tashkent region. However, by the moment when the communication was sent there have been no reactions.

325. On 9 September 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture regarding Mr. Muminov Otabek, aged 34. A letter on this case has been sent to the Government of Kyrgyzstan as well. According to the information received: Mr. Muminov Otabek, an alleged Hisb ut Tahrir member, had fled from Uzbekistan to Kazakhstan in 2001 and later to Kyrgyzstan. He was detained in Osh on 28 November 2006 and, on 1 June 2007, extradited to Uzbekistan. By the moment when the communication was sent he was being held in the detention facility of the National Security Services (SNB) in Tashkent. He has been denied access to an independent lawyer. With a view to his alleged Hisb ut Tahrir membership and the allegation that he has no access to an independent lawyer, fear was expressed for the physical and mental integrity of Mr. Muminov.

326. On 22 November 2007, the Special Rapporteur sent an allegation letter regarding Mr. Zafar Atajanovich Batyrov. According to the information received, on 20 August 2007, Mr. Zafar Atajanovich Batyrov, former director of the state company "Utrenchtransgaz", was convicted for crimes pursuant to articles 167 (theft), 205 (abuse of authority or official powers), 209 (forgery of documents while in official function), 210 (bribe taking), 242 (organisation of criminal community) and article 28 in conjunction with article 179 (complicity in false entrepreneurship) of the Criminal Code to 13 years imprisonment and a fine of 7.098.620.185 Sums. It has been reported that the criminal case of Mr. Batyrov has not been examined by the court in substance. In the course of the trial practically all evidence and witnesses brought forward by the defense lawyer of Mr. Batyrov were rejected by the court. Article 81 of the Criminal Procedure Code describes the evidence to be examined in order to establish whether the suspect actually committed the crimes which he is accused of. Furthermore, according to article 26 of the Criminal Procedural Code, which enshrines the principle of direct and verbal examination of evidence, "the court shall constitute a sentence on those evidences only which have been examined in judicial procedure". An appeal was launched against the sentence, which was granted by the Tashkent City Criminal Court on 23 October 2007.

Communications received

327. On 18 January 2007, the Government replied to the joint urgent appeal of 15 November 2006 (A/HRC/4/25/Add.1), concerning the criminal proceedings against Komilzhon Usmanov. On 14 November 2006, Tashkent city criminal court found Kamilzhon [sic] Usmanov guilty of offences under article 159, part 3, paragraphs (a) and (b), and other articles of the Criminal Code of Uzbekistan and sentenced him to 10 years' deprivation of freedom. According to the court, on 3 February 2001, K. Usmanov had been sentenced by Tashkent district court to seven years' deprivation of freedom for participating in the

commission of crimes against the State as a member of the religious extremist organization “Hizb ut-Tahrir”. In 2003, he was released under an amnesty, but, instead of drawing the appropriate conclusions, he rejoined “Hizb ut-Tahrir”, which was operating illegally in the country, in 2004 and actively participated in its activities. Specifically, while remaining true to his oath to keep secret any information connected with the activities of “Hizb ut-Tahrir”, to carry out the organization’s orders and to submit to it unquestioningly, he distributed slanderous fantasies about the democratic reforms being introduced in Uzbekistan, as well as material containing threats to public security and public order. He also advocated the establishment of a single worldwide theocratic State, the caliphate. The criminal proceedings against K. Usmanov were conducted in accordance with the requirements of the country’s Code of Criminal Procedure. The court examined the testimony of all those participating in the trial, correctly evaluated the evidence and reached the justified conclusion that K. Usmanov was guilty. After categorizing his criminal actions in accordance with the law, the court imposed the appropriate punishment.

328. On 26 January 2007 the Government replied to the joint urgent appeal of 18 January 2006 (A/HRC/4/25/Add.1), stating that Mr. Saidjahon Zaynabitdinov, member of the Human Rights Group in Andijan, arrested on 21 May 2005 and held incommunicado for a period of time, is allegedly being detained in the basement of the Andijan police station. He is able to meet with his lawyer, Mr. Matliub Akhmedov, but he cannot receive any food from his family. On 14 October 2004, the procurator of Andijan instituted criminal proceedings against Mr. Zainabiddinov on the basis of evidence of an offence contrary to article 139 (Defamation), paragraph 3 (d), of the Criminal Code. On 9 December 2004, the criminal proceedings were terminated on the basis of article 84 (Grounds for terminating criminal proceedings without establishing guilt), paragraph 5 (1), of the Code of Criminal Procedure. On 19 April 2005, the Andijan procurator’s office instituted new criminal proceedings against Mr. Zainabiddinov under article 139 (Defamation), paragraph 2, of the Criminal Code. In spite of the institution of new criminal proceedings, Mr. Zainabiddinov did not halt his illegal activities. On 13 May 2005, it was established that Mr. Zainabiddinov had disseminated slanderous information to representatives of foreign media concerning the events that were taking place in Andijan. Mr. Zainabiddinov’s reports were intended to create panic among the population and foster a negative attitude towards the authorities and constitutional system of Uzbekistan. Mr. Zainabiddinov’s aims were confirmed by tape recordings and also by forensic, psychological, philosophical and religious and philological expert examinations. On 21 May 2005, during a customs inspection at the Dustlik crossing point on Uzbekistan’s border with Kyrgyzstan, Mr. Zainabiddinov was found to be in possession of materials, the printing and dissemination of, which are prohibited and which pose a threat to the public order and the country’s security. The materials were confiscated in the presence of witnesses. Following this incident, on 22 May 2005, the Andijan procurator’s office overturned its decision to terminate the first criminal case. Both criminal cases were combined into one and the internal affairs authority of Andijan province was instructed to conduct an investigation. On 23 May 2005, Mr. Zainabiddinov was arrested as a suspect in accordance with article 221 (Grounds for detention) of the Code of Criminal Procedure; on the same day, in the presence of the lawyer Matliub Akhmedov, he was questioned as a suspect by the authorities conducting the pretrial investigation. Subsequent questioning and other procedural actions were always conducted in the presence of the lawyer. On 24 May 2005, Mr. Zainabiddinov was indicted under article 139, paragraph 3 (a) and (d) (Defamation with aggravating circumstances), and article 244-1

(Preparation or dissemination of materials constituting a threat to public safety and public order), paragraph 3 (c), of the Criminal Code, and the procurator approved the preventive measure of remand in custody for Mr. Zainabiddinov. By the verdict of the Tashkent city court of 5 January 2005 [sic], Mr. Zainabiddinov was sentenced to seven years' deprivation of liberty under article 139, paragraph (a) and (d) (Defamation with aggravating circumstances), article 159, paragraph 3 (b) and (c) (Attacks against the constitutional order of the Republic of Uzbekistan committed by an organized group or in its interests), article 244-1, paragraph 3 (a) and (c) (Preparation or dissemination of materials constituting a threat to public safety and public order, committed by prior conspiracy or by a group of persons, with the use of financial or other material assistance received from religious organizations as well as from foreign States and nationals) and article 244-2 (Establishing, leading or participating in religious extremist, separatist, fundamentalist or other prohibited organizations), paragraph 1, of the Criminal Code. The pretrial investigation and judicial proceedings were conducted in accordance with national legislation and international norms. From the moment of his arrest, Mr. Zainabiddinov made no complaints about detention conditions in the remand centre and did not make any application to the investigative authorities or the court concerning the use of impermissible methods against him.

329. On 21 February 2007, the Government replied to the joint urgent appeal of 2 February 2007. The Government informed that since 23 May 2006 until the present, the convict Sanjar Umarov has been held in prison Uya 64/47 in Kyzyl-tepa in Navoi province. In accordance with the law in force and the regulations of the Central Penal Correction Department of the Ministry of Internal Affairs of Uzbekistan, the administration of the aforementioned institution has repeatedly taken disciplinary measures against Mr. Umarov by placing him in a punishment cell for violating the prison's custodial system. However, Mr. Umarov was never once subjected to solitary confinement in the punishment cell (the regulations of the Central Penal Correction Department of the Ministry of Internal Affairs do not provide for solitary confinement). He was always with other inmates who were also being subjected to disciplinary measures for violating the prison's custodial system. An investigation conducted by the Navoi procurator's office relating to the supervision of the observance of laws in places of deprivation of liberty found that the disciplinary measures taken against Mr. Umarov were justified. During the time that Mr. Umarov was serving his sentence, his lawyers requested to meet with Mr. Umarov on 26 June, 11 July and 20 July 2006, respectively. However, in accordance with Mr. Umarov's own handwritten statement, all of the lawyers were denied a meeting with the convict. At the same time, it should be pointed out that, during his imprisonment in the aforementioned institution, Mr. Umarov was allowed two meetings: on 27 June 2006, he met briefly with his son, and, on 4 July 2006, he had a long meeting with his son and sister. In addition, on 7 July 2006 and 30 September 2006, Mr. Umarov received two parcels. On a number of occasions, when his son requested the institution to allow him to meet with the Mr. Umarov, the meetings did not take place because he had been subjected to the disciplinary measure of being placed in a punishment cell for violating the prison's custodial system. It should be pointed out that, according to the medical report on Mr. Umarov (which was signed by members of the medical commission consisting of the chief physician, therapist, duty doctor, and psychiatrist), his health was satisfactory at the time of his transfer to the aforementioned institution, and he has not complained about his general state of health or prison conditions.

330. On 10 April 2007, the Government added information to its reply of 19 April 2006 to the urgent appeal sent on 6 February 2006 (A/HRC/4/25/Add.1). According to the new information provided by the Government, on 6 March 2006 Mutabar Tajibaeva was convicted by the criminal court of Tashkent province under articles 165, para. 3 (a), 167, para. 3 (a), 168, para. 2 (b), 184, para. 2 (b), 189, para. 3, 197, 209, para. 1, 28, 209, para. 2 (a), 216, 228, para. 2 (b), 228, para. 3, 229 and 244-1, para. 3 (b), of the Criminal Code of Uzbekistan, and sentenced under articles 59 and 61 of the Criminal Code to eight years deprivation of liberty and stripped of the right to occupy managerial and financially responsible posts and to engage in business activity for a period of three years. According to the court judgement, M. Tajibaeva used the pretext of defending the rights and interests of Akhmadullo Abdullaev and Khafizidin Koraboev during investigation and in court to extort from them first 100,000 sum (Uzbek currency), then US\$ 900, by means of deceit and abuse of their trust, thereby causing particularly extensive losses. With the aim of unlawfully taking possession of half the fish bred by T. Mamadaminov, a lessee of the company Andizhonbalik, in lake N-7, M. Tajibaeva used threats and coercion to make him transfer his rights of ownership into her name, on signature of a contract to that effect. She also demanded that Mamadaminov paid her 5 million sum. On 6 October 2005 M. Tajibaeva obtained 350,000 sum from Mamadaminov by extortion. The next day M. Tajibaeva was arrested in flagrante delicto by law-enforcement officers in the act of receiving 250,000 sum from Mamadaminov. In 2002 M. Tajibaeva set up an illegal voluntary association called the "Ardent Hearts Club". She thereupon used funds received from abroad to organize unauthorized demonstrations in front of buildings housing local authorities and Government bodies in Tashkent and Fergana provinces for the purpose of putting pressure on them and their representatives. During these demonstrations she disseminated information that she knew to be false, aimed at provoking panic and destabilization. Furthermore, M. Tajibaeva did not declare the financial assistance received for organizing the activities of the "Ardent Hearts Club" to the tax authorities and deliberately evaded payment of taxes and other charges to the value of 2,042,900 sum. M. Tajibaeva set up a multiproduct trading and manufacturing company and used forged documents to obtain a loan of 8 million sum from the National Bank in Margilan, which she withdrew in cash and diverted for improper use. M. Tajibaeva unlawfully used 6.8 hectares of land belonging to the Nomuna shirkat farm in the Akhunbabaev district of Fergana province. This plot of land had originally been allocated to the Tursunbai farm, and then to the Bokijon Ota farm. Having unlawfully taken possession of this plot of land, M. Tajibaeva left it untended, as a result of which it was waterlogged, heavily salinized and infested with weeds. In consequence the productivity of this farmland fell and the provisions on land use and regulations on soil protection were directly breached. The Nomuna shirkat farm suffered a total financial loss of 1,601,512 sum and the Bokijon Ota farm a loss of 8,579,304 sum. Land tax of 191,130 sum was deliberately evaded. The criminal prosecution against M. Tajibaeva is not related to her human rights work. She has been convicted for perpetrating specific criminal acts. This criminal case is currently being prepared for review by the court of appeal.

331. On 14 August 2007, the Government added that some mass media and foreign non-governmental organizations disseminate false reports as if "Ms. Mutabar Tajibayeva's health has deteriorated". According to the decision of the Court, Ms. Mutabar Tajibayeva was pledged guilty in for committing such crimes as blackmail, robbery, embezzlement through appropriation and misapplication, fraud, evasion from tax payments, violation of trade rules and land tenure conditions, functional forgery, arbitrariness, distribution of materials containing threat to public safety and order. Since 7 July 2006 convicted Ms. Mutabar Tajibayeva is serving

a sentence in the colony of general regime. She has a right for health protection, including medical care outlined in the Criminal-Executive Code of Uzbekistan. For the term of sentence she have had so far, Ms. Mutabar Tajibayeva contacted medical unit of the colony, where she was provided with necessary treatment in the outpatient setting and two times underwent in-patient treatment. According to the medical examination conclusions made on 11 August 2007, the health condition of Ms. Mutabar Tajibayeva is satisfactory and she is able to work. During serving the punishment sentenced Ms. Mutabar Tajibayeva in accordance with article 9 of the Criminal and Executive Code of the Republic of Uzbekistan used four times short and long-lasting meetings with her relatives. Thus, on 19 July 2006 she had a short meeting with her nephew Mr. Gani Umurzakov, on 10 August 2006 - long-lasting meeting (3 days) with her sister Ms. Mukharram Tajibayeva, 9 January 2007 - short meeting with her daughter Ms. Makhliyokhon Tajibayeva, 10 August 2007 - short meeting with her younger brother Mr. Rasul Tajibayev. In accordance with written request by Ms. Mutabar Tajibayeva, lawyer Ms. Dilafroz Nurmanova visited her on 13 July 2006. Afterwards she never requested such visit. Ms. Mutabar Tajibayeva regularly receives parcels and packets from relatives (6 times), last time - on 28 June 2007. She also receives and sends correspondents to and from relatives (34 times received and 46 times sent). Abovementioned facts show that misinformation disseminated by some mass media and NGOs as if "Ms. Mutabar Tajibayeva's health condition has deteriorated, there is no access to her by relatives" is based on unchecked information, bears tendentious nature. It is obvious that such actions are aimed at artificial discharging of the situation on around that issue and represent intentional attempts to damage the image of Uzbekistan in the international arena.

332. On 4 May 2007, the Government replied to the joint urgent appeal of 23 April 2007 indicating that on 1 May 2007 the Sergeli district court on criminal cases in Tashkent city concluded the consideration of the criminal case against Mrs. Umida Niyazova, who had been found guilty according to three articles of the Criminal Code of the Republic of Uzbekistan: article 223 ("Illegal crossing of the State border"), article 246 ("Smuggling"), article 2441 ("Production and dissemination of materials containing threat to public security and public order"). The court hearings have been held in the open mode. The representatives of "Human Rights Watch" and other NGOs attended the trial. On cumulative of committed crimes Mrs. U. Niyazova was sentenced to 7 years of imprisonment serving the punishment in colony of general regime. During the investigation it also has been established that Mrs. U. Niyazova had been engaged in financing various non-registered non-governmental human rights organizations operating in Uzbekistan. Moreover, the financial assets transferred to the specified illegal organizations Mrs. U. Niyazova has received from several foreign diplomatic missions accredited in Uzbekistan. The given facts according to the international law should be considered as attempts to interfere into internal affairs of the sovereign state.

333. On 28 June, the Government added that according to the verdict of the court, on 21 December 2006, Ms. Umida Niyazova arrived by flight #782 "Bishkek-Tashkent" approximately at 10 o'clock and proceeded to the customs control of Tashkent International Airport. During the customs registration of the convicted Ms. Niyazova's luggage, the custom officials of the Post #1 of "Tashkent-Aero" Custom Control Services have found and withdrawn one HP laptop and one flash-disk hidden from the custom control and not specified in the T-6 customs declaration form. The data available in HP laptop and flash-disk have been examined. Besides during 2004-2006 Ms. U. Niyazova have received 1,229.84 US dollars for the individual grant of the Commission on development of democracy under the US Embassy in

Uzbekistan entitled “Decriminalization of slander and insult -pledge of freedom of speech”, as well as for assistance to so called “human rights defenders”, allegedly for fees to independent journalists and lawyers from the United Kingdom. During the above-mentioned period Ms. Niyazova has also received 5,328 US dollars from Russia, 2,000 US dollars from Turkey, 170 US dollars from Kazakhstan and 2,911 US dollars from Kyrgyzstan for realization of her activities presented as grants and projects such as the project of the Initiative Group of Legal Experts of Uzbekistan “On monitoring of violations of human rights in the field of freedom of movement in Uzbekistan”, the project of non-governmental non-profit human rights organization OZNP MAZLUM “Monitoring of violations of human rights in the field of freedom of movement, immigration and exit in Uzbekistan”, the project “Hot Line” or “Urgent legal aid”, the project “Urgent legal aid to human rights defenders”, In total the sum of 10,409 US dollars has been received. The above-specified projects are aimed at financing and uniting the various so-called “human rights” organizations and associations illegally operating on the territory of Uzbekistan. The aims and objectives of the above-mentioned projects and grants presented as human rights protection schemes and financed by western non-governmental organizations, are directed on unconstitutional change of the existing political system, opposing to the sovereignty, integrity and security of Uzbekistan, and targeting the incitement of social, national, racial and religious hostility, encroaching on health and morale of people. Ms. U. Niyazova by continuing her criminal activity on 8 January 2007 headed from Tashkent to Andijan region with the purpose to depart abroad illegally and in violation of the existing due order, without documents confirming her identity, unlawfully crossed the border of the Republic of Uzbekistan bypassing the “Hanobad” frontier post and departed to Osh city of the Republic of Otan. On 22 January 2007 Ms. U. Niyazova with the purpose to enter Uzbekistan illegally in infringement of the due order, without documents confirming her identity, has again unlawfully crossed the border of the Republic of Uzbekistan from the Republic of Kyrgyzstan bypassing the “Hanobad” frontier post in Andijan region and was detained by officers of “Hanobad” frontier post. Ms. U. Niyazova has partially admitted her guilt in committing the crimes and has testified that on 21 December 2006 on arrival to Tashkent from OSCE session which took place in Bishkek, during the customs registration of her luggage custom officials found the laptop. After the examination of the data available in the laptop and flash-disk by the expert of the Center of monitoring on mass communications of the Uzbek Agency on communication and Informatization, Ms. U. Niyazova was familiarized with expert’s conclusion which specified that the data available in the laptop and flash-disk could lead to the attempts to undermine the existing Constitutional system of the Republic of Uzbekistan and infringe its territorial integrity. The materials containing religious motives were also revealed and it was recommended to refrain from importing the specified data carriers to the territory of the Republic of Uzbekistan. Then, customs officers made the report on infringement of the customs legislation, which she was familiarized with and signed. Ms. Niyazova’s guilt is confirmed by the evidences of the witness Mr. M. Makhkamov who testified that as a result of search of the luggage of Ms. Umida Kurbonovna Niyazova, a passenger and citizen of the Republic of Uzbekistan, a laptop and a flash-disk not mentioned in the customs declaration was found and withdrawn. According to expert’s preliminary conclusion dated 21 December 2006, it was established that the laptop and flash-disk contain materials and information that could lead to the attempts to undermine the existing Constitutional system of the Republic of Uzbekistan and infringe the territorial integrity of the Republic. Ms. Niyazova’s guilt is also confirmed by the evidences of witnesses: O. Addable, A. Kuptsova, D. Aydarov, D. Shukurova, S. Talibjonov, R. Muhamedov, A. Negrienko, E. Holikov and others. Besides, the guilt of Ms. Niyazova is also confirmed

by the: report on infringement of State border of the Republic of Uzbekistan dated 21 December 2006; reports of the officers of the Post #1 of "Tachkent Aero" Customs Control Services dated 21 December 2006; report on examination of one HP laptop and one flash-disk; report on administrative detention dated 21 December 2006; conclusion of the Center of monitoring on mass communications of the Uzbek Agency on Communication and Informatization which specified that the data available in the laptop and flash-disk were directed on encroachment of the Constitutional system, undermining the state pillars, violation of territorial integrity, propaganda of religious extremism and fundamentalism and constitute the threat to public security. Moreover, the aims and objectives of projects and grants contained in the electronic data carriers, which presented as human rights protection schemes, are directed on unconstitutional change of the existing political system, opposing to the sovereignty, integrity and security of Uzbekistan, propagate the incitement of social, national, racial and religious hostility, encroach on health and morale of People; report on infringement of State border of the Republic of Uzbekistan dated 21 January 2007; report on examination of the place of the incident dated 22 January 2007; report on examination of testimonies at the scene of incident and photo-table enclosed to it and other materials of the criminal case. From the moment of detention of Ms. Niyazova all interrogations and investigatory actions concerning her as well as the trial of the case have been conducted with participation of lawyers Mr. A. Yusupov and Ms. T. Davidova. During the preliminary investigation and trial Ms. Niyazova has enjoyed the rights stipulated in articles 49, 50 and 52 of the Criminal Procedure Code of the Republic of Uzbekistan. Infringements of the criminal-procedure legislation concerning Ms. Niyazova have not been established. According to the ruling of the Appeal Court of Tashkent city Court on Criminal Cases dated 8 May 2007 the verdict of the Court concerning Ms. U. Niyazova was changed. The article 72 of the Criminal code was applied and the punishment of 7 years of imprisonment sentenced to Ms. U. Niyazova was replaced with conditional conviction with a trial period of 3 years. Ms. U. Niyazova was released from the courtroom.

334. On 3 July 2007, the Government replied to the joint allegation letter of 9 May 2007 indicating that on 24 April 2007, the Andijan provincial criminal court found Ms. Gulbahor Turayeva guilty of committing offences covered by article 159, paragraph 3 (b) (Attacks against the constitutional order of the Republic of Uzbekistan), article 244-1, paragraph 3 (b) (Preparation or dissemination of materials constituting a threat to public safety and public order) and article 244-2, paragraph 1 (Establishing, leading or participating in religious extremist, separatist, fundamentalist or other prohibited organizations), of the Criminal Code of Uzbekistan and sentenced her to six years' imprisonment for multiple offences. In April 2005, Ms. Turayeva, under the pretext of providing legal assistance to doctors and patients, established and headed the unofficial organization Animakor. Through this organization, she engaged in the dissemination, in the mass media, of slanderous information that had a negative impact on social stability. In such information, Ms. Turayeva exaggerated a number of shortcomings in the work of health-care institutions. In addition, she disseminated, on Internet pages, unfounded information about terrorist acts committed in Andijan on 13 May 2005, thereby spreading panic among the population. In January 2007, Ms. Turayeva, for a large sum of money, travelled to Osh in Kyrgyzstan in order to obtain literature containing an open call for the overthrow of the existing constitutional order of Uzbekistan and for the violation of the Republic's territorial integrity. This literature was to be disseminated in Uzbekistan. On her return to Uzbekistan, she was arrested at the Dustlik customs checkpoint. Ms. Turayeva's guilt has been proved by her confessions and repentance for her acts at her trial,

by the testimony of the witnesses G. Saypirov, Y. Isakov, A. Oripov, M. Tukhtasinov, I. Yuldashev and S. Saydakhmetov, by the findings of a comprehensive forensic psychological, philosophical, philological and religious examination and by other evidence. The pretrial investigation and trial were conducted in accordance with the Code of Criminal Procedure of Uzbekistan. The accusations were discussed and the evidence was correctly assessed. There is no indication in the case file that law enforcement agencies exerted any physical or psychological pressure on Ms. Turayeva during the investigation. The materials of the criminal case show that, from the moment that Ms. Turayeva was arrested as a suspect on 14 January 2007, all investigative measures with her participation were conducted in the presence of the lawyer O. Matyakubova. On 17 January 2007, Ms. Turayeva requested that Ms. Matyakubova be replaced by the lawyer D. Botiraliyev; on 22 January 2007, she requested that Mr. Botiraliyev be replaced by the lawyer A. Usmanov. All of her requests were met and all investigative measures were conducted in the presence of the lawyers D. Botiraliyev and A. Usmanov. The preliminary investigation of Ms. Turayeva's case was conducted with the participation of a lawyer, in whose presence the prisoner stated that she had testified of her own free will and that she had not been subjected to any pressure. During the trial, Ms. Turayeva also confirmed that no prohibited methods had been used against her during the pretrial investigation. Since the testimony given by Ms. Turayeva during the pretrial investigation coincided with the evidence assembled, the court found her testimony plausible. During the preliminary investigation and trial, Ms. Turayeva's rights were observed in accordance with articles 49 (Defence counsel), 50 (Engagement of defence counsel) and 52 (Waiver of defence counsel) of the Code of Criminal Procedure of Uzbekistan. In addition, on 7 May 2007, the Andijan provincial criminal court found Ms. Turayeva guilty of committing an offence under article 139, paragraph 3 (a) and (d) (Slander, combined with accusation of the commission of a serious or particularly serious offence for mercenary motives). In accordance with article 57 of the Criminal Code (Mitigation of sentence), the court sentenced Ms. Turayeva to a fine in the amount of 648,000 sum. In accordance with article 59 (Sentences in the case of the commission of multiple crimes and multiple convictions) and 61 (Rules for calculating sentences in the case of multiple convictions), and bearing in mind the conviction of 24 April 2007, the court, on the basis of all the offences committed by Ms. Turayeva, on 7 May 2007 handed down the combined sentence of six years' deprivation of liberty and a fine in the amount of 648,000 sum. On 8 May 2007, Ms. Turayeva filed appeals against both court decisions. The appeals were considered by the appellate division of the Andijan provincial criminal court. On 12 June 2007, the appellate court amended the court sentences of 24 April and 7 May 2007, applying article 72 (Suspended sentence) of the Criminal Code. Ms. Turayeva's sentence was changed to six years' deprivation of liberty, suspended, with three years' probation, and a fine of 648,000 sum. Ms. Turayeva was released from custody in the courtroom.

335. On 6 August 2007, the Government replied to the joint urgent appeal of 9 September 2007 indicating that as an ardent supporter of the religious extremist organization Hizb-ut-Tahrir since 1998, Mr. Otabek Muminov was engaged in the preparation and distribution of the organization's religious extremist literature but fled his place of residence after his associates were arrested. In April 2002, the investigation department of the Uzbekistan National Security Service opened criminal proceedings against him under articles 159 (Attacks on the constitutional order) and 244-2 (Establishing, leading or participating in religious extremist, separatist, fundamentalist or other prohibited organizations) of the Criminal Code of Uzbekistan and placed him on their list of wanted persons. It has been established that, from 2001,

Mr. Muminov continued his extremist activities in the Kazakh province of South Kazakhstan; then, in 2004, he entered the Kyrgyz province of Osh on a fake Kyrgyz passport. Mr. Muminov occupied one of the top positions in the Hizb ut Tahrir hierarchy and was responsible for preparing and reproducing the religious extremist organization's anti-constitutional literature. While carrying out these subversive activities, Mr. Muminov was taken into custody in November 2006 by the Kyrgyzstan law enforcement agencies and, in accordance with the Minsk Convention on Judicial Assistance and Legal Relations in Civil, Family and Criminal Cases of 22 January 1993, was extradited to Uzbekistan for investigation in the context of the criminal proceedings against him. Pursuant to article 46 of the Code of Criminal Procedure of Uzbekistan, Mr. Muminov was provided with a lawyer. No requests for additional legal counsel or complaints have been received from either the accused or his representatives.

336. On 28 August 2007, the Government replied to the urgent appeal sent on 24 July 2007. The Government informed that it has been established that a pretrial investigation in the criminal case concerning the aforementioned persons was conducted by the investigative units of the Samarkand province internal affairs department. On 1 May 2006, Gafur Akhadov, Jamshid Aliev and Azam Yusupov were detained under article 221 (Grounds for detention) of the Code of Criminal Procedure of Uzbekistan and were remanded in custody as a preventive measure. According to the report of 1 May 2006 by service officers and duty officers at the holding facility of the Samarkand internal affairs department, on the day of their arrest, abrasions were noted on the arms and legs of Mr. Akhadov, Mr. Aliev and Mr. Yusupov, and they were requested to explain how they had sustained those injuries. Mr. Akhadov explained that he had sustained his injuries on 30 April 2006 when he had fallen from a mulberry tree. Mr. Aliev explained that he had sustained his injuries when, out of carelessness, he had slipped off the roof of a shop where, on 29 April 2006, he had been repairing a broken power line. Mr. Yusupov explained that he had sustained his injuries on 28 April 2006 when holidaying in the mountains. As a preventive measure, Rofe Ėkubov, Azam Ibodullaev, Ibrokhim Dadamirzaev, Ilkhom Batirov and Sobir Gafurov were asked to sign a pledge of good conduct. The investigation into the case was conducted in accordance with the provisions of Uzbek legislation governing criminal procedure and with respect for the rights of the accused, including their right to a defence. In accordance with article 50 (Engagement of defence counsel) of the Code of Criminal Procedure, the defence counsel is engaged by suspects, the accused, defendants, their legal representatives and other persons at the request or with the consent of the suspect, accused or defendant. At the request of the suspect, accused or defendant, the defence counsel's participation in the case is ensured by the person conducting the initial inquiry, the investigator, the procurator or the court. During the investigation into the criminal case, the accused were represented by lawyers according to arrangements made with their relatives. The proceedings and investigations in which the accused participated were conducted in the presence of the aforementioned lawyers. In addition, on several occasions the lawyers met with the accused in private while they were being held in custody.

337. On 8 October 2007, the Government replied to the joint urgent appeal sent on 24 August 2007. The Government informed that on 2 April 2007 J.N.T. was taken into custody in connection with a murder and handed over to the internal affairs office of Yuqori-Chirchiq district of Tashkent province. From the moment that he was handed over, J.N.T. was ensured the services of a lawyer, in accordance with the rules on the procedure for upholding the right to defence, signed on 21 August 2003 by the Central Investigations Office of the Ministry of Internal Affairs and the Bar Association of the Republic of Uzbekistan. She

represented J.N.T.'s interests throughout the pretrial investigation. During the pretrial investigation, no reports or complaints were submitted by the defence of unlawful acts by employees of the internal affairs office of Yuqori-Chirchiq district of Tashkent province. On 3 April 2007, J.N.T. was charged under article 97, part 2, paragraph (g), of the Criminal Code of the Republic of Uzbekistan and remand in custody was ordered as the measure of restraint against him. On 4 April 2007, during his questioning in the presence of his lawyer and his legal representative, J.N.T. confessed to the offence that he had committed and described his actions in detail. On 12 April 2007, J.N.T. complained of headaches and received medical attention from staff of the emergency medical service. In addition, arrangements were made for J.N.T. to be visited by his grandmother. On 29 July 2007, on the basis of the materials gathered during the pretrial investigation, J.N.T. was charged under article 169, part 1, and article 97, part 2, paragraphs (g) and (n), of the Criminal Code of the Republic of Uzbekistan and the investigation was closed that same day. Over the periods from 29 June and 10 July 2007, the defendant J.N.T., his lawyer and his legal representative were familiarized with the materials of the criminal case against him. On 13 July 2007, the indictment was transmitted to the Tashkent provincial court for its consideration. The court, having comprehensively studied and analysed the materials of the criminal case against J.N.T., found him guilty of the commission of an offence under articles 97, part 2, paragraph (o) and 169, part 1, and, on 14 September 2007, sentenced him to 7 years and 11 months' deprivation of liberty, his sentence to be served in a young offenders' institution. In addition, J.N.T.'s guilt was proved during the investigation by fingerprint tests, biological and trace evidence analysis and forensic studies. The reports received by the Special Rapporteur alleging that the investigative authorities disregarded the fact that J.N.T. does not know Uzbek because he is an ethnic Kazakh are unfounded. A teacher of Uzbek language confirmed that J.N.T. spoke and understood Uzbek well. She also confirmed that, on 3 April 2007, she had been present during J.N.T.'s questioning and that no unlawful actions had been taken against J.N.T. by officers of the internal affairs office of Yuqori-Chirchiq district of Tashkent province. During the investigation, no instances came to light of the use of unlawful interrogation methods or of torture by staff of the internal affairs office of Yuqori-Chirchiq district.

Special Rapporteur's comments and observations

338. The Special Rapporteur thanks the Government of Uzbekistan for its responses to the communications of 2 February, 23 April, 9 May, 24 July, 24 August, 9 September 2007 and the information provided. He also thanks the Government for the responses to the communications sent on 16 January and 15 November 2006, which were included in his report A/HRC/4/25/Add.1. He is however concerned at the absence of an official reply to his communications sent on 9 March and 22 November 2007 and urges the Government of Uzbekistan to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to those communications.

Venezuela (Bolivarian Republic of)

Comunicaciones enviadas

339. El 20 de noviembre de 2007, el Relator Especial junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y el Representante Especial del

Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la reforma de la Constitución de la República Bolivariana de Venezuela, aprobada el 3 de noviembre de 2007 por la Asamblea Nacional de la República Bolivariana de Venezuela, y que será sometida a referéndum a principio de diciembre del 2007. Por un lado, deseamos destacar que, dentro de la reforma propuesta, hay importantes avances para los derechos humanos como, por ejemplo, la extensión de la prohibición, contenida en el artículo 21 de la Constitución a la discriminación por razones de salud y de orientación sexual, así como el reconocimiento al valor de la diversidad de culturas, contenido en el artículo 100 de la Constitución. Por otro lado, hemos recibido información sobre los cambios sugeridos y aprobados por la Asamblea Nacional en los artículos 337, 338 y 339 referidos al estado de excepción. Según las informaciones recibidas, la reforma aprobada por la Asamblea Nacional eliminaría la obligación de presentar el decreto que declare el estado de excepción ante la Sala Constitucional del Tribunal Supremo de Justicia para que se pronuncie sobre su constitucionalidad. También, se habrían suprimido los límites temporales que la Constitución vigente establece para los estados de excepción. Además, la reforma eliminaría la exigencia expresa de que el decreto que declare el estado de excepción cumpla con las garantías establecidas en el Pacto Internacional de Derechos Civiles y Políticos y en la Convención Americana sobre Derechos Humanos. Asimismo, durante un estado de excepción, podrían suspenderse algunas garantías consagradas en la Constitución vigente, en particular el acceso a la información. Si bien el nuevo texto incluye en el listado de derechos humanos intangibles el derecho a la defensa, a la integridad personal, a ser juzgado o juzgada por sus jueces naturales y a no ser condenado o condenada a penas que excedan los treinta años, así como la prohibición a la desaparición forzosa, no menciona en forma expresa, como así lo hace el texto vigente, el derecho a un debido proceso. Asimismo, dicha propuesta de reforma cambiaría las disposiciones vigentes sobre la remoción de los magistrados del Tribunal Supremo de Justicia (Artículo 265). Mientras la Constitución en vigor prevé que dichos magistrados pueden ser removidos por la Asamblea Nacional mediante una mayoría calificada de las dos terceras partes de sus integrantes, la reforma prevé que su remoción puede ser votada por solo la mayoría de los integrantes de la Asamblea Nacional. Esta disposición fragiliza la posición de los magistrado y vulnera su independencia respecto al poder legislativo. Según las informaciones recibidas, dicha propuesta de reforma cambiaría las disposiciones vigentes sobre libertad de asociación, prohibiendo a las “asociaciones con fines políticos y que participen en el proceso electoral” recibir fondos provenientes de fuentes internacionales, tanto públicas como privadas. La definición de “asociaciones con fines políticos” podría dar lugar a incertidumbres legales que afectarían directamente a las asociaciones de defensa de los derechos humanos y otras organizaciones no-gubernamentales. De esta manera, se les impediría recibir fondos internacionales de los que, en muchos casos, dependen. Deseamos expresar nuestra preocupación por la seguridad de los periodistas y los participantes en las manifestaciones que se suceden entre partidarios y opositores a la mencionada reforma constitucional. En este sentido, nos gustaría señalar a la atención de su Gobierno la información que hemos recibido sobre varios incidentes que han tenido lugar recientemente. Así, el 25 de octubre de 2007, Paulina Moreno, de la cadena pública Ávila televisión, habría resultado herida por un explosivo cuando cubría un foro en el Instituto Pedagógico de Caracas, y un camarógrafo del mismo medio habría sido agredido por opositores a la reforma. El 7 de noviembre de 2007, varios estudiantes habrían resultado heridos de bala por varios desconocidos armados en el campus de la Universidad Central de Venezuela, en Caracas, durante una manifestación de oposición a la reforma.

Comunicados de prensa

340. El 30 de Noviembre de 2007, el Relator Especial junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario-General para los defensores de los derechos humanos, emitieron el siguiente comunicado de prensa. Se adjunta la versión en inglés puesto que el comunicado fue emitido solamente en dicha lengua:

UNITED NATIONS INDEPENDENT EXPERTS CONCERNED ABOUT CONSTITUTIONAL REFORM IN VENEZUELA

“We are concerned about some provisions of the constitutional reform that was approved by the National Assembly of Venezuela on 3 November 2007 and that will be subject to a referendum on 2 December 2007, in a context where the security of journalists and participants to public demonstrations against the reform is seriously undermined.

We believe that the new provisions concerning states of emergency hinder the full enjoyment of civil liberties by Venezuelan citizens. The elimination of the Supreme Court’s authority to oversee and approve state of emergency declarations and the abolition of time limits for such states are inconsistent with the commitments taken by Venezuela under the International Covenant on Civil and Political Rights.

We express our preoccupation that provisions of the constitutional reform will curtail a set of fundamental rights that should be enjoyed at all times, including during states of emergencies, such as the right to freedom of expression and the right of access to information, stepping stones of all democratic societies that are not expressly guaranteed under the modification of articles 337, 338 and 339 of the Constitution.

We are also concerned about the situation of human rights defenders as the proposed reform establishes that associations with a political aim can only access funding at the national level. We fear that this definition might be selectively applied to human rights organizations to prevent them from accessing international funding. We are also concerned by the general situation of human rights defenders and journalists, who have been subject to threats and attacks that not only affect their personal security, but generate a widespread atmosphere of intimidation that discourages them from engaging in their activities and from taking public stands for the defence of human rights.

Furthermore, the constitutional reform might harm the independence of the judiciary, since it is proposed that the dismissal of the Supreme Court’s judges would be decided by a simple majority vote of the National Assembly, instead of the two third majority as currently stated in the Constitution.

We call upon the Venezuelan government to firmly commit to the protection of the full set of human rights, safeguarding the institutional guarantees that ensure that democracy and the rule of law will be upheld at all times.”

Comunicaciones recibidas

341. El 5 de Diciembre de 2007, el Gobierno de Venezuela respondió a la nota número G/SO 214 (67-11) del 30 de Noviembre de 2007, por medio de la cual se anexó el comunicado de prensa arriba mencionado. El Gobierno lamentó que, a su juicio, los titulares de mandato no respetaron las pautas de conducto al no darle al Estado venezolano la oportunidad de formular sus observaciones sobre las evaluaciones hechas.

Comentarios y observaciones del Relator Especial

342. El 17 de Enero de 2007, el Relator Especial junto con la Representante Especial del Secretario-General sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, envió una nota a la Misión Permanente de la República Bolivariana de Venezuela, con relación a las notas verbales n. 667 con fecha 30 de noviembre de 2006 dirigida a la Oficina de la Alta Comisionada de la Naciones Unidas para los Derechos Humanos y n. 686 con fecha de 12 de diciembre de 2007 dirigida al Presidente del Consejo de Derechos Humanos. En dicha carta, los expertos arriba mencionados toman en consideración las inquietudes expresadas durante la reunión llevada a cabo el 12 de Diciembre de 2007 entre la Representante Especial del Secretario-General sobre la situación de los defensores de los derechos humanos y representantes del Gobierno, así como en la nota verbal mencionada, en relación con el comunicado de prensa de 30 de noviembre de 2007. Como fue explicado durante dicha reunión por la Sra. Hina Jilani, en el código de conducta no se incluyen disposiciones que impidan o limiten a los titulares de mandatos a enviar comunicados, independientemente de que esos comunicados se refieran a temas que hayan sido objeto de llamamientos urgentes o cartas de alegación enviadas previamente al Gobierno. Tampoco está prevista ninguna limitación para aquellos casos en que se hubiera recibido alguna respuesta por parte del Gobierno. En relación con este tema, existe la práctica elaborada por los titulares de mandatos que incluye la posibilidad de que, en algunos casos, por ejemplo cuando la situación es motivo de grave preocupación o cuando el gobierno no proporciona una respuesta sobre el fondo o cuando se trata de una situación inminente, el titular de mandato del procedimiento especial puede hacer una declaración a la prensa o celebrar una conferencia de prensa, ya sea individualmente, o junto con otros titulares de mandatos. En el caso del comunicado de prensa de 30 de noviembre, el Código de Conducta fue plenamente respetado, así como la práctica seguida por los procedimientos especiales.

343. El Relator Especial agradece al gobierno venezolano la respuesta recibida a la carta del 30 de Noviembre de 2007, relacionada con el comunicado de prensa arriba mencionado. Sin embargo, el Relator Especial manifiesta su preocupación por la ausencia de respuesta oficial al llamamiento urgente enviado el 20 de Noviembre de 2007 y urge al Gobierno de Venezuela para que envíe lo más pronto posible, preferiblemente antes de la finalización de la novena sesión del Consejo de Derechos Humanos, una respuesta sustantiva a las alegaciones arriba mencionadas.

Viet Nam

Communications sent

344. On 9 January 2008, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders on

the situation of more than 40 democracy activists, opposition party members and labour union leaders who have been arrested during the past 15 months for charges relating to the spread of “anti-government propaganda” and in particular regarding Mr. Nguyen Van Dai, human rights lawyer. According to the information received, on 6 March 2007, Mr. Van Dai was arrested on the charge of spreading “propaganda against the Socialist Republic of Vietnam”. After his arrest, numerous requests were made to grant Mr. Van Dai access to a lawyer. On 2 May 2007, seven working days before the trial, a defense lawyer was provided by the Hanoi People’s Court. The lawyer was neither provided with the investigative report of the Hanoi Public Security Office nor the indictment of the Hanoi People’s Procuracy. During the court trial of first instance of 11 May 2007, immediate family members of the accused were not allowed to attend the event. They were stopped at the entry door reportedly because they could not produce invitation letters. During the trial, the defendant and his lawyer were not allowed to make any reference to issues relating to political organizations and parties. On the other hand, the prosecutors were allowed to discuss these issues. On 11 May 2007, the Hanoi People’s Court sentenced Mr. Van Dai to five years of imprisonment. On 28 November, an appeals court reduced this sentence by one year. As a human rights lawyer Mr. Van Dai has written many legal complaints to the authorities concerning violations of freedom of religion and believe. Concern was expressed that Mr. Van Dai did not enjoy a fair and public trial with adequate possibilities to defend himself because of his activities as a human rights lawyer.

Communications received

345. On 7 March 2008, the Government sent a response to the communication sent on 9 January 2008. According to the response, Mr. Nguyen Van Dai’s lawyer certification was revoked on 12 March 2007 by the association of lawyers. He joined a number of organizations which were illegally established and unregistered as provided by laws. He collected, propagated and distributed documents and answered interviews to journalists of foreign radios with contents inciting hatred, violence and stimulating actions aimed to disturbing public order, which violates Vietnamese laws. On 6 March 2007, the Agency of Investigation provisionally arrested him. On 11 March 2007 the People’s Court of Hanoi publicly tried him at first instance. He was sentenced to 5 years of imprisonment and 4 years of administrative probation. At his appeal, on 27 November 2007, the People’s Supreme Court sentenced him to 4 years of imprisonment and 4 years of administrative probation following the completion of his jail term. The process of investigation, arrest, provisional detention and trial of Mr. Nguyen Van Dai were conducted by judicial agencies in agreement with Vietnamese laws and international practice, including a complete independence of judicial agencies. In addition, Mr. Nguyen Van Dai was defended by five counsels selected by his family. Representations of foreign Embassies and journalists were allowed to attend and report on the trial. On 23 October 2007, Nguyen Van Dai in a meeting with the United States Commission on International Religious Freedom acknowledged that he was humanely treated in accordance with Vietnamese laws.

Special Rapporteur’s comments and observations

346. The Special Rapporteur thanks the Government for its reply of 7 March 2007. He is however concerned about the fact that Mr. Nguyen Van Dai was not represented by a lawyer during an important part of his trial - since his arrestation on 6 March 2007 until 2 May 2007, seven working days before the first instance trial-. The fact that his lawyer’s licence was cancelled in March 2007, does not justify the absence of representation. The Special Rapporteur

is concerned that the imprisonment sentence has been imposed in the absence of one of the guarantees of the due process of law, the right to be represented by a lawyer. Therefore, he recommends his process to be reviewed.

Yemen

Communications sent

347. On 4 December 2006, he Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, regarding Mr. Ibrahim Sharaf al-Din who was sentenced to death by the Specialized Criminal Court in Yemen on 23 November 2006 after a trial whose proceedings reportedly fell short of international fair trial standards. The case is now subject to appeal. If his sentence is upheld he will be at risk of execution. According to the information received, Ibrahim Sharaf al-Din was among 37 members of the Shi'a Zaidi community charged in connection with an alleged "plot to kill the President and senior army and political officers". Ibrahim Sharaf al-Din was arrested in May 2005 and held incommunicado for several months at al- Mabahith al-'Ama (General Investigation unit) in Sana'a. It would appear that while detained incommunicado, all 37 defendants were interrogated without a lawyer being present. During the trial that started in August 2005, lawyers were reported to have been prevented from obtaining a copy of the court file, including full interrogation records, to enable them to exercise an effective right to defence. Thirty-four of the defendants were sentenced to prison terms of up to eight years' while two others were acquitted.

348. On 25 June 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders regarding the situation of Mr. Maamar Mohamed Ahmed Salah Al Abdelli, academic, President of the Committee for Freedom of Conscience and the Release of Political Prisoners, and correspondent of the non-governmental organization Alkarama for Human Rights. According to the information received, on 26 May 2007, Mr. Al Abdelli was arrested on the campus of the University of Sanaa by unknown persons. When the communication was sent he was detained at the Al Amn Assiyassi intelligence facilities of Sanaa. He has been denied access to a lawyer and his family. In May 2007, Mr. Al Abdelli informed Alkarama for Human Rights of several cases of incommunicado detention of persons belonging to the Shiite religious minority and suspected of supporting the Al Houti movement. Concern is expressed that the arrest and detention of Mr. Al Abdelli may be related to his peaceful activities in defence of human rights. In view of his incommunicado detention further concern was expressed that he might be at risk of torture or ill-treatment.

349. On 15 August 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the question of torture regarding Mr. 'Abbas al-'Assal, aged 42, and Mr. Nasser al-'Awlaqi, aged about 40. According to the allegations received, Mr. 'Abbas al-'Assal and Mr. Nasser al-'Awlaqi were arrested on 2 August 2007 by security forces together with other retired soldiers, including Brigadier Nasser al-Nouba and Mr. Shallal Ali Shaya, who were released on 7 August. The arrests were carried out following a protest in form of a "sit-in"

at Liberty Square in central Aden. The protesters intended to voice their concern that their pension payments had either not been made or been significantly delayed. Security forces dispersed the protesters using tear gas, water cannons and live ammunition. Several persons were injured and it is feared that one protester was killed. Mr. 'Abbas al-'Assal and Mr. Nasser al-'Awlaqi continue to be held in incommunicado detention at Sheikh Osman police station in Aden without access to family members or lawyers. The reason for their arrests and continued detention and whether they have been charged with any offence is still unknown. In view of the incommunicado detention of Mr. 'Abbas al-'Assal and Mr. Nasser al-'Awlaqi, concern was expressed that they might be at risk of ill-treatment. Further concern is expressed that their arrests and continued detention might solely be connected to their exercise of their right to freedom of opinion and expression and freedom of assembly.

Communications received

350. On 9 February 2007, the Government replied to the joint urgent appeal of 4 December 2006, stating that Ibrahim Sharaf al-Din, who was sentenced to death by the Specialized Criminal Court in Yemen on 23 November 2006, had established a terrorist cell targeting peace, stability, national and public security. This cell was responsible for 13 bombings in the capital Sana'a, resulting in the killing and injuring of more than 25 persons. Furthermore, the named person has been caught guilty for trying together with the terrorist cell to bomb the US Embassy in Yemen with missiles and they were all transferred to the Specialized Criminal Court in Yemen for trial where he has been sentenced to death.

Special Rapporteur's comments and observations

351. The Special Rapporteur thanks the Government of Yemen for its answer of 9 February 2007. He is however concerned at the absence of an official reply to his communications sent on 25 June and 15 August 2007 and urges the Government of Yemen to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to those communications.

Zimbabwe

Communication sent

352. On 7 February 2007, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders concerning the situation of Mr. Arnold Tsunga, a prominent lawyer, Director of the Zimbabwe Lawyers for Human Rights organisation, acting Secretary of the Law Society of Zimbabwe, Chairperson of the Zimbabwe Human Rights Association, and the trustee of the radio station Voice of People (VOP). Mr. Tsunga is also the laureate of the 2006 international Martin Ennals Award for Human Rights Defenders which is granted annually to someone who has demonstrated an exceptional record of combating human rights violations by courageous and innovative means. Mr. Tsunga, together with five other activists, was the subject of an urgent appeal by the Special Representative of the Secretary General on the situation of human rights defenders on 31 January 2006. A response from the Government was received on 4 May 2006. According to new information received, on 25 January 2007, Mr. Tsunga was reportedly

detained for a brief period at the Harare International Airport when returning from the World Social Forum in Kenya. He was stopped in the arrivals terminal by four men in civilian clothing who asked to see his passport. When Mr. Tsunga enquired about their identification, they dragged him into an office where they demanded to see his baggage. Mr. Tsunga was reportedly released without charge.

353. Concern was expressed that the recent detention of Mr. Tsunga may be related to his legitimate and peaceful activities as a lawyer acting in defence of human rights, in particular his participation in the World Social Forum in Kenya, and may form part of a campaign of intimidation and harassment against human rights defenders in Zimbabwe.

354. On 28 March 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding the situation of Ms. Beatrice Mtetwa, President of the Law Society of Zimbabwe and Board member of the non-government organization Zimbabwe Lawyers for Human Rights (ZLHR), Mr. Andrew Makoni, Board member of ZLHR, Mr. Harrison Nkomo, Mr. Alec Muchadehama, Mr. Otto Saki, Mr. Tafadzwa Mugabe, Mr. Rangu Nyamurundira, Mr. Dzimbabwe Chimnga, Ms. Irene Petras, and Mr. Arnold Tsunga, all members of ZLHR. All the aforementioned individuals are registered legal practitioners in Zimbabwe and represent other human rights defenders, including women human rights defenders, trade unionists, constitutional rights activists, and students. Ms. Mtetwa was the subject of an allegation letter sent by the Special Rapporteur on the question of torture on 18 June 2004; Mr. Nkomo was the subject of an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture on 20 March 2007; Mr. Mugabe was the subject of an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 30 April 2004; Mr. Tsunga was the subject of an allegation letter sent by 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 and the Special Representative of the Secretary-General on the situation of human rights defenders on 7 February 2007 and of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders on 31 January 2006. According to the information received, on 11 March 2007, Mr. Nkomo was assaulted by a police officer with a baton stick at Machipisa police station while enquiring about the whereabouts of the members of the Save Zimbabwe Coalition who were arrested following an attempt to hold a peaceful prayer meeting in Harare. He was chased away from the station by police officers. On the same day, Ms. Petras, Mr. Makoni, Mr. Muchadehama, and Mr. Mugabe were threatened with physical harm by armed police officers when attempting to enter the Harare Central police station and meet with the Officer in Charge of the Law and Order section. On 12 March, Ms. Mtetwa was threatened by armed police at Borrowdale police station when attempting to serve a court order and gain access to Mr. Tsvangirai, an arrested member of the political opposition. On 16 March, Mr. Saki received an anonymous phone call at the office of ZLHR threatening him with death if he did not stop representing members of the Save Zimbabwe Coalition. He was also warned that all the ZLHR lawyers would be "silenced". On 16 March, the offices of Mr. Makoni and Mr. Muchadehama in Harare were visited by officers from the Central Intelligence Organisation (CIO) who attempted to intimidate the lawyers from carrying out their legal representation work.

Officers from the CIO have since reportedly visited the premises of ZLHR at least 7 times. On 17 March, Mr. Mugabe accompanied his clients Mrs. Sekai Holland and Ms. Grace Kwinjeh, who were reportedly injured by police, to the airport to seek medical treatment in South Africa, but they were prevented from leaving the country, re-arrested and escorted by armed police back to a private hospital. Mr. Mugabe tried to assert their rights to intelligence and immigration officials, but he was threatened with arrest and physical harm, and warned to desist from representing his clients and taking up similar cases. On the same day, Mr. Chimbga was stopped by intelligence and immigration officers at the airport when returning to Harare, and told to stop taking up similar cases. These officers reportedly told Mr. Chimbga that all the lawyers working for ZLHR would be “dealt with” shortly. On 18 March, Mr. Makoni was threatened with disappearance by Assistant Commissioner Mabunda at Harare Central police station while attempting to serve a High Court order on him. Assistant Commissioner Mabunda allegedly stated that lawyers had disappeared during Zimbabwe’s liberation struggle, and that since Mr. Makoni and his colleagues believed they were waging a new “liberation struggle”, they too would suffer the same fate. On 19 March 2007, Ms. Mtetwa and Mr. Nkomo were manhandled by police officers and threatened with arrest by Assistant Commissioner Mabunda at Harare Central police station whilst attempting to serve court orders and notices of set down for an urgent hearing. Concern was expressed that these acts of intimidation and harassment against the aforementioned lawyers working for ZLHR may be related to their legitimate and peaceful activities in defence of human rights, in particular the right to provide legal assistance to detainees. This concern is heightened by the fact that there seems to be a limited number of lawyers both engaged in and willing to take up human rights cases. Further concern was expressed that the independence of the judiciary is also threatened by the fact that those representing members of certain political groups are targeted.

355. On 11 May 2007, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders concerning the harassments, assaults and arrests of human rights lawyers in Zimbabwe. According to the information received, on 25 April 2007 the wives of the lawyers Alec Muchadehama and Andrew Makoni received two anonymous calls, threatening the families of the two lawyers by saying that they were going to be dealt with ruthlessly and that their husbands would meet the same fate. On 4 May 2007, Alec Muchadehama and Andrew Makoni were arrested and detained during their course of business on charges of obstructing the course of justice in the case of Amos Musekiwa and others who are facing arson charges. The two lawyers are the main legal representatives for the 30 opposition Movement for Democratic Change (MDC) members who are accused by the Government of a series of petrol bomb attacks. Defence lawyer Muchadehama argued that several of his clients were already in detention when the alleged arson attacks took place. On 7 May 2007, the lawyers were finally released after spending three days in police custody. The lawyers were being held despite two court orders ordering their release. In addition, they were both denied access to their lawyers. On 8 of May 2007, members of Law Society of Zimbabwe were subjected to brutal treatment by the state as they attempted to gather outside the High court of Zimbabwe in Harare for a peaceful solidarity protest against the arrest of the two lawyers and the non-execution of the court order. Around 60 lawyers had gathered, when they were ordered to disperse. As the lawyers began to disperse, police started assaulting lawyers with baton sticks. Seeking protection in the Attorney General’s office, they met officers waiting for them inside the building. They were forced into a police truck, driven away, severely beaten up a few kilometers away and finally

abandoned by the side of the road. It is also reported that contempt of court orders by the police has become frequent, and that lawyers exercising their duties in defending the people, and notably political dissidents, are experiencing increasing harassment and violence from the police. Grave concern was expressed for the lack of respect for the independence and authority of the judiciary and for the harassment and attacks on lawyers who execute their lawful mandate as provided for under the law, which is essential for the safeguard of fundamental rights and freedoms of citizens in the country.

356. On 12 June 2007, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, regarding the following situation affecting members of the Women and Men of Zimbabwe Association (WOZA-MOZA). According to the information received, on 6 June 2007, around 200 members of the Women and Men of Zimbabwe Association (WOZA-MOZA) undertook a silent and peaceful march through the city of Bulawayo to launch a document entitled “Ten steps to a new Zimbabwe”. The Association was also expressing its concern that Zimbabwean civil society was excluded from the ongoing dialogue initiated by the Movement for Democratic Change (MDC) and mediated by South African President Thabo Mbeki, creating the danger that pertinent issues on civil, political, economic and social rights and democracy would be given not enough attention. After having walked one block, one group of participants was reportedly violently dispersed by the riot police. Five WOZA members, namely Ms. Rosemary Sibiza, Ms. Angeline Karuru, Ms. Martha Ncube, Ms. Sangeliso Dhlamini and Ms. Pretty Moyo, were badly beaten with baton sticks, arrested and detained at Bulawayo Central Police Station. Upon hearing that five of their colleagues had been beaten, another group of women went to the police station. The police officers then assaulted the women, before arresting Ms. Jenni Williams, WOZA National Co-ordinator and Ms. Magodonga Mahlangu, another WOZA leader. Following the arrest of the WOZA women, attorney Kossam Ncube went to the police station to represent them. At the police station, Superintendent Nsingo reportedly accused him of being “unethical” and “irresponsible” and stated that lawyers had no business at the police station as he sought to speak to his clients. He also ordered Mr. Ncube to leave and pushed him out of the station. On 7 June 2007, Mr. Ncube tried again to meet with his clients but was denied access by the police.

357. On 24 August 2007, the Special Rapporteur sent an urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding the situation of Mr. Kucaca Phulu, a lawyer and chairperson of the Zimbabwe Human Rights Association (also known as ZimRights). According to the information received, on 22 August 2007, Mr. Phulu reportedly received threats over the phone by a person introducing himself as “Moyo” from the Zimbabwe African National Union - Patriotic Front. This person threatened Mr. Phulu with physical harm for representing one of his clients who is charged with armed robbery and wanted for arrest, and warned him that should his client not be found, Mr. Phulu would be killed in his place. Serious concern was expressed that the aforementioned death threats against Mr. Phulu may be related to his work in defense of human rights. Further concern was expressed that these threats may form part of an ongoing pattern of harassment against human rights defenders and lawyers in Zimbabwe.

Communications received

358. On 19 June 2007, the Government replied to the joint urgent appeal of 12 June 2007. According to the Government, on the 6th of June 2007 a group of about 30 members of WOZA converged at the Bulawayo city centre with the intention to hold an illegal demonstration. At about 1130 hours the group started to march along George Silundika Street between 8th and 9th avenue. They were waving placards denouncing the President of South Africa, Thabo Mbeki's mediation in Zimbabwe. The police ordered the demonstrators to disperse and five members who defied the order were arrested. These were: Sizimisele Ndlovu aged 23 years, Samkeliso Dlamini aged 38 years, Angeline Karuru aged 25 years, Rosemary Siziba aged 43 years, Martha Ncube aged 47 years. These were taken to the police station. Meanwhile another group of WOZA members numbering about 25 and led by Jennipher Williams and Magodonga Mhlanga regrouped and marched towards Central Police station, where they staged a demonstration in solidarity with their arrested colleagues. This group was also ordered to disperse by the officer in Charge Central Police Station. As they were being dispersed, the group leaders, Magodonga and Williams were arrested and detained at Central Police Station. They did not hand themselves over as alleged in some circles. The detained were allowed access to their lawyers Cossam Ncube and Caca Phulu of Coglán and Welsh legal practitioners at the Police Station. Accordingly, the said lawyers are reported to have arrived at the Police station and sought to see their clients well before the arrest of their clients. At no stage were the accused denied access to their lawyers. The first group of five accused persons were charged for contravening section 46 As Read with subsection 2 of the criminal Law (Codification and Reform) Act Chapter 9:23. "Criminal nuisance". They were taken to court on the 8 June 2007, where they were remanded out of custody to 21 June 2007 on \$100,000.00 bail each. Jennipher Williams and Magodonga Mhlanga were charged for contravening section 37 (1) (a) (1) of the criminal Law (Codification and Reform) Act Chapter 9:23, "Participating in an unlawful demonstration" alternatively contravening section 46 As Read with subsection 2 of die criminal Law (Codification and Reform) Act Chapter 9:23 "Criminal nuisance". They were also released on \$100,000.00 bail.

359. On 4 September 2007, the Government added in a separate communication that Jennipher Williams and Magodonga Mhlanga appeared in court on the 22nd of June 2007. During the court proceedings their lawyer raised issues of constitutionality in respect of the preferred charges. The case has since been referred to the Supreme Court for a determination of the issues raised by the defence lawyer.

360. On 11 December 2007, the Government replied to the urgent appeal sent on 24 August 2007. According to the response, the Zimbabwe Republic Police denies having received a complaint from Mr. Phulu. The Government states that the threats against Mr. Phulu cannot be substantiated because the Police did not received any complaint. In absence of such police report there is no way one can guarantee the accuracy and truthfulness of the death threats alleged.

Special Rapporteur's comments and observations

361. The Special Rapporteur thanks the Government of Zimbabwe for its quick response to the joint urgent appeal of 12 June and 24 August and 2007 and the information provided. He is however concerned at the absence of an official reply to his communications sent

on 7 February, 28 March and 11 May 2007. He urges the Government to provide substantive detailed information at the earliest possible date and preferably before the end of the 9th session of the Human Rights Council. The Special Rapporteur remains concerned by the Government's affirmation regarding the communication sent on 24 August 2007, that in absence of a complaint before the Police the threats against Mr. Phulu can not be substantiated. It is the obligation of the State, according to international human rights law, to investigate any act that could constitute human rights violations. Therefore, the Special Rapporteur calls the Government to investigate the threats received by Mr. Phulu.
