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Agenda item 3

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

**Report of the Special Rapporteur on the independence of  
judges and lawyers, Leandro Despouy**

**Addendum**

**SITUATION IN SPECIFIC COUNTRIES TERRITORIES\***

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

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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 (A/HRC/11/41). It reflects specific situations alleged to be affecting the independence of judges or lawyers or violating the right to a fair trial in 52 countries. Further, it includes 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 March 2008 and 15 March 2009, 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 1 May 2008 and 10 May 2009. In certain instances, the Government reply was obtained late and referred to allegations that were presented in the previous reports (A/HRC/8/4/Add.1 and A/HRC/4/25/Add.1). 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 10 May 2009. 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 and specific comments by the Special Rapporteur.

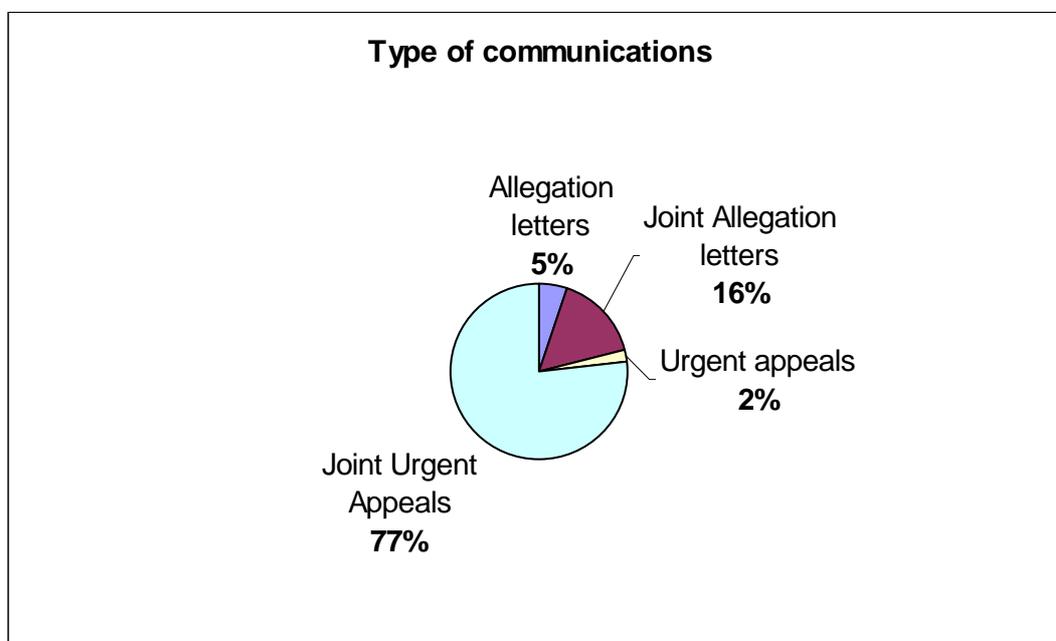
2. In the first chapter, this report also includes 10 charts reflecting statistical data so as to help the Human Rights Council to have an overview of developments in 2008 and the first trimester of 2009.

## **I. STATISTICAL DATA**

3. The following tables of statistical data are aimed at helping the Human Rights Council to have an overview of developments in 2008 and the first trimester of 2009.

4. The tables show that action had to be taken in all parts of the world and that it covered a very wide range of issues. Since 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 variety of human rights are being violated - for example the right to life, the right not to be subjected to torture and ill-treatment, the right to freedom of expression, women's rights, indigenous people's

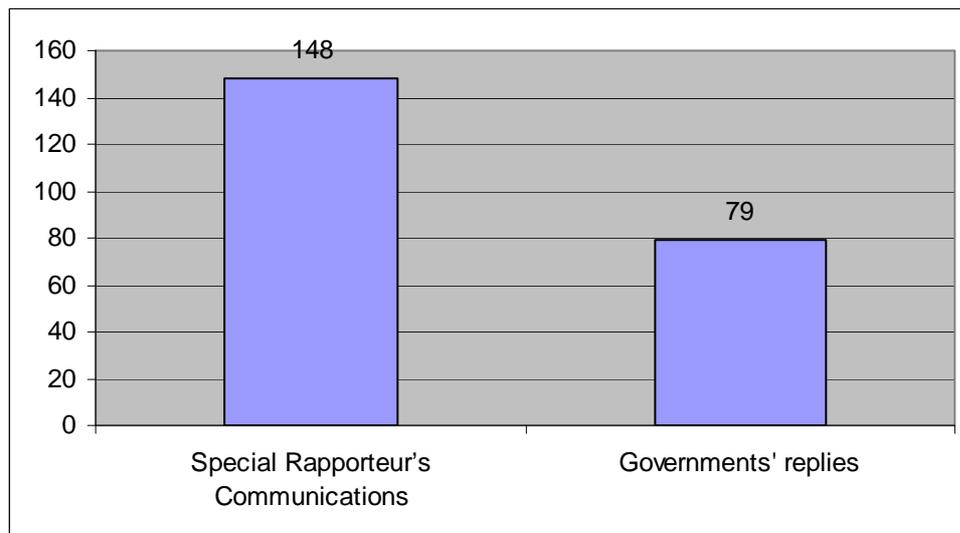
and minorities' rights - the Special Reporter's action often had to be taken jointly with other special procedures. Thus, 77% of communications were sent to Governments jointly with other special procedures (**See chart 1**). This also reflects the Special Rapporteur's will to work in close collaboration with other mandate holders so as to strengthen the impact of the special procedures system.



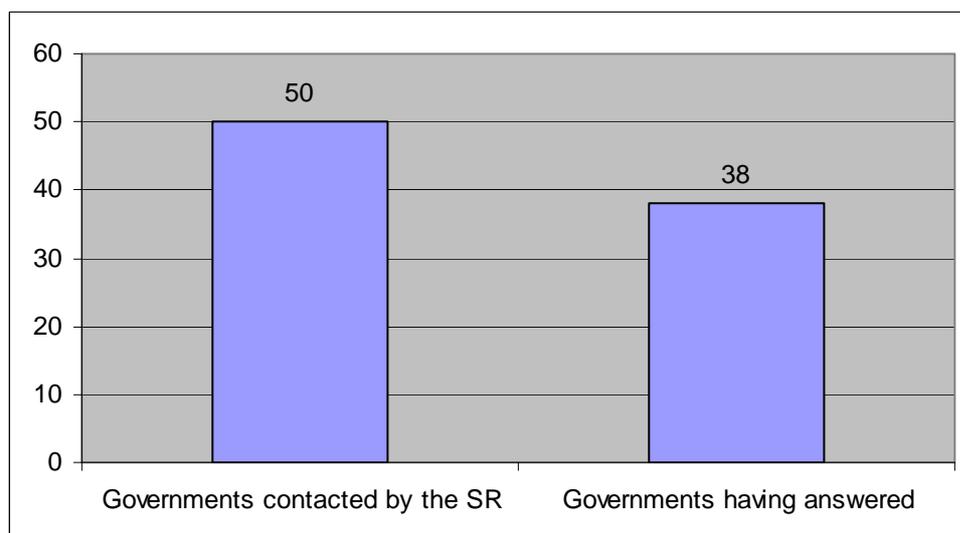
**Chart 1: Types of communications**

5. As compared to previous years, the Special Rapporteur is glad to mention that he enjoyed increased cooperation on the part of governments: 38 States of the 50 States referred to in this report (76%) have replied to his communications and most answers offered detailed, substantive information regarding the allegations received (**See chart 3**). The Special Rapporteur underlines that it is crucial that governments share their views on the allegations received with him.

6. He highlights his preoccupation in relation to the proportion of specific allegations of serious human rights violations that remain unanswered. Thus, he can only express his deep concern at the lack of cooperation of 24% of those States he contacted, more especially where the cases at hand were especially serious and revealed systemic violations affecting not only the judiciary, but the institutional structures of the Member State at large. 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 at stake. The Special Rapporteur encourages Member States to reply to his communications within reasonable deadlines.



**Chart 2: Number of communications sent by the Special Rapporteur and government replies**

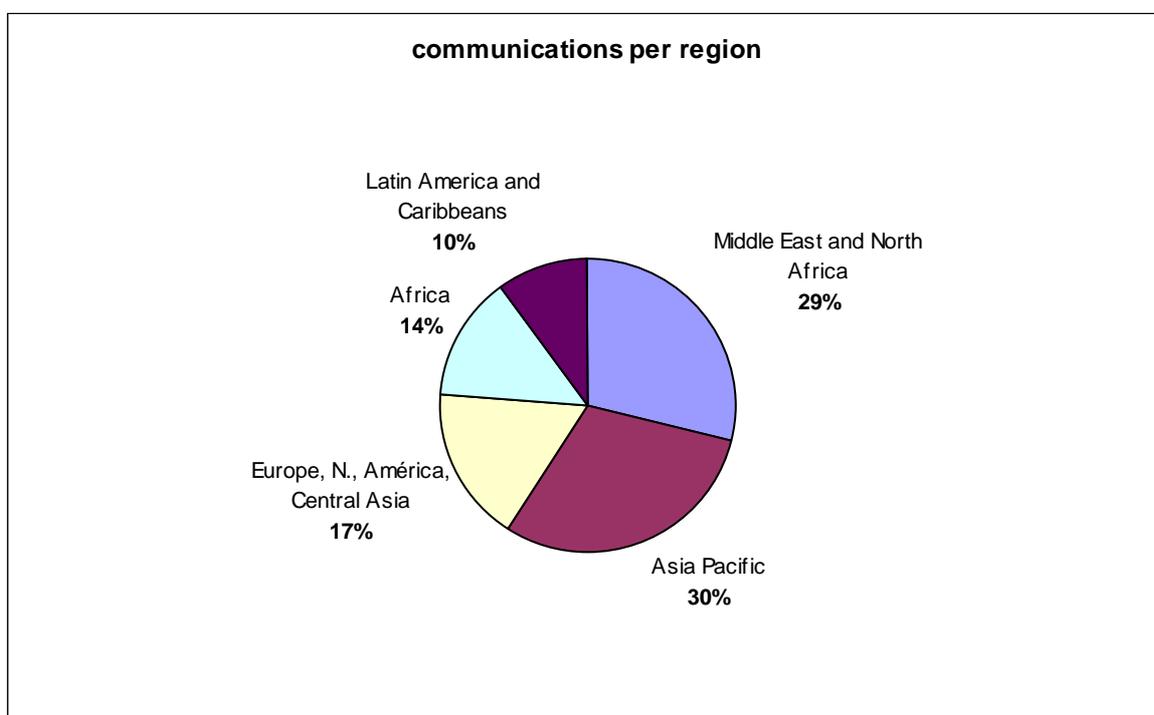


**Chart 3: Number of governments addressed and of governments which replied**

7. It may be of interest to note that, by region, the level of cooperation by governments enjoyed by the Special Rapporteur may be classified in decreasing order as follows: 81% in Europe, North America and Central Asia, 81% in Asia and the Pacific, 77% in the Middle East and North Africa, 57% in Latin America and the Caribbean, and 22% in Africa. These figures could, at the one hand, reflect the degree of political will to engage into dialogue with the Special Rapporteur. These figures could, at the one hand, reflect the degree of political will to engage into dialogue with the Special Rapporteur. Furthermore, they could reflect the level of national awareness of and attention to the impact of the special procedures, but also the level of administrative capacity of governments to prepare answers within the required deadlines.

8. The Special Rapporteur welcomes and encourages further cooperation from governments, on the understanding that a lack of reply, whatever its reasons, exposes Member States to have acknowledged the allegations of violations of human rights by omission. Early, precise and detailed answers on the other hand, allow for a dialogue which, in many cases, lead to clarify matters and even to a settlement of the case.

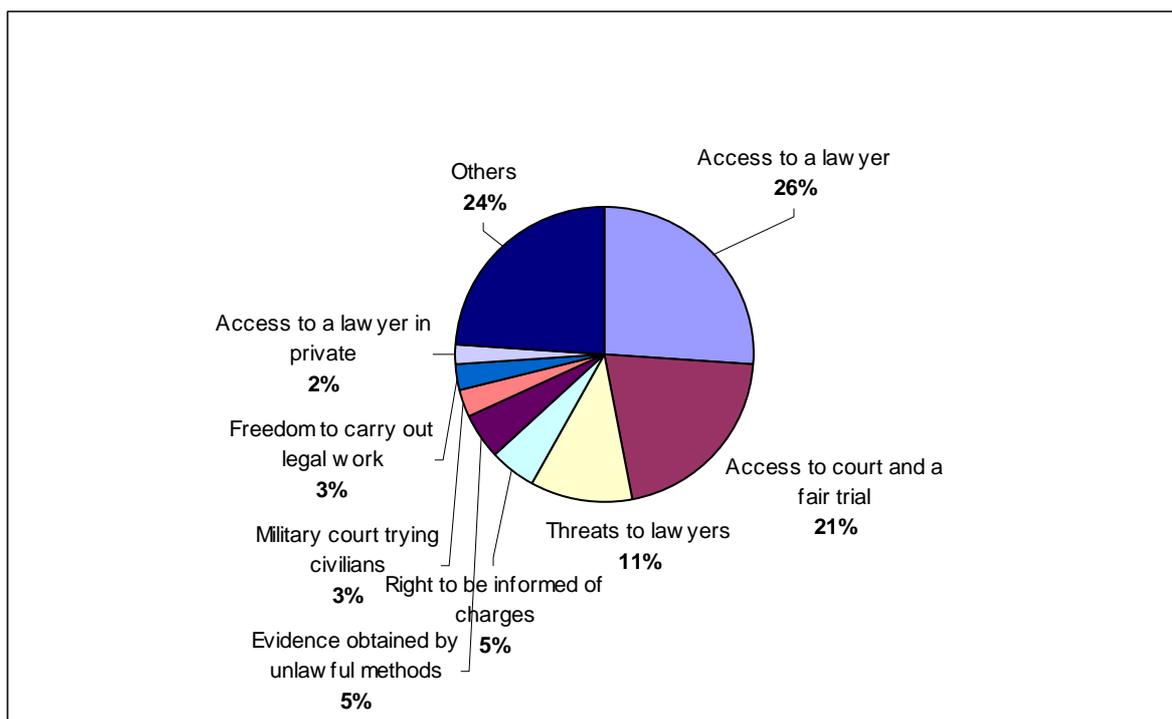
9. The Special Rapporteur notes that communications have been sent to Member States of all regions of the world (**See chart 4**). The Asia and Pacific region (30%) and the Middle East and North Africa region (29%) represent more than half of the total of communications sent (59%). The Europe, North America and Central Asia region comes on the third place with 17% of the communications. Finally, the Africa region has received 14 % of the communications, while the Latin America and the Caribbean region has been addressed in 10 % of the cases.



**Chart 4: Communications sent by the Special Rapporteur per region**

10. The Special Rapporteur's letters addressed to the governments from 16 March 2008 to 15 March 2009 on alleged human rights violations covered a wide range of subjects (**See chart 5**). The two main concerns which represent almost 50 % of all cases are the lack of access to a lawyer and access to a court and a fair trial. It should be noted that these two violations frequently occur at the same time and concern particularly those individuals under arrest or detention. Harassment or threats to lawyers represent 11 % of the communications addressed to the governments. Violations of the right to be informed of charges and the concern of evidence used in the proceedings and of obtained by unlawful methods represent each 5 %. 3 % of the letters related to allegations were civilians were being tried by military courts. The amount of cases in which lawyers were identified with the interests of their clients was 3 %. The remainder of the communications (24 %) addressed 16 different categories of alleged violations. They have been reflected in only one category because individually they represent a very small percentage

of the total of the communications sent. The 16 categories can be clustered into the following six main thematic groups: i) specific guarantees of due process of law (including the right to be brought promptly before a judge, the right to be tried in one's presence, the right to a public hearing, the right to a trial within a reasonable time or to release, the right to choose a lawyer, access to information by lawyers, and the right to have the conviction and sentence being reviewed by a higher tribunal) ii) freedom of expression and association of lawyers; iii) lawyer's immunity for pleading statements; iv) the proper role of prosecutors; v) disciplinary standards for judges and; vi) legislative developments likely to impact on the independence of judges and lawyers or fair trial guarantees.



**Chart 5: Types of violations and thematic issued addressed in the communications**

11. Thematic issues as addressed by the Special Rapporteur classified by regions are reflected in **charts 6 to 10**.

12. The main concerns of lack of access to a lawyer and lack of access to court and a fair trial represented almost half of the cases sent to governments in the Middle East and North Africa region and 45 % of those sent to governments in the Asia Pacific region. In the Africa region, those two categories represent over 60 % of the cases while in the Europe, North America and Central Asia region and the Latin America and Caribbean region, these two categories concerned 34% and 32 % of the communications, respectively.

13. Harassment of or threats to lawyers represented 14 % of the cases in the Middle East and North Africa region and 13 % of the cases on the Europe, North America and Central Asia region. In the Latin America and Caribbean region this concern amounted to even 25 % and

therefore represents the most frequent violation in this region. Elevated percentages for the harassment or threats of lawyers were also noted with 17 % for the Asia Pacific region and 14 % for the Africa region.

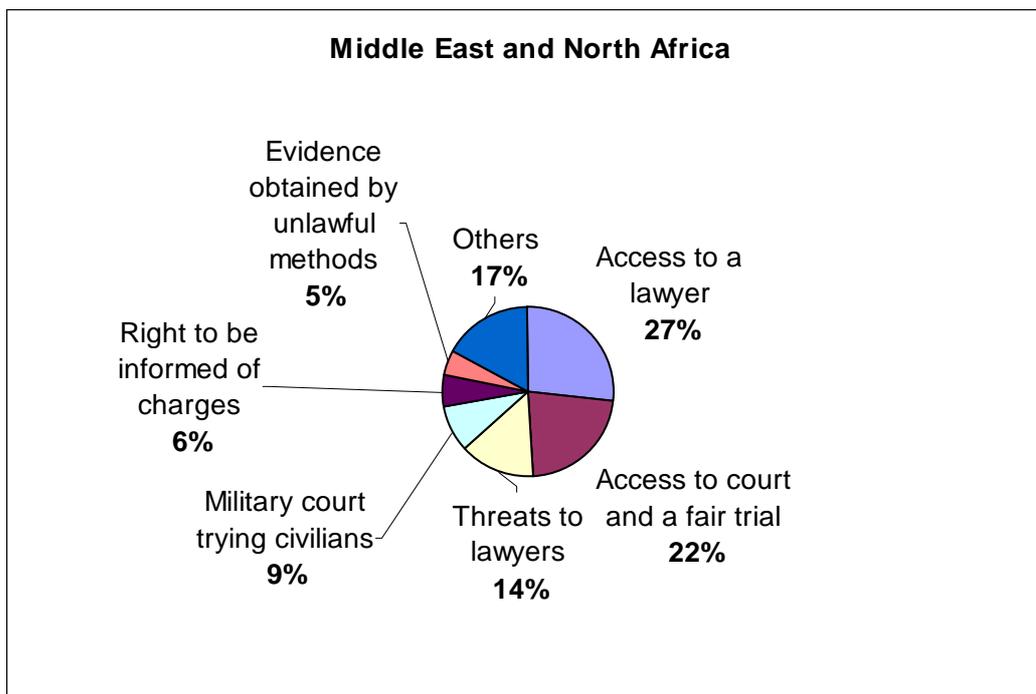
14. Threats to judges were a serious concern with 13 % in the Latin America and Caribbean region.

15. Violations of the right to be informed of charges represented 6 % in the Middle East and North Africa region and 11 % in the Africa region.

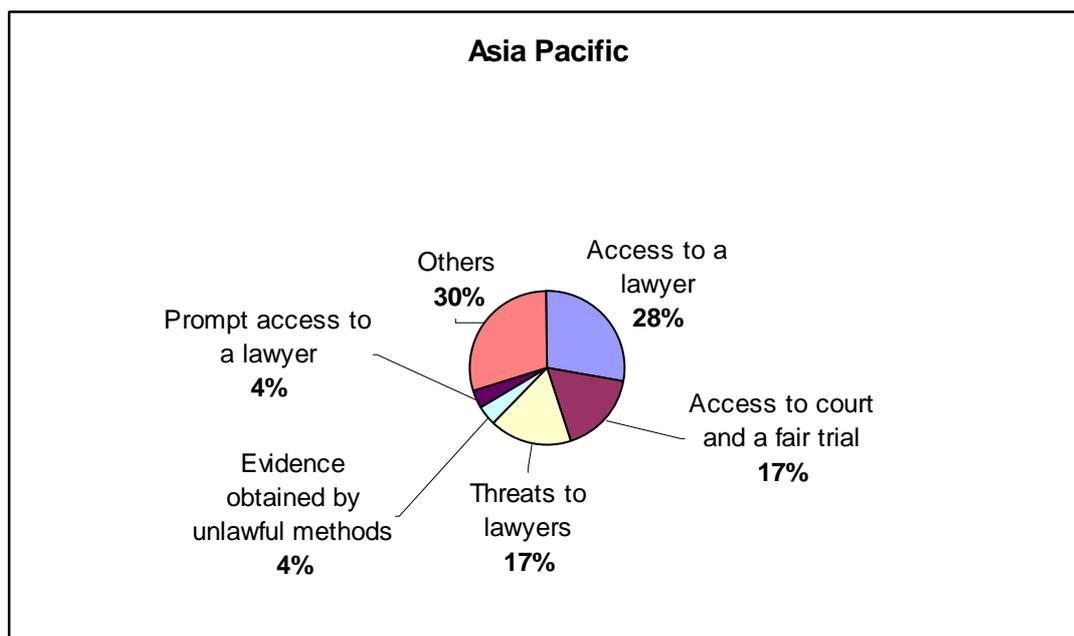
16. The issue of civilians tried by military courts was most prominent with 9 % in the Middle East and North Africa region.

17. The concern of evidence obtained by unlawful methods and used in judicial proceedings represented 5 % of the communications sent to governments in the Middle East and North Africa region and 4 % of those sent to the Asia Pacific region.

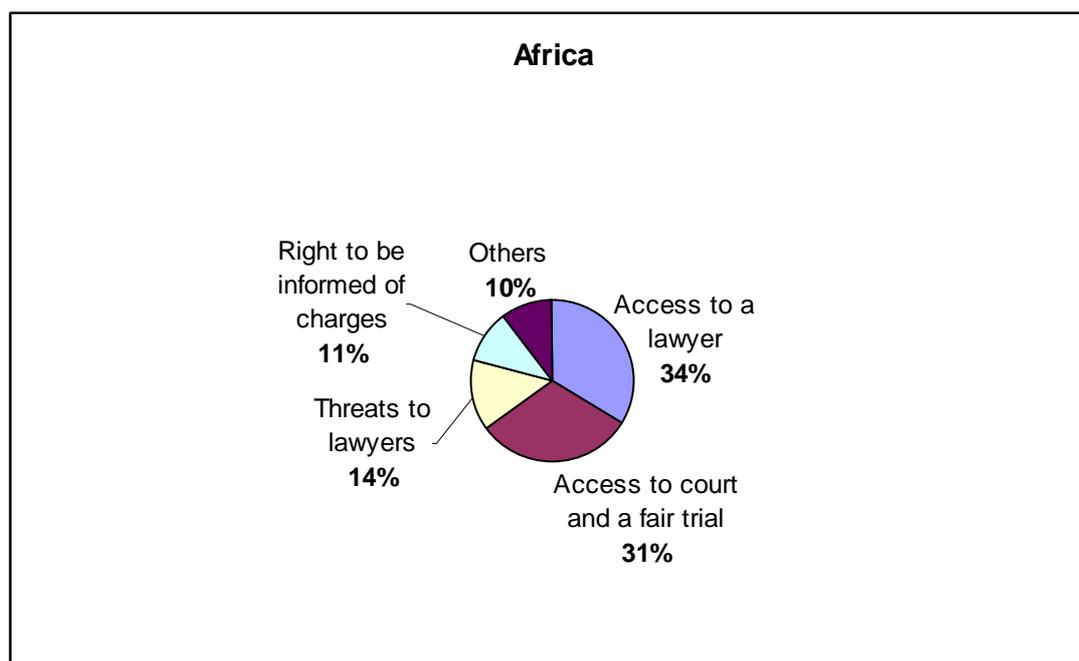
18. Concerns of access to a lawyer in private constituted 4 % of the cases in the Europe, North America and Central Asia region, while alleged violations of the guarantee of public hearings concerned 4 % in this region. Another important fact is that 4 % of the cases in the Europe, North America and Central Asia region concerned alleged violations of the right to choose a lawyer of one's own choice.



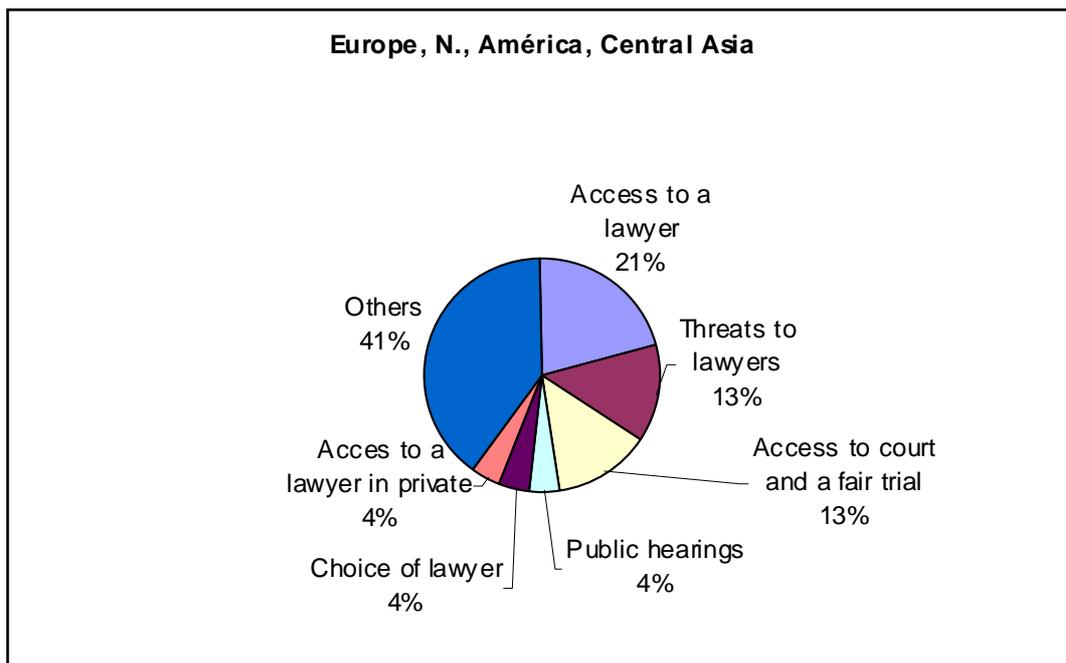
**Chart 6: Types of violations and thematic issued addressed in the communications to governments of the Middle East and North Africa region**



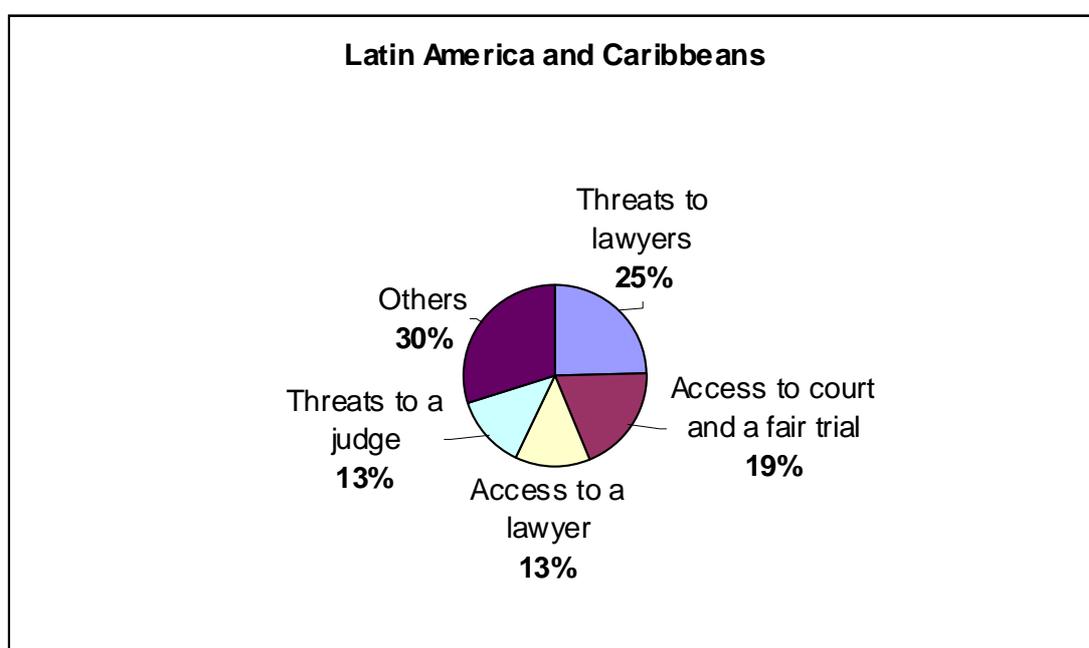
**Chart 7: Types of violations and thematic issued addressed in the communications sent to governments in the Asia Pacific region**



**Chart 8: Types of violations and thematic issued addressed in the communications sent to governments in the Africa region**



**Chart 9: Types of violations and thematic issued addressed in the communications sent to governments in the Europe, North America and Central Asia region**



**Chart 10: Types of violations and thematic issued addressed in the communications sent to governments in the Latin America and Caribbean region**

## II. SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED

### Afghanistan

#### Communication sent

19. On 1 July 2008, the Special Rapporteur sent an allegation letter, together with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, regarding allegations relating to trials taking place in Afghanistan of detainees previously held in custody in the U.S. administered Bagram Theatre Internment Facility (BTIF), as well as detainees repatriated from Guantánamo Bay Naval Base facilities to Afghanistan. The Special Rapporteurs also addressed a similar letter to the Government of the United States of America. According to the information received, some of the individuals formerly detained by the United States Government at Guantánamo Bay and Bagram had been, and continued to be, transferred to the Afghan National Detention Facility (ANDF) where they awaited prosecution. Based on the information received, in the opinion of the Special Rapporteurs, the system of detention and transfer of detainees fails to comply with international fair trial standards, including the right to court review over any form of detention, the presumption of innocence, the right to defence and access to legal counsel, and the right to be tried without undue delay as laid down in Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR). According to the information received, prior to the transfer to the ANDF, many detainees had been under United States custody without charge for several years. In addition, information suggested that trials of ANDF detainees lack many basic due process of law guarantees, including access to a lawyer while under investigation and adequate time and facilities for the preparation of the defence. With respect to trials and the evidence before the prosecution, the information the Special Rapporteurs received suggests that the United States Government provides the Afghan prosecution team, that investigates national security cases, with supposedly general and declassified versions of the Detainee Assessment Branch Reports of Investigation (ROIs), which typically state the date of capture, the capturing force and the detainee's alleged actions. These ROIs then form the basis of the Afghan Government's prosecution charges. However, this was done without any examination of individual witnesses or statements in the court dossier-sworn or unsworn, often United States personnel or officials involved in the capture and/or interrogation of the detainee. According to the information received, an estimated number of 303 detainees have been transferred from United States custody to the Government of Afghanistan. Furthermore, the National Directorate for Security has investigated some 201 cases. The situation of the other 102 detainees was not clear regarding the grounds for their detention, and concerning some of them having been detained for several months. Furthermore, it has also been brought to the Special Rapporteurs' attention that the default status for these detainees transferred to the ANDF is that of pre-trial detention until a judicial decision regarding their cases are taken. The Special Rapporteurs were concerned over the potential negative effects of the prolonged pre-charge detention in Guantanamo Bay and BITF that may compromise the ability of the Government of Afghanistan to ensure a fair trial for these persons. Moreover, the trials are conducted based on the in-court reading of investigative summaries prepared by United States and Afghan officials which do not respect the principle of equality of the parties before the court. The use of evidence in this way and the fact that the convictions can be based on it, may violate international standards, including the prohibited use of evidence obtained under torture and other cruel, inhuman or degrading treatment or punishment. The Special Rapporteurs reminded that the Afghan Constitution

explicitly prohibits the introduction, as evidence, of statements obtained “by means of compulsion” and “recognizes a confession as voluntary only if taken before a judge.” The Special Rapporteurs urged the Government to assure full compliance with the Afghan criminal procedure code and international fair trial standards included in the Universal Declaration of Human Rights (UDHR) and the ICCPR, including by requiring in-court witness testimony, and by allowing the defendant to challenge the evidence through cross-examination. The Special Rapporteurs called on the Government to ensure that trials be conducted in accordance with international fair trial standards, as laid down in the UDHR and ICCPR.

20. On 14 August 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on the situation of human rights defenders and as Special Rapporteur on violence against women, its causes and consequences, regarding the case of Ms Mary Akrami, member of the *Afghan Women's Skills Development Centre (AWSDC)*, a non-governmental organization (NGO) dedicated to reducing the suffering of Afghan women and children through rehabilitation and development projects and the promotion of peace. According to information received, on 21 July 2008, Ms Mary Akrami went to the Attorney General's office with a client who had been summoned there. In an argument with the women, the Attorney General claimed that the AWSDC supported prostitutes and that its members must pay the price for this. Ms. Mary Akrami was detained for three hours. No reason was given for her detention. Concern was expressed that the detention of Ms Mary Akrami may be related to her legitimate and peaceful activities to defend women's rights in Afghanistan.

#### **Communications received**

None

#### **Special Rapporteur's comments and observations**

21. 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 a detailed substantive answer to the above allegations.

#### **Algeria**

#### **Communications envoyées**

22. Le 11 avril 2008, le Rapporteur spécial a envoyé au Gouvernement d'Algérie, 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 concernant la situation de Me Abderrahman Amine Sidhoum, avocat et défenseur des droits de l'homme, membre de l'organisation non-gouvernementale des droits de l'homme SOS Disparu(e)s. Me Amine Sidhoum Abderramane a fait l'objet de plusieurs communications de la part des procédures spéciales, en l'occurrence un premier appel urgent le 26 mai 2006 par le Rapporteur spécial sur l'indépendance des juges et des avocats, 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 second appel urgent le 8 septembre 2006 par le Rapporteur spécial sur l'indépendance des juges et des avocats et la

Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et enfin une lettre d'allégations le 10 octobre 2006 par le Rapporteur spécial sur l'indépendance des juges et des avocats et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme. Ils ont également accusé réception de la réponse du Gouvernement d'Algérie, en date du 15 novembre 2006 en relation avec les présents faits. Selon les nouvelles informations reçues, le 30 mars 2008, le procès pour diffamation de Me Sidhoum aurait eu lieu devant la première section pénale du Tribunal de Sidi M'hamed, à Alger. Le 23 août 2006, Me Sidhoum aurait reçu une convocation du juge d'instruction du tribunal de Sidi M'Hammed à Alger qui le notifiait d'une plainte déposée à son encontre par le Ministre de la Justice pour « diffamation » à la suite de ses déclarations publiées dans l'article « Aoufi passe son trentième mois en détention » paru dans le quotidien arabophone El Chourouk le 30 mai 2004. Me Sidhoum aurait été accusé de jeter le discrédit sur une décision de Justice et de porter outrage à un corps constitué de l'Etat. Lors de son entretien avec la journaliste auteure de l'article susmentionné, Me Sidhoum aurait dénoncé la détention arbitraire de son client dans la prison de Seradji qui durait depuis 30 mois. Cependant, la journaliste, alors journaliste stagiaire au quotidien, n'aurait pas rapporté de manière fidèle les propos de Me Sidhoum, écrivant que le client de ce dernier « passe son trentième mois à Serkadji suite à une décision arbitraire rendue par la Cour Suprême ». En effet, au moment où Me Sidhoum avait tenu ces propos, aucune décision n'aurait encore été rendue par la Cour Suprême, qui ne se serait prononcée que le 28 avril 2005, soit un an après la parution de l'article. Le 27 mai 2007, Me Sidhoum aurait reçu un télégramme lui notifiant sa convocation devant la 6ème chambre d'accusation de Sidi M'Hamed, à Alger, le 12 juin 2007, suite à une demande de complément d'information effectuée par le procureur dans le cadre de ces poursuites. L'audience du 12 juin devait permettre une confrontation entre Me Sidhoum et une journaliste du quotidien El Chourouk, mais cette dernière ne s'étant pas présentée, l'audience aurait été repoussée à une date ultérieure. Par la suite, l'audience aurait été repoussée à de nombreuses reprises. A la fin de l'audition des parties le 30 mars 2008, le Procureur aurait requis deux ans de prison ferme contre Me Sidhoum. Le verdict était attendu pour le 13 avril. De vives craintes furent réitérées quant au fait que les charges retenues contre Me Amine Sidhoum viseraient à empêcher ce dernier de poursuivre ses actions en faveur de la défense des droits des familles de disparus au sein de SOS Disparu(e)s.

23. Le 13 juin 2008, le Rapporteur spécial a envoyé au Gouvernement de l'Algérie, conjointement avec la Rapporteuse Spéciale sur la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, un appel urgent concernant la situation de Me Abderrahman Amine Sidhoum, avocat et défenseur des droits de l'homme, membre de l'organisation non-gouvernementale des droits de l'homme SOS Disparu(e)s. Me Amine Sidhoum Abderramane a fait l'objet de plusieurs communications de la part des procédures spéciales, en l'occurrence un premier appel urgent le 26 mai 2006 par le Rapporteur spécial sur l'indépendance des juges et des avocats, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et l'ancienne Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, un second appel urgent le 8 septembre 2006 par le Rapporteur spécial sur l'indépendance des juges et des avocats et l'ancienne Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, une première lettre d'allégation le 10 octobre 2006 par le Rapporteur spécial sur l'indépendance des juges et des avocats et l'ancienne Représentante spéciale du Secrétaire général concernant la situation des

défenseurs des droits de l'homme et enfin une seconde lettre d'allégation envoyée par le Rapporteur spécial sur l'indépendance des juges et des avocats et l'ancienne Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme le 11 avril 2008. Les rapporteurs spéciaux ont accusé réception des réponses du Gouvernement d'Algérie en date du 15 novembre 2006 et 30 avril 2008 en relation avec les présents faits. Selon les nouvelles informations reçues, le 16 juin 2008 aurait eu lieu le procès en appel de Me Amine Sidhoum Abderramane devant la Cour d'Alger. Me Sidhoum aurait été condamnée en première instance par le Tribunal de Sidi M'hamed à 6 mois de prison avec sursis et 20,000 dinars d'amende pour diffamation à l'égard d'une décision de justice à la suite de ses déclarations publiées dans l'article « Aoufi passe son trentième mois en détention » paru dans le quotidien arabophone El Chourouk le 30 mai 2004. Me Sidhoum aurait été accusé de jeter le discrédit sur une décision de justice et de porter outrage à un corps constitué de l'Etat. Lors de son entretien avec la journaliste auteure de l'article susmentionné, Me Sidhoum aurait dénoncé la détention arbitraire de son client dans la prison de Seradji qui durait depuis 30 mois. Cependant, la journaliste, n'aurait pas rapporté de manière fidèle les propos de Me Sidhoum, écrivant que le client de ce dernier «passe son trentième mois à Serkadji suite à une décision arbitraire rendue par la Cour Suprême». En effet, au moment où Me Sidhoum avait tenu ces propos, aucune décision n'aurait encore été rendue par la Cour Suprême, qui ne se serait prononcée que le 28 avril 2005, soit un an après la parution de l'article. De vives craintes furent réitérées quant au fait que les charges retenues contre Me Sidhoum viseraient à empêcher ce dernier de poursuivre ses actions en faveur de la défense des droits des familles de disparus au sein de SOS Disparu(e)s.

24. Le 10 septembre 2008, le Rapporteur spécial a envoyé au Gouvernement de l'Algérie, conjointement avec le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, un appel urgent concernant la situation de M. Mohamed Rahmouni. Le groupe de travail sur les disparitions forcées ou involontaires a été saisi de ce cas le 14 August 2007 et a reçu une réponse datée du 2 Janvier 2008. Cependant le groupe a décidé que l'information reçue par le Gouvernement était insuffisante pour considérer ce cas comme élucidé. Selon les informations reçues, M. Mohamed Rahmouni, qui aurait été arrêté le 18 Juillet 2007 à Bourouba (Alger), aurait été accusé d'avoir participé aux attentats des 11 avril et 11 juillet 2007. Il aurait été inculpé «de complot ayant pour but de porter atteinte à l'autorité du commandant militaire [...]» (article 284 du Code de justice militaire), un crime qui porte la peine de mort. M. Rahmouni se trouverait momentanément à la prison militaire de Blida. Depuis son arrestation, M. Rahmouni n'aurait pas pu voir son avocat. Le 27 août 2008, son avocat, Me Sidhoum, se serait rendu pour la 4ème fois à la prison de Blida pour rendre visite à son client. Selon une note qui aurait été laissée à l'attention de l'avocat de M. Rahmouni par le Président du tribunal militaire, il serait interdit à Me Sidhoum de voir son client. Cette interdiction se fonderait sur l'article 18 du Code de justice militaire qui dispose que dans les affaires relatives aux infractions spéciales, le défenseur choisi par l'inculpé ne peut assister, défendre ou représenter ce dernier, tant au cours de l'instruction qu'à l'audience, que s'il y a été autorisé par le Président du tribunal militaire permanent saisi; dans le cas contraire, le défenseur est désigné par le président. Le Président du tribunal n'aurait pas motivé son refus. En outre, il n'aurait non plus désigné un avocat pour défendre M. Rahmouni. De plus, Me Sidhoum n'aurait toujours pas pu accéder au dossier de son client. M. Rahmouni aurait fait l'objet des mauvais traitements en prison, dont témoigneraient plusieurs blessures.

25. Le 10 novembre 2008, le Rapporteur spécial a envoyé au Gouvernement d'Algérie, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, une lettre d'allégation concernant la situation de Me Abderrahman Amine Sidhoum, avocat et défenseur des droits de l'homme, membre de l'organisation non-gouvernementale des droits de l'homme *SOS Disparu(e)s*. Me Amine Sidhoum Abderramane a fait l'objet de plusieurs communications de la part des procédures spéciales, en l'occurrence un premier appel urgent le 26 mai 2006 par le Rapporteur spécial sur l'indépendance des juges et des avocats, l'ancien Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et l'ancienne Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, un second appel urgent le 8 septembre 2006 par le Rapporteur spécial sur l'indépendance des juges et des avocats et l'ancienne Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, une première lettre d'allégations le 5 octobre 2006 par le Rapporteur spécial sur l'indépendance des juges et des avocats et l'ancienne Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, une seconde lettre d'allégation envoyée par le Rapporteur spécial sur l'indépendance des juges et des avocats et l'ancienne Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme le 11 avril 2008, et enfin un appel urgent envoyé le 13 juin 2008. Les Rapporteurs spéciaux ont accusé réception des réponses du Gouvernement d'Algérie en date du 15 novembre 2006, 30 avril et 10 juillet 2008 en relation avec les présents faits. Me Sidhoum est accusé «d'avoir jeté le discrédit sur une décision de justice et d'outrage à corps constitué de l'État». Ces poursuites sont liées à la plainte déposée, le 23 août 2006, par le ministre de la Justice pour «diffamation», en lien avec la parution d'un article dans le quotidien *El Chourouk*, le 30 mai 2004, dont l'auteur relatait de manière erronée que Me Sidhoum avait dénoncé la détention de l'un de ses clients «suite à une décision arbitraire rendue par la Cour Suprême», alors même que la Cour Suprême ne s'était pas encore prononcée. D'après les nouvelles informations reçues, le 13 avril 2008, le Tribunal de Sidi M'hamed, à Alger, a condamné Me Amine Sidhoum à six mois de prison avec sursis et à 20,000 dinars d'amende. Le parquet, qui avait requis deux ans de prison ferme à l'encontre de Me Sidhoum, et la partie civile ont interjeté appel de cette décision. L'audience d'appel a eu lieu le 12 novembre 2008 devant la Cour d'appel d'Alger. De vives craintes furent réitérées quant au fait que les charges retenues contre Me Sidhoum viseraient à empêcher ce dernier de poursuivre ses actions en faveur de la défense des droits des familles de disparus au sein de *SOS Disparu(e)s*.

### **Communications reçues de la part du Gouvernement**

26. Le 27 avril 2008, le Gouvernement d'Algérie a répondu à l'appel urgent du 11 avril 2008, indiquant que, s'agissant des deux affaires antérieures reprises dans l'appel urgent cité ci-dessus, la Mission Permanente voudrait rappeler au Haut Commissariat des Nations Unies aux droits de l'homme que le Gouvernement algérien avait déjà fourni des réponses qui ont fait l'objet des deux envois suivants : note verbale KH/ NO 554 / 06 du 20 juillet 2006 et note verbale MPAG/MedB/SS/AA/ N° 458/ 07 du 26 juin 2007. Le Gouvernement algérien considère, en conséquence, que ces deux affaires sont closes. Il estime que la répétition dans l'évocation des ces deux cas dans l'appel urgent susmentionné, constitue une tentative de crédibiliser le présumé défenseur des droits de l'homme. Le Gouvernement algérien souligne, à cet égard, que la nouvelle affaire dont est justiciable M. Abderrahmane Amine Sidhoum est sans rapport avec les

activités privées de défense des droits de l'homme comme tente de le faire accréditer la source de l'allégation et remonte à l'année 2004. Enfin, on affirme que la réponse de fond du Gouvernement algérien sera communiquée en temps utile.

27. Le 10 juillet 2008, le Gouvernement d'Algérie a répondu à l'appel urgent du 13 juin 2008, indiquant que Monsieur Abderhamane Amine Sidhoum a fait l'objet de poursuites engagées à son encontre le 8 juillet 2006 par le procureur de la République d'Alger, Sidi M. Hamed du Chef d'outrage à la Cour et atteinte à l'autorité de la justice et son indépendance, faits prévus par les articles 146 et 147 du Code pénal. Ces poursuites sont consécutives à un article de presse publié par le quotidien « El Chourouk » dans lequel Abderhamane Amine Sidhoum déclare en substance « que le nommé T.A., directeur de l'agence foncière d'Oran, vit une véritable tragédie du fait de son incarcération par suite du jugement inique et abusif prononcé à son encontre par la Cour suprême ». Considérant que ces propos, diffusés par voie de presse, constituaient un outrage à la justice en tant qu'institution fondamentale de l'Etat, le représentant du Ministère public a ouvert une information judiciaire et en a saisi le juge d'instruction de la 6<sup>ème</sup> chambre du tribunal d'Alger. Ce dernier a instruit l'affaire et a rendu une ordonnance par laquelle il renvoie M. Abderhamane Amine Sidhoum devant le tribunal, pour y être jugé conformément à la loi. Le 13 Avril 2008, le tribunal a condamné Abderhamane Amine Sidhoum à 6 mois de prison avec sursis et 20 000 DA d'amende. Après cette décision, l'intéressé a interjeté appel. L'examen de l'affaire fut fixé au 8 Octobre 2008.

### **Commentaires et observations du Rapporteur spécial**

28. Le Rapporteur spécial remercie le Gouvernement d'Algérie pour les réponses du 27 avril et 11 juillet 2008. Concernant le cas de Me Sidhoum, le Rapporteur spécial demeure préoccupée que la peine à six mois de prison avec sursis et à 20 000 dinars d'amende a été confirmée en appel le 26 novembre 2008. Des explications substantielles et détaillées concernant les charges retenues contre Me Sidhoum, notamment au sujet de la recevabilité de la plainte pour diffamation alors que les propos prêtés à Me Sidhoum quant à une décision « arbitraire » de la Cour Suprême ont été tenus antérieurement à toute décision de cette même Cour, n'ont toujours pas été reçues. Cette inconsistance, déjà soulevée dans les appels urgents antérieurs n'a été adressée dans aucune réponse du Gouvernement.

29. Le Rapporteur spécial regrette de devoir constater qu'il n'a pas reçu de réponse du Gouvernement d'Algérie aux lettres envoyées le 10 septembre et 10 novembre 2008 et il l'invite instamment à lui transmettre au plus tôt des informations précises et détaillées en réponse à ces allégations.

## **Azerbaïdjan**

### **Communication sent**

30. On 26 August 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 situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the detention and sentencing of Mr Novruzali Mammadov, Head of the Talysh Cultural Centre, and the

detention of his son, Mr Emil Mammadov. Mr Novruzali Mammadov is a defender of the cultural rights of the Talysh people in the south of Azerbaijan. According to information received, on 2 February 2007, Mr Novruzali Mammadov was called to the Ministry of Internal Affairs where he was interrogated about his participation at a science conference in Iran in 2004 and beaten. He was released but later detained again the following day when he was sentenced to 15 days' imprisonment for failing to cooperate with police officers. This sentence was passed despite the fact that Mr Novrulazi Mammadov was already over 65 and, according to a provision of Article 30 of the Administrative Code, citizens of that age cannot be sentenced to punishment such as custodial placement. Mr Novrulazi spent 15 days in the Investigation Isolation Centre of the Ministry of Internal Affairs and was physically and psychologically pressurized to confess to espionage. He did not have access to legal support and his whereabouts were unknown to his relatives. On 17 February 2007, he was accused under Article 274 of the Criminal Code of high treason and espionage. He had been in detention since that moment. On 24 June 2008, Mr Novruzali Mammadov was sentenced to ten years' imprisonment following a closed trial. His lawyer was reportedly not present when the verdict was announced in an empty room. Mr Novruzali Mammadov was charged with high treason and espionage. The charges were related to the gathering of information necessary to establish an administrative autonomy in Azerbaijani territories with dense Talysh population and the damaging of Azerbaijan's image abroad through sending appeals to international organizations about human rights violations against Talysh people. During his trial Mr Novruzali Mammadov pleaded not guilty and testified that he had been subjected to physical and psychological torture while in detention. The forms of torture to which he was allegedly subjected include beating, deprivation of food and water, interrogation at night, and threats against his family. He was awaiting the hearing of his appeal in detention at a pretrial prison. Following the sentencing of Mr Novruzali Mammadov, a number of clarifications were made with respect to the sentence. However, these clarifications were reportedly based on confessions of a journalist which may have been obtained through torture and ill-treatment. Both Mr Emil Mammadov and his now deceased brother had reportedly been abducted and subjected to physical and psychological ill-treatment in the past. Furthermore, on 16 July 2008, Mr Emil Mammadov, the son of Mr Navrulazi Mammadov, was detained for illegal possession of drugs. On 19 July 2008, he was sentenced to three months' pretrial detention before investigations started. However, because of a medical condition, Mr Emil Mammadov always carried prescription drugs and no information has been given by the police in relation to the drugs found on his person. He was detained in the investigatory jail of the Ministry of Justice without access to his family or legal representation, and potentially without access to the necessary medical care. Concern was expressed that the ill-treatment and sentencing of Mr Novrulazi Mammadov, as well as the detention of Mr Emil Mammadov, may be related to his legitimate activities in the defense of the cultural rights of the Talysh people. Further concern was expressed for the physical and psychological integrity of Mr Novrulazi Mammadov and that of his family members.

### **Communication received**

31. On 13 March 2009, the Government replies to the urgent appeal of 26 August 2008, stating that the authorities have analysed the information obtained from Sebail and Yasamal District Courts, the Court of Serious Crimes of the Republic of Azerbaijan, Baku Court of Appeal, Investigatory isolator no 1 of the Penitentiary system and Legal Consultancy office no. 4. It was determined that Novruzali Mammadov had been arrested for 15 days pursuant to the decision of Yasamal district court, dated 3 February 2007 and that since that time his rights were defended

by Ramiz Mammadov, a lawyer at the Legal Consultancy office no. 4, according to the agreement signed by his relatives. During the examination the information about the physical and psychological pressure exerted on Novruzali Mammadov did not prove to be accurate. During the primary investigation, the forensic medical examination held on 7 April 2007 at the request of his lawyer R. Mammadov revealed no injuries on his body. On 26 November 2007, the criminal case was given to the consideration of the Court of Serious Crimes of the Republic of Azerbaijan (Judge - Sakir Alasgarov). During the Court examination, a forensic medical examination was held pursuant to the appeal of the defendant. The examination found that no injuries were found on his body. It was also found that since 1992 Novruzali Mammadov carried out hostile activities against the Republic of Azerbaijan by helping Special Services of a foreign country, providing them with special information, finding and contracting persons having the required information and providing that country with information about those persons. It was also proven that by cooperating confidentially with these organizations, which aim at carrying out separatist propaganda in the area of the Republic of Azerbaijan where Tallishs live, he accepted money from the organizations for implementing these activities and was involved with these activities since then until his imprisonment. Novruzali Mammadov was sentenced to 10 years imprisonment, alongside with the confiscation of property according to the judgement dated 27 June 2008 of the Courts of Serious Crimes of the Republic of Azerbaijan, being charged with Article 274 of the Criminal Code of the Republic of Azerbaijan (treason). According to the mentioned article, the given punishment is the lowest degree of sanction, the highest is 15 years. While passing the sentence, the Court considered factors relieving the punishment, including that Novruzali Mammadov was being convicted for the first time and having regard to his academic activities and the fact that three individuals were under his guardianship on the time of committal of the crime. The Government informs that Novruzali Mammadov's lawyer, R. Mammadov, participated throughout the whole process, made a speech for his defense and was notified about the date when the judgement would be read. He did, however, not participate in the hearing. On 25 June 2008, N. Mammadov was placed in the investigatory isolator No. 1 of the Penitentiary Service of the Ministry of Justice and is being held there. N. Mammadov's lawyer lodged an appeal against the sentence dated 24 June 2008 issued by the Court of Serious Crimes of the Republic of Azerbaijan. Subsequently, the case was transferred to the Baku Court of Appeal. The Baku Court of Appeal having considered the criminal case decided that the decision of the Court of Serious Crimes of 24 June 2008 was legal and reasonable, so the appeal was declined. While investigating the information on Emil Mammadov, son of N. Mammadov, it was determined that he had been convicted for 6 years pursuant to the Article 80 of Criminal Code of the Republic of Azerbaijan (previous edition). On 18 July 2008, the Police Office of Sabail district of Baku city started a criminal case against E. Mammadov pursuant to the Article 234.1 of Criminal Code of the Republic of Azerbaijan. A lawyer was appointed on public expense on that date, for defending E. Mammadov's rights. According to the Decision of the Sabail district Court of 19 July 2008, E. Mammadov was arrested and placed at the investigatory isolator No. 1 of the Penitentiary Service of the Ministry of Justice. The opinion of the forensic chemical examination dated 28 July 2008 indicated that the substance obtained from E. Mammadov was hand-made drug-heroin. During the primary investigation, in the interrogation with the presence of his lawyer E. Mammadova, mother of E. Mammadov, applied to the Sabail district Police Office, Baku city, indicating that her son takes the narcotics substance against depression. The opinion of the forensic-psychiatric examination dated 5 August 2008 indicates that E. Mammadov had a serious disturbance of personality resulting from narcotics addiction. E. Mammadov's criminal case on charges under Article 234.1 of Criminal Code of the Republic of Azerbaijan was given

to examination to the Sabail district Court on 28 August 2008. By judgement of the Court dated 07 October 2008, E. Mammadov was found guilty under the Article 234.1 of Criminal Code and deprived of liberty for a year (the highest degree of punishment is deprivation of liberty for 3 years according this provision). Considering the character of the committed crime, the level of its threat against public safety and the lack of circumstances aggravating the punishment, the punishment was applied to E. Mammadov pursuant to article 70 of the Criminal Code. A probationary period of 6 months (pursuant to the 70 Article, duration of probation is applied from 6 months to 5 years) was determined. No appeal or protest was lodged against the Court's judgement. The Government also informs that E. Mammadov has not applied for medical care, and did not complain of prison staff.

### **Special Rapporteur's comments and observations**

32. The Special Rapporteur wishes to thank the Government of Azerbaijan for its reply of 13 March 2009 to his urgent appeal of 26 August 2008.

### **Bahrain**

#### **Communications sent**

33. On 24 April 2008, the Special Rapporteur sent a joint urgent appeal, together with the Vice-Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, regarding the cases of the arrest of 47 persons over four weeks and the detention of 26, notably of Ammar Hassan Ali Hassan Al-Basri, 17; Sayyed Hadi Hameed Adnan Alawi, 28; Mohammed Abbas Mohammed Ali, 29; Saleh Ali Mohammed Ali Alseeb, 30; Hassan Kadhem Ebrahim Ahmed, 30; Ha'med Ebrahim Fardan, 27; Ali Mohammed Habib Ashoor, 31; Ahmed Ali Hassan, 35; Mohammed Makki Mansoor, 27; Fadhel Abbass Mohammed Ashoor, 25; Kumail Ahmed Ali Abu-Sharaf; Jassim Mohammed Habeeb, 29; Fadhel Abbass Ali Ahmed, 28; Hussain Abbass Ali Ahmed, 24; Sayyed-Sadiq Ebraheem Jumma' Ma'jed, 26; Sayyed-Ahmed Hameed Adnan Alawi, 23; Sayyed-Jawad Hameed Adnan Alawi, 30; Sayyed-Omran Hameed Adnan Alawi, 24; Sadeq Jawad Al-Fardan, 27; Qasim Mohammed Khaleel Ebraheem, 22; Hussain Abdul-Kareem Makki Eyd, 24; Habeeb Mohammed Habeeb Ashoor, 20; Habeeb Ahmed Habeeb Mohammed Abbass, 22; Hussain Ali Dhaif, 28; Hussain Mohammed Khatam Hussain Mohammed, 28; and Ebraheem Saleh Ebraheem Jaffer, 22. According to information received, 47 people from the villages of Karzakkan, Demistan, Sadad and Malekkya were arrested between 27 March and 15 April 2008, mostly during house raids by Special Security Forces, allegedly with the support of the secret intelligence and armed militia. In one case, the person wanted by the security forces was absent, and his brother Jassim Mohammed Habeeb was arrested in his place and taken to Hamad Town police station. He was still in detention although his brother presented himself to the police station. Others were arrested after they presented themselves to the Hamad Town police station in response to official summons. Of the 47 arrested people, 26 were still being detained, including one minor, Ammar Hassan Ali Hassan Al-Basri. The detainees were being held in the premises of the Criminal Investigations Bureau (CIB) in Adleyya, Manama. Since their arrests, they had not had access to lawyers and no visits had been allowed. Some of the detainees had been taken before the Public Prosecutor to have their detention extended. In addition, Shaker Mohammed Abdul-Hussein Abdul-Aal, aged 26, from Hamala, was summoned

on 15 April 2008 to Hamad-Town police station, from where he was transferred to an unknown place. Since then, his whereabouts had been unknown. Mr. Abdul-Hussein Abdul-Aal had briefly been detained on 2 February 2007 for delivering a speech criticizing the government, arrested again on 21 December 2007, along with other members of the Committee for the Unemployed, in relation to the December protests, and released a month later. His arrest in December was the subject of an urgent appeal sent on 10 January 2008 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions, 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. Allegations were received that he was subjected to torture including being blindfolded and handcuffed for several days, hanged by the arms for two days and exposed to electric shocks during his detention. The arrests were triggered by two violent incidents: the burning on 6 March 2008 of a farm belonging to a former high Government official and the killing on 9 April 2008 of a member of the Special Security Forces. However, accusations regarding the killing of the Special Security officer were reportedly not supported by evidence. Concern was expressed that these men were arrested and detained for their alleged involvement in social movements, such as the Committee for the Unemployed and the Underpaid, the Committee for the Defence of Detainees, the Committee against High Prices, etc., as well as their community activism.

34. On 30 May 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 Rapporteur on the situation of human rights defenders, regarding the case of Messrs Shaker Mohammed Abdul-Hussein Abdul-Aal, aged 26, Sadeq Jawad Ahmed Al-Fardan, aged 27, and Hasan Kathom Ebrahim Ahmed, aged 30, members of the Unemployment Committee; Ali Mohamed Habib Ashoor, aged 31, and Habib Mohamed Habib Ashoor, aged 20, of the Committee for Detainees; Fadhel Abbas Mohamed Ashoor, aged 25, of the Committee Against High Prices; and Sayed Omran Hameed Adnan, aged 24, of the Committee Against One Percent. The arrest of the aforementioned, together with 19 other men, was subject of an urgent appeal sent on 24 April 2008 by the Vice-Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Mr Shaker Mohammed Abdul-Hussain was the subject of two previous urgent appeals sent by the then Special Representative of the Secretary-General on the situation of human rights defenders and other mandate holders; on 10 January 2008 and on 18 January 2008. The Special Rapporteurs acknowledged the receipt of the reply of the Government dated 26 February 2008. According to the new information received, since their arrest in early April 2008, Messrs Shaker Mohammed Abdul-Hussein Abdul-Aal, Sadeq Jawad Ahmed Al-Fardan, Hasan Kathom Ebrahim Ahmed, Ali Mohamed Habib Ashoor, Habib Mohamed Habib Ashoor, Adhel Abbas Mohamed Ashoor and Sayed Omran Hameed Adnan have had reportedly been tortured, beaten, held in solitary confinement and deprived of food and sleep. A form of torture known as Falaqah has been applied on them, whereby a hard stick is inserted between the detainee's cuffed hands and tied legs, and then used to suspend the detainee in the air for hours with his legs facing upwards and his blind-folded

head facing downwards. The detainee's feet are then beaten until he makes a confession or loses consciousness. The men were reportedly held without charge or access to lawyers and access to families have been restricted. Serious concern was expressed for the physical and mental integrity of the aforementioned human rights defenders in view of the reported ill-treatment. Further concern was expressed that their arrest, detention and treatment amounting to torture may be related to their non-violent activities in defense of labour rights in the country. The above mentioned allegations were adding to other serious allegations raised by mandate holders regarding cases of torture of detained human rights defenders in Bahrain, and serious concern was expressed over this apparent emerging trend of repression against human rights defenders in the country.

35. On 28 July 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur 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, regarding the case of Messrs Hassan Abdelnabi Hassan, Maytham Bader Jassim Al Sheikh and Abdullah Mohsen Abdulah Saleh of the Unemployment Committee; Mr Najji Ali Fateel of the Bahrain Youth Society for Human Rights (BYSHR); Mr Mohammed Abdullah Al Sengais, head of the Committee to Combat High Prices; Mr Ahmed Jaffar Mohammed Ali, former member of the Unemployment Committee; and Mr Ebrahim Mohamed Amin-Al-Arab, founding member of the Martyrs and Victims of Torture. All of the aforementioned were detained between 21 and 28 December 2007 following unrest and protests. All were the subject of urgent appeals sent by various mandate-holders on 10 January 2008 and 18 January 2008. The Special Rapporteur thanked the Government for his response dated 26 February 2008. According to new information received, on 13 July 2008, Mr Hassan Abdelnabi Hassan was sentenced to seven years' imprisonment and fined around 9,980 Bahrain Dinars. Messrs Maytham Bader Jassim Al Sheikh, Najji Ali Fateel and Mohammed Abdullah Al Sengais were sentenced to five years' imprisonment. Mr Ahmed Jaffar Mohammed Ali was sentenced to one year's imprisonment for taking part in the demonstration, violence against the police officers and setting fire to a government vehicle. The High Criminal Court found them guilty of offences such as burning a police jeep, illegal gathering and use of force against security officials. In addition, Mr Maytham Bader Jassim Al Sheikh was found guilty of theft of a government fire arm and possession of a fire arm without permission while Mr Najji Ali Fateel and Mr Mohammed Abdullah Al Sengais were found guilty of theft of government ammunition and possession of part of a fire arm without permission. The judge of the High Criminal Court failed to consider medical evidence indicating that some of the human rights defenders may have been beaten while in detention. The medical evidence was not fully conclusive because the examination by independent forensic experts had been delayed. Messrs Abdullah Mohsen Abdulah Saleh and Ebrahim Mohamed Amin-Al-Arab were acquitted. On 18 July 2008, peaceful demonstrations, organized by family members of the detained in protest against the sentences, were violently dispersed by riot police. Tear gas and rubber bullets were used against the protesters. As a result, the four-year-old son of Mr Maytham Bader Jassim Al Sheikh was rushed to hospital in an ambulance. While the Special Rapporteurs welcomed the acquittals of Messrs Abdullah Mohsen Abdulah Saleh and Ebrahim Mohamed Amin-Al-Arab, they were concerned that the sentencing of the other above-mentioned human rights defenders may not result from a fair trial and may be related to their work in the defense of human rights. They also expressed concern that confessions obtained under torture may be the basis of the verdicts of those found guilty.

36. On 26 August 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on violence against women, its causes and consequences, regarding the concerns that the Special Rapporteurs had pertaining to current judicial practices in family matters and the absence of a Family Code in the Kingdom of Bahrain, with implications on women's ability to enjoy family rights upon divorce and leave abusive relationships. They noted with interest the reply by the Bahrain Government to a previous letter (AL G/SO 214 (89-11) BHR 4/2006) that the Special Rapporteur sent, which stressed that "[w]ith regard to the subject of family law, the legislature (...) has been examining this question for some time now with a view to guaranteeing the rights of everyone in the Kingdom." In this joint letter, the Special Rapporteurs had noted with concern the absence of a codified family law that states clear and equitable norms on divorce or child custody. They had further noted that in the absence of a family code, judges seemed to decide cases according to their personal interpretation of Shari'a, often favouring men. In this regard, the Committee against Torture cited the broad discretionary powers of Shari'a courts in the application of the law to personal status cases and recommended that Bahrain adopt a Family Code. The Special Rapporteurs also noted with interest that, during the Universal Periodic Review of the Kingdom of Bahrain, the Government indicated that it had been working on implementing the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) since its ratification in 2002, to provide women full equality with respect to rights and obligations bearing in mind the Sharia. In this regard, the Government committed to "conduct wide consultations between different partners, in particular the legislative authority, with the view of adopting a family law." Another matter raised by the Working Group on the Universal Periodic Review was the role of the Supreme Council for Women. Established in 2001, the Supreme Council for Women plays a role in recommending general policy on the development and advancement of women's issues in constitutional and civil society institutions. It also sought to empower women in public life and to integrate their efforts into comprehensive development programmes. The Council's Women's Complaints centre dispenses legal aid to women. However, this legal aid was allegedly not effective due to the Council's reluctance to interfere in ongoing judicial cases. Furthermore, it was alleged that, in May 2007, the Women's petition Committee, in a letter to the King of Bahrain, called for the dissolution of the Supreme Council for Women, citing its failure in "building and supporting Bahraini women". In light of the above, the Special Rapporteurs brought a case to the attention of the Government. They understood that the case was under judicial proceedings at the moment; without pre-judging the outcomes of such proceeding, they were mentioning it in this letter as it is symptomatic of the implications for women's family rights of the legal and institutional frameworks mentioned above.

37. According to the information received, Ms. Saddeeqa Al-Munfaredi, a Bahraini citizen, is divorced from her husband, with whom she had a daughter. When the girl reached seven years of age this year, her father filed a case at a Shari'a Court to obtain the guardianship of his daughter. It was reported that according to Shari'a Law, guardianship of a child who reaches seven is transferred from the mother to the father. Through the help of a lawyer, Ms. Saddeeqa Al-Munfaredi filed a case at the First Level Shari'a Court n° 3, Jaffaria Division (n° 14/2008/01533/6). Hearings between Ms. Saddeeqa Al-Munfaredi and her ex-husband were held on 6 May, 20 May and 15 June 2008. The next hearing was scheduled on 7 September 2008. Both parties had reached an informal agreement at the end of June for the mother to keep the daughter, with an increased number of visits by the father. However, during the hearing held on 29 June 2008, Ms. Al-Munfaredi's ex-husband allegedly refused any

agreement. It was reported that Ms. Saddeeqa Al-Munfareedi approached the Supreme Council for Women in April 2008, seeking legal aid and support. She filed a case (n° 365) but since then has never heard back from the Supreme Council. Ms. Saddeeqa Al-Munfareedi reportedly also tried several times to contact the wife of the King of Bahrain, without receiving any response. Ms. Al-Munfareedi also had contacts with the brothers and sisters of her ex-husband, who confirmed her allegations that he is mentally unstable. She also alleged that her ex-husband had sexually abused the child when she was 3 years old. She apparently had a medical certificate attesting to the abuse. It was reported that Ms. Al-Munfareedi contacted the Child Protection Unit within the Ministry of Social Affairs. This Unit promised to provide an independent report to the Shari'a Court, based on observations and assessment of living standards at her home as well as at that of her ex-husband. It was however alleged that judges of Shari'a Courts are not obliged to follow any of the recommendations of the report. Concerns were expressed that the guardianship of that child will not be decided upon based on objective criteria, which take into account the best interests of the child and consider both parties equally.

### **Communications received**

38. On 14 August 2008, the Government replies to the urgent appeal of 24 April 2008 and 30 May 2008, stating that first, the Department of Public Prosecutions undertook an investigation into the persons named in the attached note who had been accused of offences that are punishable by law under the Criminal Code. Two investigations were carried out into these incidents, as described below. Regarding the first case, the Government informs that the Department of Public Prosecutions laid charges against a total of 19 persons on the counts described below. They participated in a public demonstration involving more than five persons for the purpose of carrying out criminal attacks against property and persons. The accused committed the following offences, knowing the purpose behind the demonstration: a) The intentional and premeditated murder and ambushing of Majid Ashgar Ali; they had planned and conspired to set fire to any police vehicle that passed by the scene of the crime and to kill the occupants. They had prepared Molotov cocktails and stones in advance and hid in a place where they were certain that a police car would pass. As soon as the victims' car appeared, they showered it with a hail of these materials with the intent of killing the occupants. They caused the fatal injuries described in the forensic report on the victim. b) They attempted deliberately to murder and ambush Salih Ali Salih and Ammar Mas`ad Hamud; they had planned and conspired to set fire to any police vehicle that passed by the scene of the crime and to kill the occupants. They had prepared Molotov cocktails and stones in advance and hid in a place where they were certain that a police car would pass. As soon as the victims' car appeared, they showered it with a hail of these materials with the intent of killing the occupants. The crime failed to achieve the desired effect for reasons beyond their control, namely, the victims' decision to get out of the vehicle, and the fight which the second victim put up. c) They set fire to a police car belonging to the Ministry of the Interior and endangered lives and property, after surrounding the vehicle and bombarding it with Molotov cocktails, which exploded and set fire to parts of the vehicle.

39. With regard to the second case, the Department of Public Prosecutions brought charges against 15 persons on the counts described below. They participated in a public demonstration involving more than five persons for the purpose of carrying out criminal attacks against property and persons. The accused committed the following offences, knowing the purpose behind the demonstration: Setting fire to the movable and immovable property described and listed in the case documents as belonging to Sheikh Abd al-Aziz Atiyah Allah Al Khalifah, thus

endangering lives and property; throwing Molotov cocktails; dousing them with flammable material (gasoline) and setting light to them, as described in the documents. The Government further informs that, second, the Department of Public Prosecutions referred all the accused persons in the two cases to the Criminal High Court on the charges described above. In referring the accused to the Criminal Court, the Department of Public Prosecutions submitted a great deal of evidence, including confessions by a number of the accused; confessions in which some of the accused implicated others in the same investigation; the testimony of police officers who had witnessed the incidents and others who had been present at the scene; and forensic evidence, reports and photographs of the accused committing the offence. Third, none of the persons who were arrested and detained made any statement when questioned by the Department of Public Prosecutions about having been assaulted. The Department of Public Prosecutions nevertheless ordered a medical examination of the accused in order to clarify whether or not they had sustained any injuries. The medical reports found no evidence of any injuries. Four, Shakir Mohammed Abd al-Hussayn Abd al-Al was charged in the second case and was detained pending trial. Five, the second case was sent before the Criminal High Court and is still being heard by the Court. Six, the Department of Public Prosecutions, at the very outset of the investigation, gave orders that the accused and their defence counsel should be provided with every assistance to facilitate the presentation of a defence in the framework of the law. Nothing was done which vitiates the legal procedures followed by the Department of Public Prosecutions.

40. On 21 October 2008, the Government replies to the urgent appeal of 26 August 2008, stating that further to consultations with the competent authorities in the Kingdom of Bahrain (the Ministry of Justice and the Supreme Council for Women), the following matters have been clarified. With regard to the first question, the Government provided the following clarifications: On 29 January 2001, the husband of Ms. Saddeeqa Ali Munfaredi filed a suit (case No. 8/158/2003/14) against his wife before the competent (sharia) court. In it, he demanded that his wife return to the marital home. Ms. Saddeeqa Ali Munfaredi filed two counter-suits (Nos. 3/186/2003/14 and 3/1138/2004/14) before the competent (sharia) court, petitioning for a divorce from her husband. The court decided to join the latter two suits to the one filed by the husband (case No. 8/158/2003/14). The court delivered the following rulings on these cases: In case No. 3/186/2003/14, in which the wife (Ms. Saddeeqa Ali Munfaredi) petitioned for a divorce from her husband, a judgement was delivered granting the wife a divorce; In case No. 8/158/2003/14, in which the husband demanded that his wife (Ms. Saddeeqa Ali Munfaredi) return to the marital home, the court issued a judgement dismissing the petition on the grounds that the divorce rendered it void; In case No. 3/186/2003/14, in which the wife (Ms. Saddeeqa Ali Munfaredi) petitioned for payment of the deferred part of the marriage gift (mu'akkhar al-sadaq), the matter was referred to the competent sharia court. On 1 February 2006, the husband filed an appeal further to case No. 8/158/2003/14. On 20 May 2006, a judgement was issued dismissing the appeal. On 22 April 2008, the husband filed a suit (case No. 9/1058/2008/14), petitioning for custody of his daughter and an annulment of the maintenance payment arrangement. The wife (Ms. Saddeeqa Ali Munfaredi) filed a counter-suit (registered as case No. 6/1533/2008/14), asking to be allowed to retain custody of the child and to continue to receive maintenance payments. The court decided to consider both cases together and set a date of 28 October 2008 for the hearing.

41. With regard to the abduction of the child by the father, a judgement was handed down in case No. 3/1207/2004/7 finding the husband guilty of abducting the child, ordering him to pay a 200 dinar fine and granting the mother (Ms. Saddeeqa Ali Munfaredi) the right to retain

custody of the child. The legal procedures followed by the court, in deferring sessions, hearing the testimony of both the parties and the witnesses and assessing the documentary and other evidence, were based on its competence and knowledge of the specific nature of sharia cases, together with its assessment of the actual damage in the case. The court furthermore acted in conformity with the rules set out in the Code of Procedures issued by Decree Law No. 26 of 1986, concerning the sharia courts. With regard to the second question, concerning the regulations applied by the sharia courts on the guardianship of children upon divorce, the courts follow the rules of the Islamic sharia in cases referred to them by the Sunni and Ja`fari divisions, and are essentially guided by the best interests of the child, which constitute the basis of all the measures taken in accordance with the Islamic sharia and the Convention on the Rights of the Child. With regard to the third question on the steps taken by the Government to implement the national action plan on implementing Bahrain's voluntary pledges to the Human Rights Council regarding the adoption of a family code, in order to enable the Ministry of Foreign Affairs and the relevant national authorities to follow up, in an effective and concrete manner, on the implementation of the Government's voluntary commitments and pledges and the recommendations and outcomes of the universal periodic review conducted with the Kingdom of Bahrain, the Ministry of Foreign Affairs and the bureau of the United Nations Development Programme (UNDP) in the Kingdom signed a project document (on 28 July 2008) to support the implementation of an action plan relating to the universal periodic review conducted with the Kingdom of Bahrain. In the same month, a committee was set up to oversee the implementation of the outcomes and the commitments and voluntary human rights pledges made by the Kingdom in connection with the universal periodic review report. The members of the committee include: the Ministry of the Interior; the Ministry of Health; the Ministry of Social Development; the Ministry of Education; the Ministry of Information; the Ministry of Justice and Islamic Affairs; the Department of Public Prosecutions; the Ministry of Labour; the Supreme Council for Women; the Labour Market Regulatory Authority; the Central Bureau of Statistics; the Chamber of Commerce and Trade; representatives of civil associations and of: the Bahrain Human Rights Association; the Society for Public Freedom and Democracy Support; the Transparency Society; the Bahrain Human Rights Watch Association; the Women's Union; and the UNDP bureau in the Kingdom. This committee, the members of which represent governmental and non-governmental organizations, is currently engaged in translating the project document (which was attached to the reply) into concrete action aimed at achieving the set objectives within three years from the date of signature. The project focuses on five major outputs: gathering information on human rights; applying human rights on the ground; applying a human-rights based approach to development programmes; creating a national system for the protection and promotion of human rights; and strengthening the normative framework for human rights. As will be clear from the above, one of the main project outputs is ensuring the application of human rights on the ground, including the implementation of laws in the most effective manner, as explained on page 4 of the project. The Government underscores that there is a detailed timetable for the selection of a draft human rights law such as a family bill and a process to ensure that it is adopted and implemented with the assistance of governmental and non governmental stakeholders who are members of the committee (output 2 of the attached annex).

## Special Rapporteur's comments and observations

42. The Special Rapporteur wishes to thank the Government of Bahrain for the detailed responses to his letters of 24 April, 30 May and 26 August 2008. He is, however, concerned at the absence of an official reply to his letter of 28 July 2008 and therefore the Government to provide at the earliest possible date a detailed substantive answer to the above allegations.

## Bangladesh

### Communication received

43. On 29 May 2008, the Government replies to the urgent appeals of 22 May 2007, 7 November 2007 and 8 February 2008 concerning alleged extortion charges/threat by RAB officials to Mr. Jahangir Alam Akash, a journalist. The Government stated that the competent authorities have investigated the allegations mentioned in the communication and provided them with the following response: One Mr. Mahfuzul Alam Loton lodged an FIR (First Information Report) with the Boalia Police Station stating that Mr. Jahangir Alam Akash demanded money by criminal intimidation. The investigation officer examined the witnesses. On the basis of sufficient prima-facie evidence against the accused Mr. Jahangir Alam Akash, the investigation officer submitted charge sheet No. 398 dated 30.10.2007 in the court under section 385/386 of the Penal Code. During the special operation conducted by RAB-5, Rajshahi, Mr. Jahangir Alam Akash was challenged on 24.10.2007 at 01.15 hours as it was unusual to return to the residence. Mr. Akash tried to run away. He was arrested under section 54 of the code of criminal procedure. Being confirmed, after preliminary inquiry, that Mr. Jahangir Alam Akash was the FIR-named accused, RAB-5 handed over Mr. Jahangir Alam Akash to the Boalia Model Police Station (PS). Police of Boaliathana (PS) sent him to the Magistrate's court on the basis of General Diary (GD) No. 1239 dated 24.10.2007 under section 16 (2) of the Emergency Power Rules-2007. He was also arrested in connection with the case No. 13, dated 23.10.2007 under section 385/387/508 of the Penal Code in Putia police station of Rajshahi District. The Government further said that Mr. Jahangir Alam Akash is a yellow journalist and he was engaged in so many illegal activities by using his journalist's profession as a shield. The Government further states that no complaint has been lodged either by Mr. Jahangir Alam Akash or on his behalf to police or a court. He has submitted a writ petition to the Honorable High Court bearing No. 10905 of 2007 to obtain bail. The Honorable High Court released him on bail. Moreover, the Government stated that two charge sheets, No-398 dated 30.10.2007 under section 385/386 of Penal Code and No. 01 dated 06.01.2008 under section 385/387/506 of Penal Code were submitted by the Putia police Station, Rajshahi against Mr. Jahangir Alam Akash. With regard to the legal basis for the charges and his re-arrest, the Government referred to the following legal bases (1) GD No. 188 dated 05.12.2000 (2) GD No. 1104 dated 24.02.2001 (3) GD No. 1239 dated 24.10.2007 (4) Case No. 02 dated 02.10.2007 (MGR case No. 843/2007 and session case No. 672/2007) charge sheet No. 398, dated 30.10.2007 filed under Boalia Model Police Station, Rajshahi Metropolitan Police, Rajshahi and case No. 13, dated 23.10.2007 under section 385/387/506 charge sheet No. 01 dated 06.01.2008 under Putia Police Station, Rajshahi. The Government also informs that that he was granted bail from the Honorable High Court for which he should have surrendered to the lower court, but he failed to do so. For the violation of the bail conditions he was warranted for re-arrest by the court of law. It would be apparent from the investigation that no physical and mental torture was made against former CSB news reporter Mr. Jahangir Alam Akash who is known for his yellow journalism and extortion charges. He was

sent to the court on the basis of specific legal complaint. What has been done was clearly in conformity with the law. Thus, the Government concluded that no human rights violations have occurred in connection with the arrest of Mr. Akash.

### **Special Rapporteur's comments and observations**

44. The Special Rapporteur wishes to thank the Government of Bangladesh for its reply of 29 May 2008.

## **Belarus**

### **Communications sent**

45. On 23 January 2008, the Special Rapporteur sent a joint urgent appeal,<sup>1</sup> 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 case of Mr. Aleksandr Sdvizhkov, editor at the weekly newspaper Zhoda, which had 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. Concern was expressed that the sentencing of Mr. Sdvizhkov may be directly linked to his reportedly legitimate exercise of the right to freedom of opinion and expression.

46. On 28 April 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on the question of torture, regarding the case of Vladimir Anatolevich Russkin, aged 37, citizen of Belarus, who was currently held at Novopolock correctional colony n. 10. According to the information received, he was arrested by ten officers from the Belarusian Committee for State Security (KGB) on 5 January 2007 at Varshavsky Most customs checkpoint. Following his arrest he was severely beaten, his face was shoved into the dirt; he was hand-cuffed behind his back and blind-folded. He was then pushed into a car, with his face downwards and officers put their feet dressed in heavy army boots on his back. At the KGB detention centre in Minsk he was put in a small room of 2 square metres, which resembled a grave, with no natural daylight and no ventilation. A small lamp remained switched on all the time. When he attempted to cover his eyes in order to be able to get some sleep, the guards came

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<sup>1</sup> This communication has already been included in the Communications Report of 28 May 2008, A/HRC/8/4/Add.1. The Special Rapporteur has included it again in order to facilitate the reader's comprehension of the Government's reply.

to prevent him from doing so. He could not leave the cell to go to the toilet and had to eat the low-quality food that he received in the same place where he relieved himself. At one instance several buckets with concentrated chlorine were put into the room and, although he was asking for help, they were not removed until he lost consciousness. He was repeatedly interrogated, at any time of the day, sometimes for long periods. After ten days at the KGB he was transferred to Minsk's pre-trial detention centre (SIZO), which was overcrowded (40 persons on 12 square metres) and where officers beat those who did not immediately follow all orders. The food was also of bad quality and access to sanitary facilities was restricted. Then he, together with about 19 persons, was put in a minibus with maximum capacity for eight persons, and taken to a train station. There, while being beaten by officers, they were moved into a railway wagon with dogs barking at them. For 12 hours they had to stay there, without being given any water or being allowed to use a toilet. Novopolock correctional colony n. 10 was equally overcrowded (1 square metre per prisoner). The building where Mr Russkin was staying has the capacity to house up to 170 persons, but up to 700 were detained there. Hygiene and sanitation were insufficient, prisoners were allowed to shower only once per week, there was no hot water available in the living quarters. The food was of bad quality. For minor offenses, persons were severely punished by being put in overcrowded cells with even worse conditions and with no possibility to appeal this decision. People were forced to work for 8 hours, 6 days a week for 3 EUR per month. If they refuse, they were subjected to punishment, such as denial of family visits, prolongation of the prison terms (up to 10 additional years) and prolonged stays in punishment cells. On 14 September 2007, Mr Russkin was convicted by the Military Chamber of the Belarus Supreme Court to ten years of imprisonment for treason under article 356 of the Belarus Criminal Code and espionage under article 358. He did not have access to a lawyer of his choice at any stage of the criminal process including during the trial. Instead, the State provided a lawyer. All petitions Mr Russkin filed with the courts were reportedly ignored. The trial protocol was falsified. The investigation and trial were biased and there was not enough time for the accused to study the case files. Mr Russkin was not given the opportunity to call his own witnesses and to question witnesses of the prosecution. Finally, he was not given the opportunity to appeal the court's decision.

47. On 22 July 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 the Special Rapporteur on the situation of human rights defender, regarding the case of Mr Pavel Levinov, human rights lawyer and member of the Belarus Helsinki Committee, a human rights non-governmental organization (NGO). A letter of allegation was sent by the Special Rapporteur on freedom of opinion and expression and the then Special Representative of the Secretary-General on the situation of human rights defenders on 8 April 2008, regarding the arrest and subsequent hunger protest of Pavel Levinov. No response from the Government had been received. According to new information received, since his arrest on 26 March 2008 after providing legal aid for journalist Vadim Borshevskiy, Mr Pavel Levinov made efforts, which have included a 15-day hunger strike, to have his case investigated fairly. Nevertheless, on 26 May 2008, a court ruling was passed, in Mr Pavel Levinov's absence, condemning him to ten days of detention and a fine of 700,000 rubles. According to Mr Pavel Levinov, accusations against him were made by a senior militia officer and supported by subordinate officers acting under orders. On 15 July 2008, Mr Pavel Levinov visited the Public Prosecutor of Vitebsk who promised to inquire into the matter. However, before any inquiries could be made Mr Pavel Levinov was approached outside the office of the Public Prosecutor by militiamen

from a special militia troop who presented him with evidence of the court decision for him to be arrested for ten days. They brought him to Pershamayski District Militia Station. There, Mr Pavel Levinov fell ill and was taken to hospital. After a telephone conversation the cardiologist on duty at the hospital refused to admit Mr Pavel Levinov for treatment. On leaving the hospital he lost consciousness. He recovered in the hospital's resuscitation ward hours later. He was transferred directly from there to Pershamayski District Militia Station. Officials at the hospital where Mr Pavel Levinov had been refused treatment would not answer questions about whether or not he was in a fit condition to be held in detention. Mr Pavel Levinov was being held in a temporal isolation centre in Vitebsk. He has been visited by a doctor but did not have access to legal aid. On 16 July 2008, Mr Pavel Levinov began another hunger strike. Concern was expressed that Mr Pavel Levinov may have been detained as a result of his activities in defense of human rights. Further concern was expressed for the physical and psychological integrity of Mr Pavel Levinov. In light of reports that members of the Belarusian Helsinki Committee and other human rights activists in Belarus have been insulted on national Belarusian television over the last month, concern was also expressed about the situation of human rights defenders in the country.

48. On 18 November 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Ms Yana Paliakova, a human rights defender, lawyer and member of the Human Rights Alliance of Belarus. According to the information received, on 9 October 2008 Ms Yana Paliakova was attacked by an unidentified man as she entered her house in Salihorsk. She was hit on the head and back. The attacker also told her that "if she didn't shut up, this would be her last warning". As a result of the attack, she was diagnosed in hospital with a concussion. Following the medical check-up Ms Paliakova went to the Salihorsk police station to file a complaint. When she felt ill at the station and tried to go outside, a policeman grabbed her by her sweater and pushed her to the floor, causing a bruise on her hip. Ms Paliakova previously lodged a complaint against the Salihorsk police station on 1 September 2008, concerning physical assault by the police that took place the previous day. Ms Paliakova was stopped by the district policeman Mr Pugachev and two other men, and taken to the regional office of Internal Affairs where she had been hit on her arms and legs. Although Ms Paliakova lodged repeated complaints regarding this incident with the Public Prosecutor's office and the District Prosecutor's Office, no inquiry has yet been launched. Ms Paliakova defended several victims of excessive violence of the police, and one of the cases resulted in the dismissal of a policeman. Concern was expressed that the attacks on, and harassment of, Ms Paliakova was related to her activities as a human rights lawyer, acting on cases of excessive violence of the police. Further concern was expressed at the apparent lack of investigation and criminal proceedings in the cases of physical assault by members of the police forces.

### **Communications received**

49. On 24 February 2008, the Government replies to the allegation letter of 28 April 2008, stating that on 14 September 2007 the Military Division of the Supreme Court of the Republic of Belarus convicted Vladimir Anatolyevich Russkin, born on 26 March 1971, resident of Kobrin in Brest province and national of Belarus, of two offences committed as a foreign citizen: espionage with the intention of prejudicing the security and defensive capability of Belarus (high

treason), and setting up the collection and transfer of other information on behalf of a foreign intelligence service for use to the detriment of the interests of Belarus, committed by a foreign national (organization of espionage). V.A. Russkin was sentenced to nine years' imprisonment in accordance with article 356, part 1, of the Criminal Code of Belarus, deprivation of the military rank of reserve senior lieutenant pursuant to article 60 of the Code and eight years' imprisonment under article 16, part 4, and article 358, part 1, of the Code. In accordance with article 72, part 3, of the Code, the final aggregate sentence imposed on V.A. Russkin following partial combination of punishments for several offences was 10 years' imprisonment to be served in a penal colony under a strengthened regime and deprivation of the military rank of reserve senior lieutenant. V.A. Russkin began serving his term on 14 September 2007. The period spent by V.A. Russkin in police custody and detention between 5 January and 14 September 2007 will be deducted from the prison term. Mr. V.A. Bogdan, Mr. P.G. Petkevich and Mr. S.G. Kornilyuk were sentenced in this same case under article 356, part 1, of the Criminal Code. The sentence entered into force as soon as it was handed down, as article 370, part 6, of the Code of Criminal Procedure of the Republic of Belarus lays down that regular appeals or appeals in cassation may not be lodged against sentences of the Supreme Court. The law does offer an opportunity to appeal against sentences of the Supreme Court under the supervisory procedure, but the convicted person V.A. Russkin and his defence lawyer E.S. Chizhevskaya did not lodge such an appeal. During the preliminary criminal investigation the lawyer I.A. Pankov defended the accused V.A. Russkin. The rights of suspects and accused persons under article 41, part 2, paragraphs 1 to 18, and article 43, part 2, paragraphs 1-28 of the Code of Criminal Procedure, including the right to a defence, the right to lodge challenges and petitions and the right to lodge complaints against the actions and decisions of the authorities leading the criminal proceedings, were explained to V.A. Russkin, as his signing of the relevant records attests. He made statements acknowledging his guilt from the outset of the initial questioning and throughout the preliminary investigation. The accused was questioned during working hours only in the presence of a lawyer and for no longer than the standard period established under criminal procedure law. V.A. Russkin was in a remand centre of the Belarus State Security Committee (KGB) from 6 January to 20 September 2007. Russkin bore no signs of bodily harm when he entered the centre. After completing the registration forms, Russkin was placed in a four-person cell measuring 10.5 square metres (article 13 of the Detention Procedures and Conditions Act sets the minimum prison cell living space at 2.5 square metres per person). KGB detention centres have no cells measuring 2 square metres. Russkin's cell had individual sleeping quarters, bedding and tableware. The cell was equipped with sanitary facilities, to which access was not restricted. Russkin was served three meals a day and given the opportunity for walks in the prison yard and eight hours of sleep. He was allowed to receive and send an unlimited number of letters and telegrams. The prisoner did not receive any short-term visits, since none of his close relatives and family members submitted any applications in writing to the remand centre administration. No parcels of any kind were sent to Russkin. The doctor on duty found no signs of bodily harm to Russkin during examinations when he entered and left the remand centre. Throughout the entire investigation Russkin did not file any complaint against the actions of the investigators or administration of the centre. Nor did Russkin register any complaint about the prison conditions with the procurator during his monthly inspections. As the record shows, the accused V.A. Russkin and his lawyer I.A. Pankov familiarized themselves with the facts of the case from 27 to 30 July 2007 by personally reading and reviewing the material evidence. V.A. Russkin and his lawyer did not register any petition after familiarizing themselves with the facts of the case. A qualified lawyer, E.S. Chizhevskaya, was assigned to defend the accused

V.A. Russkin in court and familiarized herself with the facts of the case in good time. The criminal proceedings against V.A. Russkin and other persons took place in strict accordance with the requirements of chapters 34 to 38 of the Code of Criminal Procedure, which set out the conditions and procedures for conducting court proceedings. In the preparatory part of the court proceedings the accused V.A. Russkin had his rights under article 43 of the Code of Criminal Procedure explained to him. V.A. Russkin did not object to E.S. Chizhevskaya's participation in the trial as his defence lawyer and expressed his trust in her. During the court examination V.A. Russkin and the other accused were questioned about the charges against them. Moreover, witnesses were questioned and documents and material evidence were examined. The court examined the circumstances of the case in a comprehensive, full and objective manner. Furthermore, the accused V.A. Russkin did not submit any request for the questioning of additional witnesses and did not make any statement that improper methods were used against him during the pretrial investigation. The record of the trial kept by the court reporter covers the entire court proceedings. The participants in the proceedings did not make any remarks on the record of the trial. On 26 September 2007 V.A. Russkin was transferred from the remand centre to serve his sentence in penal colony No. 10 in Navapolatsk in Vitsebsk province. The prisoner arrived in the colony on 27 September 2007. The number of persons held in the section where the convict V.A. Russkin is living may not exceed 18. Today, 16 convicts aside from V.A. Russkin are living in this section. The convicts take baths once a week. There was no interruption in the supply of hot water in penal colony No. 10 between 2007 and 2008. A qualified nutritionist ensures that the meals of the prisoners are balanced. The relevant authorities have received no complaints or claims from the prisoners about the quality or shortage of food. No prisoners were found to be detained beyond the sentences handed down to them by the courts during the monitoring of the conditions of detention. The reports of the violation of V.A. Russkin's right to a defence, the falsification of the record of the court proceedings, the biased consideration of the petitions of the accused and the criminal case and the use of improper methods of investigation during the pretrial proceedings are groundless.

50. On 10 June 2008, the Government replied to the urgent appeal of 23 January 2008, stating that criminal proceedings against Mr. A.M. Sdvizhkov were instituted on 22 February 2006 by the investigative department of the Committee for State Security following the publication in the 17 February 2006 issue of the newspaper Zhoda of caricatures offending the sensibilities of believers in the religion of Islam. The investigation was conducted by the Office of the Procurator-General of Belarus. Mr. Sdvizhkov was indicted on 31 March 2006 and, as a preventive measure, he was required to sign an undertaking not to leave the area. However, he violated this undertaking and went into hiding, and on 21 April 2006 the preventive measure was changed to remand in custody and a search was declared. On 18 November 2007, Mr. Sdvizhkov was arrested by militia officers involved in the search. During the investigation it was established that, in February 2006, Mr. Sdvizhkov, an official (publishing editor of the newspaper Zhoda), personally searched the Internet for caricatures of the Prophet Muhammad that defiled the symbols of the Islamic faith, and published them in the issue of the newspaper that came out on 17 February 2006 as material illustrating an article on the subject of the "caricature scandal". For the aforementioned acts, on 29 November 2007 Mr. Sdvizhkov was indicted for the offence covered under article 130, paragraph 2, of the Belarusian Criminal Code, namely the commission by an official, using his or her official powers, of deliberate acts intended to incite religious enmity and discord. On 10 December 2007, the case was referred to the court for consideration. The circumstances mentioned in the indictment were fully confirmed in the course of the

proceedings and were not denied by the defendant. Having considered the evidence, including the testimony of the mufti of the Muslim Religious Association and the mufti of the Clerical Department of Muslims in Belarus, and the conclusions of an expert theological study, the court came to the well-founded conclusion that the publication in the media of caricatures defiling the religious symbols of Islam damaged the foundations of the religious outlook of persons of the Muslim faith, and incites religious animosity among representatives of diverse religious denominations, creating conditions for the stirring up of religious intolerance and discord - which was acknowledged by the defendant. On 18 January 2008, pursuant to article 130, paragraph 2, of the Criminal Code, the Minsk city court sentenced Mr. Sdvizhkov to three years' deprivation of liberty in a high-security correctional colony. This punishment is the minimum punishment for an offence that is classified in Belarusian law as a serious offence. The sentence was appealed by the defendant and did not enter into force. On 22 February 2008, the cassation division of the Supreme Court of Belarus amended the sentence that the criminal division of the Minsk city court issued on 18 January 2008 with respect to Mr. Sdvizhkov. Bearing in mind that Mr. Sdvizhkov suffers from a number of chronic illnesses, that he has an elderly mother and that his actions did not have serious consequences, the cassation division came to the conclusion that the sum total of the aforementioned circumstances substantially reduce the degree of social danger of the act, recognized them as exceptional and applied article 70 of the Belarusian Criminal Code, in accordance with which it substituted the punishment imposed on Mr. Sdvizhkov pursuant to article 130, paragraph 2, of the Criminal Code (deprivation of liberty for three years) with arrest for a period of three months. Since Mr. Sdvizhkov has served this sentence, he was released from custody. The conviction relating to Mr. Sdvizhkov's admission that he was guilty of deliberate acts intended to incite religious enmity and discord, committed by an official with the use of official powers, and also relating to his conviction under article 130, paragraph 2, of the Criminal Code, was upheld. Mr. Sdvizhkov was prosecuted and sentenced for committing an offence, in strict accordance with the criminal and criminal procedural legislation currently in force in Belarus; such legislation is in no way contrary to international norms and standards for the protection of the rights and freedoms of citizens, including the right to freedom of opinion and its expression, as contained in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. In its sentence, the court noted that the publication of caricatures has nothing in common with freedom of speech but constitutes the dissemination of insults and provokes retaliatory acts on the part of the Muslim community, including the need to defend religious symbols.

51. On 18 August 2008, the Government replies to the urgent appeal of 22 July 2008, stating that on the basis of a judgement by a judge of the Pervomaisky district court in Vitebsk, of 26 May 2008, Mr. P.I. Levinov was sentenced to 10 days' administrative detention and a fine of 700,000 roubles for offences under articles 17.1 and 23.4 of the Code of Administrative Offences of the Republic of Belarus, namely petty hooliganism and refusing to follow lawful instructions from an official. On 27 March 2008 at 3.55 p.m., on the 4th floor landing of 28-3 Chkalov Street in Vitebsk, Mr. Levinov committed petty hooliganism: in the presence of militia officers, he provoked a conflict, insulted a militia officer on duty and ignored the resulting requests and admonitions addressed to him, thereby breaching public order and disturbing the peace. In response to militia officers' lawful demand that he accompany them in their official car, Mr. Levinov grabbed hold of the banister on the landing and refused to go to the militia station voluntarily, which constituted refusal to follow lawful instructions or demands from an official on duty. Having been convicted of administrative offences, Mr. Levinov lodged a complaint with

the prosecutor's office for Vitebsk province regarding the actions and rulings of the judge and violations of procedural legislation, which, he claimed, had prevented him from appealing the judgement of conviction. Under article 7.2 of the Code of Administrative Procedure and Enforcement of the Republic of Belarus, complaints concerning the actions and rulings of a judge may be made to the president of the court. Examining such complaints does not fall within the purview of the prosecutor's office. Furthermore, in accordance with the Act of the Republic of Belarus on Stamp Duty, when complaints are submitted to the prosecuting authorities regarding judgements by judges in administrative offence cases, the stamp duty must first have been paid. Taking into account the above, and the fact that no stamp duty was paid in respect of Mr. Levinov's complaint regarding violations of procedural legislation, which was essentially a complaint about the court's verdict that he had committed administrative offences, there were no grounds for the prosecutor's office for Vitebsk province to examine the complaint's substance. As a result, the prosecutor's office for the province legitimately refused to examine the substance of Mr. Levinov's complaint, clarifying to the complainant the legally established procedure for submitting to the prosecuting authorities complaints in respect of judgements by judges in administrative offence cases. Concerning the search conducted at the apartment of Mr. L.V. Svetik, the Special Rapporteurs wished to state the following: at present, the Vitebsk provincial department of the Committee for State Security of the Republic of Belarus is investigating a criminal case under article 130, section 1, of the Criminal Code of the Republic of Belarus (Incitement of racial, ethnic or religious enmity or discord), brought in connection with the distribution around Vitebsk by persons unknown of leaflets containing calls to incite enmity between ethnic groups and intended to tarnish the ethnic honour and dignity of persons of Jewish descent. In the course of this investigation, on 23 May 2008, on the basis of a decision approved by the deputy prosecutor for the province, as the competent authority, that a search should be carried out, a search was undertaken in the presence of witnesses at Mr. Svetik's residence, as a result of which a laptop computer, printer, scanner and some compact discs were confiscated for further investigation. The search of Mr. Svetik's residence and the confiscation of office equipment took place not on account of his human rights activities but because certain materials in the criminal case gave grounds for suspecting him of committing an offence under article 130, section 1, of the Criminal Code. Mr. Svetik was declared a suspect, and, in accordance with the requirements of criminal procedure legislation, he was questioned as a suspect in the presence of a lawyer. The preliminary investigation in this case is continuing. With regard to the investigation carried out in relation to Mr. V.P. Borshchevsky, the Special Rapporteurs wished to state the following: the prosecutor's office for the city of Minsk is examining a criminal case brought against a group of individuals for committing offences under article 367, section 1, of the Criminal Code (Defamation against the President of the Republic of Belarus). During the investigation into this case, the need arose to conduct a search of Mr. Borshchevsky's apartment in Vitebsk. Accordingly, on 27 March 2008 a search was carried out at Mr. Borshchevsky's residence, on the basis of a decision approved by the deputy prosecutor for the city of Minsk that a search should be undertaken by officials of the Vitebsk provincial department of the Committee for State Security in compliance with the requirements of criminal procedure legislation. During the search, office equipment - a computer, printer, scanner, cassettes, discs and printing materials - was seized. Following examination by the prosecutor's office for Vitebsk province of the complaint submitted on 31 March 2008 by Mr. V.P. Borshchevsky and Ms. E.N. Borshchevskaya regarding possible violations of criminal procedure legislation by officials of the Vitebsk provincial department of the Committee for State Security during the search, the complainants' allegations were not upheld. The items seized

during the search were examined in the established manner, after which the prosecutor's office for the city of Minsk ruled that they should be returned to their owners. In the course of the investigation into this case, Mr. Borshchevsky was not detained. The preliminary investigation in this case has been suspended.

### **Special Rapporteur's comments and observations**

52. The Special Rapporteur wishes to thank the Government of Belarus for their replies of 24 February, 10 June and 18 August 2008.

53. At the time this report was finalized, the Special Rapporteur was not in a position to reflect the content of the reply from the Government of Belarus dated 9 January 2009 as he had not received the translation of its content from the relevant services.

## **Brazil**

### **Communication sent**

54. On 31 July 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 the Special Rapporteur on the situation of human rights defenders, regarding the case of Mr Roberto de Oliveira Monte, founder of the National Movement for Human Rights, former General Coordinator of the State Program for Education in Human Rights, long-term employee of the Commission of Pontifical Justice and Peace in the arch-diocese of Natal, and member of the National Committee of Human Rights, the Centre of Human Rights and Popular Memory, and the State Council of Human Rights. He was also central to the creation of DHNet, a website which provides information on the issue of human rights. According to information received, in late October 2005, an accusation was made to the Military Court by the Military Public Prosecutor against Mr Roberto de Oliveira Monte. The accusation came after Mr Roberto de Oliveira Monte gave a lecture entitled "Human Rights - Thing of the Police" at an event organized by the Association of Soldiers of the Brazilian Army. In his lecture Mr Roberto de Oliveira Monte promoted respect for the rule of law within the armed forces, defended the creation of human rights commissions for the armed forces, and objected to the ban on unionization for soldiers. He also raised registered cases of internal human rights abuses in the army whereby members of the military were allegedly deprived of sleep, forced to drink chicken's blood, and made remain on their knees in ant colonies. On 24 January 2008, the Military Public Prosecutor, who had objected to what he considered inappropriate comparisons between current and former army officials by Mr Roberto de Oliveira in the lecture, filed a complaint against Mr Roberto de Oliveira Monte for incitement to disobedience and offense to the Armed Forces under Articles 155 and 219 of the Military Penal Code. These charges carry possible prison sentences of four years and one year respectively. On 23 July 2008, Mr Roberto de Oliveira Monte was scheduled for interrogation at the Special Council of the Army's Court. This interrogation did not take place, reportedly because there were not enough colonels available to represent the Council. No new date for the interrogation has been given. Mr Roberto de Oliveira Monte was the only civilian out of a total of 14 defendants in the process Number 20/08-0, in the 7th Division of the Military Court, established in relation with the declarations realized during the Congress of Military Law. In addition to Mr Roberto de Oliveira Monte, the colonel of the Military Police of Alagoas Joilson Gouveia was charged as well as the

Army Sergeants Anderson Rogério dos Santos, Lindomar de Oliveira, Dalton Simão, Sílvio Pekanoski, Francisco Ribeiro, Francisco Lima, Antônio Lima, Lasser Saleh, Alberto dos Santos, Francisco Bezerra, Marcos França and Edvaldo da Silva. Concern was expressed that the charges brought against Mr Roberto de Oliveira Monte may be related to his legitimate activities in the defense of human rights, in particular his activities to promote human rights within the armed forces.

### **Communication received**

None

### **Special Rapporteur's comments and observations**

55. The Special Rapporteur is concerned at the absence of an official reply to his communication of 31 July 2008 and urges the Government of Brazil to provide at the earliest possible date, a detailed substantive answer to the above allegations.

## **Bulgaria**

### **Communication sent**

56. On 24 April 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the question of torture and the Vice-Chairperson of the Working Group on Arbitrary Detention, regarding the case of Said Kadzoev, aged 29, Russian national of Chechen origin. According to the information received, Said Kadzoev arrived in Bulgaria in October 2006 to ask for asylum. However, he was stopped at the Bulgarian border because he only had Chechen identity papers and no internationally-recognized Russian documentation. The Bulgarian border guards detained Said Kadzoev and issued an order of deportation. Since 1 November 2006 he has been held in the Special Centre for the Temporary Accommodation of Foreigners (SCTAF) in the village of Busmantsi, near Sofia. He was in solitary confinement from 28 May 2007 until 2 April 2008 and repeatedly subjected to beatings by the staff of SCTAF. During this period, Said Kadzoev developed gallstones, a painful medical condition. The doctor who saw him indicated that he needed an operation to remove the gallstones. However, he was only given painkillers. Mr Kadzoev's asylum application was registered on 31 May 2007 by the Bulgarian State Agency of Refugees and was rejected on 4 June 2007. The Sofia Court rejected his appeal in October 2007. A complaint was filed with the European Court of Human Rights in December 2007. The deportation order against him was confirmed by the Yambol Regional Court on 15 March 2007 and on 17 April 2008, the Supreme Administrative Court upheld this decision. His lawyers did not have access to the documents filed on him by the Bulgarian authorities. Said Kadzoev alleged that he was previously detained and tortured by Russian police. According to his testimony, in October 2002, he was detained for five months by the Federal Security Bureau in Moscow, where he was tortured in order to force him to "confess" participating in a terrorist attack on a Russian military air base, which he denied. During those months, Said Kadzoev was held incommunicado and officially reported as having "disappeared". Furthermore, after a conflict with the Chechen local authorities, his house was burned down in August 2006. Concern was expressed for the physical and mental integrity of Said Kadzoev, should he been forcibly returned to the Russian Federation.

### Communication received

57. Le 15 mai 2008, le Gouvernement de la Bulgarie a répondu<sup>2</sup> à l'appel urgent du 24 avril 2008, indiquant que tous les droits de procédure de M. Said Kadzoev ont été garantis conformément aux standards internationaux applicables ; les autorités compétentes bulgares sont en train d'enquêter sur les faits relatifs à ce cas précis, y compris sur les allégations de M. Kadzoev d'avoir été victime de violation et de ne pas avoir pu bénéficier d'une aide médicale. La Bulgarie informera ultérieurement des résultats de l'enquête. Les ONG concernées bulgares ont été mises au courant du cas de M. Said Kadzoev; en 2007 M. Kadzoev a soumis une plainte à la Commission pour la protection contre la discrimination contenant des allégations que le Chef du *Centre spécial d'accommodation temporaire des étrangers* - Bousmantzi a violé les dispositions de la Loi sur la protection contre la discrimination de la République de Bulgarie. Après avoir examiné attentivement tous les faits liés à ce cas, la Commission n'a pas donné suite à la plainte puisqu'elle n'a pas établi l'existence de discrimination sur la base de la nationalité (décision du 22 avril 2008).

### Special Rapporteur's comments and observations

58. The Special Rapporteur wishes to thank the Government of Bulgaria for its reply of 15 May 2008. He is looking forward to receiving more detailed information on possible violations of human rights of Mr. Said Kadzoev, as stated in the Government's letter.

## Cameroon

### Communications envoyées

59. Le 29 août 2007, le Rapporteur spécial a envoyé au Gouvernement du Cameroun, conjointement avec le Rapporteur spécial sur la situation des défenseurs 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<sup>3</sup> 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

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<sup>2</sup> The Government of Bulgaria replied to the communication of 24 April 2008 in French, which is retained in this report for the sake of clarity.

<sup>3</sup> This communication has already been included in the Communications Report of 28 May 2008, A/HRC/8/4/Add.1. The Special Rapporteur has included it again in order to facilitate the reader's comprehension of the Government's reply.

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.

60. Le 28 avril 2008, le Rapporteur spécial a envoyé au Gouvernement du Cameroun, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, un appel urgent concernant la situation de M. Abdoulaye Math, président du Mouvement pour la Défense des Droits de l'Homme et des Libertés (MDDHL) et chef de file de l'Observatoire régional des droits de l'Homme du Grand nord. Selon les informations reçues, dans l'après-midi du 28 mars 2008, M. Koué Kaokamla, Procureur de la République auprès des Tribunaux de première et grande instance de Maroua, aurait appelé M. Abdoulaye Math et aurait déclaré : "je suis au courant de ce qui s'est passé. Toi et moi jusqu'à la mort, tu es mon ennemi juré!", sans préciser ce qu'il reprochait exactement à M. Math. Le 29 mars 2008, M. Abdoulaye Math aurait dénoncé ces agissements dans une lettre adressée au Procureur de la République. Il aurait également saisi le Président de la Cour d'appel de Maroua, qui se serait engagé à intervenir auprès du Procureur de la République afin d'éclaircir la situation. Le 3 avril 2008, M. Math se serait vu refuser l'accès à la prison de Maroua alors qu'il devait rencontrer des clients pour lesquels il avait été commis d'office par la Cour d'appel. Les gardiens de la prison auraient justifié ce refus sur la base d'une lettre du Procureur de la République auprès des Tribunaux de première et grande instance de Maroua qui lui interdirait tout contact avec les détenus. Le 8 avril 2008, M. Math aurait rencontré le Président de la Cour d'appel afin de lui demander de lui permettre de reprendre ses visites dans les prisons. Une réponse du Président était attendue à ce moment. Des craintes furent exprimées quant au fait que les actes d'intimidation contre M. Math et les entraves à son travail furent liés à ses activités non-violentes de défense des droits de l'homme.

61. Le 20 octobre 2008, le Rapporteur spécial a envoyé au Gouvernement du Cameroun, conjointement avec le Rapporteur spécial sur Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, un appel urgent concernant la situation de M. Ngalle Moussombo, conseiller municipal à la Mairie de Njombé-Penja et de Maître Jean René Manfo Songong, avocat au Barreau du Cameroun et responsable de la cellule juridique de l'organisation non gouvernementale l'Action des Chrétiens pour l'Abolition de la Torture (ACAT) Littoral. Selon les informations reçues, le 8 octobre 2008, M. Ngalle Moussombo aurait été détenu sans mandat judiciaire, lors de la cérémonie de passation de commandement entre les sous-préfets entrant et sortant de la localité de Penja. Postérieurement il aurait été transféré dans les locaux du groupement de gendarmerie de Nkongsamba. M. Ngalle Moussombo n'aurait pas eu accès à son avocat, Me Jean René Manfo Songong. Il n'aurait pas non plus eu la possibilité qu'un juge se prononce sur la légalité de sa détention. D'après les informations reçues, le Commandant de police M. Amougou aurait reçu l'ordre d'arrêter Me Manfo Songong du fait de son opposition à l'arrestation arbitraire de son client. En outre, Me Jean René Manfo Songong aurait fait l'objet de menaces téléphoniques anonymes en relation avec sa participation en tant que conseiller juridique dans les procès de Paul Eric Kingue, ancien Maire de Njombé-Penja contre le Ministère Public, concernant les émeutes de fin février 2008. D'après les informations reçues, durant ces émeutes de nombreuses personnes auraient été détenues et accusées sans preuves à l'appui d'incitation à la révolte et vandalisme. Certains responsables politiques souhaitant accéder à certains postes auraient saisi

l'occasion pour dénoncer leur supérieur. Ce serait le cas du Maire de la localité de Penja. Depuis son arrestation, les membres du conseil municipal se déchireraient entre collaborateurs et opposants au Maire.

### **Communications reçues**

62. Le 18 décembre 2007, le Gouvernement camerounais a répondu à l'appel urgent du 29 août 2007, au sujet de la destitution du Chef traditionnel des Mbororos. Le Gouvernement a indiqué que la réponse sera communiquée dans les meilleurs délais. La Mission Permanente du Cameroun porta également à la connaissance des Rapporteurs spéciaux que le Premier Ministre, Chef du Gouvernement vient de mettre sur pied en date du 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 communiquées aux trois mandataires dans la réponse qui leur sera transmise.

63. Le 13 août 2008, le Gouvernement camerounais a répondu à l'appel urgent du 29 août 2007, indiquant que le processus de désignation des chefs traditionnels du Cameroun est régi par le Décret N° 77/245 du 15 juillet 1977. Aux termes de celui-ci, en cas de vacance d'une chefferie, l'autorité administrative (Préfet ou sous-préfet) procède, au cours d'une réunion et sans délais, aux consultations en vue de la désignation d'un nouveau chef. Les notabilités coutumières sont obligatoirement consultées. Le déroulement des consultations est consigné dans un procès verbal signé du président de la réunion. Le dossier du candidat issu des consultations est transmis par voie hiérarchique pour leur nomination par le Premier Ministre (chefs de premier degré), le Ministre de l'Administration Territoriale (chefs de 2e degré) ou le préfet (chef de 3e degré). «Les chefs traditionnels sont, en principe, choisis au sein des familles appelées à exercer coutumièrement le commandement traditionnel. Les candidats doivent remplir les conditions d'aptitudes physiques et morales requises, et savoir autant que possible, lire et écrire» (Chapitre II, Article 8). Dans la pratique, l'autorité administrative tient compte du mode de succession traditionnelle en vigueur dans la chefferie. La dévolution du pouvoir traditionnel est mystico-religieuse. Le chef est avant tout celui qui préside aux cultes. D'où sa position à vie au trône. La désignation du chef n'est pas donc démocratique mais obéit à un système de valeurs qui tient compte des lignages spécifiques. Conformément à la tradition et au testament du 4e Ardo (le chef traditionnel chez les Mbororos du Nord-Ouest), Mamuda Sagba, dernier des 5 enfants du fondateur de la dynastie Sagba, devrait à la mort de son frère, prendre la tête de l'Ardorat. C'est après son décès que la génération suivante, dont son neveu Adamu K. Buba est l'ainé, pourrait, toujours selon l'ordre de naissance, prétendre à tour de rôle au trône. Le 13 juin 2007, Ahmadou Sagba, cinquième chef de l'Ardorat de Sagba décède. Il est inhumé le lendemain en présence du Préfet de la Mezam. Le 15 juin 2007, deux jours plus tard, un groupe de 14 personnes, non reconnu par l'administration camerounaise, et s'auto-proclamant «King-makers », dépose auprès du Préfet de la Mezam un dossier désignant Adamu Kawuyel Buba, neveu du chef défunt, comme nouveau chef de l'Ardorat de Sagba. Le non respect de la procédure réglementaire et de la tradition de succession, l'opposition d'une partie de la population Mbororo, la condamnation pour vol de bétail pesant sur Adamu K. Buba et un certain nombre des «king-makers» ont conduit le préfet de la Mezam à déclarer la nullité de cette désignation et ouvrir la vacance de la chefferie. Un délai de 8 jours a été accordé aux éventuels prétendants pour déposer leur dossier de candidature. Le 20 août 2007, conformément aux dispositions réglementaires, l'autorité administrative a présidé les consultations des notabilités

coutumières en vue de la désignation du nouveau chef. Le seul dossier reçu était celui de Mamuda Sagba. A l'issue des consultations, celui-ci a été désigné chef de l'Ardorat de Sagba. La tradition de succession de frère en frère en vigueur, le testament daté de 1998 du Lamido Adamu Sagba qui prime sur celui présenté par Adamu K. Buba et datant de 1989, les témoignages de nombreuses notabilités du village et surtout du Fon de Kedjom Ketinguh confirmant à la fois la validité du testament et le mode de succession chez les Sagba, la tradition locale selon laquelle un oncle ne peut faire allégeance à son neveu expliquent entre autres cette désignation. M. Buba, le chef déchu, explique sa tentative de prise de pouvoir par les griefs qu'il avait contre son oncle, Mamuda Sagba. Il lui reproche notamment sa proximité avec M. Danpoulo, personnage riche et influent de la région et propriétaire de l'Elba Ranch ; son éloignement momentané de son village; les origines d'esclave de sa mère. Il a affirmé à la Commission d'enquête interministérielle ordonnée par le Premier Ministre pour faire la lumière sur cette crise, que ses partisans et lui ont refusé Mamuda Sagba « parce qu'il n'est pas aimé, il est pauvre, sans domicile à Sagba et manipulable. » A l'annonce de la désignation de son oncle comme chef, Adamu K. Buba a, avec ses partisans, exprimé leur opposition, notamment par la pose de barricades sur la voie publique, des incitations à la révolte, des manifestations illégales sur la voie publique, perturbant ainsi l'ordre public et portant atteinte aux droits et libertés des populations concernées. Ces infractions sont réprimées par les articles 219, 230(1), 231 et 157(1) du Code pénal camerounais. En application des dispositions des lois du 19 décembre 1990 portant régimes des réunions et des manifestations publiques et relatives au maintien de l'ordre public, le Préfet a décidé de l'intervention des forces de maintien de l'ordre pour rétablir le calme dans cette région. Il n'a pas été fait usage d'armes à feu ni de violence. Aucune atteinte à l'intégrité physique des populations de ce village n'a été déplorée du fait des Forces de l'ordre. Convoqués au Bureau de liaison de la Direction Générale de la Recherche Extérieures (DGRE), pour répondre des infractions sus cités, les manifestants ont, à leur présentation dans ces Services, préféré l'organisation d'un sit-in d'une dizaine de jours à l'Ambassade des Etats-Unis à Yaoundé, d'où ils escomptaient une meilleure audience internationale. La crise de succession à la tête du Lamida de Sagba n'est en réalité qu'une tentative de coup de force organisée par Adamu Kawuyel Buba et ses partisans en vue d'accéder illégalement à la tête de la chefferie traditionnelle. Elle a été instrumentalisée par des hommes politiques et des Associations telles le MBOSCUA, le SADM (Sagba Development Meeting) et UNOWHURO (Union of Meeting of North West Human Rights Organisations) dans le but d'une part de se constituer un fief politique parmi les Mbororos, et d'autre part de bénéficier de subventions internationales. Le décret sus évoqué portant organisation de la chefferie traditionnelle prévoit un certain nombre d'avantages, notamment monétaire, attachés à la fonction de chef traditionnel. Il convient de rappeler les Mbororos au Cameroun se retrouvent principalement dans les Provinces du Nord, du Nord-Ouest, de l'Adamoua et de l'Est. La destitution de Adamu K. Buba ne concerne que les Mbororos de l'Ardorat de Sagba, l'une des plus petites chefferies de l'arrondissement. De plus, les autres chefs des communautés Mbororos, se sont désolidarisés de la tentative de prise de pouvoir par la force et ont réaffirmé leur soutien à l'administration camerounaise lors d'une audience que leur a accordé en novembre 2007 le Ministre d'Etat, Ministre de l'Administration Territoriale et de la Décentralisation. Aussi, assimiler la crise de succession à la tête de l'Ardorat de Sagba à la destitution du Chef traditionnel de tous les Mbororos, est au sens du Gouvernement du Cameroun, une généralisation abusive, qui ne rend pas la réalité exacte de la situation des Mbororos au Cameroun et des efforts fournis par le Gouvernement en vue de la protection de leurs droits.

64. Par une demande datée du 10 octobre 1985, El Hadj Baba Ahmadou Danpoulo, a sollicité l'obtention d'un titre foncier sur une parcelle du domaine national à Ndawara, Arrondissement de Fundong, Province du Nord-Ouest du Cameroun, en vue de créer un ranch. A la suite de l'Arrêté préfectorial N° S1/86 du 7 mars 1986, la Commission Consultative de Fundong a effectué une visite sur le terrain le 20 mars 1986 aux fins de bornage de ladite parcelle. Cette opération s'est heurtée à l'opposition de 44 personnes dont celle de MM. Ardo Hassan Yakubo et Acaji Saidou, qui avaient déposé auprès de la Commission une requête écrite. A la suite d'un accord, M. Danpoulo s'est engagé à indemniser toutes celles des personnes qui avaient des mises en valeurs sur l'espace que devait occuper son ranch. Une réunion s'est ensuite tenue entre les autorités administratives, municipales, traditionnelles et les populations de la localité. Celles-ci ont autorisé et encouragé la création de l'Elba Ranch sur une superficie de 7400 ha 53a. La Commission a donc décidé d'attribuer par voie d'immatriculation directe une superficie de 4726 ha (titre foncier n° 140 du 1er décembre 1989) et une concession provisoire de 1335 ha (décret présidentiel n° 89/351 du 2 mars 1989) ; M. Danpoulo, Mbororo lui-même, ayant hérité de son père une partie de cette parcelle. La superficie de ce ranch n'a pas connu d'extension au-delà des limites légales sus-évoquées. A ce jour, aucune réclamation d'indemnisation ou revendication domaniale sur les terres de l'Elba Ranch n'a été enregistrée auprès des autorités camerounaises. Par ailleurs, une étude du mode de vie des Mbororos révèle que ceux-ci sont des populations nomades qui malgré les efforts du Gouvernement de les sédentariser dans les chefferies se déplacent sur le territoire camerounais et des pays voisins à la recherche de pâturages. Sociologiquement, ils ne possèdent pas de sentiment de propriété foncière sur les pâturages ou autres terres qu'ils ont momentanément occupés et n'en détiennent pas la propriété juridique et légale en dehors des chefferies sur lesquelles l'Etat les a installés. Aussi, le Gouvernement du Cameroun récuse-t-il toute allégation de dépossession de Mbororos de leurs terres traditionnelles de pâturages et de violation de leurs droits au logement, à l'accès à l'eau et à la nourriture. En ce qui concerne les exactions qu'aurait commises M. Danpoulo et le personnel de son ranch, à l'encontre des Mbororos, il importe de souligner que les populations Mbororos riveraines dudit ranch, se sont à plusieurs reprises rendues coupables de vol de bétail. Arrêtés en flagrant délit par le personnel du ranch, des plaintes ont été régulièrement portées contre les coupables, qui généralement font l'objet de jugement devant les tribunaux de la République, dans le strict respect des lois et procédure de l'Etat du Cameroun. A cet égard, il ressort d'un jugement que 6 personnes, dont Adamu K. Buba ont été condamnées, le 4 juillet 2006 par le Tribunal de Grande instance de Bamenda (province du Nord-Ouest) à 5 ans d'emprisonnement et à payer au plaignant la somme de 10 420 000 FCFA (environ 5 210 USD) pour le vol de 22 bœufs. Ce jugement, ainsi que les nombreuses plaintes déposées par M. Danpoulo sont une preuve de la non-existence d'un tribunal et d'une prison privés dans l'«Elba Ranch». Les tribunaux traditionnels (tribunaux coutumiers) sont reconnus par la loi, en vertu de la loi N° 2006/015 du 29 décembre 2006 portant organisation judiciaire. L'Alkali Court de Ndawara, localité voisine du village de Sagba, n'est pas situé au sein de l'Elba Ranch. Elle n'a pas été établie par M. Danpoulo. Seule la loi peut créer une Alkali Court ou tout autre tribunal traditionnel. Le jugement sus évoqué montre que l'Affaire du vol de bétail à l'Elba Ranch a d'abord été examinée par l'Alkali Court de Ndawara avant d'être portée devant le tribunal de Grande instance de Bamenda. Il convient également de rappeler qu'au Cameroun, les prisons sont des lieux de détention publics sous l'autorité de l'administration pénitentiaire, rattachée au Ministère de la Justice. Il n'existe donc aucune prison privée au Cameroun. Les chefs traditionnels, sous l'autorité desquels sont placés les tribunaux traditionnels créés par la loi ne sont pas habilités à punir «leurs sujets». L'article 29 du décret de 1977 régissant les chefferies

traditionnelles au Cameroun interdit implicitement entre autres «les exactions des chefs à l'égard des populations», qui constituent d'ailleurs une cause de révocation. Le Gouvernement du Cameroun, informé des exactions commises par les Chefs traditionnels prend régulièrement et immédiatement des mesures pour y mettre fin et punir les coupables. C'est ainsi que des poursuites judiciaires et des sanctions pénales sont très souvent prises à l'encontre des Chefs incriminés. En ce qui concerne la collusion entre les autorités camerounaises et les chefs traditionnels en vue de l'incarcération dans des prisons d'Etat de personnes «condamnées» par les tribunaux traditionnels, cette allégation est irréaliste et irréalisable au Cameroun. Une vérification des registres de la prison centrale de Bafoussam, indexée dans l'appel urgent, permettra de constater l'absence d'incarcération de Mbororos après jugement de l'Alkali Court de Ndawara ou de tout autre tribunal traditionnel. Cette même vérification peut être effectuée auprès des autres prisons du Cameroun. La Constitution du Cameroun protège les populations autochtones. Le Cameroun a signé la Déclaration des Nations Unies sur les droits des peuples autochtones. Toutefois, le Gouvernement du Cameroun tient à souligner que les Mbororos, arrivés au Cameroun vers 1905, ne sont pas reconnus par l'administration camerounaise comme des populations autochtones. Néanmoins, du fait des risques liés à leur environnement et à leur mode de vie, ils ont été classés dans la catégorie sociale de «population vulnérables». Dans ce cadre, ils appartiennent à la couche de population dites marginales qui crée un régime de protection d'exception et une protection accentuée de leurs droits. La crise de succession à l'Ardorat de Sagba a été gérée par les autorités locales puis nationales. Une commission d'enquête interministérielle s'est rendue, du 23 au 26 septembre 2007, sur les lieux pour évaluer la situation. Le calme règne dans cette partie du pays et le nouveau chef est accepté par les populations de Sagba.

### **Commentaires et observation du Rapporteur spécial**

65. Le Rapporteur spécial remercie le Gouvernement du Cameroun de sa réponse détaillée du 13 août 2008 concernant la situation de la communauté Mbororo.

66. Aucune réponse n'était reçue aux lettres envoyées par le Rapporteur spécial du 28 avril 2008 et 20 octobre 2008. Il invite le Gouvernement instamment à lui transmettre au plus tôt, et de préférence avant la fin de la douzième session du Conseil des droits de l'homme, des informations précises et détaillées en réponse à ces allégations et concernant la situation de M. Abdoulaya Math et de M. Ngalle Moussombo.

### **China (People's Republic of)**

#### **Communications sent**

67. On 22 January 2008, the Special Rapporteur sent a joint allegation letter,<sup>4</sup> together with the Special Representative of the Secretary-General on the situation of human rights defenders, regarding the case of Mr Li Jinsong and Mr Li Fangping. The aforementioned are lawyers of the

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<sup>4</sup> This communication has already been included in the Communications Report of 28 May 2008, A/HRC/8/4/Add.1. The Special Rapporteur has included it again in order to facilitate the reader's comprehension of the Government's reply.

detained pro-democracy campaigner and HIV-Aids activist Mr Hu Jia, who was already 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 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 was 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 was expressed for the physical and psychological integrity of Mr Hu Jia while in detention, as well as that of the members of his family.

68. On 14 April 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, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Representative of the Secretary-General on the situation of human rights defenders pursuant, regarding the case of Mr Hu Jia. Mr Hu Jia is a pro-democracy campaigner and HIV-AIDS activist. Mr Hu Jia was the subject of a joint urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture on 4 January 2008, following his detention on 27 December 2007. Mr Hu Jia was also subject of communications sent by mandate holders on 30 November 2007, 31 May 2007 and 2 June 2004. According to new information received, on 3 April, 2008, Mr Hu Jia was sentenced to three years and six months' imprisonment and one year of political rights deprivation for "inciting subversion of state power" by the Beijing Municipal No. 1 Intermediate People's Court. Mr Hu Jia was convicted on the basis of political articles he wrote for the internet, interviews he had given to the media, and his signing of the letter "The Real China Before the Olympics", which demands an end the pre-Olympics human rights abuses. Mr Hu Jia was officially charged on 30 January 2008 by the Beijing Municipal Peoples Procurate, and he stood trial on 18 March 2008. Reports indicated that his lawyers were given only 20 minutes to deliver a defense during the four-hour session and were prevented from responding or interjecting throughout the proceedings. International observers and diplomats were barred from the courtroom during the trial, as were Mr Hu Jia's father and wife. Some of Mr Hu Jia's friends and colleagues were detained and moved to locations outside Beijing, allegedly to prevent them from speaking to the media outside the courtroom. Reports indicated that the Beijing Public Security Bureau (PSB) has refused to supply Mr Hu Jia with necessary medication in detention and to deliver him the medication brought by his relatives to the detention centre. Mr Hu Jia suffers from a liver disease and must take daily medication. Concern was expressed that the alleged

verdict of Mr Hu Jia may be directly related to his human rights activities, particularly his exercising of the right to freedom of expression. Further concern was expressed for Mr Hu Jia's medical condition and psychological integrity while in detention.

69. On 23 April 2008, the Special Rapporteur sent a joint urgent appeal, 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, regarding the case of Mr. Hu Jia, a Beijing-based HIV/AIDS activist, co-founder and former director of the Beijing Aizhixing Institute for Health Education. Mr Hu Jia has been the subject of communications sent by several mandate holders following his detention on 27 December 2007 and his sentencing on 3 April 2008 to three years and six months' imprisonment and one year of deprivation of political rights for "inciting subversion of state power". According to new information received, Mr. Hu Jia has been prevented from submitting an appeal. According to the law, Mr Hu Jia had ten days to appeal the sentence from the day it was issued by the Beijing Municipal No. 1 Intermediate People's Court. However, Mr Hu Jia was denied legal representation in this period, preventing him from discussing the details of a possible appeal. Reports further indicate that Mr. Hu Jia has not been able to see his relatives since 3 April 2008, and that his health condition has been deteriorating. Concern was expressed that the denial of access to legal representation and the consequent absence of any opportunity for Mr Hu Jia to appeal the sentence might be related to his peaceful and legitimate activities in the defence of human rights and in disseminating information about HIV/AIDS. Further concern was expressed for the physical and psychological integrity of Mr Hu Jia while imprisoned.

70. On 24 April 2008, the Special Rapporteur sent a joint urgent appeal together with 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 the Special Representative of the Secretary-General on the situation of human rights defenders, regarding the case of Ms. Zheng Mingfang, a human rights defender and petitioner in Ji County, Tianjin. According to information received, on 29 February 2008, the Tianjin police arrested Ms. Zheng Mingfang at her home. She has been held incommunicado since the arrest. Her family has not received any formal detention order and their requests to contact and meet with her have been repeatedly denied by the police. In addition, she has not been allowed to meet with a lawyer. According to unofficial sources, Ms. Zheng Mingfang has been sentenced to two years of reeducation through labor (RTL) and was currently being held at the Xian district centre in Tianjin, east of Beijing. Ms. Zheng Mingfang's health had deteriorated and she was beginning to lose her sight. Ms. Zheng Mingfang's husband's mobile phone and computer equipment were confiscated after her arrest. On 4 April 2008, the Tianjin police warned Ms. Zheng Mingfang's family not to communicate with foreigners. The husband was told that, if he did not comply, Ms. Zheng Mingfang would not be released. Her sister was ordered to turn off her mobile phone and keep away from journalists. Shortly before her detention, Ms. Zheng Mingfang had campaigned and protested against the arrests of Ye Guozhu and Hu Jia. In particular, she had been collecting signatures to demand that authorities release Mr. Hu Jia. Concerns were expressed that the arrest and detention of Ms. Zheng Mingfang might be solely connected to her peaceful activities in defending human rights and the exercise of her right to freedom of opinion and expression. In view of the reported incommunicado detention of Ms. Zheng Mingfang at an unknown place of detention, further concerns were expressed that she might be at risk of ill-treatment. Further concern was expressed at the restrictions on the exercise of the right to freedom of expression imposed on the family of Ms. Zheng Mingfang.

71. On 25 June 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on the situation of human rights defenders, regarding the Law on Lawyers as amended on 28 October 2007 and the 1996 Ministry of Justice regulations on “Methods for the Management of Lawyers Professional Licenses”. In this connection, the Special Rapporteurs drew the Excellency’s Government attention to two substantive areas that give rise to concern: 1) the legal regime of re-registration of licenses of lawyers and its application; and 2) articles 37, 40 para. 7 and 49 paras. 7 and 8 of the amended Law on Lawyers.

72. Regarding the first area of concern, the Special Rapporteurs point out that Article 12 of the Ministry of Justice’s regulation of “Methods for the Management of Lawyers Professional Licenses” requires that lawyers’ licenses must be registered yearly. Pursuant to this provision, a lawyer’s application for renewal of his/her license must be submitted to the judicial bureaus by the law firm for which he works. This application must include information on the lawyer’s work during the past year, among other requirements. It is then the local judicial bureau which adopts an opinion on the subject matter before transmitting it to the relevant institution for registration. According to the information received, the respective judicial bureau has broad discretion in this regard. Provisions that allow for the denial of re-registration are contained in articles 9 para. 11 (using media and publicity or other means to carry out untrue or unsuitable publicity); 9 para. 23 (other acts for which a penalty is appropriate) and 10 para. 3 of these regulations (other illegal acts, that seriously damage the image of the legal profession). These provisions are overly broad and thus raise concerns as to legal certainty. In this context, the Special Rapporteurs had received information concerning Teng Biao and Jiang Tianyong, human rights lawyers. Both of them appear to have not been granted renewal of their licenses after declaring publicly their willingness to defend individuals of Tibetan origin charged to have been involved in the events of March 2008. While Mr. Teng Biao was reportedly informed that his application for re-registration was rejected at final stage, the application of Mr. Jiang Tianyong appears to be reconsidered by the judicial bureau in the following weeks. In this connection, the Special Rapporteurs drew to the Excellency’s attention the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crimes and the Treatment of Offenders held in Havana, Cuba, in 1990, and in particular to principles 16 a) and c), 18 and 23. Furthermore the Special Rapporteurs referred to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular articles 1, 2 and 9 para. 3 point c).

73. Regarding the second area of concern, the Special Rapporteurs, while having noted with satisfaction that the revised Law on Lawyers, adopted by the 10th Standing Committee of the National People’s Congress on 28 October 2007, reflected commendable progress made in relation to the issues of access to legal counsel (article 33), access to and photocopying of case files and documents (article 34), no progress has been made with respect to the establishment of a truly independent and self-regulatory body governing activities of lawyers. In this connection, the Special Rapporteurs referred the Excellency’s Government to principles 24 and 25 of the above mentioned Basic Principles on the Role of Lawyers relating to professional self-governing associations that are entrusted to ensure the lawyers’ independence.

74. Furthermore, the Special Rapporteurs refer to article 37 paras. 1 and 2 of the revised Law on Lawyers, which reads “[t]he personal rights of a lawyer in practicing law shall not be infringed upon. The representation or defense opinions presented in court by a lawyer shall not

be subject to legal prosecution, however, except speeches compromising the national security, maliciously defaming others or seriously disrupting the court order.” In addition, article 40 para. 7 of the Law prohibits to instigate a party to “settle disputes by illegal means disrupting public order or compromising public safety”. These provisions are to be read in conjunction with article 35 of the Criminal Procedure Law, which stipulates “[t]he responsibility of a defender shall be to present, according to the facts and law, materials and opinions proving the innocence of the criminal suspect or defendant, the pettiness of his crime and the need for a mitigated punishment or exemption from criminal responsibility, thus safeguarding the lawful rights and interests of the criminal suspect or the defendant.”; and with article 5 of the Standards of Ethics and Disciplines of Professional Lawyers issued by the All China Lawyers’ Association, which reads “[l]awyers shall abide to honesty, credibility, diligence and responsibility in fulfilling the requirement and responsibility of the profession for the defense of the legal interests of clients.’ In addition to that, article 24 of the Standards of Ethics requires that ‘lawyers shall fully exercise professional knowledge and skills, complete the entrusted tasks under legal parameters; and with commitment and responsibility, maximize protection of the legal interests of the clients.’

75. While article 37 of the Criminal Procedure Code defines the lawyers’ immunity in respect of submissions made before the court in general terms, the Special Rapporteurs were concerned at the overly broad formulation of “except speeches compromising the national security, maliciously defaming others”. He had the same concern as regards “to settle disputes by illegal means disrupting public order or compromising public safety”, as enshrined in article 40 para. 7. Given that lawyers have the above mentioned responsibilities related to the defense of their clients, the overly broad clauses contained in article 37 and 40 may deter lawyers from defending certain cases. In this context, it should also be noted that article 49 paras. 7 and 8 of the Law stipulates such behaviour may cause the withdrawal of a lawyer’s license and the criminal liability of a lawyer. In this context, the Special Rapporteurs referred to the Excellency’s Government to principle 18 and 20 of the above mentioned Basic Principles on the Role of Lawyers.

76. In summary, the Special Rapporteurs were concerned that many provisions of the Law on Lawyers, as entered into force on 1 June 2008, are not in accordance with international human rights standards. They therefore urged the executive and legislative branches of government in the China to consider and initiate amendments to the Law on Lawyers and related provisions of the Criminal Code and Criminal Procedure Code in order to prevent human rights violations.

77. On 20 October 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on the right to food, regarding threats against voluntary lawyers involved in a campaign initiated by Mr. Li Fangping, a human rights lawyer in Beijing. The campaign aims to bring about justice for the children victim of milk contamination following more than 50,000 cases of kidney infections reportedly caused by drinking milk mixed with melanin. At least 22 Chinese companies are allegedly responsible for the contamination. Communications regarding Mr. Li Fangping were sent by various mandate holders on 7 April 2006, 21 December 2006, 5 January 2007, 22 January 2008, and 15 July 2008. Responses from the Government were received on 14 June 2006, 14 February 2007, 3 September 2008 and 10 September 2008. According to information

received, as of 24 September more than 100 lawyers from 22 provinces had signed up to offer voluntary legal aid to the victims of contaminated milk powder products. On 28 September 2008, many of those lawyers had dropped out of the group because of pressure from officials. The lawyers were reportedly told that “they would face serious repercussions if they stayed involved” in the campaign. Concern was expressed that the threats against the voluntary lawyers involved in the campaign organized by Mr. Li Fangping might have been related to their legitimate activities to seek justice for the victims of contaminated milk. Serious concern was expressed for the physical and psychological integrity of the lawyers involved in this campaign. It was feared that, because of the pressure faced by the lawyers in question, they may no longer feel able to continue with their campaign. In addition, the Special Rapporteurs have been informed that some of the companies’ infant formula milk had been certified as an “inspection-exempt product” for three years by the General Administration for Quality Supervision, Inspection and Quarantine. It appeared that such certification means that the products are exempt from quality monitoring and inspection by public authorities.

78. On 7 November 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 the Special Rapporteur on the situation of human rights defenders, regarding the case of Cheng Hai and Li Subin, members of the Beijing Yitong Law Firm, and Tang Jitian, previous member of the Beijing Haodong Law Firm. According to the information received, Cheng Hai, Li Subin and Tang Jitian were among 35 lawyers who signed and published an appeal on the internet on 26 August 2008 calling for direct elections of the chairperson and the board of directors of the Beijing Lawyers Association, which operates under the control of the Bureau of Justice. Subsequently, the lawyers used text messages, letters and other means to disseminate their appeal to all Beijing lawyers and called upon them to demand their rights and actively participate in the upcoming elections for representatives to the Lawyers Association. The Association issued a reply to the appeal on its website on 5 September 2008. This appeal allegedly states that the use of text messages, the internet or other media to privately promote and disseminate the concept of direct elections and to express controversial opinions related to the Association is illegal. On 30 October 2008, officials of the Haidian District Bureau of Justice came to the Yitong Law Firm, which has dealt with several rights defense cases in the past. The officials took photographs and questioned members of the law firm about cases the firm has handled. Following this visit, the director of the law firm expressed concern as he felt strong pressure from the authorities to stop taking on such cases and employing individuals supporting the direct election of the Lawyers Association. In early September, Tang Jitian was asked by his superiors to leave his post in order not to put the future of the firm in peril. On 24 September 2008, Tang had filed a complaint with the Xicheng District Court against the Beijing Lawyers Association, stating that the written statement by the Association violated domestic law and international treaties signed by the Chinese Government. This complaint has allegedly not yet been registered. In mid-October, the Haodong Law Firm terminated Tang’s employment, reportedly under pressure of the authorities. Information has also been received that many lawyers who have signed the appeal were summoned by the district bureaus of justice to report on their motivation to participate in the appeal. Several directors of law firms were also informed by the bureaus of justice that in case the concerned lawyers refused to withdraw their signatures, their firms would risk difficulties in the annual licensing procedure.

79. On 24 November 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special

Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding information the Special Rapporteurs have received regarding the situation below. According to the allegations received, Mr. Wo Weihan might have been at imminent risk of execution. He was sentenced to death in May 2007 for spying following a closed trial in Beijing. His appeal was rejected on 29 February 2008. Mr. Weihan had been detained in Beijing on 19 January 2005, but was not formally arrested until 5 May. Mr. Weihan, who reportedly had not had any health problems prior to his detention, suffered a brain haemorrhage in a detention centre on 6 February 2005, following which he was allowed to recuperate at home for six weeks. In March 2005, he was taken to Beijing Municipal Bo Ren Hospital (a prison hospital) where he has been held since. Reports indicate that Mr. Weihan was held incommunicado during the first ten months of his detention and only then allowed regular meetings with his lawyers. It was further alleged that he confessed to the charges while in detention. Concern has been expressed that Wo Weihan may have confessed to the spying charges under torture, in the absence of a lawyer.

80. On 12 February 2009, 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 situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Mr. Gao Zhisheng, a human rights lawyer. Mr. Zhisheng was the subject of several communications sent on 28 September 2007, 1 December 2006, 30 November 2006, 21 December 2005 and 25 November 2005. According to the information received, Mr. Gao Zhisheng was taken away from his home in Shaanxi Province by more than 10 security agents on 4 February 2009. He had previously been taken into custody on or shortly after 19 January 2009 and held incommunicado at an unknown location. He was considered to be at high risk of torture and other ill-treatment in light of the harsh treatment he received while in detention in 2006 and 2007. His current whereabouts were unknown. Mr. Gao Zhisheng had been previously detained on 22 September 2007 and held incommunicado for six weeks. During this time, he was allegedly stripped and beaten by a group of police officers in civilian clothes. He was also beaten, given electric shocks to his genitals and had cigarettes held close to his eyes for several hours, leaving him partially blind for a number of days. During his detention in 2006, he was reportedly handcuffed and forced to sit in an iron chair or cross-legged for more than four days at a time, in addition to having bright lights shone in his eyes. In April 2007, Mr. Gao Zhisheng publicized the torture and ill-treatment he had suffered while in custody, which led to an escalation of harassment of his family.

81. On 12 February 2009, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, regarding the case of Liu Yao, lawyer in Shenzhen. According to the information received, in June 2008, Mr. Liu was sentenced to four years in prison by the Dongyuan County People's Court for "intentional destruction of properties". The Heyuan Municipal Intermediate Court in Guangdong revoked the judgment for unclear facts and insufficient evidence and referred it back to the lower court. On 17 December 2008, the Dongyuan County People's Court, reportedly without any explanation, sentenced Mr. Liu to two years imprisonment, even though no new facts or additional evidence were presented during the retrial. Liu Yao has appealed the sentence to the Heyuan Municipal Intermediate Court. Mr. Liu represented peasants in Paitou Village, located in Dongyuan

County, Heyuan City, Guangdong Province, whose land was expropriated at the end of 2006 by the local government to make way for a new power station planned by the Fuyuan Industrial Group. In December 2007, Liu Yao went with peasants to the hydroelectric plant construction site to try to stop work at the construction site, which had continued in spite of an order issued by the State Land Bureau in Dongyuan County to halt the construction. A dispute ensued between the peasants and Mr. Liu on the one side and the staff of the Fuyuan Industrial Group on the other, which resulted in the destruction of some items at the construction site. On 17 January 2008, the Dongyuan County Prosecutor's Office authorized Mr. Liu's arrest.

82. On 12 February 2009, 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 situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding Mr. Gao Zhisheng, a human rights lawyer. Mr. Zhisheng was the subject of several communications sent on 28 September 2007, 1 December 2006, 30 November 2006, 21 December 2005 and 25 November 2005. According to the information received, Mr. Gao Zhisheng was taken away from his home in Shaanxi Province by more than 10 security agents on 4 February 2009. He had previously been taken into custody on or shortly after 19 January 2009 and held incommunicado at an unknown location. He is considered to be at high risk of torture and other ill-treatment in light of the harsh treatment he received while in detention in 2006 and 2007. His whereabouts were unknown. Mr. Gao Zhisheng had been previously detained on 22 September 2007 and held incommunicado for six weeks. During this time, he was allegedly stripped and beaten by a group of police officers in civilian clothes. He was also beaten, given electric shocks to his genitals and had cigarettes held close to his eyes for several hours, leaving him partially blind for a number of days. During his detention in 2006, he was reportedly handcuffed and forced to sit in an iron chair or cross-legged for more than four days at a time, in addition to having bright lights shone in his eyes. In April 2007, Mr. Gao Zhisheng publicized the torture and ill-treatment he had suffered while in custody, which led to an escalation of harassment of his family.

83. On 18 February 2009, 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 situation of human rights defenders, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the cases of Mr. Lobsang Lhundup, 38 years old, born in Gemo Village, in Litang County, Ganzi, Tibetan Autonomous Prefecture, Sichuan Province, a monk of Nekhor Monastery; his brother, Mr. Sonam Tenpa, 29 years old; Mr. Jampa Thokmey, 30 years old; Mr. Gelek Kunga, 26 years old; Mr. Lobsang Tenzin, 23 years old; Mr. Lobsang Phendey, 37 years old; Mr. Jampa Yonten, 30 years old; Mr. Sanggey, 29 years old; Mr. Jampa Tsering, 28 years old; Mr. Lobsang Wangchuk, 30 years old; Mr. Lobsang Tashi, 21 years old; Mr. Gendun Choephel, 30 years old; Mr. Dargye, 37 years old; Mr. Gedhun, 29 years old; Mr. Jampa, 40 years old; Mr. Amdo Gyaltsen, 41 years old; and Mr. Damdul, head of Dekyi village, all of them residing in Litang County. According to the information received, Mr. Lobsang Lhundup was arrested on 15 February 2009 for staging a peaceful solo demonstration at the main market square of Litang town for about 15-20 minutes, chanting slogan such as "Long live the Dalai Lama", "Independence for Tibet", "Swift return of the Dalai Lama to Tibet", or "No Losar celebration this year" (Losar being the New Year celebrated by ethnic Tibetans). He was arrested and

detained by officials of the Public Security Bureau (PSB) and People's Armed Police (PAP) and taken to the Litang PSB Detention Centre for further interrogation. In the morning of 16 February 2009, a group of twenty Tibetans from Litang County was also arrested after staging a similar peaceful protest march at Litang main market square. In addition to the sixteen individuals named above, they included two Tibetans, whose identities are not known, and Yanglo and Dolma, two Tibetan Nomad women from Sako village, who were released on the evening of the same day. Mr. Sonam Tenpa, who led the peaceful protest, was carrying a portrait of the Dalai Lama adorned with a traditional Tibetan scarf, while the group chanted slogans such as "Long Live the Dalai Lama", "Independence for Tibet", "Swift return of the Dalai Lama to Tibet" and "No Losar celebration this year". Eyewitnesses to the scene reported that the members of the group were beaten, manhandled and forcibly loaded into military trucks by PSB and PAP forces. Some of the protesters were badly bruised and injured with blood dripping from their nose, head and arms. Mr. Sonam Tenpa and Mr. Lobsang Tenzin sustained particularly serious injuries from the beatings at the site of the demonstration. Mr. Lobsang Lhundup was detained at Litang County PSB Detention Centre, whereas the other detainees are said to be held at Tsagha PSB Detention Centre. However, when the family members of Mr. Gelek Kunga arrived for a visit they could not find him at this detention centre. Concerns were expressed for the physical and mental integrity of the abovementioned individuals, in particular of Mr. Gelek Kunga whose whereabouts were unknown. Further concerns were expressed that their arrest and detention might be solely based on their reportedly peaceful exercise of their right to freedom of assembly, opinion, and expression of political beliefs.

### **Communications received**

84. On 13 June 2008, the Government replies to the urgent appeal of 24 April 2008, stating that Zheng Mingfang, female, born on 5 July 1963, junior middle-school education, from Ji County in Tianjin City. On 1 March 2008, Zheng concocted a terrorist message, claiming that a man driving a vehicle supposedly filled with explosive was going to blow up a State gymnasium. Since the story she made up and spread caused a disturbance and seriously disrupted public order, the Tianjin public security authorities, acting in accordance with the relevant Chinese regulations on re-education through labour, applied re-education through labour to Zheng on 1 April 2008. Re-education through labour in China is conducted on basis of the decision on the matter approved in 1957 by the Standing Committee of the National People's Congress and other such laws and regulations. It is not a criminal punishment but an administrative one. The people's government in every province, autonomous region, city reporting directly to the Government, and every large and medium-sized city in China has established a re-education through labour management committee, and re-education through labour activities are supervised by the people's procuratorates. Under the regulations, re-education through labour is applicable only to people aged 16 years and older who have disrupted the social order in large or medium-sized cities and refused to mend their ways, or who have committed petty offences not meriting a criminal penalty, and who meet the conditions laid down in the regulations. There is a strict legal procedure for ordering re-education through labour, and a statutory supervision system. Persons wishing to challenge a re-education order can appeal to the re-education through labour management committee or, under the terms of the Administrative Proceedings Act, to the people's courts. Apart from being required to comply with disciplinary measures under the re-education through labour regulations which restrict some of their rights, individuals subject to

re-education retain the wide range of civil rights afforded to them by the Constitution and laws, including permission to see family members while undergoing re-education and freedom of correspondence, rest on holidays and so forth.

85. On 10 September 2008, the Government replies to the communication of 22 January 2008. First, the Government indicates that Li Jinsong, male, is a lawyer and was the defence attorney for Hu Jia in the latter's case; all his rights have been fully respected, and the Chinese judicial authorities have never taken any coercive measures in respect of him. Throughout the investigation, prosecution and trial phases of Hu's case, Li was able to meet regularly with Hu in his capacity as his counsel, and he put forward a complete defence during the hearings. When the trial in the court of first instance was over, Li unequivocally supported Hu's decision not to appeal. Second, the Government informs that Li Fangping, male, is not Hu Jia's defence attorney, and the Chinese judicial authorities have never taken any coercive measures in respect of him. Third, the Government informs that Hu Jia, male, was born in 1973. On 27 December 2007, the Beijing municipal public security authorities placed him in criminal detention on suspicion of inciting subversion of the political authority of the State. On 3 April 2008, the Beijing No. 1 Intermediate People's Court sentenced Hu to a term of imprisonment of three years and six months and one year's deprivation of his political rights for the crime of inciting subversion of the political authority of the State. The Government informs that during the investigation, prosecution and trial phases of Hu's case, all of Hu's rights were fully respected. During the trial, Hu stated in court that from the time coercive measures had been taken in respect of him, the public security authorities had never violated his integrity but had cared for and educated him in a compassionate and humane manner. The government further informs that he acknowledged that he had indeed broken the law, admitting his guilt and expressing his willingness to accept the punishment mandated by law; he did not appeal the verdict. Hu is currently serving his sentence in prison; his health is excellent, and his parents and his spouse have all been able to visit him.

86. On 13 February 2009, the Government replies to the Special Rapporteurs' letters of 20 October and 7 November 2008 stating that the Beijing Lawyers Association is an association having legal personality and is registered with the civil authorities in accordance with the law which conducts its activities independently. The Government informs that the competent Chinese Government authorities have never interfered in its internal affairs, such as elections, nor have they ever exerted pressure on any unit or individual in this regard, nor have the competent authorities ever received any complaint to this effect. It further states that because of problems involving unlawful breaches of discipline by the Beijing Yitong Law Firm and its lawyers in the course of their professional activities, with the parties concerned being the subject of numerous complaints and even being disciplined by the Lawyers Association, the Beijing municipal judicial authorities investigated the matter and sought on the spot for clarification from the law firm. Such activities are part of the judicial authorities' normal supervisory and managerial activities. The Government thus maintains that the allegations in the communication are thus inconsistent with the facts. Concerning Tang Jitian, the Government informs that his contract of employment with the Beijing Haodong Law Firm had expired, which meant that he could not continue working for that firm. In November 2008, Tang submitted an application for work with the Beijing Anhui Law Firm, where he is currently employed as a lawyer. The Government thus concludes that the allegation in the communication that pressure was placed on the law firm to fire Tang is inconsistent with the facts.

87. On 4 June 2008, the Government replied to the Special Rapporteur's communications of 14 and 23 April 2008. On 17 February 2009, the Government replied to the Special Rapporteur's letter of 24 November 2008. On 1 April 2009, the Government replied to the Special Rapporteur's letter of 12 February 2009 (concerning Gao Zhisheng). On 17 April 2009 and 20 April 2009, the Government replied to the Special Rapporteur's communications of 18 February 2009 and 12 February 2009 (concerning Liu Yao), respectively.

### **Special Rapporteur's comments and observations**

88. The Special Rapporteur wishes to thank the Government for the replies received. At the time this report was finalized, the Special Rapporteur was not in a position to reflect the content of the replies from the Government of China dated 4 June 2008, 17 February 2009, 1 April 2009, 17 April 2009 and 20 April 2009 as he had not received the translation from the relevant services.

89. The Special Rapporteur notes that the majority of the cases addressed by his mandate concern the situation of defense lawyers and the situation of other human rights defenders which often face judicial and other proceedings which fall short of the fair trial principles.

90. The Special Rapporteur is concerned at the absence of an official reply to his communication of 25 June 2008. As this letter concerned his detailed comments on legislative amendments to the Law on Lawyers and regulations on professional licenses for lawyers, the Special Rapporteur would like to encourage the Government of China to enter into a dialogue with him in order to discuss and examine the concerns highlighted in the letter.

## **Colombia**

### **Comunicaciones enviadas**

91. El 30 de junio de 2008 el Relator Especial conjuntamente con la Relatora Especial sobre la situación de los defensores de los derechos humanos envió una carta de alegación para señalar a la atención urgente del Gobierno de Colombia la información que había recibido con relación a la persistencia de una situación delicada de amenazas y violencia contra abogados y defensores de derechos humanos y respecto a la existencia de diversas irregularidades en el sistema de administración de justicia. La carta de alegación enviada reiteró la profunda preocupación respecto de las amenazas de que han venido siendo objeto los defensores de derechos humanos, en particular quienes llevan adelante actividades profesionales como abogados en defensa de los derechos humanos. Dicha preocupación ya había sido expresada al Gobierno de Colombia en la comunicación enviada el día 4 de diciembre de 2007, así como en el comunicado de prensa de 30 de abril de 2008. El Relator agradece la respuesta del Gobierno del 4 de abril de 2008. Sin embargo, manifestó que resulta preocupante que este tipo de situaciones continúen sucediendo. Según la información recibida, los abogados defensores de derechos humanos estarían siendo víctimas de asesinatos, atentados y amenazas, llegando a veces a verse obligados a recurrir a desplazamientos forzados o al exilio. Además, el papel de los abogados defensores de derechos humanos resultaría frecuentemente estigmatizado por las autoridades. Aún desde los niveles más altos del Poder Ejecutivo se emitirían opiniones públicas identificando al abogado con la persona cuyos derechos defiende. Esta persecución se extendería a gran parte de los operadores del sistema judicial y policial que, por añadidura, recurrirían a acciones administrativas, judiciales y

de hecho, criminalizantes del ejercicio profesional, particularmente cuando se trata de abogados penalistas, laboralistas o defensores de derechos humanos. Asimismo, el Relator Especial hizo referencias a alegaciones sobre violaciones al debido proceso, en particular a la garantía de la igualdad de armas, que estarían siendo utilizadas como herramienta para limitar las actividades profesionales de los abogados, en especial de los defensores de derechos humanos. Así, se estaría violando la confidencialidad de la relación abogado-cliente, se estaría limitando el acceso de los abogados a los expedientes o a los lugares de detención y se les estaría impidiendo hacerse cargo de la defensa de ciertos casos. Además el Relator Especial anotó que conforme a las informaciones recibidas, todas estas acciones y agresiones en contra de los abogados no son debidamente investigadas por las autoridades, lo cual hace aún más difícil el ejercicio de la profesión de abogado, en especial para los defensores de derechos humanos. Con relación al modelo de sistema judicial, el Relator Especial indicó que, de acuerdo a la información remitida, la entrada en vigencia del sistema de tipo acusatorio como un nuevo sistema procesal penal a partir de 2004 habría afectado profundamente el debido proceso. El Estado no habría adoptado medidas para colaborar en el reentrenamiento de los abogados particulares, pero si lo habría hecho con los funcionarios del poder judicial, quienes, pese a la vigencia del sistema de tipo acusatorio, seguirían utilizando las prácticas del antiguo sistema inquisitivo. Asimismo, el Relator Especial indicó que en Colombia no existiría la colegiación obligatoria, lo cual disminuye la defensa de los intereses gremiales y la protección personal del abogado. Asimismo, manifestó que de acuerdo a la información recibida las medidas cautelares otorgadas por el Estado a las víctimas de amenazas, aunque demuestran una voluntad estatal de responder a sus compromisos internacionales, muchas veces se tornarían en un mero acto administrativo, pues, de manera general, habrían perdido eficiencia debido al número significativo de perseguidos y a la carencia de recursos humanos, financieros y logísticos.

92. El 9 de marzo de 2009 el Relator Especial conjuntamente con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias y la Relatora Especial sobre la situación de los defensores de los derechos humanos envió un llamamiento urgente para señalar a la atención urgente del Gobierno de Colombia la información recibida con relación a las amenazas contra la Sra. Lina Paola Malagón Díaz, abogada de la *Comisión Colombiana de Juristas* (CCJ) y otro miembro de la organización. La Sra. Malagón Díaz adelanta actividades sobre impunidad en casos de violaciones cometidas contra las y los sindicalistas en Colombia. El Relator Especial indicó que según la información recibida, el 2 de marzo de 2009, a las 12: 21 hs, se habría recibido un fax en el que se declara como objetivo militar a la Sra. Lina Paola Malagón Díaz, abogada de la Comisión Colombiana de Juristas (CCJ). En el texto de la amenaza también se habría mencionado a otro miembro de la CCJ, quien habría debido salir del país a finales de 2008, por haber sido víctima de persecución y amenazas por parte del mismo grupo paramilitar autodenominado *Bloque Capital de las Águilas Negra AUC*. De acuerdo a la información recibida, en febrero de 2009, la Sra. Malagón Díaz realizó un informe sobre la impunidad existente en los crímenes que se cometen en Colombia contra las y los sindicalistas por sus actividades en defensa de los derechos laborales. Este informe habría sido un insumo importante para la audiencia que se llevó a cabo el 12 de febrero de 2009 en el Congreso estadounidense, convocado por el representante George Miller, Presidente de la Comisión de Educación y Trabajo de la Cámara de Representantes de Estados Unidos y cuyo propósito fue examinar la situación de los derechos de los trabajadores en Colombia y la violencia antisindical. El trabajo realizado por la CCJ para dicha audiencia se habría coordinado con el Director de la Escuela Nacional Sindical, el Sr. Luciano Sanín Vásquez, quien habría participado de la misma. Esta

participación habría generado la reacción del Presidente de la República, Álvaro Uribe Vélez, quien habría señalado a los participantes en la reunión como personas que distorsionan la verdad motivados por el “odio político”. El Relator expresó su temor de que la amenaza en contra de la Sra. Lina Paola Malagón Díaz y la CCJ esté relacionada con el trabajo de la CCJ de proteger derechos sindicales.

### **Comunicación recibida**

93. El 4 de septiembre de 2008 el Gobierno respondió a la comunicación enviada por el Relator Especial el 30 de junio de 2008. El Gobierno indicó que se han adelantado esfuerzos sistemáticos para brindar plenas garantías a la labor que realizan los defensores de derechos humanos, incluidos el fortalecimiento de programas de protección, el mantenimiento de canales permanentes de comunicación con las autoridades, la facilitación de su acción en todo el territorio nacional y la respuesta eficaz a sus demandas de información y quejas. El Gobierno colombiano rechazó categóricamente las intimidaciones y amenazas contra dirigentes de Organizaciones No Gubernamentales dedicadas legítimamente a la defensa de los derechos humanos y su declaratoria como objetivos militares por parte de grupos armados ilegales. El Gobierno consideró que la caracterización de la situación de este sector debe hacerse teniendo en cuenta que aquéllos casos que se presentan y puedan constituir motivos de preocupación, son excepcionales y aislados. Para responder con efectividad a los casos aislados de amenaza a la labor de Abogados y Defensores de Derechos Humanos, el Gobierno indicó que se han adoptado medidas de protección sobre los casos denunciados y han sido puestos en conocimiento de las autoridades competentes. También se han adoptado medidas de prevención para evitar la ocurrencia de hechos similares en el futuro. En materia de los impactos del nuevo sistema penal oral acusatorio, el Instituto Nacional Penitenciario y Carcelario INPEC, ha informado que el nuevo Sistema ha dado celeridad al proceso penal, motivo por el cual al disminuirse el tiempo procesal, el detenido en su calidad bien sea de sindicado, iniciado o imputado, no permanece en esta situación jurídica por lapsos superiores a los previstos en la misma norma penal para llevar a cabo el llamamiento a juicio, el cual tenía una duración superior a los dieciocho (18) meses; con el actual proceso, de acuerdo con estudios adelantados por el Consejo Superior de la judicatura, el tiempo procesal de un sindicado, iniciado o imputado no supera de dos y medio (2,5) a cinco (5) meses. Por esta razón, la actual situación jurídica de los reclusos se ha ido modificando de una forma más pronta, ya que acorde con estos cambios, pasan al status de condenados, lo que trae consigo el cambio del establecimiento de reclusión, acceso a los programas de reinserción y redención de pena.

### **Comentarios y observaciones del Relator Especial**

94. El Relator Especial agradece al Gobierno de Colombia su grata cooperación y aprecia que el mismo haya tenido a bien enviarle información sustantiva en respuesta a la alegación enviada el 30 de junio de 2008. El Relator Especial nota con satisfacción los esfuerzos realizados por parte del Gobierno a fin de proteger la labor de los defensores de derechos humanos y agradece la explicación sobre el sistema de protección puesto en marcha. Sin embargo, continúa preocupado por la vulnerabilidad de los defensores de derechos humanos que continúan siendo frecuentemente estigmatizados y amenazados por su labor, de acuerdo a lo constatado por la Alta Comisionada en su reciente misión al país (A/HRC/10/032). Preocupa al Relator Especial que dichas estigmatizaciones en ocasiones provienen de altos funcionarios del Gobierno. En este contexto el Relator Especial llama la atención sobre los Principios Básicos sobre la Función de

los Abogados, en particular, el número 16 y 17 que establece que los gobiernos garantizarán que los abogados puedan desempeñar todas sus funciones profesionales sin intimidaciones, obstáculos, acosos o interferencias indebidas y sin sufrir ni estar expuestos a persecuciones o sanciones administrativas, económicas o de otra índole. Cuando la seguridad de los abogados sea amenazada a raíz del ejercicio de sus funciones, recibirán de las autoridades protección adecuada.

95. De otra parte el Relator deja constancia de que el Gobierno no ha clarificado el impacto de la implementación del sistema acusatorio penal sobre las labores de los abogados, ni ha explicado de qué manera se ha protegido la igualdad de armas, elemento fundamental del derecho a un debido proceso, teniendo en cuenta las alegaciones que indican que los abogados no están en igualdad de condiciones con los fiscales, en materia de capacitación sobre el sistema penal acusatorio.

96. En lo que respecta la comunicación enviada el 9 de marzo de 2009, el Relator espera recibir una respuesta del Gobierno lo más pronto posible, para poder incluirla en su próximo informe, dado que a la finalización del presente, el plazo para responder dado al Gobierno aún estaba vigente.

### **Democratic Republic of the Congo**

#### **Communications envoyées**

97. Le 21 avril 2008, le Rapporteur spécial a envoyé au Gouvernement de la République démocratique du Congo, conjointement avec la Vice-Présidente du Groupe de Travail sur la détention arbitraire, 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, un appel urgent concernant la situation de Nsimba Embete Ponte, directeur du journal "*L'Interprète*" à Kinshasa et de son collaborateur Davin Ntongo Nzovuangu. Selon nos informations, M. Ponte aurait été arrêté le 7 mars 2008 par des hommes en civil armés et non identifiés. Il serait détenu depuis dans les cellules de l'Agence Nationale de Renseignement (ANR) à Kinshasa, sans avoir été inculpé. Il semblerait que depuis son arrestation, Mr. Ponte n'ait eu accès ni à son avocat, ni aux visites de sa famille, ni à des soins médicaux. Les raisons de l'arrestation et de la détention de Mr. Ponte seraient liées à des articles qu'il aurait publiés dans son journal en février 2008, relatant la tentative d'assassinat présumée contre le chef de l'Etat, ainsi que l'état de santé de ce dernier, informations considérées comme "portant atteinte à la sûreté de l'Etat" par l'administrateur de l'ANR. Quant à Davin Ntongo Nzovuangu, il aurait été arrêté le 29 mars 2008 et n'aurait pas été revu depuis.

98. Le 29 avril 2008, le Rapporteur spécial a envoyé au Gouvernement de la République Démocratique du Congo, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits, un appel urgent concernant la situation de Mme Sophie Roudil, représentante de l'organisation non-gouvernementale Protection internationale en République démocratique du Congo, Me Jean Bedel Kaniki, avocat membre de l'Initiative congolaise pour la justice et la paix, M. Jean-Paul Ngongo, membre de la Voix des sans voix ni liberté et représentant des ONG de défense des droits de l'homme au bureau de coordination de la société civile de Bukavu, et M. Dieudonné Sango, vice-président du Réseau provincial des organisations de droits de l'Homme de la RDC et coordinateur du Programme de

développement social. Ces quatre personnes ont suivi, en qualité d'observateurs, le procès en appel de l'affaire Serge Maheshe, journaliste de Radio Okapi assassiné le 13 juin 2007 à Bukavu. Les rapporteurs spéciaux ont également attiré l'attention du Gouvernement de la République démocratique du Congo sur la situation de Me Mulume et Me Cubaka, deux avocats des présumés auteurs matériels dans le procès Maheshe. Des dysfonctionnements entourant le procès en première instance et des menaces proférées contre les défenseurs des droits de l'homme participant ou suivant le procès en appel ont déjà fait l'objet d'un appel urgent que les Rapporteurs spéciaux ont transmis au Gouvernement le 11 février 2008.

99. Selon les informations reçues, le 17 avril 2008, Mme Sophie Roudil aurait reçu un message anonyme sur son téléphone portable (SMS) la mettant en garde avec les termes suivants : «Ne t'en fais pas. Rira bien qui rira le dernier. Ils paieront cher de leur propre sang à l'issue de ce procès qu'ils ont tant discrédité. Nous sommes au Congo. Au plaisir ...». Ce message viserait l'ensemble des observateurs qui auraient dénoncé des irrégularités dans le procès en appel de l'affaire Serge Maheshe. Le même jour, M. Jean Bedel Kaniki et M. Dieudonné Sango aurait reçu un message similaire. Le 19 avril 2008, Mme Sophie Roudil aurait été une nouvelle fois menacée par le biais du SMS suivant: «Avec tous les respects, tu es RESPONSABLE de ce qui va ARRIVER». M. Jean Bedel Kaniki, M. Jean Paul Ngongo et M. Dieudonné Sango auraient quant à eux reçu le message suivant: «Plainte. Une contre attaque? Hum!!! Ok. Le plus fort l'emportera. C'est une question de temps. Le vin est tiré...bonne chance. Enfin, M. Jean Bedel Kaniki (ONG ICJP) aurait de surcroît reçu deux appels du même numéro à 19h27 et 20h01, mais n'aurait pas décroché. Le 24 avril, des menaces contre M. Jean Bedel Kaniki auraient à nouveau été proférées : « Tu es un CADAVRE qui marche ! Ca te dit quelque chose? ksk tu gagnes à salir comme ça l'image de ton pays? J'ai donné ma tête à couper. Mais en ce qui concerne toi ...». Des plaintes auraient été déposées auprès de la police par les personnes susmentionnées les 19, 21 et 25 avril. Me Mulume et Me Cubaka, seraient également la cible de menaces. En témoignent les messages suivants reçus le 21 avril 2008: «Merci d'être cyniques [sic]. Votre stratégie consiste maintenant conseiller vos clients de sécher les audiences! Le fait de les avoir incités à citer les militaires dans cette saleté ne vous a pas suffi? Apres tout, ce procès finira un jour et nous verrons qui sera ridicule ...». «Me, avec respect, je te mets en garde contre cette façon de vouloir salir les magistrats militaires. Tu as donc adopte la méthode de l'avocat Cubaka des assassins qui n'a pas du [sic] respect pour les morts et qui veut dérouter la cour vers une piste militaire inexistante. Apres tout, ce procès finira, et ...». Le 23 avril, les deux avocats auraient déposé une plainte auprès du Procureur général. Me Mulume aurait ensuite annoncé qu'il se retirait du procès car il ne se sentait pas en sécurité et n'était pas en mesure d'exercer librement ses activités professionnelles.

100. Parallèlement à ces actes d'intimidations à l'encontre des observateurs du procès, les dysfonctionnements suivants lors du procès en appel auraient été observés: la violation systématique du principe de l'égalité des moyens entre les parties lors des audiences: alors que le Ministère Public et les avocats de la partie civile s'exprimeraient longuement et obtiendraient systématiquement la parole, les avocats de la défense, et les prévenus eux-mêmes, se seraient vus à de nombreuses reprises refuser la parole ou interrompre par le Premier Président de la Cour; le procès en appel n'aurait jusqu'à présent pas procédé à l'examen des questions controversées en première instance mais l'instruction se serait presque exclusivement focalisée sur la lettre de rétractation des présumés auteurs matériels. La Cour semblerait insister à remettre en cause la validité de la rétractation des aveux alors que les prévenus auraient affirmé de manière constante que deux magistrats militaires les auraient forcés à faire ces «aveux» et à mettre en cause les

deux amis de Serge Maheshe ; les deux magistrats militaires, mis en cause par les deux auteurs matériels, assisteraient à toutes les audiences. Ils n'auraient jamais été isolés de la salle d'audience avant d'être entendus, ce qui aurait pu influencer leurs déclarations et serait en violation du code judiciaire militaire. Aucune enquête n'aurait eu lieu sur les allégations de subornation et l'Auditeur Supérieur serait intervenu en personne au procès pour prendre la défense des magistrats et réfuter ces allégations; un des présumés auteurs matériels aurait été victime d'une agression à la prison centrale. Ces avocats auraient qualifié l'agression de tentative d'assassinat et demandé l'ouverture d'une enquête. La Cour n'aurait ordonné aucune enquête sur cet incident; aucun élément de preuve nouveau n'aurait été examiné. La Cour aurait refusé de procéder à une expertise balistique de l'arme; les prévenus militaires, principaux prévenus au début du procès en 1<sup>ère</sup> instance, seraient absents du procès qui n'aurait jusqu'à présent jamais cherché à examiner leur rôle dans l'affaire. L'un des deux militaires ne se serait jamais présenté, mais le second, notifié en personne, se serait présenté à deux audiences, le plus récemment en date du 9 avril, mais n'aurait pas été entendu. D'après le Premier Président de la Cour et le chargé des renseignements des FARDC qui aurait comparu, les deux militaires seraient actuellement portés disparus. Néanmoins, la Cour n'aurait fourni aucun effort pour les rechercher et préférerait visiblement s'appuyer uniquement sur les différents procès verbaux d'auditions établis antérieurement, faisant ainsi obstacle au ré-examen des multiples contradictions constatées dans leurs déclarations et relevées par les avocats de la défense. Les avocats de la défense auraient été systématiquement interrompus lorsqu'ils tentent de faire allusion aux prévenus militaires ; le Premier Président de la Cour et le Ministère Public aurait tenu à plusieurs reprises des propos désapprouvant ouvertement la présence et le travail des observateurs du procès depuis l'audience du 26 mars 2008. Lors de cette audience, le Ministère Public aurait été le plus explicite en indiquant que l'observation 'subjective' qui serait menée exposait leurs auteurs à des poursuites pour outrage à la magistrature. Parlant de l'entrevue d'un membre d'une ONG observatrice sur RFI, il aurait qualifié d'hérésies les informations diffusées. De vives craintes furent exprimées quant au fait que les menaces proférées contre Mme Sophie Roudil, Me Jean Bedel, M. Jean-Paul Ngongo, M. Dieudonné Sango, Me Mulume et Me Cubaka soient liées à leurs activités non-violentes de défense des droits de l'homme. Des craintes furent également exprimées quant au fait que les dysfonctionnements précités lors du procès en appel puissent compromettre le principe du droit à un procès équitable.

101. Le 20 janvier 2009, le Rapporteur spécial a envoyé au Gouvernement de la République démocratique du Congo, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, et la Rapporteuse spéciale sur la vente d'enfants, la prostitution d'enfants et la pornographie impliquant des enfants, un appel urgent concernant la situation de dix garçons, notamment : Libaku Mudaka, Bwirande Patient, Tuse Karungu, Janvier Kanane, Sadiki Bahati, Junior Tshilobo, Didier Mutombo, Moise Danani, Pascal Ramazani, Sudja Ndimubanzi, tous détenus à la prison centrale Munzenze, ville de Goma, province Nord-Kivu. Selon les informations reçues, Libaku MUDAKA, âgé de 12 ans, serait détenu depuis le 29 décembre 2008, pour motif de vol simple. Bwirande PATIENT, âgé de 15 ans, serait détenu depuis le 29 décembre 2008, pour motif de viol. Tuse KARUNGU, âgé de 17 ans, serait détenu depuis le 29 décembre 2008, pour motif de viol. Il n'aurait jamais été présenté devant un juge. Janvier KANANE, âgé de 16 ans, détenu depuis le 10 décembre 2008, pour motif de vol simple. Il n'aurait jamais été présenté devant un juge. Ses parents ne seraient pas informés de sa détention. Sadiki BAHATI, âgé de 12 ans, serait détenu depuis le

14 novembre 2008, pour motif de viol. Il aurait été maltraité dans sa cellule par des détenus majeurs. Junior TSHILOBO, âgé de 14 ans, serait détenu depuis le 29 décembre 2008, pour motif de viol. Didier MUTOMBO, âgé de 16 ans, serait détenu depuis le 15 novembre 2008 pour motif de viol. Il aurait été détenu dans les cellules de la police nationale congolaise pendant une semaine, où il aurait été soumis à des mauvais traitements par des policiers dont l'un parmi lesquels était également détenu. Moïse DANANI, âgé de 16 ans, serait détenu depuis le 23 juillet 2008 pour motif de raison d'enquête. Il n'aurait jamais été présenté devant un juge. Pascal RAMAZANI, âgé de 16 ans, serait détenu depuis le 25 septembre 2008 pour motif d'abus de confiance. Sudja NDIMUBANZI, âgé de 16 ans, serait détenu depuis le 15 novembre 2008 pour motif de raison d'enquête. Il aurait été détenu dans les cellules de la police nationale congolaise pendant une semaine, où il aurait été soumis à des mauvais traitements par des policiers dont l'un parmi lesquels était également détenu. Des craintes furent exprimées quant à l'intégrité physique et morale des personnes mentionnées ci-dessus, étant donné qu'il s'agirait des mineurs, qui nécessitent un traitement adapté à leurs besoins et qu'ils seraient détenus parmi des adultes.

### **Communications reçues**

Aucune

### **Commentaires et observations du Rapporteur spécial**

102. Le Rapporteur spécial regrette de devoir constater qu'il n'a reçu du Gouvernement de la République démocratique du Congo aucune réponse aux communications du 21 et 29 avril 2008 ainsi que à la communication du 20 janvier 2009. Il invite le Gouvernement instamment à lui transmettre au plus tôt des informations précises et détaillées en réponse à ces allégations.

## **Egypt**

### **Communications sent**

103. On 21 August 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 the Special Rapporteur on the situation of human rights defenders, regarding the case of Mr Mohamed Bayoumi, a lawyer and representative of the Association for Human Rights and Legal Aid (AHRLA). He was the defence lawyer of Ms Awleel, a Sudanese refugee who was assaulted and raped by two Egyptian police officers. As a result of the court case, one of the police officers was sentenced to 25 years in prison. According to the information received, Mr Mohamed Bayoumi and members of his family have been harassed and intimidated several times over the past two months. In July 2008, the sentenced police officer offered him a bribe of 50.000 LE in order to drop the charges against him, which Mr Bayoumi refused. On 2 August 2008, relatives of the sentenced police officer stopped Mr Bayoumi in the street, beat his leg and stole his case files on Ms Awleel. On 13 August 2008, his family received a phone call claiming that Mr Bayoumi had been shot dead and that his body could be found in the morgue. Mr Mohsen, who is Mr Bayoumi's partner on the Awleel case, received a similar phone call. Concern was expressed with regard to the acts of harassment and intimidation against

Mr Bayoumi, which are connected with his activities in defense of human rights. Further concern was expressed regarding the physical and psychological integrity of Mr Bayoumi and that of his family.

104. On 31 October 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur 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, regarding the alleged threats against Messrs. Nasser Amine and Hammad Wadi Sannd. Mr. Nasser Amine is the Director General of the *Arab Centre for the Independence of the Judiciary and the Legal Profession (ACIJLP)*. Mr. Hammad Wadi Sannd is a lawyer and a researcher with the same organization. The ACIJLP is a non-governmental institution that works to reinforce the status of justice, the independence of the judiciary and the legal profession, and the respect of human rights and fundamental freedoms in the Arab region. In Darfur, Sudan, it works to strengthen the implementation of criminal justice and to advocate for the intervention of the *International Criminal Court (ICC)*. According to the information received, on 25 October 2008, threats were sent by email to the official ACIJLP address by a group which called itself the Middle East Mujahedeen in Cairo. The email threatened to kill Mr. Nasser Amine if he, the ACIJLP, or the International Criminal Court, continued to intervene in the Darfur crisis. Threats were also made against Mr. Hammad Wadi Sannd. Concern was expressed that the threats against Messrs. Nasser Amine and Hammad Wadi Sannd may be related to their legitimate activities in the strengthening of criminal justice in Darfur. Serious concern was expressed for the physical and psychological integrity of Messrs. Nasser Amine and Hammad Wadi Sannd.

105. On 20 February 2009, 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 situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment together, regarding the case of Mr. Dia' el Din Gad, an Egyptian citizen and student blogger. According to information received, on 6 February 2009, Mr. Dia' el Din Gad was arrested outside his home in Qotour city, near Tanta city (north of Cairo) by State Security Investigations (SSI) officers. Just before his arrest, Dia' el Din Gad had returned to his home in Qotour city. When he left the house, he was immediately arrested by SSI officers and allegedly beaten as he was taken away. He was reportedly held incommunicado in an unknown location, and his whereabouts have not been disclosed by the Egyptian authorities, despite inquiries by his family and his lawyer with the Ministry of the Interior and the office of the Public Prosecutor. According to local activists, a few days before he was arrested, Dia' el Din Gad had taken part in demonstrations organized by the liberal Wafd opposition party in Cairo in solidarity with the people of Gaza. On his blog Dia' el Din Gad criticized the Egyptian policy regarding Gaza - including the restrictions on humanitarian aid delivered through Egypt to Gaza - and regarding the 4 February arrest of Ahmed Doma, a leading member of a youth movement, the Popular Movement to Free Egypt. Mr. Dia' el Din Gad reportedly frequently suffered panic attacks which made it difficult for him to breathe. He also had difficulty walking or bending one of his legs, due to injuries suffered in childhood. He took medication, which he did not have with him when he was arrested.

### **Communication received**

106. On 15 January 2009, the Government replies to the urgent appeal of 31 October 2008, stating that both Ministry of Interior (MoI) and the Public Prosecutor Office (PPO) have no prior information regarding this issue. Neither Mr. Nasser Amin, nor Mr. Hammad Wadi Sanad have placed a complaint to the MoI or the PPO that they have received such threats. The MoI took note of the aforementioned “Middle East Mujahedeen in Cairo” group and is undergoing investigations regarding its existence.

### **Special Rapporteur’s comments and observations**

107. The Special Rapporteur wishes to thank the Government for its reply of 15 January 2009 to his letter of 31 October 2008 and is looking forward to receiving further information, as announced in the Government’s letter.

108. The Special Rapporteur is concerned at the absence of an official reply to his letter of 21 August 2008 and urges the Government of Egypt to provide at the earliest possible date a detailed substantive answer to the above allegations. He is also looking forward to receive a reply to his communication sent on 20 February 2009.

## **Equatorial Guinea**

### **Comunicación enviada**

109. El 27 de febrero de 2009 el Relator Especial conjuntamente con la Presidente-Relatora del Grupo de Trabajo sobre la Detención Arbitraria envió un llamamiento urgente para señalar a la atención urgente del Gobierno de Guinea Ecuatorial la información recibida en relación con los Sres. Fabián Ovono Esono y José Ndong, quienes se encuentran detenidos en la nueva cárcel en el recinto del cuartel central de Bata. Según las informaciones recibidas, los Sres. Fabián Ovono Esono y José Ndong se encuentran en las celdas de la planta alta de la cárcel ubicada en el recinto del cuartel central de Bata en aislamiento total, con grilletes en las manos, y no reciben ninguna visita. Aparte del Jefe de Cárcel (el sargento Enrique Mbomio) y el Administrador de la misma (un teniente de apodo “Dado”), nadie tiene acceso a ellos. Asimismo, los Expertos indicaron que, según se alega, los Sres. Ovono Esono y Ndong se encontraban exiliados en Nigeria y habrían sido llevados a Bata aproximadamente en diciembre de 2008.

### **Comunicaciones recibidas**

No se ha recibido ninguna comunicación del Gobierno.

### **Comentarios y observaciones del Relator Especial**

110. El Relator Especial espera que el Gobierno envíe una respuesta sustantiva al llamamiento arriba mencionado a su comunicación lo más pronto posible, dada la gravedad de las alegaciones contenidas en la misma. Preocupa al Relator Especial que la posibilidad de que los detenidos no estén gozando de las garantías del debido proceso y al respecto llama la atención sobre los Principios básicos sobre la función de los abogados, específicamente los principios 5 y 7.

## Ethiopia

### Communication sent

111. On 14 January 2009, 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 and other cruel, inhuman or degrading treatment or punishment, regarding the case of Ms. Birtukan Mideksa, aged 34, and leader of the registered opposition party Unity for Democracy and Justice Party. Ms. Birtukan Mideksa was the subject of two urgent appeals 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 then Special Representative of the Secretary-General on the situation of human rights defenders on 3 November 2005, and 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 then Special Representative of the Secretary-General on the situation of human rights defenders on 18 November 2005, respectively. The response of the Government dated 23 November 2005 was acknowledged. According to new information received, on 29 December 2008, Ms. Birtukan Mideksa was arrested by several officers of the security forces and has since then been detained in solitary confinement at Qaliti prison outside Addis Ababa, in a cell measuring 2 m<sup>2</sup> which is reported to be often unbearably hot. It was believed that her arrest might have been carried out in connection with a trip to Europe in November 2008 during which she discussed the terms of her previous release from prison. Ethiopian government media reported that she had denied apologizing for the crimes she had allegedly committed and that she was given three days to revoke her statement. Shortly afterwards, the Pardons Board decided to recant her pardon and to re-impose her original life sentence passed in 2007. Ms. Mideksa, together with thousands of individuals including opposition parliamentarians, opposition party leaders, journalists and human rights defenders, had been arrested in 2005 following demonstrations against the results of elections held in May 2005. In 2006, Ms. Mideksa was charged with treason, tried and sentenced to life imprisonment. The majority of those found guilty were released in 2007 following pardons after they had negotiated an agreement with the Government and signed letters of apology. However the exact terms and conditions of pardon remain unclear. Since her arrest Ms. Mideksa had reportedly been allowed one visit from her close family but had not been granted access to legal counsel or medical treatment. She had refused food to protest against her arrest and detention. During her arrest a person who was with her, Professor Mesfin Weldemariam, was severely beaten by one security officer with a rifle butt. He sustained injuries to his leg as a result of the assault. In view of the reported conditions of detention including solitary confinement, the alleged denial of further family visits and access to legal counsel and medical treatment, concern was expressed for Ms. Birtukan Mideksa's physical and psychological integrity. Further concerns were expressed that her arrest and detention might solely be connected to the reportedly peaceful exercise of her rights to freedom of opinion and expression, association, assembly, and to take part in the conduct of public affairs, directly or through freely chosen representatives.

**Communication received**

112. On 12 February 2009, the Government replies to the urgent appeal of 14 January 2009, concerning Ms. Birtukan Mideksa. The Government of Ethiopia stated that the revocation of the pardon granted to Ms. Birtukan Mideksa was carried out in accordance with the law in force on the subject. However before going to the legal grounds on revocation of the pardon and the compliance of the measures to domestic and international human rights standards, it is necessary to discuss on the accuracy of facts alleged on the conditions of Ms. Birtukan's detention. The facts brought to the special procedures' attention concerning the arrest and detentions of Ms. Birtukan Mideksa were flawed. Ms. Mideksa was arrested and detained according to the law with due regard to her rights under the Constitution and international human rights instruments. Ms. Mideksa is not subjected to special treatment than other prisoners. Ms. Mideksa has not been denied of her right to be visited by her family. Federal Prison Administration reported that since her detention, she has maintained contact with her family, in particular with her mother, daughter and sister on Saturdays and Sundays. The Government is unaware of Ms. Mideksa's refusal of food to protest against her detention. In contrast, her family is providing her with varieties of meal daily. The Government of Ethiopia is cognizant of the Basic Principles on the Role of Lawyers, which provides for an arrested or detained person right to access a lawyer. This principle is also reflected in the domestic legal system and is guaranteed for any arrested and detained person. Ms. Mideksa is in contact with her lawyer and the allegation that she is denied of her right to consult with her lawyer is incorrect. The special procedures have expressed your concerns that the situation of Ms. Mideksa detention is detrimental to her physical and psychological integrity. The Government respects its obligations to protect the right to physical and mental integrity of all persons under Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Accordingly, Ms. Mideksa is being treated as any other person under the protection of law with due regard to her physical and mental integrity. With regard to the concern that the arrest and detention of Ms. Mideksa is solely connected to the peaceful exercise of her right to freedom of opinion and expression, association, assembly, and to take part in the conduct of public affairs, the Government states that the said allegations are not correct. Let me draw your attention to the fact there are many groups that are exercising such rights. No one in the country is arrested and detained merely on the ground of exercising sacred rights of human beings, among other things, freedom of expression, association and assembly. The true facts that cause the revocation of the pardon are discussed below. Ms. Birtukan Mideksa and others in the leadership of the former Coalition for Unity and Democracy (CUD) party were granted conditional pardon, after submitting a signed written petition for pardon, on 19 July 2007 by the President of the Federal Democratic Republic of Ethiopia on the basis of the procedure of Pardon Proclamation No. 395/2004. It was understood at the outset that the pardon granted would remain valid only as long as they conducted themselves in accordance with the conditions of the pardon they freely accepted. Most of these beneficiaries of the pardon are carrying out their political and social activities in accordance with the laws of the country. However, Ms. Mideksa on different occasions misrepresented the circumstances of the pardon by making an open statement to her supporters saying "she did not make any plea for pardon" and rather the pardon was granted solely through the intervention of elders and by the pressure of her supporters. In effect, Ms. Mideksa denied her request for pardon to the Ethiopian Government and the people. She violated the very premise and basis of the pardon by making it manifest she was not remorseful and did not have

regrets about her former illegal acts. Specifically she acted in contravention of the first and second conditions of the pardon, namely, acceptance of individual and collective responsibility for the destructive acts committed and to refrain from such acts in the future. By denying that she ever petitioned the government for pardon Ms. Birtukan has in effect disavowed the first condition of the pardon, by which she in effect also disavowed the second condition. As such, violation of any of the condition of pardon in the case of conditional pardon inevitably triggers the provisions of the pardon proclamation relating to revocation of pardon with all its legal consequences. The procedure of the revocation of pardon is as follows: Despite this behavior on the part of Ms. Birtukan and in the hope that the statement by Ms. Birtukan could possibly have been an honest mistake and could be rectified with out difficulty, the Federal Police discharging its responsibility of ensuring compliance with the conditions of pardon and protecting the Constitutional order from criminal acts, talked to Ms. Birtukan on more than one occasion about her statement with a view to set the record straight. However, after Ms. Birtukan made it clear she made no request for pardon, the Federal Police asked her to officially rectify her statement within three days failing which appropriate legal action will be taken to revoke the pardon granted by the government. The Government informs that this cooperative gesture on the part of the federal police did not meet with any positive response from Ms. Birtukan. On the legality of the revocation of the pardon: On the basis of the Pardon Proclamation, the Federal Police, having observed Ms. Mideksa's final statements of refusal to rectify her misrepresentation, requested the Board of Pardon for revocation of the pardon. The Board of Pardon, according to the Procedure of Pardon Proclamation, has the power to examine such cases and submit recommendations of revocation to the President when persons granted conditional pardon by the President have allegedly failed to meet such condition or have violated same. The Board, having considered the lapse of time given to her to renounce her denial of pardon and having being convinced of the existence of sufficient ground for revocation, submitted its recommendation to the President of the FDRE for revocation of the pardon. The Government therefore maintains that the revocation of the pardon for Ms. Mideksa is fully in line with the procedure provided in the Pardon Proclamation. Due to the conditional nature of the pardon, the penalty of life imprisonment imposed by the Federal high court was reactivated starting from the day of revocation of the pardon. The Government reiterates that Ms. Mideksa has not been deprived of her liberty arbitrarily. Her case was tried in fair proceedings before an independent and impartial court. She was convicted of crimes against the constitutional order and sentenced for life imprisonment. After she has requested the Government and the people for pardon, the Board of Pardon considered her case and recommended to the President to grant her pardon. But she failed to respect the conditions attached to the pardon, which entails its revocation.

### **Special Rapporteur's comments and observations**

113. The Special Rapporteur wishes to thank the Government of Ethiopia for its quick and detailed reply to his communication of 14 January 2009.

### **France**

#### **Communication envoyée**

114. Le 18 juin 2008, le Rapporteur spécial a envoyé au Gouvernement de la France, conjointement avec le Rapporteur spécial sur la torture, une lettre d'allégation concernant la situation de M. Rumsfeld du 10 mars 2008, dans laquelle étaient énumérés les arguments du

Gouvernement de la France au sujet du classement de la plainte déposée le 25 octobre 2007 par plusieurs ONGs. En réponse, les Rapporteurs spéciaux ont rappelé quelques développements liés à la question de l'immunité, le Gouvernement français faisant référence au jugement Congo c. Belgique de la Cour Internationale de Justice (CIJ). En statuant que M. Yerodia, le Ministre des affaires étrangères à l'époque, jouissait de l'immunité devant les cours nationales pendant toute la durée de son mandat, la CIJ soulignait implicitement qu'il n'aurait pas joui de cette immunité s'il n'avait pas été ministre en exercice. De plus, la CIJ a souligné que cette immunité pénale ne signifiait pas que des auteurs présumés de violations graves ou crimes contre l'humanité pouvaient agir en toute impunité. La CIJ a aussi remarqué que, dans tous les cas, des ministres peuvent faire l'objet de procès devant des cours pénales internationales.

115. Dans ce contexte, les Rapporteurs spéciaux ont rappelé l'article 27 du Statut de Rome de la Cour Pénale Internationale, qui stipule que « 1. Le présent Statut s'applique à tous de manière égale, sans aucune distinction fondée sur la qualité officielle. En particulier, la qualité officielle de chef d'État ou de gouvernement, de membre d'un gouvernement ou d'un parlement, de représentant élu ou d'agent d'un État, n'exonère en aucun cas de la responsabilité pénale au regard du présent Statut, pas plus qu'elle ne constitue en tant que telle un motif de réduction de la peine. 2. Les immunités ou règles de procédure spéciales qui peuvent s'attacher à la qualité officielle d'une personne, en vertu du droit interne ou du droit international, n'empêchent pas la Cour d'exercer sa compétence à l'égard de cette personne. » Etant donné le fait que le Statut de Rome est un traité international, tous les Etats-membres, y compris la France, acceptent ce principe et renoncent à la possibilité d'invoquer l'immunité.

116. Bien que la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants ne contienne pas de disposition explicite visant exceptions des règles relatives à l'immunité, il est clair que sa lecture doit s'inspirer d'autres instruments internationaux, y compris le Statut de Rome. De plus, il est difficile d'imaginer qu'un instrument comme la Convention contre la torture, dont le but est de pénaliser la torture et d'établir la juridiction universelle pour éviter que les auteurs des actes de torture échappent à la justice, soit interprétée d'une façon qui conférerait des immunités importantes aux anciens représentants de l'Etat, y compris pour des actes de torture. Pour les raisons précitées, les règles traditionnelles d'immunité du droit coutumier doivent être interprétées d'une manière très restrictive.

117. C'est cette approche qui a été privilégiée par la Chambre des Lords britannique quand elle a examinée le cas de Pinochet. La majorité a décidé que l'ancien chef d'Etat et Sénateur ne bénéficiait pas d'immunité et pouvait être extradé vers l'Espagne pour des poursuites liées aux actes de torture commis après l'entrée en vigueur de la Convention contre la torture en Espagne, au Chili et au Royaume Uni. En considérant le troisième rapport périodique du Royaume Uni en 1998, le Comité contre la torture a confirmé cette interprétation en recommandant « que l'affaire du sénateur chilien Pinochet soit déférée au parquet en vue de déterminer si un procès est réalisable, et, le cas échéant, que des poursuites criminelles soient engagées en Angleterre si la décision de ne pas l'extrader était prise. Ceci serait conforme aux obligations incombant à l'État partie en vertu des articles 4 à 7 de la Convention et de l'article 27 de la Convention de Vienne de 1969 sur le droit des traités. » Ce même Comité, dans le cas de Habré, l'ancien dictateur du Tchad, a constaté une violation par le Sénégal de ses obligations d'exercer la juridiction universelle sous les articles 5 and 7 de la Convention contre la Torture, ce qui signifie implicitement qu'il considère qu'un ancien chef d'Etat ne jouit pas d'immunité diplomatique pour des actes de torture.

## **Communication reçue**

Aucune

## **Commentaires et observations du Rapporteur spécial**

118. Le Rapporteur spécial regrette de devoir constater qu'il n'a reçu du Gouvernement de la France aucune réponse à sa lettre du 18 juin 2008. Il invite le Gouvernement de continuer le dialogue sur les développements liés à la question de l'immunité.

## **Guatemala**

### **Comunicaciones enviadas**

119. El 27 de mayo de 2008 el Relator Especial envió un llamamiento urgente junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos en relación con las amenazas en contra del Sr. Fredy Peccerelli, director de la Fundación de Antropología Forense de Guatemala (FAFG)- dedicada a investigaciones forenses y a la exhumación de cadáveres de personas enterradas en fosas secretas durante el conflicto interno de Guatemala, la Sra. Bianca Monterroso, hermana de Fredy Peccerelli, el Sr. Omar Bertoni Girón, coordinador de laboratorio de la FAFG y esposo de Bianca Peccerelli Monterroso, el Sr. Gianni Peccerelli, hermano de Fredy Peccerelli, el Sr. José Suasnavar, director adjunto de la FAFG, el Sr. Leonel Paiz, jefe del departamento de arqueología de la FAFG, y del Sr. Eduardo Cojulún, Juez Undécimo de Instancia Penal. El Sr. Peccerelli y la FAFG ya habían sido objeto de varias comunicaciones enviadas el 27 de julio del 2002, 19 de agosto del 2003, 16 de septiembre del 2005 y el 21 de marzo del 2006 por la Relatora Especial sobre la situación de los defensores de derechos humanos. De acuerdo con la información recibida, el 19 de mayo se habría enviado al Sr. Fredy Peccerelli un mensaje de correo electrónico que contenía amenazas de muerte contra de él, su hermana y los cuatro miembros de la FAFG arriba mencionados, con el siguiente texto: "Bueno malditos les ha llegado el día. Están vigilados y los mataremos. Freddy te vamos a quebrar el culo, a Omar lo tenemos vigilado en la Universidad de ni mierda le servirá su título, su felicidad de padre poco le durara, a su mujer la vamos a violar y la enviaremos en pedazos a la FAFG. Malditos revolucionarios. Su seguridad a la mierda, todos están vigilados Freddy pronto te llegara tu día y a los demás miembros de la Institución les tocara después, nunca llegaras a declarar maldito hijo de puta. La lista es larga pero mataremos a todos tu familia será la primera Freddy maldito". Se teme que esta amenaza esté relacionada con las declaraciones recientemente prestadas ante el Juez Eduardo Cojulún por unos testigos del genocidio guatemalteco de la década de 1980. El tribunal presidido por el Juez Cojulún actuaría en nombre de los tribunales españoles como parte de una causa por genocidio que se sigue actualmente en España contra ex altos mandos de la junta militar guatemalteca de principios de los años ochenta. La relación entre las investigaciones llevadas a cabo por el juez Cojulún y el trabajo de exhumación de la FAFG se hizo pública, a través de un artículo periodístico. A su vez, el 20 de mayo, el juez Eduardo Cojulún habría declarado públicamente que el fin de semana del 17 y 18 de mayo había recibido amenazas telefónicas por su papel en esas vistas. Se teme que las amenazas en contra de los integrantes de la FAFG y del juez Cojulún estén relacionadas con su trabajo de investigación de los crímenes del pasado. Los expertos también expresaron preocupación por que los integrantes

de la FAFG sigan estando amenazados desde hace varios años sin que se hayan procesado o condenado a los responsables de las amenazas y porque la protección proporcionada sería insuficiente.

120. El 4 de julio de 2008 el Relator Especial envió un llamamiento urgente junto con Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Relatora Especial sobre la situación de los defensores de los derechos humanos, con relación a la situación del Juez José Eduardo Cojulún, quien desde el mes de mayo de 2008, ha trabajado con una comisión rogatoria organizada por la Audiencia Nacional Española. El tribunal por él presidido actuaría en nombre de los tribunales españoles como parte de una causa por genocidio que se sigue actualmente en España contra ex altos mandos de la junta militar guatemalteca de principios de los años ochenta. La comisión rogatoria estaría investigando denuncias de presuntos crímenes - muchos de ellos en contra de la etnia maya - de genocidio, torturas, asesinatos y detenciones ilegales durante el conflicto armado interno de Guatemala. La situación del Juez Cojulún y las amenazas en su contra ya habían sido objeto de un llamamiento urgente enviado el 27 de mayo de 2008. No obstante, y de acuerdo a la información recientemente recibida, el 12 de junio de 2008 le habrían retirado los dos escoltas al Juez José Eduardo Cojulún, sin reemplazarlos. La explicación oficial que se habría dado sería que los escoltas necesitaban vacaciones. Además, la Policía Civil Nacional (PCN) habría dicho que no había ningún guardia, ni vehículo civil disponible cuando los solicitó por teléfono el mismo día. Los expertos manifestaron su preocupación respecto de la decisión de retirar los escoltas del Juez José Eduardo Cojulún a pesar de las amenazas en su contra. Asimismo, expresaron su preocupación por la integridad física y psicológica del Juez José Eduardo Cojulún.

121. El 19 de agosto de 2008 el Relator Especial envió un llamamiento urgente junto con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y la Relatora Especial sobre la situación de los defensores de los derechos humanos para señalar a la atención urgente del Gobierno de Guatemala la información que recibida en relación con el Sr. Amilcar Pop y la Asociación de Abogados y Notarios Mayas de Guatemala (AANMG). El Sr. Amilcar Pop es abogado y presidente de la AANMG, organización que proporciona asistencia legal a comunidades indígenas de Guatemala, en particular en asuntos relacionados con los recursos naturales de las comunidades. Según las informaciones recibidas, el 2 de agosto de 2008, poco después de medianoche, el Sr. Amilcar Pop fue perseguido y amenazado con un arma de fuego, por los pasajeros de una pick-up blanca doble cabina con vidrios polarizados y sin placas, quienes llevaban máscaras que hacían imposible su identificación. Los individuos lo habrían amenazado de muerte. El Sr. Amilcar Pop, quien logró escapar, habría resultado lesionado en la lengua, motivo por el cual se dirigió a un hospital. Una vez en el hospital, descubrió que la pick-up se encontraba estacionada detrás de su coche. Sin embargo, cuando salió, aproximadamente a las 6 a.m., ya no estaba allí. Según las alegaciones, a lo largo de los años 2007 y 2008, los integrantes de AANMG habrían recibido varias amenazas de muerte, tanto por teléfono, como por correo, para que dejaran de proporcionar asistencia legal a las comunidades de San Juan Sacatepéquez en la defensa de sus recursos naturales y en contra de la empresa Cementos Progresos SA. Asimismo, la AANMG habría sido objeto de varias denuncias ante el Ministerio Público por parte del Consejo Municipal por intimidación, amenazas y coacción. Se alega que dichas denuncias no están sustentadas en ninguna evidencia. Asimismo, se informa que la AANMG habría sido falsamente acusada de ser responsable del asesinato del Sr. Francisco Tepeu Piri, un habitante del Municipio de San Juan Sacatepéquez, quien murió después de una protesta contra Cementos Progresos SA, la cual tuvo lugar el

21 de junio de 2008. El Relator Especial expresó su temor de que las amenazas y acusaciones en contra del Sr. Amilcar Pop y de otros miembros de la AANMG, así como la persecución de este último, podrían estar directamente relacionadas con sus actividades legítimas de defensa de los derechos de las comunidades indígenas de San Juan Sacatepéquez.

### **Comunicaciones recibidas**

122. Mediante comunicación del 20 de agosto de 2008, el Gobierno de Guatemala proporcionó información con respecto al llamamiento urgente enviado el 4 de julio de 2008. El Gobierno informó que al respecto no hay ninguna denuncia presentada ante los tribunales. En ese sentido informa que un funcionario de la Fiscalía de Derechos Humanos del Ministerio Público se apersonó ante el Juez José Eduardo Cojulún, quien manifestó que no iba a brindar información sobre la situación y que no deseaba presentar una denuncia. Asimismo, informó que el Juez Cojulún se negó a aceptar el servicio de seguridad personalizada del agente de la Policía Nacional Civil, Sr. Canahui, en reemplazo del agente Aceytuno, alegando que prefería esperar que regresara de vacaciones el agente Aceytuno. A raíz de ello, el Oficial III de la PNC, Salvador Donis Delgado, le solicitó que le diera una nota en la que explicara el porqué prescindía del agente Canahui, pero en forma cortante el Juez Cojulún le dijo que no le daba nada por escrito. Según información proporcionada por la Subdirección de Unidades Especialistas de la PNC, el Juez Cojulún goza de seguridad personalizada desde el mes de enero de 2006 hasta la fecha, por orden del entonces Director General de la Policía Nacional Civil. Por lo tanto el Estado no ha retirado los escoltas del Juez Cojulún, quien aún sigue contando con seguridad proporcionada por el Estado.

123. Mediante comunicación del 20 de marzo de 2009 el Gobierno brindó información con relación al llamamiento urgente enviado el 19 de agosto de 2008. Al respecto el Gobierno informó que la Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos (COPREDEH) está en conocimiento de los hechos a los que se refieren las alegaciones presentadas. También informó que el Licenciado Amilcar Pop interpuso una denuncia por amenazas e intimidaciones ante el Ministerio Público en Agosto de 2008, que aún se encuentra en investigación. Asimismo, se informa que a la fecha de la comunicación enviada por el Gobierno, el Sistema Interamericano no había adoptado medidas cautelares en favor del Licenciado Amilcar Pop.

### **Comentarios y observaciones del Relator Especial**

124. El Relator Especial agradece al Gobierno de Guatemala su grata cooperación y aprecia que el mismo haya tenido a bien enviarle información en respuesta al llamamiento enviado el 4 de julio de 2008. Sin embargo, el Relator expresa preocupación por no haber recibido respuesta alguna del Gobierno de Guatemala con relación a las comunicación enviada el 27 de mayo de 2008 y le pide encarecidamente tenga a bien enviarle a la brevedad posible, y preferentemente antes de la clausura del undécimo período de sesiones del Consejo de Derechos Humanos, informaciones precisas y detalladas acerca de la alegación arriba resumida. En efecto, el Relator Especial nota con inquietud las frecuentes amenazas e intimidaciones a los miembros de la Fundación de Antropología Forense de Guatemala (FAFG) y teme que las mismas estén relacionadas con su trabajo de investigación de los crímenes del pasado. En tal sentido, el Relator recomienda al Gobierno la ratificación del Estatuto de Roma y de la Convención

Internacional para la Protección de todas las Personas contra las Desapariciones Forzadas y lo insta a tomar las medidas necesarias para proceder a la investigación de tales actos de hostigamiento, así como para evitar que hechos similares se repitan.

125. En lo que respecta a la comunicación de 19 de Agosto de 2008, El Relator Especial también agradece la respuesta dada por el Gobierno. Si embargo, solicita al Gobierno que lo tenga al tanto de los resultados de las investigaciones que están siendo llevadas a cabo con base en la denuncia interpuesta por el Sr. Amilcar Pop ante el Ministerio Público en Agosto de 2008. Asimismo, hace un llamado al Gobierno para que adopte las medidas necesarias para proteger al abogado Amilcar Pop, de manera urgente. Asimismo, solicita al Gobierno que se le mantenga informado sobre la ejecución de las mismas.

### **Comunicado de prensa**

126. El 30 de enero de 2009, en la ciudad de Guatemala, el Relator Especial emitió el siguiente comunicado de prensa, el cual contiene sus observaciones preliminares sobre la situación del sistema de justicia en Guatemala, después de su visita al país:

“El Relator Especial de las Naciones Unidas sobre la independencia de los magistrados y abogados, Sr. Leandro Despouy, visitó Guatemala a invitación del Gobierno, del 26 al 30 de enero de 2009. Visitó la capital, Guatemala y la ciudad de Quetzaltenango. El Relator Especial agradece al Gobierno de Guatemala por la invitación y la plena colaboración prestada durante su visita, la cual fue realizada con toda libertad. Asimismo, agradece al Sistema de las Naciones Unidas en Guatemala, en especial a la Oficina del Alto Comisionado para los Derechos Humanos, por el excelente apoyo prestado en la organización de su visita. Asimismo, el Relator agradece a la prensa y los medios de comunicación por el seguimiento dado a la misma.

Durante su visita el Relator Especial se reunió con altas autoridades del Gobierno y del Organismo Judicial. Tuvo la oportunidad de reunirse, entre otros, con el Canciller, el Ministro de Defensa, los magistrados de la Corte de Constitucionalidad, el Presidente en funciones de la Corte Suprema de Justicia, el Procurador de los Derechos Humanos, el Fiscal General, la Directora del Instituto de la Defensa Pública Penal, la Comisión Presidencial contra la Discriminación y el Racismo (CODISRA), la Defensoría de la Mujer Indígena (DEMI) y la Directora de la Policía Nacional Civil. El Relator Especial también se reunió con la Comisión Internacional contra la Impunidad en Guatemala (CICIG), jueces, fiscales y abogados, así como con numerosas organizaciones de la sociedad civil, incluyendo representantes de organizaciones de derechos humanos, de movimientos indígenas y de mujeres. Finalmente, el Relator Especial tuvo reuniones con representantes de las embajadas acreditadas, de las agencias de cooperación internacional y del sector académico.

En su calidad de experto independiente de las Naciones Unidas, el Relator Especial presentará un informe sobre su visita a Guatemala ante el Consejo de Derechos Humanos en los próximos meses. Asimismo, presentará un informe a la Asamblea General a finales del año 2009.

Siguiendo la práctica habitual, el Relator Especial ha querido reunirse con la prensa al final de su visita, con el fin de hacer públicas sus primeras impresiones, así como algunas recomendaciones preliminares, sin perjuicio de las que presentará una vez finalizado el informe.

Entre las cuestiones más relevantes, el Relator se permite adelantar las siguientes observaciones:

Todos los interlocutores del Relator coinciden en que existe un clima de impunidad generalizado en Guatemala, con notorias deficiencias del sistema de justicia, provenientes principalmente de factores estructurales y de la presión ejercida sobre los operadores de justicia. El Relator detallará cada uno de estos elementos en su informe, pero por el momento sólo enunciará los más preocupantes.

El Relator quisiera hacer referencia a la ausencia de políticas públicas en materia de prevención del crimen, así como la falta de una política criminal y criminológica del Estado. En general, en otros países dichas funciones están bajo la responsabilidad del poder Ejecutivo, a través de un Ministerio de Justicia.

De otra parte, el Relator ha constatado que existe una concentración de funciones en cabeza de la Corte Suprema de Justicia que junto con otros factores de notoriedad pública ha desembocado en la crisis actual. En efecto, la Corte está a cargo de un sinnúmero de funciones administrativas que han dificultado su función específica de impartir justicia.

En cuanto a la investigación criminal, el Relator ha constatado que adolece de varias deficiencias, derivadas principalmente de la falta de personal y de instrumentos adecuados, tanto dentro del Ministerio Público, como dentro de la Policía Nacional Civil, que en tanto auxiliar de justicia no cuenta con los instrumentos técnicos y científicos que le permitan llevar a cabo una eficiente investigación criminal, así como una ausencia de articulación institucional.

El Relator también considera que el hecho de que los jueces estén supeditados a un mandato de cinco años debilita el poder judicial, afecta su independencia y su desarrollo profesional. El Relator considera que reformas de tipo legislativo podrían solucionar este problema en la medida en que se centren en la construcción de una verdadera carrera judicial.

El Relator nota con preocupación que el Congreso de la República no ha aprobado aún leyes que son imprescindibles para fortalecer el sistema de justicia y la seguridad ciudadana. Resulta inadmisibles que la ley de armas y municiones no haya sido aún aprobada por el Congreso.

El país mantiene varias asignaturas pendientes, sobretodo en cuanto a su naturaleza pluricultural, multiétnica y multilingüística. El Relator pudo constatar que aún existen graves obstáculos en el acceso a la justicia, en especial de los sectores pobres de la población y de las comunidades indígenas. El Gobierno no ha adoptado las medidas necesarias para solucionar este problema. La niñez, la adolescencia y las mujeres forman

parte de los sectores más afectados. De los 591 niños muertos en el año 2008, el 80% son víctimas de muerte con arma de fuego. El femicidio se ha incrementado, 722 mujeres fueron asesinadas en el 2008.

A ello se suman otros indicadores sumamente inquietantes: de cada 100 homicidios, sólo 2 son juzgados y de cada 100 delitos, sólo 4 son juzgados. Además, la amenaza de la penetración del narcotráfico y el crimen organizado puede plantear una situación irreversible. Es necesaria la reconducción de la actividad del Estado frente a la justicia, la impunidad y la reparación de las víctimas. A este respecto el Relator considera prioritario:

- La creación de un Ministerio de Justicia que tome a su cargo las funciones clásicas de definición de las políticas públicas en materia de justicia, en especial la política criminal y demás funciones que en el momento se encuentran dispersas en la cabeza de diferentes instituciones. En este punto, el Relator considera indispensable y urgente la creación de un sistema coherente de protección de operadores de justicia, testigos y víctimas. El Relator considera que haría falta que la protección estatal de dichas personas se brinde de manera unificada.
- El establecimiento de un sistema que permita que la Corte Suprema de Justicia cumpla fundamentalmente con sus tareas de impartir justicia, así como otras inherentes a su condición de cabeza del poder judicial y en particular aquellas vinculadas a garantizar su independencia. En ese sentido, el establecimiento de un Consejo de la Magistratura u organismo similar podría permitir una adecuada distribución de funciones de naturaleza administrativa. La inminencia de la elección de nuevos magistrados, brinda al país la oportunidad para que la misma se lleve a cabo de manera transparente, basándose en criterios objetivos fundados en la idoneidad, antecedentes académicos y profesionales, y demás criterios que garanticen la elección de jueces independientes, probos y competentes. El Relator seguirá con atención este proceso.
- Fortalecer los mecanismos de investigación criminal, tanto a nivel del Ministerio Público, como respecto de la Policía Nacional Civil en tanto auxiliar de justicia. En este sentido, sería útil el establecimiento de una sección o unidad que tenga como responsabilidad específica la investigación criminal. Ello debe ir acompañado de una adecuada capacitación de los recursos humanos y de la dotación de los medios técnicos y científicos para ejercer las funciones asignadas. El Relator considera que las reformas que están siendo llevadas a cabo en la actualidad en el seno de la Policía Nacional Civil deben ser apoyadas. Asimismo, considera que es muy importante fortalecer el INACIF. En lo que respecta a la CICIG, el Relator considera que este gesto de la comunidad internacional debe ser valorado y utilizado debidamente, de manera que la capacidad proporcionada por la misma se instale en el país y permita un verdadero fortalecimiento del sistema de investigación criminal hacia el futuro. El Relator hace un llamado a las autoridades nacionales y a la comunidad internacional para que continúen sus actividades en el país.
- El establecimiento de mecanismos legales que rompan con la provisionalidad que implica la elección de los jueces y magistrados por un periodo de cinco años. Al mismo

tiempo deben establecerse mecanismos concretos que garanticen la instauración de una carrera judicial. Igualmente, es importante establecer mecanismos eficaces de rendición de cuentas para jueces y magistrados.

- La adopción de una serie de leyes indispensables en la lucha contra la impunidad:
  - Ley de control de armas y municiones: teniendo en cuenta el altísimo nivel de violencia y el creciente uso de armas de fuego y el consumo de municiones en el país, la pasividad del Congreso convierte al territorio nacional en un escenario bélico, por lo que la aprobación de esta ley resulta impostergable.
  - Ley de reforma del amparo: El uso abusivo de un instrumento consagrado como una garantía de protección de los derechos humanos por la Constitución y los tratados internacionales ha sido convertido en muchos casos, por una práctica maliciosa, en un arma de obstrucción y de retardo de la justicia. Es por ello, que una reforma a la ley de amparo se hace urgente.
  - Sanción de una ley que reglamente la aplicación de los estados de excepción, para que su aplicación sea conforme con los principios y las normas internacionales que regulan la protección de los derechos humanos en las situaciones de crisis.
- Teniendo en cuenta las graves violaciones a los derechos humanos cometidas durante el conflicto armado y la comisión de crímenes de naturaleza imprescriptible generan la obligación del Estado de investigar y de juzgar. En este sentido, se recomienda la ratificación del Estatuto de Roma y de la Convención Internacional para la Protección de todas Personas contra las Desapariciones Forzadas.
- Adoptar con carácter urgente las medidas necesarias para eliminar los obstáculos en el acceso a la justicia de parte de las comunidades indígenas y los sectores más pobres de la población. Asimismo, deberán adoptarse medidas para facilitar la implementación de un verdadero pluralismo jurídico, que permita la integración del derecho consuetudinario indígena conforme a las normas internacionales de protección de los derechos humanos y la plena aplicación del Convenio 169 de la OIT.

El Relator valora la apertura del Gobierno de incorporar en su gestión el aporte de personas de larga militancia en entidades de la sociedad civil.

El Relator quisiera agradecer una vez más a las autoridades y a la prensa por la colaboración e interés con que han seguido su visita y quisiera alentar a los jueces, abogados, defensores públicos, fiscales y defensores de derechos humanos para que continúen en la noble misión de arbitrar justicia y defender los derechos humanos. El Relator garantiza que hará un cuidadoso seguimiento de los temas que le han sido planteados durante su visita. Finalmente, el Relator hace un llamado para que la comunidad internacional continúe su presencia y acompañamiento.”

## Guyana

### Communication sent

127. On 16 September 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Ranvanlee Chan, aged 10; Patrick Sumner, Victor Jones and David Leander; Damyoun Wordsworth, aged 19. Ranvanlee Chan was arrested on 1 January 2008 after being accused of having stolen 6,000 Guyanese dollars from a neighbour and taken to the Sisters Police Station in East Bank Berbice, where police officers beat him, flogged him with a belt, a broom and a tamarind whip and made him kneel half-naked and forced to lift a stack of heavy books over his head. Ranvanlee Chan was held in custody for two days and hospitalized on the third day. He remained under police guard while in the hospital. Patrick Sumner and Victor Jones were arrested by GPF and GDF officers in early September 2007 in connection with the 2006 murder of the Minister of Agriculture Satyadeow Sawh, Sawh's siblings and bodyguard. Mr. Sumner and Mr. Jones were taken to an unidentified military camp on the Linden-Soesdyke Highway and subjected to beatings. They had their feet bound, eyes blindfolded, and were thrown in a pool of water by members of the security service. At some point policemen threw gunpowder and a corrosive liquid on the detainees. They were released after three days and never charged for the crimes for lack of evidence. Damyoun Wordsworth was approached by two policemen who took him to Blairmont police station on 15 September 2007. The two men were dressed in civilian clothing and did not identify themselves. Whilst at the police station, he was questioned over a theft. At all times, Mr Wordsworth denied this allegation. Whilst at the police station, he was suffocated with a plastic bag, which was placed over his head, on numerous occasions. He was hit with a lemonade bottle on his left hand and was handcuffed. A gun was held over his mouth and he was lashed with the gun across his left forehead. This led to bleeding on his forehead. He was taken to Fort Wellington Hospital, where he was provided with medication. However, once he returned to police custody, he did not receive any medicine. He was released on 17 September 2008 without having been charged with any criminal offences. The Special Rapporteurs also referred to their communication of 12 February 2008 to the Government, relating to the cases of Alvin Wilson and Michael Dunn, to which they have regrettably not received any response. The Special Rapporteurs re-iterated their earlier request for information on the progress of the investigations and on whether the alleged perpetrators have been brought to justice.

### Communication received

128. On 31 December 2008, the Government replies to the letter of 16 September 2008, stating that any victim and/or his/her relatives under the circumstances alleged may approach any or all of the following entities to report, investigate and seek redress: 1) the Police Service Commission in relation to the Guyana Police Force (a constitutional body established by a parliamentary consensual mechanism); 2) the Police Complaints Authority (established through the Police Complaints Authority Act, Cap. 17:02, Laws of Guyana with the specific permit to investigating allegations of human rights abuses and infringements of police codes. On average the Police Complaints Authority receives 330 complaints per year. The year of its highest reports was in 1989 with over 500. The Government has provided the Committee against Torture with copies of the annual reports of the PCA for the years 2002-2007); 3) the Office of Professional Responsibility, Guyana Police Force (established as part of the Police reform in 2000); 4) the

Heads of the Disciplined Forces, i.e. the Guyana Defence Force, the Guyana Police Force, the Guyana Service and the Guyana Fire Service who would establish Boards of Inquiries whenever required; 5) the Parliament, through the relevant Oversight Committee or individual Member of Parliament to raise the issue publicly in the House; 6) the Judiciary. The Government advised further that the relevant agencies have conducted inquiries concerning this matter and determined that no reports of allegations of torture or abuse of human rights were made to any of the designated complaints agencies by any of the persons listed in the letter: Ranvalee Chan, Patrick Sumner, Victor Jones and David Leander, Damyoum Wordsworth. The Government is therefore not in a position to verify or otherwise comment on the accuracy of the allegations made.

### **Special Rapporteur's comments and observations**

129. The Special Rapporteur wishes to thank the Government of Guyana for its reply dated 31 December 2008. With regard to the seriousness of the allegations described above, the Special Rapporteur urges the Government to pursue its efforts to provide detailed substantive information on the above-mentioned cases.

## **India**

### **Communication sent**

130. On 16 April 2008, the Special Rapporteur sent a joint urgent appeal, together with Vice-Chairperson of the Working Group on Arbitrary Detention and Special Representative of the Secretary-General on the situation of human rights defenders pursuant, regarding the case Dr Binayak Sen, medical doctor and General Secretary of the People's Union for Civil Liberties (PUCL), Chhattisgarh, and Vice-President of PUCL National. Dr Sen had been the subject of a letter of allegation sent by the Special Representative on the situation of human rights defenders to the Government on 1 June 2007, to which no reply had been received. According to information received, on 15 March 2008, Dr Binayak Sen, who had been in detention at the Raipur Central Prison since May 2007, was placed under solitary confinement at the Raipur Central Jail, in Chhattisgarh. It was not known why the conditions of Dr Sen's detention have changed and he had not had any access to legal representation since being placed in solitary confinement. Dr Sen had been detained since 14 May 2007 under the Chhattisgarh Special Public Security Act 2006 (CSPSA) and the Unlawful Activities (Prevention) Act 2004, due to alleged links with the Naxalite Maoist guerrilla. It was not known whether any charges had been brought against Dr Sen since his detention. Concern was expressed that the reported continued detention and the placement under solitary confinement of Dr Binayak Sen may be directly related to his activities in defense of human rights, particularly his advocacy of the rights of adivasi communities in his capacity as a leader of the People's Union for Civil Liberties. In light of reports of Dr Sen's detention in solitary confinement, further concern was expressed for his physical and psychological integrity.

131. On 8 July 2008, the Special Rapporteur sent an allegation letter, together with the Special Rapporteur 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, regarding the case of Dr Andana Chatterji convener of the International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir and Mr Parvez Imroz, lawyer and also convener of the

tribunal, who have been subjected to intimidation and harassment. The civil society established tribunal, which began on 5 April 2008, was created in order to investigate allegations of systematic violence and human rights violations in Indian-administered Kashmir. Mr Imroz was previously the subject of urgent appeals sent by the then Special Representative of the Secretary-General on the situation of human-rights defenders and the Special Rapporteur on the independence of judges and lawyers on 1 May and 14 September 2006, of an urgent appeal sent by the then Special Representative of the Secretary-General on the situation of human rights defenders on 11 May 2005, and 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 Rapporteur on the question of torture on 5 October 2004. According to information received, on 21 June 2008, Dr Andana Chatterji was followed from her hotel to the office of the tribunal by eight members of the intelligence service, who remained outside the office throughout the day and questioned anybody entering or leaving the building. The previous day, 20 June, Dr Andana Chatterji and Mr Parvez Imroz had been visiting mass graves in Indian-administered Kashmir and in the course of the day had been questioned by twelve intelligence personnel from Special Branch Kashmir (SBK) and Counter Intelligence Kashmir (CIK) regarding their activities, the villages they had visited and whether they had taken photographic or video evidence of what they had observed. After being questioned, they were followed and their vehicle was forcibly boarded in Shangargund, Sopore by members of intelligence personnel who did not show identification. They were then briefly detained at a police station where officers confiscated their tapes, claiming they contained objectionable and dangerous material and from where they were followed once again. Dr Andana Chatterji has previously been subject to harassment and intimidation. In April 2008, after announcing the formation of the tribunal, she was stopped and intimidated at immigration control when leaving India for the USA, where she is resident. In June 2008, when she was returning to India, she was subjected to similar treatment. Concern was expressed that the intimidation and questioning of Dr Andana Chatterji and Mr Parvez Imroz may be directly related to their activities in defense of human rights, in particular in their role in the civil society established International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir. Further concern was expressed for the physical and psychological integrity of both individuals. Finally, concern was expressed that the incidents outlined may represent an attempt to restrict the work of the individuals, including as a lawyer, in addressing human rights violations in the region.

132. On 7 October 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Mr. Kirity Roy, lawyer and Secretary of Banglar Manabdhikar Suraksha Mancha (MASUM) and State Director of the National Project on Preventing Torture in India (NPPTI). MASUM is a human rights non-governmental organization based in Kolkata, West Bengal. On 9 and 10 June 2008, in Molali, Kolkata, MASUM coordinated the People's Tribunal on Torture (PTT), an initiative which works within the framework of the NPPTI and aims to bring about justice in cases of police torture. Mr. Kirity Roy was the subject of communications sent by mandate holders on 14 December 2005, 25 January 2006, 9 January 2007 and 18 June 2008. The PTT was the subject of a communication sent by the Special Rapporteur 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 10 June 2008. No responses to any of these

communications had been received from the Government. According to new information received, on 18 September 2008, a complaint was filed by MASUM (Writ Petition 25022 (W)/2008 Kirity Roy vs State of West Bengal and others) before the Honorable High Court, Kolkata, regarding the alleged raid on their offices on 12 June 2008. On 27 September 2008, at approximately 4.00 p.m., a group of Kolkata Police agents whose identities were known entered the offices of MASUM to search for Mr. Kirity Roy who was not there at the time. They then requested three documents relating to three alleged victims of police torture who had sworn affidavits for the PTT. Concern was expressed that the harassment of Mr. Kirity Roy and MASUM may be related to their legitimate activities in the defense of victims of police torture. Further concern was expressed that the incident described above may form part of an ongoing trend of harassment against human rights defenders involved in the investigation of police torture in India.

### **Communication received**

133. By letter dated 26 February 2009 (received by the Office of the High Commissioner for Human Rights on 19 March 2009) the Government of India replied to the joint allegation letter of 8 July 2008. The Government rejects the allegations raised in the Special Rapporteur's communication. The Government informed that, owing to the fact that Jammu and Kashmir is a sensitive border State of India that has been victim of cross-border terrorism for nearly two decades, any person venturing near the Line of Control without informing the authorities is liable to be questioned and asked to prove credentials by the law enforcing agencies. Since Dr. Chatterji and Advocate Parvez Imroz had been frequently visiting areas falling close to the Line of Control without informing the authorities, they may have been stopped by law enforcing agencies to ascertain the purpose of their visit close to the line of Control. The Government argues that such actions are necessary to maintain public order in a terrorism-prone area and cannot be termed as harassment/intimidation. It may also be noted that a vigil over the movement of foreigners in such a sensitive State is for their own safety as well as to prevent activities by them that might cause public disorder.

### **Special Rapporteur's comments and observations**

134. The Special Rapporteur is concerned at the absence of an official reply to his letters of 16 April 2008 and 7 October 2008. He urges the Government of India to provide at the earliest possible date detailed substantive replies to the above allegations.

## **Indonesia**

### **Communications sent**

135. On 6 November 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the following case, which was noted in the report by the Special Rapporteur on Torture to the Human Rights Council on his visit to Indonesia (A/HRC/7/3/Add.7, Appendix I, para. 75). On 18 October 2007, Sabar Olif Iwanggin, assistant lawyer and human rights activist, was arrested in Jayapura by the Anti-Terror Special Force Unit of the National Police (Mabes Polri). Afterwards, he was transferred to Mabes Polri in Jakarta where he was held for interrogation until 1 November 2007.

Subsequently he was brought back to Polda Papua. Sabar Olif Iwanggin was accused of forwarding a short-message-service (sms) to his family and his friends defaming the Indonesian President Susilo Bambang Yudhoyono. Sabar Olif Iwanggin was being tried since 7 January 2008 before the State Court of Jayapura. He was charged for insulting the President, based on articles 134 and 160 of the Indonesian Criminal Code. According to article 134, deliberate insult against the President shall be punished by a maximum prison sentence of six years. Article 160 stipulates that any person who incites in public to commit a punishable act, a violent action against the public authority or any other disobedience shall be punished by a maximum prison sentence of six years or a maximum fine of three hundred rupiahs. According to the information received, Sabar Olif Iwanggin's trial has violated due process guarantees, as stipulated by Indonesia's Criminal Procedure Code and international human rights standards. It was alleged that Sabar Olif Iwanggin was arrested without an arrest warrant and that he was not accompanied by his lawyer during part of the interrogation. Moreover, he would have confessed to committing the offense as a result of psychological pressure exerted by police officers. It was also alleged that the prosecution presented nine witnesses of whom none was able to testify against Sabar Olif Iwanggin, which led the prosecution to ask for further witness examination, even though both the examination of the witnesses as well as the examination of the defendant had been closed. This would have breached the Indonesian Criminal Procedural Code (article 182). Furthermore, it was alleged that although the prosecution did not prove that the sms of Sabar Olif Iwanggin led to anarchic actions in the districts of Yahukimo and Boven Digul where several stores were destroyed and burned down in September 2007, Sabar Olif Iwanggin was charged with violating article 160 of the Penal Code. Finally, the judges allegedly shouted and blamed the accused during the trial.

### **Communication received**

None

### **Special Rapporteur's comments and observations**

136. The Special Rapporteur is concerned at the absence of an official reply to his letter of 6 November 2008. He urges the Government of Indonesia to provide at the earliest possible date a detailed substantive answer to the above allegations.

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

#### **Communications sent**

137. Belonging to the brothers. The authorities had not yet announced why the brothers were detained or whether or not they intend to bring any charges. On 15 April 2008, the Special Rapporteur sent a joint urgent appeal, together with the Vice-Chairperson of the Working Group on Arbitrary Detention, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders pursuant, regarding the case of Behrooz Karimizadeh, Peyman Piran, Ali Kantouri and Majid Pourmajid, four students and members of the organisation "*Students Seeking Freedom and Equality*". According to information received, three of the four students were arrested in December 2007, apparently to prevent demonstrations to commemorate the "Students Day" on 7 December 2007.

Behrooz Karimizadeh was arrested on 2 December 2007 by Ministry of Information agents at the house of a friend in Tehran; Peyman Piran was arrested on 4 December 2007 by plainclothes agents from the Ministry of Information as he was leaving Tehran University campus following a peaceful demonstration; and Ali Kantouri was arrested approximately two weeks later in the town of Ghazvin. Behrooz Karimizadeh and Peyman Piran were being detained in Units 209 and 305 in Evin prison in Tehran, and Ali Kantouri was detained in Ghezel Hesare near Tehran. Bail was refused for Mr. Kantouri, and prohibitively high bail was set for Mr. Piran and Karimizadeh. Majid Pourmajid was arrested on 29 March 2008 in Tabriz; he was hospitalized three days after his arrest and transferred two days later from the hospital to an undisclosed location by the authorities. Since then his whereabouts were not known. The four students were accused of taking part in “armed activities” and “forming groups against the State”. Their lawyers did not have access to their clients or their files. The detained students were reportedly being subjected to long periods of solitary confinement and physical and psychological ill-treatment. Approximately 40 students had been arrested since December 2007, and all except these four were later released, some of them alleging that they were ill-treated during their detention. Concern was expressed that the arrest and detention of Behrooz Karimizadeh, Peyman Piran, Ali Kantouri, and Majid Pourmajid may be linked to their non-violent activities in defense of human rights, in particular in the exercise of their right to freedom of expression and assembly.

138. On 24 April 2008, the Special Rapporteur sent a joint urgent appeal, together with Special Rapporteur on extrajudicial, summary or arbitrary executions, 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 case of Abdolwahed (Hiwa) Butimar, a Kurdish journalist and environmentalist, by Branch No. 1 of the Revolutionary Court in Marivan City in the Province of Kordestan. An urgent appeal was sent on 26 July 2007 on behalf of Hiwa Butimar and his cousin Adnan Hassanpour, a Kurdish journalist and cultural rights activist, by the Special Rapporteur on extrajudicial, summary or arbitrary executions, 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, to which the Government replied on 23 August 2007. According to the information received, Hiwa Butimar and Adnan Hassanpour were arrested on 23 December 2006 and 25 January 2007 respectively, and reportedly held incommunicado in the Ministry of Intelligence facility in Marivan until 26 March 2007, when they were transferred to Marivan prison. They were tried on 12 June 2007 on charges of espionage and crime of “Moharebeh” (enemy of God) and sentenced to death on 17 July, although information received indicated that the charges were not supported by evidence. They appealed the sentence, and on 23 October 2007 the Supreme Court upheld the death sentence against Adnan Hassanpour, while it overturned the sentence against Hiwa Butimar for procedural irregularities and sent it back to the Marivan Revolutionary Court for re-examination. According to information received, Hiwa Butimar’s death sentence was upheld on appeal. It was reported that the case was referred to the same judge on appeal as the first instance judge.

139. On 11 July 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 situation of human rights defenders and the Special Rapporteur on violence against women, its causes and consequences, regarding the case of Ms Hana Abdi, Ms Raheleh Asgarizadeh and Ms Nasim Khosravi. The One Million Signatures Campaign seeks

to change discriminatory laws against women and to promote gender equality in Iran. Ms Hana Abdi is also a member of the women's rights NGO Azar Mehr. Ms Hana Abdi was the subject of a joint allegation letter sent by the then 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 and the Special Rapporteur on violence against women on 19 December 2007. Ms Raheleh Asgarizadeh and Ms Nasim Khosravi were the subjects of a joint urgent appeal sent by the same mandate-holders on 22 February 2008. No response to either correspondence had been received from the Government. According to information received, on 4 July 2008 Ms Hana Abdi began a five-year prison sentence. Her detention started on 4 November 2007, when her computer and pamphlets relating to the One Million Signatures Campaign were also confiscated. The sentence was passed on 18 June 2008 for "gathering and collusion to threaten national security" under Article 610 of the Islamic Penal Code. The sentence was reportedly based on interrogations carried out whilst Ms Hana Abdi was in isolated detention and was not allowed access to her lawyer. During her detention she was reportedly tortured. An appeal against her sentence was filed by her lawyer. The appeals court had not issued a decision in relation to the appeal at the time of writing of the letter. On 20 July 2008, Ms Raheleh Asgarizadeh and Ms Nasim Khosravi appeared in court. They were arrested on 14 February 2008 while collecting signatures as part of the One Million Signatures Campaign. The following day they were charged with "propaganda against the state" and transferred to Evin prison. The Special Rapporteurs were concerned that the prison sentence of Ms Hana Abdi and the trial of Ms Raheleh Asgarizadeh and Ms Nasim Khosravi may be related to their work in the defense of human rights, in particular their work to defend the rights of women in Iran. They were also concerned by the allegations of ongoing harassment of women human rights defenders involved in the One Million Signatures Campaign in the Islamic Republic of Iran.

140. On 31 July 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 situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Mr. Qulamriza Nejefi, aged 36; Mr. Hemid Valai, aged 27, a university graduate of law and an associate of the Association of Southern Azerbaijani Academics; Mr. Vedud Esedi, aged 28, a student reading geology at the Open University in Rasht, former student in the Open University in Ardebil, former Secretary-General of the Islamic Student Society and Director of the students' publication "Seher"; Mr. Sejjad Radmehr, aged 26, student of mechanical engineering; Mr. Aydin Khajei, aged 23; Mr. Feraz Zehtab, aged 23, both students reading law and members of the Islamic Student Society at Tabriz University; Mr. Dariyush Hatemi, aged 29, student; and Mr. Shahrukh Hatemi, aged 27, dentistry student in Turkey, all of them activists supporting cultural rights of Iranian Azerbaijanis. According to the information received, the above mentioned persons have been arrested and detained without indictment or trial since 5 June 2008 together with other individuals, whose identities were not yet known. They were being held in incommunicado detention without access to lawyers and have not been allowed visits by their relatives. Mr. Qulamriza Nejefi was arrested at his workplace in Tabriz on 5 June. One of the charges brought against him relates to a number of student publications issued under licence, which had been found during the searches of his workplace at the time of the arrest. Security agents, who then searched his home without a court warrant, confiscated his computer, books,

CDs and posters. Mr. Nejefi's family was unaware of his whereabouts for 15 days when it learned that he had been transferred to Tabriz prison, where he was not allowed to receive visits from his relatives. It was believed that the shutting down of Mr. Nejefi's shop at the Rasta Bazaar in Tabriz despite a valid licence was effected by the Ministry of Information's Office in Tabriz. Mr. Hemid Valai was detained on 15 June 2008 at the Ministry of Information's interrogation unit in Tabriz after he had been summoned there. His current place of detention was unknown. When family members inquired about his whereabouts with Iranian judicial and security authorities they were threatened not to publicise the case. Mr. Valai has been active in defending and researching ethnic rights. His articles have been published in a host of Azerbaijani student publications as well as in the "Dilmaj", which was banned by Iranian authorities. At the intervention of the Ministry of Information he was barred from membership of the bar of judiciary lawyers, despite fulfilling all professional requirements. Mr. Vedud Ezedi was arrested at his home in Rasht on 22 July 2008 by four security agents who confiscated his computer, CDs, books, handwritings, a photo album, a wedding video tape and a diary. It was feared that Mr. Ezedi has been transferred to Section 209 of the Evin Prison in Tehran, however, his family has not been able to establish his exact whereabouts. It was believed that Mr. Ezedi's arrest was attributed to his wedding ceremony, where the colour decorations on his wedding cake coincided with the three colours contained in the national flag of Azerbaijan and where folk songs in Azerbaijani Turkic were sung. Mr. Ezedi had been detained by the Ministry of Information in Tabriz and Ardebil before following his participation in the May 2006 demonstrations. He was released after three months and reportedly ill-treated while in detention. Mr. Sejjad Radmehr, Mr. Aydin Khajei, and Mr. Feraz Zehtab were arrested by security agents on 17 July at Tabriz University. All have been taken to a location undisclosed by the Iranian authorities and did not reveal their places of detention during one single short phone call they have been allowed to make to their families. It was believed that the men were arrested in connection with Mr. Radmehr's viva voce of his master thesis. He was only allowed to defend his thesis after staging a "sit-in" protest in the mosque of the University on 11 May 2008 and a hunger strike, and following a signature campaign at Tabriz and Urmiye Universities and the publication of open letters sent to President Mahmoud Ahmadinejad. Mr. Aydin Khajei and Mr. Feraz Zehtab supported Mr. Radmehr during the sit-in protests and had been banned from the University for one year before. Mr. Dariyush Hatemi and his brother, Mr. Shahrukh Hatemi, were also arrested by security agents on 17 June 2008 at their home in Tabriz. There was no confirmed information on their whereabouts and the charges brought against them were unknown. In view of their reported incommunicado detention, grave concerns were expressed as regards the physical and psychological integrity of the above mentioned persons. Further concern was expressed that their arrests and detention might be solely connected to their reportedly peaceful exercise of their right to, in those States in which ethnic, religious or linguistic minorities exist, enjoy their own culture or to use their own language, in community with the other members of their group.

141. On 14 August 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders, regarding the case of Ms Shirin Ebadi, Nobel Peace Prize laureate and lawyer. Ms Ebadi was the subject of an urgent appeal sent by the Special Rapporteur on violence against women and the Special Representative of the Secretary-General on the situation of human rights defenders on 16 April 2008; an urgent appeal 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 then Special Representative of the Secretary-General on the situation of human rights

defenders on 11 August 2006; an urgent appeal sent 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 then Special Representative of the Secretary-General on the situation of human rights defenders on 4 August 2005; an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on violence against women, and the then Special Representative of the Secretary-General on the situation of human rights defenders on 13 January 2005 and an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the then Special Representative of the Secretary-General on human rights defenders on 8 December 2003. According to the new information received, on 8 August 2008, an article was published on the website of the Iranian Republic News Agency (IRNA), entitled “Ebadi bogged down with the Bahai’s”. The article reacts to the fact that Ms Ebadi has undertaken the defence of seven members of the Baha’i community. The article contains allegations such as that human rights are used as means of pressure to impose Western norms to other cultures, and criticizes Ms Ebadi for taking up the defence of homosexuals, Bahai’s and “CIA agents”. The article also refers to the conversion to the Baha’i faith of Ms Nargess Tavassolian, the daughter of Ms Ebadi. Another article, which was published on IRNA’s website, alleged that the reason why Ms Ebadi took up the defence of the seven Baha’i members was in connection with her daughter’s conversion to the faith. On 4 August 2008, the newspaper ‘Kayhan’ also published an article insinuating links between Ms Ebadi, Israel and the Baha’i community. Concern was expressed that the recent slander campaign may be perceived as incitement to further harassment against Ms Ebadi and her family, especially in conjunction with the death threats against her in April 2008. Further concern was expressed with regard to the physical and psychological integrity of Ms Ebadi and her family, as well as her ability to carry out her work.

142. On 18 August 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions, regarding the case of Mr Ya’qub Mehrnehad, a journalist and activist working in defense of the cultural and civil rights of Baluchi peoples in northern Iran. Mr Mehrnehad was a civic activist and the General Secretary of the *Youth Association of Justice Voice* in Zahidan. Mr Ya’qub Mehrnehad had been the subject of a previous urgent appeal, sent on 15 February 2008 by the Special Rapporteur on the question of torture and the then Special Representative of the Secretary-General on the situation of human rights defenders. The Special Rapporteurs had not received a reply to that communication from the Government. According to the new information received: Mr Ya’qub Mehrnehad was executed on 4 August 2008 after his death sentence was approved by the Prosecutor-General of Iran. Mr Mehrnehad was sentenced to death in February 2008, a fact which was confirmed at a press conference by Judiciary spokesman Mr Ali Reza Jamshidi on 19 February 2008. Mr Ya’qub Mehrnehad was arrested in early May 2007 along with five other members of the association after they attended a meeting in the provincial office of Culture and Islamic Guidance. The five other men were later released. Five months after his arrest, Mr Ya’qub Mehrnehad was allowed visits from his lawyer and his family who alleged that he had been tortured, had lost about 15 kg and was unable to keep his balance.

According to the Public and Revolution Prosecutor's Office in Zahedan, Mr Mehrnehad was accused of being a member of Jondallah (also known as the Iranian Peoples' Resistance Movement) and considered having aided Mr Abdolmalek Rigi, the head of a Baluchi armed group. Ya'qub Mehrnehad was charged with *Mohareb* (enmity with God) and *Mofsed fi'l arz* (corruption on earth).

143. On 22 August 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, and the Special Rapporteur on the situation of human rights defenders, regarding the case of Mr Massoud Kordpour, founding member of the Foundation for Democracy and Human Rights in Iranian Kurdistan, who works on human rights and environmental issues. According to the information received, on 8 August 2008 Mr Kordpour was arrested in his home, in Boukan. Allegations against him included "espionage for foreign powers", apparently due to interviews he allegedly gave to Kurdish and Farsi language news sources. His current place of detention as well as the charges brought against him was unknown. He might have been kept in incommunicado detention. Concern was expressed that the detention of Mr Kordpour at an unknown location may be connected to his activities in defence of human rights and his work on minority issues. Further concern was expressed regarding the physical and mental integrity of Mr Kordpour.

144. On 26 August 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 situation of human rights defenders and the Special Rapporteur on violence against women, its causes and consequences, regarding the case of Ms Mahboubeh Karami, a journalist and active member of the Campaign for Equality, a women's rights movement in Iran which calls for reform of laws that discriminate against women, and a member of the One Million Signatures Campaign in Tehran. Members of the One Million Signatures Campaign have been the subject of previous communications sent to the Government by mandate holders. According to information received, on 13 June 2008, Ms Mahboubeh Karami was arrested by plain clothed security officers, who boarded a bus she was travelling on from Tajrish Square near Mellat Park, Tehran. Prior to her arrest Ms Mahboubeh Karami used her cell phone to call her mother to tell her that she was on her way home but that the bus was delayed in traffic. A short time later, Ms Mahboubeh Karami reportedly called her mother again to tell her that she was being forcibly removed from the bus. Her cell phone was then disconnected. Prior to Ms Mahboubeh Karami's arrest, a demonstration had taken place near Mellat Park in Tehran. The protest had been organised to demonstrate against the arrest, on 11 June 2008, of Mr Abbas Palizdar, a member of Iran's Majlis's (Parliament) Judicial Inquiry and Review Committee, who had apparently accused several senior Iranian officials of financial corruption. According to reports, security forces used tear gas and electric shock batons to disperse the crowd, and check points were also set up by security forces in Vali Asr Street which runs alongside Mellat Park. Several public buses were stopped and boarded by plain clothed officers. According to reports, on the day Ms Mahboubeh Karami was detained, her family was unable to ascertain her whereabouts despite enquiries made by her brother at Vozara detention centre. The following day, a fellow passenger who had been on the bus with Ms Mahboubeh Karami returned her bag to her family, informing them that all the women on the bus had been removed by security officers, and that seemingly none of them had been involved in any demonstration.

On 14 June 2008, the Head of Tehran's Judiciary reportedly issued a press statement declaring that 200 people had been arrested the previous day and that those who were innocent or were suspected of committing only minor offences would learn about the status of their cases within a week. On 25 June, Ms Mahboubeh Karami's mother received a call from her daughter from Evin Prison saying that she was being held along with 90 other alleged female protesters. On 6 July, Ms Mahboubeh Karami along with nine other women reportedly went on hunger strike to protest about the prison conditions. At that time they were all being held in a section of Evin Prison where detainees are not permitted visits. The protest ended after the other nine women were all released by 25 July. Ms Mahboubeh Karami remained in detention but was moved to a 'general' section of Evin Prison, and from that moment on was allowed weekly visits from her family. According to reports, Ms Mahboubeh Karami was charged with "acting against national security," and the Revolutionary Court in Mahabad has scheduled her next hearing for 1 November 2008. Ms Mahboubeh Karami's lawyer has reportedly only recently been allowed to see the court documents concerning her case, and will shortly meet with her for the first time since her arrest. The court set bail of one billion rials (approximately US\$110,000) on 12 July 2008. However, Ms Mahboubeh's family had been unable to raise such a large amount. Concern was expressed that the aforementioned events may be in relation to Ms. Karami's involvement in the Campaign for Equality and the One Million Signatures Campaign and may represent an attempt to prevent freedom of assembly and expression.

145. On 23 September 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 right to education, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the human rights of migrants, regarding the case of Dr. Mehdi Zakerian, a scholar of international relations and international law, chair of the *International Studies Association of Iran (ISAI)*, also known by its French name and acronym *Association iranienne des études internationales (AIEI)*, an independent body aimed at promoting the teaching, research and debate on international relations. According to the information received, Dr. Zakerian, was arrested on or around 15 August 2008. The exact circumstances of his arrest and the place of detention where he was being held were not known. His family had been permitted to meet him only once, on 6 or 7 September, at Branch 12 of the Revolutionary Court in Tehran under the supervision of court officials. Since then Dr. Zakerian had not been in contact with them. It was unclear whether this meeting was meant as an official courtroom appearance, since Dr. Zakerian has been accused of offences relating to national security including espionage, but has not formally been charged. During the meeting Dr. Zakerian appeared to be weak. It was believed that Dr. Zakerian's detention might be an attempt to prevent him from travelling to the United States of America to take up a new post at the University of Pennsylvania as he was awaiting his visa when he was detained. Dr. Zakerian used to be an assistant professor at the Islamic Azad University in Tehran until September 2007, when he was dismissed from the post without explanation. He had taught for more than 10 years, holding posts at a number of important Iranian universities, and has written numerous articles. In view of Dr. Zakerian's reported incommunicado detention at an undisclosed place of detention, grave concern was expressed as regards his physical and mental integrity. Further concerns were expressed that his detention might be solely connected to his

reportedly peaceful exercise of his right to freedom of opinion and expression, which includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and of his right to freely leave any country, including his own.

146. On 20 October 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur 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, regarding the case of Mr. Adnan Hassanpour, a journalist, an advocate of cultural rights for the Kurdish people in Iran, and a former member of the editorial board of the Kurdish-Persian journal, *Aso* (Horizon), which was shut down by the Iranian authorities in August 2005. On 25 August 2008, Mr. Adnan Hassanpour began a hunger strike, with 130 Kurdish prisoners in Iran, in protest against human rights violations such as torture. Urgent appeals were sent to the Government by various mandate-holders on 26 June 2007, and 24 April 2008, regarding the death sentences given to Mr. Adnan Hassanpour and his cousin, Mr. Abdolwahed Butimar, a Kurdish journalist and environmentalist. A response from the Government was received on 23 August 2007. According to new information received, on 3 September 2008, Branch 32 of the Supreme Court overturned Mr. Adnan Hassanpour's death sentence because the charges on which he had been convicted did not amount to moharebeh (enmity with God). However, he will be retried by Branch 1 of the Revolutionary Court in Marivan, Kordestan, on charges of espionage. Mr. Adnan Hassanpour reportedly confessed under duress to the charges brought against him but retracted his confession. The Government's response received on 23 August 2007, states that the charges against both Mr. Adnan Hassanpour and Mr. Abdolwahed Butimar were not related to their work as professional journalists. While this was acknowledged and the overturning of Mr. Adnan Hassanpour's death sentence was welcomed, concern was expressed that both his and Mr. Abdolwahed Butimar's work to defend the rights of Kurdish people in Iran is inhibited as long as there were charges against them. Serious concern was also expressed for Mr. Adnan Hassanpour's physical and psychological integrity as well as that of Mr. Abdolwahed Butimar.

147. On 1 December 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health, regarding the case of two brothers Arash and Kamiar Alaei, doctors specialising in the prevention and management of HIV and AIDS and harm-reduction programmes for HIV drug-users in Iran. According to the information received, Dr Arash Alaei was arrested by security forces on 22 June 2008, and held overnight at an unknown location. On 23 June 2008, he was reportedly accompanied to his home, where his brother, Dr Kamyar Alaei was also arrested. It was also alleged that security forces seized material and documents against them. It was further alleged that authorities have refused to disclose information about where the Alaei brothers were being held and have not provided them access to counsel. In view of their alleged detention at an unknown place concerns were expressed regarding their physical and mental integrity. It was alleged that the detention of Drs. Arash and Kamiar Alaei will prevent drug users and others from accessing needed health care services which are necessary for the protection of their health and further prevention of HIV transmission. Drs. Arash and Kamiar Alaei are leading experts on HIV/AIDS and have pioneered HIV/AIDS prevention and treatment activities throughout Iran. Since 1986, they have worked to integrate care of HIV/AIDS sexually-transmitted diseases and drug-related harm reduction programs into Iran's national health care system. Their programmes have focused on harm reduction for injecting

drug users and they have received wide acclaim internationally. In addition to their work in Iran, the Alaei brothers have held training courses for Afghan and Tajik medical workers and have encouraged regional cooperation among 12 Middle Eastern and Central Asian Countries.

148. On 12 January 2009, 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 torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Mr. Kamiar Alaei and Mr. Arash Alaei. They were already subject of an earlier communication by Special Procedures sent on 1 December 2008. According to recent information received, Messrs Kamiar and Arash Alaei were held by Iran's Intelligence Ministry in Section 209 of Evin Prison, where detainees are reportedly routinely subjected to prolonged interrogation while blindfolded and without counsel, to solitary confinement, sleep deprivation, threats, beatings and stress positions. Moreover, during the criminal process that led to the trial of Messrs Kamiar and Arash Alaei before Tehran's Revolutionary Court on 31 December 2008 neither their defense lawyer, nor Messrs Kamiar and Arash Alaei had been informed of all the charges against them, nor had they been allowed to review all the evidence in the case. Eventually, charges of communicating with an "enemy government" were brought against them. Additional charges that the prosecution had not disclosed before were submitted at the trial. A verdict by the Court had been expected to be issued already on 7 January; however it was not known whether this has been the case and what the outcome was. With a view to consistent allegations of ill-treatment at Section 209 of Evin Prison, grave concern for the physical and mental integrity of Messrs Kamiar and Arash Alaei was expressed.

149. On 21 January 2009, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on violence against women, its causes and consequences, regarding several cases of persons sentenced to death by stoning on charges of adultery. According to the information received, on 26 December 2008, Mr. Houshang Khodadadeh and another man whose name has not been reported to the Special Rapporteurs were executed by stoning in Mashhad. These executions were confirmed on 13 January 2009 by Mr. Ali Reza Jamshidi, spokesman of the judiciary. A third man, identified as a citizen of Afghanistan named Mahmoud Gh., reportedly managed to free himself of the pit where he was to be stoned. He was again in custody. Ms. Gilan Mohammadi and Mr. Gholamali Eskandari were arrested, possibly in 2003, on charges of adultery. In 2005 or 2006, they were tried and sentenced to death by stoning. The death sentences were possibly confirmed by the Supreme Court in 2008. On 14 January 2009, two lawyers, Mr. Mohammad Mostafaie and Ms. Shadi Sadr, travelled to Esfahan Central Prison, where Ms. Gilan Mohammadi and Mr. Gholamali Eskandari were detained, to offer their services as lawyers. The prison authorities denied the two lawyers access to the detainees. Mr. Mostafaie and Ms. Sadr appealed to the judicial authorities in Esfahan, which ruled that the lawyers could contact the two convicts only if the detainees first asked to meet with lawyers. The cases of Ms. Zohreh Kabiri and Ms. Azar Kabiri were the subject of two urgent appeals dated 13 February 2008 and 30 July 2008, to which the Special Rapporteurs had not received any response from the Government. As stated in our previous communications, Ms. Zohreh Kabiri and Ms. Azar Kabiri were arrested on 5 February 2007 in connection with allegations of illegitimate relations other than adultery. On 17 March 2007, they were prosecuted in court, found guilty, and sentenced to 99 lashes. This sentence was executed. Thereafter, both women were returned to prison and another trial took place for the same charges and they were

sentenced to death by stoning on 5 August 2007. Branch 27 of the Supreme Court confirmed the death sentence in 2007. According to information received since then, the Head of the Judiciary subsequently quashed the death sentence imposed against Ms. Zohreh Kabiri and Ms. Azar Kabiri and sent their case back to Branch 77 of the General Court in Karaj. This court reportedly again imposed the death sentence by stoning and, in the first half of January 2009, Branch 27 of the Supreme Court confirmed the death sentence. The charges against Ms. Zohreh Kabiri and Ms. Azar Kabiri were primarily based, as evidence, on video footage from a camera Zohreh Kabiri's husband allegedly had secretly installed in his house, which allegedly shows the two women with another man. It would appear that the lawyer defending the two women has never been able to view the video footage which was used as evidence by the court. In the Special Rapporteurs communication of 30 July 2008, they further brought to the Government's attention reports they had received regarding the following other persons allegedly sentenced to death by stoning on charges of adultery: Ms. Kobra Najjar, Ms. Iran Eskandari, Ms. Malek (Shamameh) Ghorbani, Ms. Ashraf Kolhari, Ms. Khaeirieh Valania, Ms. Leila Qomi, and Mr. Abdollah Farivar Moqaddam. Regrettably, the Special Rapporteurs had not received a reply from the Government on these cases. Reportedly, in 2002, the Head of the Judiciary issued a directive purporting to introduce a moratorium on executions by stoning. However, it was reported that at least four men and one woman have been stoned to death since 2002, including the two men stoned to death in Mashhad on 26 December 2008. On 13 January 2009, the spokesman of the judiciary, Mr. Ali Reza Jamshidi, reportedly stated that the directive on the moratorium had no legal weight and judges were therefore free to ignore it.

### **Communications received**

150. The Government of Iran replied to the urgent appeal dated 31 July 2008 in three letters, dated 18 February 2009, 20 February 2009 and 12 March 2009.

151. On 18 February 2009, the Government replies to the urgent appeal of 31 July 2008, stating that Mr. Vadoo Asadi is one of the leaders of the extremist pan-Tukism network and the director of the of the students publication of Sahar, the certificate of which was cancelled due to its illegal activities. He was arrested on 22 July 2008 and charged with propagation against state through distribution and publication of false information with the intention of inciting public opinion, distribution of immoral pornographic CD.s as well as propagation of extremist political issues. His file was referred to Branch 12 of Rasht Investigation Office. Mr. Asadi is presently out of prison through a six million tooman (6 thousand dollar) bail. He was arrested in relation with his illegal activities, threatened in accordance with the rule of law and enjoyed all his legal rights before the court of justice. Mr. Asadi enjoyed all facilities existing medical services, similar to any other individual under detention. The Government informs that any allegation of mistreatment or lack of proper attention to his physical psychological integrity as well as any allegations of threat against his family are baseless and mere fabrication of lies. The Government regrets that the letters of the special procedures contain references "the victim" or "secret police". Furthermore, it expresses regret that the release of Mr. Asadi was not reported to the special procedures by the sources of the allegation.

152. On 20 February 2009, the Government, in reply to the urgent appeal of 31 July 2008, forwards information received from the judiciary. In this letter, it is stated that the judicial procedure on different cases are carried out on the basis of law, disregarding social titles,

positions, profession, belief or religion and etc. of the accused individuals. Arrest of the individuals mentioned in the letters of the honourable Special Rapporteurs, has been the result of their illegal activities and on the basis of charges laid against them in accordance with the rule of law. Any allegation stating otherwise, including attribution of their arrest to their belief or ideology, is baseless and distortion of realities, with the purpose of inciting public opinion for politically motivated objectives. The judicial authorities received complaints of a considerable number of individuals of all walks of life against a sect oriented organization, attributed to Baha'is, under supervision of seven individuals, namely Khanjani, Tvakoli, Tizfahm, Rezaei, Fariba Kamalabadi, Afif Nafini and Mahvash Shahriyari. On the basis of the statements and evidences provided by the complainants, they had received threats and intimidation from the mentioned individuals or their subordinates to join the sect organization. The complainants were, furthermore, threatened through interference and meddling with their private lives and beliefs, to be expelled and disconnected from their families and relatives. Following registry of the complaints and seriousness of allegations, strict orders were issued, by the pertinent authorities, for carrying out thorough investigations into the case. The result of exhausting investigations on complaints and allegations revealed that the afore-mentioned individuals had played an effective role in the occurring and realization of the mentioned offences. Through formation of a clandestine and frightful organization, and systematic control of the private, social and economic activities of their sect members as well as accurate planning and programming for entrapping other people into their sect through abnormal and illegal methods including persuasion, temptation and threat, they intended to expand their illegal organization and ultimately achieve their goals through creating a deviant move. On the basis of the existing authentic evidences, the organization has received several directives from Israel, as the centre, as well as considerable financial assistances for realization of its objectives. Pursuant to the registry of complaints and the result of the alarming investigation findings, the mentioned individuals were legally charged and sued, for action against state national security. Therefore, six of them were arrested on 14 May 2008, on the writ issued by the Tehran Public Prosecutor's Office. Later, the writ was objected and the case was referred to the pertinent court. Pursuant to the review of the objection the writ was reinstated. The seventh individuals, Ms. Mahvash Shahriyari, who was arrested earlier in Mashad city, was transferred to Tehran due to the result of investigations and the statements made by the above-mentioned individuals on her connection with the dossier under investigation. Presently, the preliminary stage of investigations is complete, and the case is referred to the competent court. The Government advises that, upon exhaustion of the national judicial procedures, the Special Rapporteurs shall be advised of the final verdict.

153. On 12 March 2009, the Government, in reply to the urgent appeal of 31 July 2008, informs the special procedures of further information received from pertinent authorities. The letter informs that all the eight individuals, during their apprehension, have been in contact with their families. On the basis of investigations, the mentioned students in the communication have had extremist ethnic inclinations and their activities have constantly aimed at creating hatred toward other Iranian ethnic groups with the ultimate separatist objectives. They resorted to illegal instruments, violation and extremism and even did not hesitate to have contacts with outlawed groups in some neighbouring countries, for which the Iranian Government has officially taken measures through diplomatic channels. According to the existing information, they started their activities through establishment of a literature association named "Sahand" without any coordination or information of the university's vice-chancellor for cultural affairs, which was a requirement. The association was merely used as an umbrella for their activities. They also

continued with their separatist and extremist ideas through propagating and releasing of articles and making of baseless allegations in a Website in Canada, which has been established by anti-Iranian groups. Iranian laws do not allow using internet websites, for advertisement or propagation issues, which do not observe social morality standards or incite public opinion or create discord among ethnic groups. They further developed their activities by formation of the illegal group of “Azoukh”. They later put their group at the service of the separatist and extremist group of “Gamouh” which located out of the country, which, in fact, alerted the Iranian pertinent authorities to make the necessary investigations. The illegal “Gamouh” group is stationed in USA and Azerbaijan and considers itself as a “national movement for awaking of Azerbaijan”. It is led by an Iranian, by the name of Mr. Mahmoud Cheregani, who has fled the country. Goumeh is known as an extremist and separatist group which has openly announced its goal as establishment of southern Azerbaijan government and state as well as separation from the Islamic Republic of Iran. The Group which receives financial assistance from foreign countries, has taken extensive measures toward ethnic hatred against other ethnic groups of the country, inter alia through propagating extremist terminology and literature (such as Fars chauvinism), which is against the existing national law and regulations as well as international standards. The group follows the extremist objectives of “Gamouth” group through creating a Weblog and a Website by the assistance of Gamouh members and buying of the permit from Canada. They collected particular pieces of News on students’ activities, labour union activities/strikes and other ordinary News of the country and reflected and commented them in a way which incited separatist and ethnical ideas and unrest. The other activities of Azoukh included: a. providing mal-intended information to all Websites affiliated to terrorist groups which have been hostile to Iran, b. deceiving students and formation of covert teams with the objective of separatism and ethnical provocations and ultimate overturning of the government, c. distribution of books and written materials on their ideas as well as dragging the “Sahand” illegal literature association into their activities.

154. With regard to the individuals, the authorities inform of the following. Mr. Hamid Valai was arrested being charged with acts of extremism, disturbing of public order, act against national security, co-founding of the illegal group of “Azoukh” with extremist goals. He was released on bail (50 million toomans/50 thousand dollars) on 29 October, 2008. He had two lawyers, Mr. Mahmoudi and Mr. Jamali. The authorities inform that there was no final verdict issued. Mr. Sajjad Radmehr, student of mechanical engineering of Tabriz University, was arrested on 18 July, 2008, being charged with co-founding of the illegal group of “Gamouth” and participation in propagation against the State in favour of the Gamouth group. The hearing court was held on 19 July 2008. The case was under judicial procedure. Mr. Faraz ZehtabFavadi is a student of Tabriz University. He is charged with co-founding of the illegal group of “Azoukh”, and its co-directing, with the intention of disturbing state security and propagation against the State in favour of the Gamouth group. He was the main editor of separatist statements and also the executive head of the illegal association of Sahand. His hearing court was held on 19 July 2008. Mr. Aydin Khajei is a student of the Tabriz University, studying for bachelor’s degree. He was arrested on 18 July, 2008 and the hearing court was held on 19 July 2008. The charges laid against him include participation in formation of the illegal group of “Azoukh”, and its co-directing, with the intention of disturbing state security and propagation against the State in favour of the Gamouh group (Article 498 and 500 of the Islamic Penal law). Organizational role and responsibility of the accused: collection and/ distribution of news and statements and articles, to do follow-ups on actions, absorbing news members, particularly students coming

from remote areas and leading of an information network with the objective of separatism and ethnical provocations and ultimate overturning of the government, participation in leading the illegal association of Sahand, installing of a forged flag as the flag of southern Azerbaijan, in the university campus and in some parts of the city of Tabriz, filming them and sending the films to Websites opposing the Islamic Republic of Iran. Mr. Daryoush Hatami is a conscript soldier of Division 21 Hamzah of the Army and a university graduate of agriculture. He was arrested on 18 July 2008, being charged with co-founding and management of the illegal group of "Azoukh", with the intention of disturbing state security and propagation against the state in favour of the Gamouh group (Article 498 and 500 of the Islamic Penal law). The organizational role and responsibility of the accused: leasing of a house and turning it into the venue for meetings of the Azoukh group, preparing of computers and electronic equipments for activities of the group, connection with foreign illegal websites, connection with ethnical members of the Gamouh and its supporters as well as distribution of provocative ethnic statements and posters. Mr. Shahrokh Hatami is a student of dentistry in Turkey. He has a record and conviction for participation in gatherings, intended to incite ethnic unrest. He was charged with propagation against the State in favour of the Gamouh group (Article 498 and 500 of the Islamic Penal law). His role and responsibility in the group was the organizing of meetings, collection and distribution of news and information aiming at separatist ends as well as ethnic hatred and unrest. He was arrested on 18 July 2008 and the court of hearing was held on 19 July 2008. He was released on bail on 31 July 2008. His dossier was under judicial procedure. Mr. Vadood Asadi is one of the leaders of the extremist pan-Turkish network and the director of the of students publication of Sahar, the certificate of which was cancelled due to its illegal activities. He was arrested on 22 July 2008 and charged with propagation against state through distribution and publication of false information with the intention of inciting public opinion, distribution of immoral pornographic CD's as well as propagation of extremist political issues. His file was referred to Branch 12 of Rasht Investigation Office. Mr. Asadi is presently out of prison through a six million tooman (6 thousand dollar) bail. He was arrested merely in relation with his illegal activities (and not under the allegation of Azeri sons, which are quite prevalent and popular in Iran or the colour of his wedding cake). He was treated in accordance with the rule of law and enjoyed all his legal rights before the court of justice. Charges laid down against the above-mentioned individuals have had no connection, whatsoever with their peaceful social/human rights activities. All the individuals enjoyed the existing medical services and facilities, similar to any other individual under detention. The Government concludes by stating that any allegations of mistreatment or lack of proper attention to their physical or psychological integrity are baseless and mere fabrication.

155. On 28 April 2009, the Government of Iran replied to the letter dated 15 April 2008, stating that on the basis of investigations conducted it turned out that Behrooz Karimizadeh, Peyman Piran, Ali Kantouri and Majid Pourabdolloah were not students and had resorted to illegal instruments, violation and extremism and started their activities through establishment of an illegal organization, with extremist Marxist inclination, named Hekmatism, Azadi guard brach. The Government informs that, aiming at creating insecurity in the country, the organization had set up a military branch disguised under the umbrella of student activities. The Government further informed that they absorbed students who wished to have political activities and gradually dragged them into criminal and terrorist acts, such as kidnapping, engineering bomb explosions etc. On 4 December 2007, the abnormal behaviour of the four above-mentioned individuals who had participated in a gathering in commemoration of the Day of Student made

police officers suspicious. Consequently, they were arrested and the investigations revealed the following: Mr. Peyman Piran, from the city of Mahabad, had been expelled from the University of Tehran, and he had a record of arrests for acts of extremism with leftist Marxist inclinations in relation with Hekmatism with armed struggle policies. Mr. Behrouz Karimizadeh, from the city of Mahabad, had been expelled from the University of Tehran, and Mr. Ali Kantour, from the city of Qazvin, who has records of illegal activities, extremist leftist inclinations, acts leading to public disorder, destruction of public property and one case of blackmail, were both actively involved in armed activities of Azadi guard of Hekmatism. Majid Pourabdollah, who has had records of illegal activities, extremist leftist inclinations, acts leading to public disorder, destruction of public property and actively participated in the implementation of armed activities. The above mentioned individuals were charged with: 1) founding an extremist group with the objective of disturbing security of the country, and 2) propagation against the state in favour of the hostile groups (extremist Marxist with armed struggle policies). Their cases were referred to branch 15 of the penal court and later on they were released on bail. Their cases have not been finalized yet. Charges laid down against the above-mentioned individuals had had no connection, whatsoever, with peaceful social/human rights activities. All the individuals enjoyed their rights as well as having access to the existing services and facilities, similar to any other individual under detention. Mr. Abdolfattah Soltani and Ms. Mahnaz Parakan were the lawyers of the individuals. Any allegations of maltreatment or lack of proper attention to their physical integrity are baseless and mere fabrication. The Government concludes by noting that according to the latest information, Mr. Karimizadeh and Mr. Piran have illegally left the country and are seen in northern Iraq.

156. On 4 May 2009, the Government of Iran replied to the joint urgent appeal dated 15 April 2008, stating that Mr. Reza Daghestani, born in 1981, was arrested on 21 February 2008, under the charge of extremist incitement to ethnic feelings and sentiments, organizing of illegal gatherings as well as ethnic propagation against other Iranian ethnic groups. Following investigations, he was released on bail. On 14 May 2008, the penal court of Oroumiye city sentenced him, in the presence of his lawyer, Mr. Karim Najafi, to eight months of imprisonment, including his earlier days of detention. Taking into the consideration Mr. Daghestani's young age and respecting the Islamic affection as well as his lack of criminal record and finally, on the basis of Article 25 of the Islamic Penal Code, the remaining of his sentence was suspended. As it was explained, Mr. Daghestani was treated in accordance with the rule of law, enjoying the highest level of affection as well as his legal rights before the court of justice. The charges laid down against Mr Daghestani had no connection, whatsoever, with her, if any, social/human rights activities, and the case was heard and settled in the shortest possible time. The Government concludes by stating that therefore all allegations on maltreatment or lack of proper attention to his physical or psychological integrity as well as any allegation on threats against his family are baseless, mere fabrication as well as an abuse of the internationally-recognised instruments.

157. On 6 May 2009, the Government of Iran replied to the letter of 5 February 2008, stating that Mr. Behrouz Safari and his wife, Mrs. Leila Heydari traveled to Turkey as tourists and participated in training sessions, which according to authentic information, were organized by Americans. According to the confirmed information, the agenda of the training courses included overthrow of the system/government through abuse of civil and social rights existing in the country. The participants in the training courses are taught the special methods for recognition and absorption of new members, organizational techniques, extremist propagation on the existing

weaknesses in the country, as well as disturbing of public opinion. Mr. Behriuz Safari and his wife Mrs. Leila Heydari together with other seven individuals participated in the above-mentioned course and took the oath to implement what they had learned in the course. Following their return to the country, Mr. Safari was arrested on 19 June 2007 and Mrs. Heydari was arrested on 27 August 2007. Following the relevant investigations, they were released on bail on 2 March 2008 and their case, together with the bill of indictment, was sent to branch 15 of Tehran Penal Court. The court met on 8 June 2008, in the presence of their defense lawyers, Dadkhah and Raesian Firourabad, and convicted them to one year's suspended imprisonment, through verdict No. 87/104. Upon complaint of the defence, the case was raised in branch 36 of the Court of Appeal and reinstated through verdict No. 1257 of 28 October 2008. The Government further informs that the two individuals were arrested merely in relation with their illegal activities and they were treated in accordance with the rule of law and enjoyed all their legal rights before the court of justice. Any allegation on maltreatment or lack of proper attention to his physical or psychological integrity as well as any other allegation such as "torture to obtain confessions" or "arrested in relation with their peaceful activities in defence of human rights" are baseless and a mere fabrication. The government further informs that the law of the Islamic Republic of Iran are based on prohibition of any form of mistreatment of individuals. This overriding principle has been accorded special attention in the Constitution. In order to ensure effective respect for this principle, not only has the Constitution provided for the punishment of those who ignore the prohibitions and commit acts of mistreatment and torture, but provision have also been made for the legal protection of the victims of mistreatment. Furthermore, confession extracted through torture is invalid. The Government concludes by referring to the wording of article 38 of the Constitution.

### **Special Rapporteur's comments and observations**

158. The Special Rapporteur wishes to thank the Government for their detailed replies of 18 and 20 February, 12 March, 28 April, 4 May and 6 May 2009.

159. The Special Rapporteur is concerned at the absence of any official reply to the communications of 24 April 2008, 11 July 2008, 14, 18, 22 and 26 August 2008, 23 September 2008, 20 October 2008, 3 November 2008, 1 December 2008, 12 January 2009 and 21 January 2009. He urges the Government of Iran to provide at the earliest possible date detailed substantive answers to the above allegations.

160. The Special Rapporteur remains concerned at the manifold information received about human rights violations against human rights defenders, as reflected in the above-mentioned letters sent to the Government of Iran. In this connection, he wishes also to express his pre-occupation about the violation of procedural rights of these individuals which lead to a situation in which they are not in a position to adequately defend themselves in pre-trial as well as judicial procedures.

161. In this context, the Special Rapporteur wishes to remind the Government of his request to visit that country, made in 2006. Given the discussions with the authorities of Iran, the Special Rapporteur is hopeful that the Government will invite the mandate-holder in the near future.

## Israel

### Communications sent

162. On 28 July 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, regarding the case of Mr Shawan Jabarin, general director of *Al-Haq*, a Palestinian human rights organization based in the occupied West Bank. On 16 March 2007, Mr Shawan Jabarin was the subject of a joint urgent appeal sent by the Special Rapporteur on freedom of opinion and expression and the Special Representative of the Secretary General on the situation of human rights defenders. The urgent appeal referred to travel restrictions against Mr Shawan Jabarin imposed on 23 March 2006. No response had been received from the Government. According to information received, on 7 July 2008, the Israeli High Court rejected Mr Shawan Jabarin's petition to have the travel restrictions against him lifted. Previous petitions filed by Mr Shawan Jabarin against the travel restrictions were rejected in December 2006 and June 2007. With the travel restrictions in place Mr Shawan Jabarin was not permitted to leave the West Bank. The High Court's refusal to lift the travel restrictions against Mr Shawan Jabarin was reportedly based on secret information provided by the military and examined *ex parte*. This information allegedly justifies the Israeli High Court's decision by proving that Mr Shawan Jabarin was a security risk. Given that neither Mr Shawan Jabarin nor his lawyer has been able to gain knowledge of why the travel restrictions are in place, it has been impossible to defend Mr Shawan Jabarin. Because he cannot leave the West Bank, Mr Shawan Jabarin has been unable to represent his organization at various events in other countries. The Special Rapporteurs were concerned that no reasons for the travel ban imposed against Mr Shawan Jabarin have been given and as a consequence he cannot effectively continue his non-violent activities in defence of human rights in the occupied West Bank territory.

163. On 31 October 2008, the Special Rapporteur sent a joint urgent appeal, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, regarding the situation of S.S. and S.S., both aged 16, and cousins, living in Bethlehem. According to information received, both were reportedly due to be released on 4 October 2008. On 5 October 2008, S.S. and S.S. were issued a second administrative detention order for a further three-month period. On 6 October 2008, their appeal was rejected. The military judge Eyal Noon reportedly upheld the order for a further three months until 3 January 2009. The judge reportedly considered that these girls were still 'dangerous'. Furthermore, the military prosecutor has provided no evidence since their arrest. On 5 June 2008, at approximately 02.00 a.m., S.S. and S.S. had been arrested by Israeli police and Israeli Security Agency (ISA) officers at their respective homes in Bethlehem. In both cases, it was alleged that officers used excessive force and abusive ill-treatment at the time of arrest, including by handcuffing and blindfolding. Following their arrest, S.S. and S.S. were taken briefly to Telmond Prison and then transferred to Ofer Prison where they were interrogated for one hour. During the interrogation, they were allegedly asked about their activities and relations with any political group. S.S. and S.S. did not confess anything. The ISA reportedly claimed that the girls were involved in militant activities; although to date, no charges have been issued against them. S.S. and S.S. were then taken back to Telmond prison, where they were kept for two days. They were then transferred to Addamoun prison, where they had been detained with other Palestinian adult female detainees. With regard to the military administrative detention orders, it was reported that they were issued on

12 June 2008, and allegedly justified S.S.' and S.S.' detention on the basis of their supposed involvement in militant activities, deemed by authorities as "endangering the security of the area". These orders set for four and five months respectively. A military court reportedly confirmed these orders on 18 June 2008. On 15 July 2008, S.S. and S.S. were brought from Addamoun prison to Al Ramle prison, in view of the appeal hearing set for 16 July 2008. They endured abusive behaviour during this transfer and at the place of destination. At Al Ramle prison, S.S. and S.S. were undressed and had undergone a full body search conducted by a female officer. On 16 July 2008, S.S. and S.S. were brought before an appeal hearing which confirmed the orders, although S.S.'s administrative term was reportedly reduced from 5 to 4 months. It was further alleged that according to the administrative detention procedure in Israel, a Military commander was able to renew the administrative detention order for up to 6 months, every 6 months, subject to review by a court (within 8 days of each order being issued); and the renewal can be extended perpetually. This exists even in the absence of any charge or trial during the whole period of detention. It was understood that a military order by the commander would be confirmed by a military court, and furthermore may be subject to an appeal. Both S.S. and S.S. have had access to legal counsel, and their families were able to visit them only three times since their arrest. Concerns were expressed at the physical and psychological integrity of Ms. Salah and Ms. Siureh, particularly in light of their status as minors and in the alleged absence of charges.

164. On 4 December 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 situation of human rights in the Palestinian territories occupied since 1967, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Mr. Rami Ibrahim Mohammed Samarah, aged 22, Palestinian, identity document No. 938010287, usually residing at Zeita village, Tulkarm. According to the information received, Mr. Samarah was arrested without a warrant by a member of the Israeli national security forces on 28 June 2007 at Zatarah checkpoint. He has been ordered to remain in detention for security reasons for 36 months and was currently held at Naqib and Majido prisons, between which he was regularly transferred back and forth. The authority ordering the detention had not been reported, and the legal basis for the detention was not known. Mr. Samarah had a lawyer, however, up to date no charges had been brought against him. During the investigation Mr. Samarah was allegedly severely beaten. It was alleged that he was being detained in poor conditions. Prior to his arrest his house was searched by Israeli soldiers who were said to have destroyed parts of the interior and his personal computer. In view of allegations of ill-treatment, concerns were expressed as regards Mr. Samarah's physical and mental integrity.

### **Communications received**

165. On 11 December 2008, the Government replies to the urgent appeals sent on 31 October 2008, stating 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, is 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. Regarding the cases at hand, Ms. Siureh was arrested on 5 June 2008. Thereafter, on 12 June 2008, an administrative detention order for a period of five months was issued against her due to her activities jeopardizing the security of the area. In a judicial review regarding the order, in light of Ms. Siureh being a minor, the Court decided to shorten the administrative detention order to a period of four months. Thus her detention was scheduled to end on 4 October 2008. An appeal regarding the above-mentioned decision was denied by the Court. Ms. Saleh was also arrested on 5 June 2008. Thereafter, on 12 June 2008, an administrative detention order for a period of four months was issued against her due to her activities jeopardizing the security of the area. In a judicial review regarding the order, the Court noted that it would have been appropriate to sentence Ms. Saleh to a longer detention period, but in light of her status as a minor, the original sentence of four months would stand. Thus her detention was scheduled to end on 4 October 2008. An appeal regarding the abovementioned decision was denied by the Court. On 28 September 2008, the administrative detention orders against Ms. Siureh and Ms. Saleh were extended for an additional three months. In a judicial review regarding this extension, which took place on 6 October 2008, the Court affirmed the order and stated that there is reliable, high-quality intelligence material indicating that there is a definite threat to the security of the area if Ms. Siureh and Ms. Saleh were to be released. It should be noted that the Court also examined if alternative and less severe procedures could be taken against the two appellants, but found that it was not possible at that time. An appeal regarding the abovementioned decision was denied by the Court who affirmed the order “in light of willingness of the appellants for dangerous security activity.” Ms. Saleh and Ms. Siureh are thus due to be released on 3 January 2009.

### **Special Rapporteur’s comments and observations**

166. The Special Rapporteur wishes to thank the Government of Israel for its reply to his letter of 31 October 2008. While he appreciates the detailed information on the questions of administrative detention, he remains concerned that military justice is used to try civilians. In this connection, he refers to paragraph 22 of General Comment No. 32 of the Human Rights

Committee, in which it stated that “Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.” Consequently, the Special Rapporteur is looking forward to receiving relevant information from the Government in this regard.

167. The Special Rapporteur is concerned at the absence of an official reply to the communications of 28 July 2008 and 4 December 2008. He urges the Government of Israel to provide at the earliest possible date a detailed substantive answer to the above allegations.

## **Japan**

### **Communication sent**

168. On 14 May 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 the Special Rapporteur on the situation of human rights defenders, regarding the case of Mr. Tashi Tsering, aged 38. Mr. Tashi Tsering is the Vice-Chairman of the Taiwan branch of the Tibetan Youth Congress. According to the information received, on 26 April 2008, the day the Beijing Olympic torch was brought to Japan, Mr. Tashi Tsering was participating in a reportedly peaceful demonstration in Nagano against the Olympic torch relay. During the demonstration, Mr. Tashi Tsering was taken into custody by the Nagano police authorities. Mr. Tashi Tsering had reportedly not committed any violent acts during the demonstration. Before he was arrested, he had been calling for the independence of the Tibet Autonomous Region by approaching the torch and shouting, “Free Tibet!”. Mr. Tashi Tsering was charged with “forcible obstruction of business”. While in detention, Mr. Tashi Tsering allegedly did not have access to a lawyer during the first days, nor was he allowed to see visitors. On 28 April, Mr. Tashi Tsering was brought before a prosecutor for interrogation. Thereafter, his detention was extended for another 10 days and he was once again not permitted to see any visitors during this extended detention period. On 8 May, another 10-day extension of Mr. Tashi Tsering’s period of detention was sought, allegedly to gather evidence against him to show that he was a terrorist. Mr. Tashi Tsering was detained at Nagano’s central police station. His indictment was reportedly scheduled for 15 May and the court hearing on his case was due to take place on 17 May. Information was also received that if found guilty, Mr. Tsering may be sentenced to a fine of 500,000 Japanese yen (around US\$4,800) or to a prison sentence of up to 3 years. Concerns were expressed that the detention of Mr. Tashi Tsering might be solely connected to his peaceful activities in defending human rights and the exercise of his right to freedom of opinion and expression.

### **Communication received**

169. On 28 May 2008, the Government replies to the urgent appeal of 14 May 2008, stressing that it guaranteed freedom of assembly and association, as well as speech, press and all other forms of expression as major rights (Article 21 of the Constitution of Japan). The case referred to in the communication includes an action that went beyond the limits of the freedom and it was dealt with by the concerned authorities under appropriate legal procedures. The Government of Japan has no intention to restrict the freedom arbitrarily. 1484. The detailed facts of the case are

summarized as follows. On 26 April 2008, when the Beijing Olympic Torch Relay, co-organized by the Beijing Organizing Committee for the Games of the XXIX Olympiad and the City of Nagano, was under way in the city, Mr Tashi Tsering, the accused, jumped out towards the running course shouting “Free Tibet” for the purpose of interfering this event, and as a result, prevented a runner from running forward. As it obstructed the business of the Organizing Committee and Nagano City by force, his action constituted “forcible obstruction of business”, which is stipulated under Article 234 of the Penal Code. On 26 April 2008, at 9-06 am, the police arrested Mr Tshering on the spot as a flagrant offender and detained him in a detention cell. On 27 April 2008 the police referred the case to the public prosecutor. On 28 April 2008 the public prosecutor requested Mr Tshering to be detained for 10 days and it was authorized by the judge after the direct judicial inquiry. On 7 May 2008 the prosecutor requested the extension of the period of detention for another 10 days, and it was authorized by the judge. Mr Tshering was interviewed by a defense counsel 13 times between 28 April and 14 May 2008. He also had an interview with a staff from the Taipei Economic and Cultural Representative Office in Japan. On 16 May 2008 Mr Tshering was fined 500.000 yen as a summary order, which he paid on the same day. He was released at 2.25 pm on 16 May 2008. The legal basis for the arrest and detention of Mr. Tashi Tsering are as follows: article 213, 212 (1), 203 (1), 216, 199 (1), 60 (1), 61, 203 (1), 205 (1), 205 (1), (2), 207 (1), (4), 208 (1) and (2). The Government informs that in Japan, majority of criminal cases are completed without the suspects being arrested or detained. In order to arrest a suspect, there must be sufficient probable cause to suspect that an offence has been committed by him/her, and an arrest warrant issued in advance by a judge is required, except a case of emergency including on-the-spot arrest against flagrant offender. The police, the prosecutor and a judge, in sequence, strictly check the case and decide whether or not a suspect should be detained after arrest, and unless a judge authorizes the detention at the latest within 72 hours after arrest, the suspect must be released. Extensions of a period of detention are authorized only when the judge deems unavoidable circumstances exist. The Government concludes that the procedures of arrest and detention in Japan are compatible with applicable international human rights norms and standards. These procedures are meant to apprehend suspects of criminal cases, and their appropriate enforcement does not violate the freedom of expression.

### **Special Rapporteur’s comments and observations**

170. The Special Rapporteur wishes to thank the Government of Japan for its detailed and detailed reply to his letter of 14 May 2008.

## **Kazakhstan**

### **Communication sent**

171. On 10 April 2008, the Special Rapporteur sent a joint urgent appeal, together with the Vice-Chairperson of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture, regarding the case of Ms Tatiana Aleksandrovna Krainova, aged 37, and her sister, Ms Olga Aleksandrovna Koroleva, aged 38. According to the information received, Tatiana Krainova was ordered to report to the Committee for National Security (KNB) in Almaty on 29 September 2007 and has not been seen since then. On 2 November 2007 Olga Koroleva was also invited to the Committee for National Security and has not been seen since. On 10 December 2007, the family was orally notified that charges had been brought against the two

women on 3 December 2007, however, without specifying in connection with which offenses. Both women have been held in isolation at the KNB detention centre in Astana ever since and have not been allowed to meet with lawyers or receive any visits. Informally, family members residing outside Kazakhstan were informed that the two women would not be released until their father, Aleksandr Albertovich Krainov, currently residing in Vienna, Austria, and wanted by the KNB, returns to Kazakhstan. In view of the incommunicado detention of Tatiana Krainova and Olgo Koroleva, concern for their physical and mental integrity was expressed.

### **Communication received**

172. On 8 June 2008, the Government replies to the urgent appeal of 10 April 2008, stating that Ms. T. Krainova and Ms. O.A. Koroleva were prosecuted for illegally gathering information that constituted State secrets and for the serious consequences of their actions. On 25 March 2008, the military tribunal of Aqmola garrison found Ms. Krainova, Ms. Koroleva and others guilty of offences contrary to article 172, paragraph 4, of the Criminal Code of Kazakhstan. All of the guilty parties were sentenced to deprivation of liberty for a period of two years and six months. The sentence was appealed. At present, the question of whether the case should be referred to the criminal division of the armed forces military tribunal is being decided. During the pretrial investigation, Ms. Krainova and Ms. Koroleva were required to sign, as a preventive measure, an undertaking not to leave the area and a pledge of good behaviour, in accordance with article 144 of the Code of Criminal Procedure. Ms. Krainova and Ms. Koroleva were granted the right to defence counsel. The aforementioned persons did not submit any complaints concerning unlawful actions on the part of the members of the investigative group of the Committee for National Security in connection with restrictions on their freedom of movement, nor did they make any complaints about their state of health. All defendants, including Ms. Krainova and Ms. Koroleva, were guaranteed the participation of defence counsel at all stages of the criminal proceedings. Owing to the fact that the investigation involved State secrets, the criminal proceedings were held in camera. However, the rights of all the parties to the proceedings were observed.

### **Special Rapporteur's comments and observations**

173. The Special Rapporteur wishes to thank the Government for its reply to his letter of 10 April 2008. The Special Rapporteur would like to invite the Government to provide information on whether the case was actually referred to the criminal division of the armed forces military tribunal, as indicated by the letter, and about the outcome of the appeal. In this regard, he would like to refer to paragraph 22 of General Comment No. 32 of the Human Rights Committee, in which it stated that "Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials." Consequently, the Special Rapporteur is also looking forward to receiving relevant information from the Government in this regard.

## Kenya

### Communication sent

174. On 21 August 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the promotion and protection of human rights while countering-terrorism, regarding the case of Mohammed Abdulmalik, aged 35, currently detained at the United States of America naval base of Guantanamo Bay (Cuba). According to the allegations received, on 13 February 2007, Mr. Abdulmalik was apprehended by the Anti-Terrorism Police Unit in a café in Mombasa, detained and held incommunicado in the Kilindini Port and Urban Police Stations before being transferred to Hardy, Ongata and Spring Valley Police Stations in Nairobi. He was held on suspicion of the Paradise Hotel attack and the attempted attack on an Israeli Arkia Airlines plane in Mombasa in 2002. It was reported that Mr. Abdulmalik was not charged with any offence, was denied the right to challenge his detention, denied access to a lawyer and contact with family members, and was not brought before a judge. On 26 March 2007, it was announced by the United States Government that Mr. Abdulmalik was transferred to Guantanamo Bay. It was reported that no judicial proceedings were held in relation to the transfer of Mr. Abdulmalik from Kenyan to US custody.

### Communication received

None

### Special Rapporteur's comments and observations

175. 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 a detailed substantive answer to the above allegations.

## Kyrgyzstan

### Communications sent

176. On 23 April 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on torture, Special Rapporteur on violence against women, its causes and consequences and Vice-Chairperson of the Working Group on Arbitrary Detention, regarding the case of Ms. Oktomkan Kazakovna Almanbetova, born 8 November 1959, widowed, self-employed market-woman. According to the information received, Ms. Almanbetova has been recognised as non compos mentis (certifiably insane) by government authorities. On 18 February 2008 she went to the local authority (akimiat) in Kerben, in order to lodge a complaint with Ms. Kynagul Oskombaeva, because the electricity at her home had been cut. The representative refused to take her complaint arguing that she complained for no apparent reason, called her "crazy" and threatened to call the militia. Ms. Oskombaeva asked her to report back on 20 February. When Ms. Almanbetova did so, she was arrested by three members of the militia whose first names were Meder, Melis and Almaz. The three men violently dragged her into a car, which caused her pain in her shoulders and armpits, and transferred her to the police station in Kerben. At the police station, investigator Mamatkerin Anarbaev reportedly threatened that she

would be detained for many years if she did not sign a number of documents. Ms. Almanbetova signed 5 or 6 documents written in Russian, which she hardly understands since she is ethnic Kyrgyz and has difficulty reading and writing. Afterwards, Ms. Almanbetova was detained in a cell at the police station and raped by two police officers on guard during that night, one of whom was identified as Ilyas. He beat her, forced her onto the bed, removed her pants and tights and raped her. Later, another police officer entered the cell and also raped her. Then the two officers beat Ms. Almanbetova again, hit her head against a wall and told her not to talk to anyone about the incident. She lost consciousness several times. The officers washed her with cold water from a plastic bottle. This reportedly resulted in cystitis. Ms. Almanbetova attempted to commit suicide with 20 tablets of Carbamazepine, an anticonvulsant and mood stabilising drug used primarily in the treatment of epilepsy and bipolar disorder. She was unconscious when she was admitted to a hospital in Kerben, had to be artificially nourished, and only regained consciousness two days later on 22 February. At the hospital she was handcuffed to her bed and guarded by policemen, making it impossible for her to go to the bathroom, which caused her much distress because of her cystitis. One of the police guards, identified by his first name Altyn, threatened her again not to report the rape. On 22 February she was summoned to the city court of Kerben on charges of hooliganism brought against her, but reportedly the presiding judge Adyl Bazarbaev did not ask any questions or listen to her complaints. After the trial she was returned to the hospital. On 25 February 2008 she filed a complaint with the Deputy Prosecutor of Kerben, Ernis Nizambekov, who came to the hospital following the intervention of a human rights defender on Ms. Almanbetova's behalf. She remained in the hospital until 26 February when she was transferred to the Legal Examination Unit of the National Psychiatric Hospital in Kyzylzhar, escorted by three guards, one of whom, Ilyas, had raped her at the police station. Ms. Almanbetova remained in custody at the National Psychiatric Hospital. On 17 March, a lawyer acting on behalf of Ms. Almanbetova contacted the Deputy Prosecutor in Kerben, Mr. Nizambekov, who denied the lawyer a meeting. A complaint was submitted to the Prosecutor's Generals Office in Bishkek on 25 March. Grave concerns were expressed for the physical and mental integrity of Ms. Almanbetova.

177. On 20 August 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on violence against women, its causes and consequences, regarding the rape of a minor, O.M.V., of Uzbek origin, residing in Chui province, Sokuluk-1 village, Ulitsia Zarechnya 18. According to the information received, O.M.V. was 13 years old at the time of the alleged commission of the crime. O.M.V. was victim of rape at least five times between 7 and 15 January 2008. The incidents happened in Jalalabat Province, Kyazyljar village. On 7 January 2008 at night, two young men named A.T. and A.J. forced O.M.V. and her friend R.M. to drink alcohol, hit them, and raped them. They threatened the girls to kill them if they told anyone about what happened. The girls returned to their homes without mentioning the incident. In the evening of 10 January, the two girls decided to flee from their house. On 11 January, K.B., the son of a woman from the girls' village, who helped them hide, took the girls to his flat. With his friend M.T., he harassed and hit the girls. He then raped O.M.V. On 12 January, K.B. brought the girls to the house of Z.N., where another man was present, K.T. The girls were forced to drink alcohol and were beaten up. Three other men came. All of them harassed and hit the girls, threatened them with knives, and forced them to take unknown tablets. K.T. and Z.N. then raped O.M.V. and R.M. The girls were then thrown into the street. On 13 and 14 January, the two girls accidentally met Z.N., who again raped O.M.V. twice. On 15 January, the girls were found and reported to the police of Tashkumyr. A medical expertise conducted by

the doctor Kudaiberdiev in Shamalduusai the same day confirmed that O.M.V. suffered from wounds in her forehead, lips and shoulders, from concussion, and from pains in her abdomen and genital organs. Traces of different sperms were found on her. A court case was conducted, and four of the nine perpetrators were convicted with 10 to 15 years imprisonment. One was recognized mentally insane. The four others, A.T., K.M., M.D. and A.O., were not convicted. On 22 January 2008, inhabitants of Kyzyljar gathered to discuss the rape of O.M.V. Among them were authorities, including the deputy of the village counsel A. Duishebaeva, representatives of three village *aksakal* (elderly men) counsels, the therapist of the district psychiatric hospital S. Mombekova, and the school principal S.A. Anataeva. The village's inhabitants reached a decision to evict the victim and her family from the village within 24 hours. The perpetrators' relatives further demanded that O.M.V. withdraw her complaint against the perpetrators, or else they would make sure O.M.V.'s family be evicted from the village. The village's inhabitants also decided to evict the girl from the school and to jointly act to release the assailants by writing a letter to the court explaining the "bad" behaviour of the girl victim. They started to harass the victim and her family after this meeting. In a statement signed by 104 inhabitants of the village and sent to the Administration of the President, they accused O.M.V.'s father-in-law to be the real perpetrator of the rapes, and that O.M.V.'s family had asked relatives of the perpetrators for USD 50,000 in exchange of the withdrawal of her complaint against them. The signatories of the statement further stated that O.M.V.'s mother often insulted the inhabitants on ethnic grounds. They finally demanded the reconsideration of the cases of the convicted perpetrators. On 9 July 2008, the prosecutor interviewed the victim's mother in Jalalabad Oblast, and she later confirmed in writing that the allegations in the statement by the village's inhabitants were unfounded. A petition was filed by O.M.V. with a police investigator about the threats she endured from relatives of the convicted perpetrators and from the medical staff of the District Psychiatric Hospital during her treatment. The investigator refused to accept the complaint, saying that there was no basis for it, since she was not beaten. The petition was also sent to the Ministry of Health but she received no reply. It was alleged that the investigation and trial were not conducted properly. The victim's statements were distorted by the investigator; the victim was not informed about her rights and duties; the investigator did not give any material about the criminal case to the victim's mother and did not share documents relating to the insanity of K.T. The investigator also refused to reconsider the cases of the other four perpetrators who were not convicted, explaining that he "had a family and could not arrest everybody," implying also that she was inflating the number of persons who had aggressed her. The trial was conducted in Kyrgyz language, although the victim and her family are ethnically Uzbek and do not speak Kyrgyz. No Russian translation was provided. The victim was also not provided with a lawyer. It was also alleged that the court wrongly considered K.T. as 'insane', thereby releasing him from legal liability. The family of K.T. allegedly put pressure on the medical staff and psychiatric experts in this regard. On 28 April 2008 a trial on his case was conducted in Kyrgyz, during which the Court-expert on psychiatric issues recognized him insane. The court's decision was appealed but the case was not reconsidered by the Supreme Court. On 18 July 2008, the Jalalabad court accepted to reconsider the cases of the convicted men, upon receipt of the above-mentioned letter by the village's inhabitants. A.J., convicted for 15 years in the first instance, was convicted and sentenced to 2 year suspended prison term upon appeal. Z.N., convicted for 15 years in the first instance, was released after the appeal. The 15-year conviction for K.B. was reduced to 10 years. M.T. was convicted for 10 years in the first instance and to 8 years imprisonment after appeal. Concern was expressed that the court judgments on first

instance and on appeal did not take into consideration the gravity of the crime. It was further alleged that the judges were influenced by the village's inhabitants and the perpetrators' relatives.

178. On 20 February 2009, 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 torture and other cruel, inhuman or degrading treatment or punishment, regarding several cases of alleged torture and ill-treatment, which have been brought to our attention. According to the information received, R.D. and A.R., both aged 17, are orphans under state supervision. Both were, for the first time, detained in March 2008. During their detention, they were ill-treated by several investigators of the Pervomaisky District Department of Interior. At the time, a criminal case was instituted against the alleged perpetrators. However, the latter were eventually released. On 4 October 2008, the same investigators re-arrested R.D. and A.R. in Bishkek and took them to the Pervomaisky District police station, where they put a plastic bag over their heads pretending to choke them in order to make them confess to a crime committed on 9 September 2008. As a result of that treatment, R.D. and A.R. suffered from headaches and psychological trauma. Their legal representatives and lawyers were not informed about their arrest. They were subsequently transferred to the Investigation Isolator for juveniles in Bishkek, where they remained. On 4 November 2008, a police officer arrested Mr. Tynchtykbek Zhakypbekov at his home in Karakol without a warrant using violence. He then transferred him to the Jety-Oguz police station, where four officers subjected him to severe beatings with sticks, fists and a chair on his back, feet, hips and head and threatened with breaking his backbone and rape. The objective was reportedly to make him confess to the theft of a horse from Zhonbulak village. However, Mr. Zhakypbekov did not make any confession. He was hospitalized later that day. As a result of the beatings, Mr. Zhakypbekov suffered from craniocerebral injury and a concussion. He was still undergoing medical treatment in the Traumatology Division of Issyk-Kul regional hospital. On 6 November 2008, he filed a complaint with the Office of the Public Prosecutor of Issyk-Kul area and the Ombudsman of the Kyrgyz Republic. Mr. Maksat Bazarbaev, a resident of Naryn, was arrested without a warrant on 8 August 2008 by three policemen from the Naryn Criminal Investigation Department, an official from the Ministry of Internal Affairs reportedly referred to as Sultan, and a policeman referred to as Arstan. He was suspected of murder. Mr. Bazarbaev was taken to Kara-Balta, where the crime had taken place. There he was handcuffed, suspended from a tree and beaten on his genitals. A plastic bag was placed on his head and he was threatened. At about 11 p.m., Mr. Bazarbaev was taken to Kara-Balta Ministry of Interior Department, where an official referred to as Kubich subjected him to beatings on his ears, feet, kidneys, and stomach. The beatings and attempted suffocation continued on the following days with the aim of obtaining a confession. As a result, Mr. Bazarbaev suffered from kidney problems, hypostasis and multiple contusions. Since 8 August 2008, he has had access to his lawyer only once. Whereas a doctor who visited him stated that Mr. Bazarbaev should have been hospitalized, he was transferred back and forth from different police departments in Sukuluk, Moskovaskaya area, Issyk-Atinsk area. Mr. Bazarbaev remained in detention. Concern was expressed for the physical and mental integrity of the above mentioned individuals.

### **Communication received**

179. On 4 August 2008, the Government replies to the urgent appeal of 23 April 2008, stating that on 20 February 2008, Ms. K. Oskonbaeva filed a complaint against Ms. O. Almanbetova

with the Aksyisky district internal affairs office, accusing her of criminal mischief (hooliganism) committed against the complainant and her sister, Ms. N. Myrzabekova. The investigation found that there were grounds for the complaint. Accordingly, on 20 February 2008, the internal affairs office's investigation service instituted criminal proceedings under article 234, part 3, paragraph 2, of the Kyrgyz Criminal Code, dealing with criminal mischief (hooliganism). On the same day, Ms. Almanbetova was arrested for the acts in question, in accordance with article 94 of the Kyrgyz Code of Criminal Procedure, and taken into police custody at the Aksyisky district internal affairs office. On 22 February 2008, Ms. Almanbetova, in the presence of counsel and of human rights defender Ms. S. Varavina, was charged with the offence described in article 234, part 3, paragraph 2, of the Kyrgyz Criminal Code, and the Aksyisky district court issued a pretrial restraining order authorizing her detention. On 25 February 2008, the investigator called for a psychiatric report to be done, on an inpatient basis, to determine whether Ms. Almanbetova was fit to stand trial. (In 2002, Ms. Almanbetova had previously been convicted for acts of criminal mischief (hooliganism) and had undergone compulsory treatment at a psychiatric hospital.) On 14 March 2008, experts at the national psychiatric hospital in the settlement of Kyzyl Zhar-12 issued finding No. 11, according to which Ms. Almanbetova was suffering from a psychological disorder, "epileptic dementia", and was thus incapable of understanding and controlling her actions. She was found to be unfit to plead her case, and it was recommended that she undergo compulsory treatment at a psychiatric hospital and be kept under routine observation. On 27 March 2008, following the investigation, the criminal case was referred to the Aksyisky district court with a view to the application of compulsory medical measures. The court issued a decision finding Ms. Almanbetova guilty of the offence in question, and the criminal case against her was closed. She was sent to the psychiatric hospital in the settlement of Kyzyl-Zhar for compulsory treatment, with routine observation. As for the question of measures taken against the staff of the Aksyisky district internal affairs office, on 23 February 2008 the head of the human rights NGO Nadezhda i Mir (Hope and Peace), Ms. S. Varavina, filed a complaint alleging that Ms. Almanbetova had been raped on the night of 21 February 2008 while in custody at the Aksyisky district internal affairs office. The case in question was investigated by the Aksyisky district deputy procurator, Mr. E. Mizambekov, who on 25 February 2008 ordered a forensic medical examination to be carried out. On 26 February 2008, Ms. Almanbetova, in the presence of the human rights defender, Ms. Varavina, was unable to identify from among the staff of the Aksyisky district internal affairs office the persons who had allegedly raped her on the night of 21 February 2008. The forensic medical report concluded that Ms. Almanbetova had sustained minor facial injuries in the form of superficial scratches, with no short-term health effects, and which might have been caused by an impact with a wall or the corner of a bed, or possibly by a fall. No signs of sexual assault were found. In the light of the findings, the district procurator's office decided not to institute criminal proceedings, as there had been no criminal act. The material in question was examined by the Jalalabad provincial procurator's office, which found that the decision taken was justified. The allegation that Ms. Almanbetova was raped by staff of the Aksyisky district internal affairs office has thus been found to be unreliable. Furthermore, Ms. Almanbetova has not filed a statement with the national Procurator-General's Office. It should be noted that the entire investigation of Ms. Almanbetova's case took place with the participation of defence counsel. The assertions that the investigator submitted for signature documents in Russian, without making them public, are untrue; the proceedings in the criminal case were conducted in the national language. There were no violations of the legislation on criminal procedure during the handling of the case, nor were there any violations of Ms. Almanbetova's rights.

## Special Rapporteur's comments and observations

180. The Special Rapporteur wishes to thank the Government of Kyrgyzstan for its reply of 4 August 2008 to his letter of 23 April 2008. The Special Rapporteur is concerned at the absence of an official reply to the communication of 20 August and urges the Government of Kyrgyzstan to provide at the earliest possible date a detailed substantive answer to the above allegations. He is also looking forward to receive a reply from the Government of Kyrgyzstan to his communication of 20 February 2009.

### Lebanon

#### Communications envoyées

181. Le 27 janvier 2009, le Rapporteur spécial a envoyé au Gouvernement du Liban, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, un appel urgent concernant la situation de M. Fadi Sabunah, âgé de 25 ans, demeurant Bab al-Raml à Tripoli. Selon les allégations reçues, il aurait été arrêté le 5 octobre 2008 par le Comité de sécurité collectif palestinien sans mandat de justice dans le camp de réfugiés de Beddawi, près de Tripoli. Il aurait ensuite été transféré au service de renseignement de l'armée libanaise et accusé de liens avec une cellule responsable d'attaques ayant visé l'Armée à Abdeh en mai 2008 et à Tripoli en août et septembre de la même année. Gardé pendant une journée au poste militaire de Quba à Tripoli, il aurait ensuite été transféré au ministère de la défense à Al-Yarze, Beyrouth, où il aurait été détenu pendant 35 jours au secret. Le 11 novembre 2008, il aurait été emmené au poste de la police militaire d'Al-Rihania où il serait resté pendant 15 jours avant d'être retourné au ministère de la défense le 26 novembre pour de nouveaux interrogatoires. Depuis le 29 novembre 2008, il serait détenu à la prison de Roumié. Pendant sa détention au ministère de la défense, M. Fadi Sabunah aurait été gravement torturé, parfois près de huit heures par jour sans interruption. Il aurait notamment été suspendu les mains attachées derrière le dos, violemment battu, forcé de rester debout pendant deux jours et privé totalement de sommeil durant cinq jours. Les officiers, dans le but de lui faire signer de faux aveux, auraient également menacé de violer sa femme devant lui. Un certain M. Nabil Sary aurait participé aux interrogations au ministère de la défense. En dépit du fait qu'il n'a pas la qualité de militaire, M. Sabunah aurait fait l'objet de poursuites pénales devant le tribunal militaire de Beyrouth. M. Nabil Sary, qui aurait été impliqué dans les interrogations au ministère de la défense, serait en même temps le juge d'instruction militaire chargé de mener la procédure qui était en cours contre M. Sabunah. En dépit d'une demande formelle d'examen médical au juge d'instruction chargé du dossier et plusieurs rappels, aucune expertise médico-légale n'aurait été effectuée et aucune enquête n'aurait été ordonnée. Des craintes furent exprimées que les preuves qui seront utilisées contre M. Sabunah pendant le procès devant le tribunal, pourraient être essentiellement constituées par des déclarations arrachées au moyen des mauvais traitements.

182. Le 30 janvier 2009, le Rapporteur spécial a envoyé au Gouvernement du Liban, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur la promotion et la protection des droits de l'homme et des libertés fondamentales dans le cadre de la lutte antiterroriste, et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, un appel urgent concernant la

situation de Amer Abdullah Hallak, âgé de 28 ans, né au Liban, de nationalité palestinienne (carte d'identité de réfugié: A 022557), résident à Sidon, aurait été arrêté le 30 décembre 2005 à Sidon derrière l'hôpital de Dalaa par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Ils auraient bandé ses yeux et l'auraient d'abord emmené au poste de police Al Bastah et ensuite dans les locaux du service de renseignement à Beirut, où il aurait été détenu pendant cinq mois. Après avoir été battu, il aurait perdu l'ouïe. Il aurait aussi été menacé. Il aurait été transféré à la prison de Roumieh le 31 mai 2006. Bora Mohammed Fouad, âgé de 35 ans, nationalité syrienne, résident à Alep en Syrie et à Al Mahallet, aurait été arrêté le 3 janvier 2006 à Kornishe el Mazraa, Beirut, dans une cabine téléphonique, par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Il aurait été transféré dans les locaux du service de renseignement, où il aurait été détenu pendant cinq mois en régime cellulaire au sous-sol. Là-bas, on l'aurait menacé de « traitements d'Abu Graib », privé de sommeil pendant 72 heures et forcé à rester debout pendant ce temps. Finalement, on l'aurait transféré à la prison de Roumieh. Il craint d'être renvoyé vers la Syrie et de disparaître comme M. Hamad Turkey Al Rda (voir le dernier cas ci-dessous). Faissal Asaad Hashim Akbar, âgé de 31 ans, citoyen de l'Arabie Saoudite, étudiant, résident à Ras Tanuraen en Arabie Saoudite, et à Mahallat Ramle, Beirut, aurait été arrêté le 3 janvier 2006 à Al Houda Ave, Mahallat Ain Romana, Beirut, par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Il aurait été emmené dans les locaux du service de renseignement à Beirut, où il aurait été détenu pendant à peu près cinq mois dans le sous-sol en régime cellulaire. Il aurait été battu et suspendu pendant de longues périodes entre autre par le Lieutenant Rabee Fakeeh, Tawfik Assaf, Mohammed Fatuni et Ibrahim Himia. Il aurait aussi été privé de sommeil et empêché d'aller aux toilettes pendant cinq jours. Finalement, on l'aurait transféré à la prison de Roumieh. Fuad Ahmed Al Masri, âgé de 39 ans, Musaytbeh, nationalité libanaise, demeurant à Route Al Djadida, aurait été arrêté le 30 janvier 2006 par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Il aurait été emmené dans les locaux du service de renseignement à Beirut, où il aurait été détenu pendant cinq mois. Il aurait été transféré à la prison de Roumieh le 31 mai 2006. Il aurait été libéré le 4 septembre 2008. Pendant sa détention, on aurait bandé ses yeux et il aurait été soumis à la technique dite du « Faruj », battu avec des barres en bois et en métal sur les jambes et les mains et forcé à rester debout pendant toute la nuit par un Lieutenant qui s'appellerait Nasser. Suite à ce traitement, il souffrirait de problèmes cardiaques, de tension élevée, des pertes de mémoire et de dépression. Hani Hashim Al-Shanti, âgé de 28 ans, né à Riyadh, nationalité libanaise (numéro de carte d'identité: 10000015618623), résident dans la rue d'Ahdab à Beirut, aurait été arrêté le 1er janvier 2006 dans le bâtiment Al Hart à Mahallat Al Bousha, Beirut par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Ils lui auraient bandé les yeux, l'auraient menotté et emmené dans leurs locaux à Beirut, où il aurait été détenu pendant à peu près cinq mois dans le sous-sol en régime cellulaire et finalement transféré à la prison de Roumieh. Hassan Mohammed Nabah, âgé de 34 ans, nationalité libanaise, résident à Mahallat Ramle, Beirut, aurait été arrêté le 3 janvier 2006 à Kornishe el Mazraa à Beirut par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Il aurait été emmené dans les locaux du service de renseignement à Beirut, où il aurait été détenu pendant cinq mois au sous-sol en régime cellulaire. Il aurait été soumis à la technique dite du « Faruj » pour une période prolongée. On lui aurait bandé les yeux, attaché les mains derrière le dos et placé un sac plastique sur le visage. De plus, on l'aurait mis sur une chaise pendant une semaine et privé de sommeil. Finalement, il aurait été transféré à la prison de Roumieh. Moaz Abdelghani Shousha, âgé de 28 ans, de nationalité syrienne, demeurant à Alep en Syrie, aurait été arrêté le

4 janvier 2006 à la Place de Saadoun, quartier de Abu Samra à Tripoli. Il aurait été transféré à la station de police d'Al Bastah et ensuite dans les locaux du service de renseignement à Beirut, où il aurait été détenu pendant cinq mois en régime cellulaire au sous-sol jusqu'à son transfert à la prison de Roumieh, où il serait détenu à ce jour. Il craint d'être renvoyé vers la Syrie et de disparaître comme M. Hamad Turkey Al Rda. Mohammed Abderrazzak Al-Wafaei, âgé de 25 ans, de nationalité syrienne, demeurant à Alep en Syrie, aurait été arrêté le 3 janvier 2006 dans le quartier de Kornishe el Mazra à Beirut sans mandat d'arrêt par des membres du service de renseignement des forces de l'ordre interne. Ces derniers l'auraient emmené dans leurs locaux à Beirut, où ils l'auraient détenu pendant cinq mois au sous-sol en régime cellulaire. Plusieurs officiers, y compris Tawfik Assaf, Mohammed Fatuni, Ibrahim Himia et Tony Yusuf l'auraient forcé à rester tout nu, menacé de viol, piétiné, battu avec des barres en bois et en métal et privé de sommeil pendant cinq jours. Il aurait finalement été transféré à la prison de Roumieh. Il craint d'être renvoyé vers la Syrie et de disparaître comme M. Hamad Turkey Al Rda. Mohammed Ahmed Qoja, âgé de 24 ans, de nationalité syrienne, demeurant à Alep en Syrie, aurait été arrêté le 3 janvier 2006 dans le quartier de Kornishe el Mazra à Beirut sans mandat d'arrêt par des membres du service de renseignement des forces de l'ordre interne. Ces derniers l'auraient emmené dans leurs locaux à Beirut, où ils l'auraient détenu pendant cinq mois au sous-sol en régime cellulaire et finalement transféré à la prison de Roumieh. Il craint d'être renvoyé vers la Syrie et de disparaître comme M. Hamad Turkey Al Rda. Malik Mohammed Nabah, âgé de 27 ans, nationalité libanaise, demeurant à Beirut, aurait été arrêté le 3 janvier devant sa résidence, sans mandat d'arrêt, par des membres du service de renseignement des forces de l'ordre interne. Ces derniers l'auraient emmené dans leurs locaux à Beirut, où ils l'auraient détenu pendant cinq mois au sous-sol en régime cellulaire. Plusieurs officiers, entre autres le Lieutenant Fakeeh Rabee, Assaf Tawfik Ibrahim, Mohammed Fatuni et Ibrahim Hamiyyeh l'auraient suspendu pendant plusieurs heures et battu, auraient placé un sac plastique sur son visage et l'auraient menacé. Il aurait finalement été transféré à la prison de Roumieh. Tareq Rajaa Nasser, âgé de 22 ans, de nationalité syrienne, demeurant à Alep en Syrie et dans le quartier de Mahallat Ramle à Beirut, aurait été arrêté le 3 janvier 2006 dans le quartier de Kornishe el Mazra à Beirut sans mandat d'arrêt par des membres du service de renseignement des forces de l'ordre interne. Ces derniers l'auraient emmené dans leurs locaux à Beirut, où ils l'auraient détenu pendant cinq mois au sous-sol en régime cellulaire. Plusieurs officiers, y compris, Rabee Fakeeh, Tawfik Assaf et Mohammed Fatuni, l'auraient menacé d'abus sexuel et d'arrêter sa femme et sa mère également. Finalement, il aurait été transféré à la prison de Roumieh. Il craint d'être renvoyé vers la Syrie et de disparaître comme M. Hamad Turkey Al Rda (voir le dernier cas ci-dessous). Hamad Turkey Al-Rda, âgé de 25 ans, de nationalité syrienne, résident dans le quartier de Khaldeh, au sud de Beirut, aurait été arrêté le 16 janvier 2006 à Khaldeh par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Ils l'auraient emmené dans leurs locaux à Beirut, où ils l'auraient détenu pendant cinq mois au sous-sol en régime cellulaire et finalement transféré à la prison de Roumieh. Il aurait été extradé par les services de sécurité libanais vers la Syrie en juin 2006, où il aurait disparu. Tous les individus nommés ci-dessus auraient été torturés, maltraités, menacés et battus pendant leur détention. Ils seraient accusés d'avoir constitué un gang au Liban et d'appartenir à un groupe terroriste, plus précisément de soutenir la résistance en Iraq et d'entretenir des liens avec Al Qaeda. Leurs dossiers seraient traités par un tribunal militaire, bien qu'ils n'aient pas la qualité de militaires et bien que l'infraction dont ils seraient accusés ne soit pas qualifiée de militaire. En dépit du fait que les avocats de toutes les personnes mentionnées ci-dessus auraient informé le tribunal militaire des traitements auxquels les accusés auraient été

soumis pour les forcer à signer des aveux, aucune enquête n'aurait été ordonnée. Des craintes furent exprimées que les aveux et témoignages obtenus suite à de mauvais traitements pourraient être utilisés comme éléments de preuve pendant les procédures devant le tribunal.

### **Communications reçues**

183. Le 30 avril 2009, le Gouvernement du Liban a répondu à l'appel urgent du 30 janvier 2009.

### **Commentaires et observation du Rapporteur spécial**

184. Au moment où le rapport fut finalisé, le Rapporteur spécial n'était pas en mesure d'exprimer une opinion sur la réponse du Gouvernement du Liban, datée du 30 avril 2009, puisqu'il n'avait pas reçu de traduction des services compétents. Le Rapporteur spécial regrette de devoir constater qu'il n'a reçu du Gouvernement du Liban aucune réponse à la lettre envoyée le 27 janvier 2009. Il invite le Gouvernement instamment à lui transmettre au plus tôt des informations précises et détaillées en réponse à ces allégations.

## **Malaysia**

### **Communications sent**

185. On 21 April 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the question of torture, the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on freedom of religion or belief, and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, regarding the case of Mr P. Uthayakumar, Legal Adviser of the Hindu Human Rights Action Force (HINDRAF), Mr M. Manoharan, Counsel of HINDRAF, Mr R. Kenghadharan, Counsel of HINDRAF, Mr V. Ganabatirau and Mr T. Vasanthakumar, members of HINDRAF. The five human rights activists were the subject of an urgent appeal sent on 27 December 2007 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 Representative of the Secretary-General on the situation of human rights defenders. The Special Rapporteurs acknowledged the response of the Government sent on 8 February 2008. According to new information received, since their arrest on 13 December 2007 under Section 8(1) of the Internal Security Act for allegedly carrying out activities that threatened national security, Mr P. Uthayakumar, Mr M. Manoharan, Mr R. Kenghadharan, Mr V. Ganabatirau and Mr T. Vasanthakumar have been kept in solitary confinement for more than 16 hours a day, and have been exposed to light continuously in order to prevent them from sleeping and to disorientate them. Furthermore, Mr P. Uthayakumar and Mr M. Manoharan are diabetic and access to appropriate medication has reportedly been denied. On 7 April 2008, Mr P. Uthayakumar collapsed in his cell and was taken to a doctor who diagnosed a heart condition. Although they have access to their lawyers, it was reported that discussions between the aforementioned human rights activists and their lawyer have been monitored by guards who have taken notes of what was said. Finally, they were denied their right to worship. They did not have access to temples and prayer rooms and no time to worship was allocated to them. In view of the above reports, serious concern was expressed for the physical and psychological integrity of P. Uthayakumar, M. Manoharan, R. Kenghadharan,

V. Ganabatirau and T. Vasanthakumar. Further concern was reiterated that their arrest and detention may be solely linked to their reportedly non-violent activities in defense of human rights - in particular the rights of members of the Indian community in Malaysia - in the exercise of their rights to freedom of expression and assembly.

186. On 19 September 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, and the Special Rapporteur on the situation of human rights defenders, regarding the case of Mr Raja Petra Kamaruddin, editor and founder of the online newspaper *Malaysia Today*. According to information received, on 12 September 2008, Mr Raja Petra Kamaruddin was arrested, together with Ms Teresa Kok, a Member of Parliament with the Democratic Action Party (DAP) and State Legislative Councilor, and Ms Tan Hoon Cheng, a senior journalist with Chinese-language newspaper *Sin Chew Daily*, under Section 73 (1) of the Internal Security Act (ISA) for allegedly posing a threat to “security, peace and public order”. In accordance with Section 73 (1) of the Act, individuals can be detained for up to sixty days without trial, and thereafter for a period of two years should the Home Ministry decide to extend the detention order. Mr Raja Petra Kamaruddin was arrested at his home in Sunglai Buloh, in the province of Selangor, at approximately 1:00 p.m., by ten police officers who took him for questioning to an unknown location in Bukit Aman. Mr Kamaruddin’s arrest was apparently related to recent comments he made about Islam on the website *Malaysia Today*. Mr Kamaruddin was facing prosecution on alleged charges of defamation and sedition in relation to articles and comments he had posted on his website in the past. On 26 August 2008, access to the *Malaysia Today* website was blocked following pressure from the Malaysian Communications and Multimedia Commission, the State agency charged with oversight of the communications industry. However, it became accessible again on 12 September. In 2001, Mr Kamaruddin was arrested for his involvement with the National Justice Party. He was responsible for editing the Party’s newspaper, the content of which was deemed as ‘seditious’ by the authorities. Mr Kamaruddin remains in detention in Bukit Aman. The exact location of his detention is unknown. However reports claim that he was possibly being held at the main police headquarters in Bukit Aman, where he was granted a visit by his wife and daughters on 16 September. He was due to meet with his lawyer on 18 September. At approximately 11:00 p.m. on 12 September, Ms Teresa Kok was arrested by police officers while on her way home. She was taken to an unknown location in Bukit Aman. On 15 September, Ms Kok received a visit from her family at the Bukit Aman police headquarters. During the visit she apparently indicated that she was being well treated, but that she was suffering from low blood pressure, according to a medical check she received while in detention. Ms Kok remained in detention at an undisclosed location in Bukit Aman and the reason for her arrest is unclear. Ms Teresa Kok was reportedly released on 19 September 2008. Ms Tan Hoon Cheng was arrested at her home in Penang in the evening of 12 September. Her arrest was reportedly related to an article she had written citing comments made by Minister Ahmad Ismail, the Malay leader of the ruling United Malays National Organisation (UMNO), who allegedly referred to Malaysians of Chinese origin as “squatters”. Ms Cheng was taken into police custody for questioning in relation to her work. She was released 16 hours later, without charge. During a press conference on 13 September, the Interior Minister reportedly stated that he had not ordered the aforementioned arrests and that he was unable to intervene, unless a decision was taken in accordance with the police. Lawyers acting for Mr Raja Petra Kamaruddin were due to file a writ of habeas corpus seeking his release. The application was expected to be

filed at the Kuala Lumpur High Court on 15 September 2008. Concern was expressed that the aforementioned events may represent a direct attempt to prevent independent reporting in Malaysia, thus stifling freedom of expression in the country.

### **Communications received**

187. On 12 December 2008, the Government replies to the urgent appeal of 19 September 2008, stating that the summary of the case outlined by the experts in the communication is not entirely accurate. At the outset, the Government of Malaysia informs about the facts leading to the arrests of Mr. Kamaruddin, Ms Teresa Kok and Ms Tan Hoon Cheng as well as the subsequent release of the latter two individuals. All three individuals were arrested on 12 September 2008 under subsection 73 (1) of the Internal Security Act 1960 [Act 82]. Ms. Tan Hoon Cheng was detained on the grounds of publishing fabricated news regarding a statement made by Dato' Ahmad Ismail, Division Head, Bukit Bendera UMNO Division, Pulau Pinang that Chinese were mere migrants and "squatters" in Malaysia. This raised the ire of the Chinese against the Malays. Upon further investigation by the police, Ms Tan Hoon Cheng was released on 13 September 2008 on the grounds that her detention under subsection 73 (1), Act 82 was inappropriate to be continued. Ms Teresa Kok was detained on several grounds. The first was causing uproar amongst the Malays Muslims by questioning the issue of Azan or the Muslim call to prayer and secondly by questioning the usage of the traditional Malay calligraphy known as jawi. Regarding the issue of azan, the police received three separate police reports on incidents which, according to the Government, caused conflicts arising from racial and religious issues and are an extremely serious threat to the national security within the Malaysian context. Therefore swift and immediate actions had to be taken by the authorities to contain and control any possible threat of violence that could affect national security. These had justified the invoking of Act 82 or ISA. On 15 September 2008, Teresa's father, mother, cousin and her Special Assistant were allowed to visit Teresa. On 17 September 2008, Mr Sankara Narayanan a/l Sankaran Nair, a counsel of Teresa's choice, was given visitation right. On 19 September 2008, Teresa was released from detention under subsection 73(1), Act 82 as there were no grounds to continue Ms Teresa Kok's detention. Mr. Kamaruddin was detained on 12 September 2008 under subsection 73 (1), Act 82 due to his involvement in publishing articles in his blog site "Malaysia Today". The Government informs that these articles were blasphemous to Islam and were also tarnishing the country's leadership to an extent that these articles had caused confusion amongst the populace and threatened to jeopardise national security of Malaysia. Mr. Kamaruddin had published an article entitled "Let's Send Altantuya Murderers to Hell" in his blog "Malaysia Today" which had falsely accused a prominent leader in the Malaysian Government to be involved in the murder of a Mongolian national Altantuya Shaaribu. The Government informs that this article had affected the public's confidence and caused the public's hatred of the particular leader. It had also affected diplomatic relations between Malaysia and Mongolia. Mr. Kamaruddin had published or allowed to be published in his blog "Malaysia Today" the articles "Malay, The enemy of Islam", "I Promise to be a Good, Non-Hypocritical Muslim" and "Not all Arabs are Descendants of the Prophet" on 16 January 2008, 8 August 2008 and 26 August 2008 respectively, which, according to the Government, had caused extreme anger amongst the Muslims, mainly of the Malay race, hatred between Muslims and non-Muslims in Malaysia and had seriously affected national security and interest. Numerous police reports lodged by various Muslim Organisations in Malaysia on these articles were one of the reasons for Mr. Kamaruddin's arrest and detention under the ISA. On September 2008, Mr. Kamaruddin's wife and children were allowed to visit him. On 17 and 19 September 2008,

Mr. Kamaruddin's counsel of his own choice was allowed to visit him. The four lawyers acting for Mr. Kamaruddin have filed the writ of habeas corpus and the trial of the matter began on 23 September 2008. The matter was scheduled to be continued for trial on 28 October 2008. The lawyers subsequently filed another writ at the High Court in Shah Alam and the matter had been fixed for trial on 22 October 2008. The presiding High Court Judge allowed the writ of habeas corpus on 7 November 2008 and was subsequently released from his ISA detention.

Mr. Kamaruddin was detained under section 73 (1), Act 82 at the Detention Centre, Royal Malaysian Police Headquarters from 12-22 September 2008. Upon the issuance of the Detention Order by the Minister of Home Affairs under paragraph 8 (c), Act 82, Mr. Kamaruddin was detained at the Protective Detention Centre in Taiping, Perak from 22 September 2008. Upon the issuance of the writ of habeas corpus by the High Court of 7 November 2008, Mr. Kamaruddin was released from the said Protective Detention Centre. The Government informs that Act 82 is a law passed by the Malaysia on preventive detention for the internal security of Malaysia, the prevention of subversion, the suppression of organized violence against persons and property in specified areas of Malaysia, and for matters incidental thereto. Article 149 of the Federal Constitution provides the power to the Parliament to enact preventive laws for the purposes as stated above. The provisions under Act 82 authorize the preventive detention to the Minister of Home Affairs as provided under section 8 and the police as provided under section 73. The Government of Malaysia wishes also to inform the Experts that the Malaysian courts may exercise judicial review in respect of detention orders issued under sections 73 and 8 of Act 82. According to jurisprudence, the discretion of the police in issuing detention orders under section 73 of Act 82 can be subject to judicial review by the court. In this regard, the burden of proof is on the police to prove the satisfaction of the court that the requirements of the existence of the reasons justifying the detention of a person under section 73 have been fulfilled. In respect of detention order issued by the Minister pursuant to section 8 of Act 82, section 8B provides that the procedural matters of the detention orders shall be subjected to judicial review. In the case of *Abd Malek Hussin v. Borhan Hj Daud & Ors* [2008] 1 CLJ 264, it was held that the first Defendant has to provide sufficient material evidence and particulars to show the basis of his reason to believe that the detention of the plaintiff was necessary to prevent him from acting in a manner prejudicial to the security of Malaysia and further that the plaintiff had acted (or was likely to act or was about to act) in a manner prejudicial to the security of the country. The Government highlights that the legal rights provided to all persons detained under Act 82 and the application of the Act in compliance with the rule of law. In this connection, the Government indicates various available safeguards under the Malaysian law including the detainee's right to be informed of the reasons and grounds for his detention, his right to make representations and his right to counsel. The Government of Malaysia informs that the alleged arrest and detention of Mr. Kamaruddin by the Malaysian police was reasonable and necessary for the protection of national security and public order. His detention was necessary to prevent him from acting in any manner prejudicial to the security of Malaysia. His detention was in accordance with the provisions of the law. Thus, the Government of Malaysia is of the view that the alleged arrest and detention are compatible with international norms and standards on freedom of opinion and expression as contained in the UDHR, the ICCPR and the Declaration on Human Rights Defenders.

188. On 19 December 2008, the Government of Malaysia replied to the communication of 21 April 2008 (the Government's reply was received by the Office of the High Commissioner of Human Rights on 6 April 2009). In its letter, the Government informs that the Hindu Human

Rights Action Force (henceforth HINDRAF) is a non-registered society. It furthermore points to the activities of HINDRAF carried out at the end of 2007 which led to the arrest of Mr M. Manoharan, Mr R. Kenghadharan, Mr V. Ganabatirau and Mr T. Vasanthakumar under section 8 (1) of the Internal Security Act 1960 on the grounds that they were a threat to public order and security. The Government further informs about the placement of the above-mentioned individuals in the Detention protection Center Kamuntin, Taiping, Perak. Moreover, the Government informs about conditions of detention. With regard to the question of the confidentiality of the meetings between the detainees and their lawyers, the Government informs that - according to the existing procedure - the prison officers would stay in the meeting room during the meeting between the detainees and their lawyers. However, the prison officers did not record what was said in the meeting, which - according to the Government - is in compliance with Regulation 81 (5) of the Internal Security (Detainee) Rules 1960 which requires meeting surveillance to be done on the method of vision and hearing. The Government further informs that, due to protest from Mr. P. Uthayakumar, a direction was issued on 12 May 2008 requiring meeting surveillance to be carried out in a manner where such surveillance will take place at a range where the conversation can be seen and heard and this does not necessarily mean that the prison officers are required to sit together with the detainee and his lawyer in the same room. Due to such detention, surveillance was henceforth carried outside the meeting room. The Government also indicates that the Internal Security Act 1960 (Act 82) provides for the right to be represented in front of the Advisory Board which is also perceived as judiciary inquiry. The purpose of the representation in front of the Advisory Board is to enable the detainees to submit their defence against the validity of the detention order made against them. The Government further informs that during the proceedings before the Advisory Board, the above-mentioned individuals were represented by lawyers of their choice (between 5 to 7 lawyers) who were able to call for witnesses to support their defence. The Advisory Board made a review of detention on 1 July 2008 under section 13 of Act 82. The Government further details that section 73 of the Internal Security Act permits arrest without warrant and detention by the police not exceeding sixty days unless with a written order by the Minister pursuant to section 8. Section 8 of the Internal Security Act also provides the Minister with the power to order detention of any person without trial for up to two years on the ground that the detention is necessary to prevent the person from acting in any manner prejudicial to national security. Such detention order may be renewed for a further period not exceeding two years at a time. A person detained can petition to the High Court for a writ of habeas corpus to be issued. Section 11 of the Internal Security Act provides that any person against whom an order by the Minister under section 8 has been made shall be entitled to make representations against that order to an Advisory Board. Section 13 of the Internal Security Act provides that any detention order made by the Minister under section 8 of the ISA shall be reviewed not less than once in every six months by an Advisory Board.

### **Special Rapporteur's comments and observations**

189. The Special Rapporteur wishes to thank the Government of Malaysia for its detailed replies of 12 and 19 December 2008. With regard to the reply of 19 December 2008, he wishes to point to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular principle 22 which stipulates that "Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential", and principle 8 which states that "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time

and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.” In relation to both of the replies of the Government of Malaysia, the Special Rapporteur remains concerned at the long period of detention without effective judicial control.

## **Maldives**

### **Press releases**

190. On 12 August 2008, the Special Rapporteur issued the following press statement:

“The Special Rapporteur on the independence of judges and lawyers welcomes the ratification of the new Constitution by the President, on 7th August 2008. It demonstrates the progress made by Maldives towards the democratic principles and the rule of law, in particular, the independence of the judiciary.

The new Constitution is the culmination of almost four years of work of the Special Majilis (Constitutional Assembly). It establishes separation of powers and recognizes the independence of the judiciary. It also contains provisions for the establishment of a Supreme Court and the post of a Prosecutor General. Furthermore, the Constitution provides the creation of a Judicial Service Commission, an independent body, which will decide on appointment, dismissal and discipline for judges.

The Special Rapporteur notes that these provisions are in line with his recommendations, made after his visit to the country, in February 2007. The Special Rapporteur expresses his satisfaction and calls on the Government to effectively implement the Constitution.”

On 3 November 2008, the Special Rapporteur issued the following press statement:

“Following the run-off in the first multi-party presidential elections in the Maldives, the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, welcomes the democratic transition process and congratulates the people of the Maldives who have been the central actors of the reform.

The Special Rapporteur expresses profound appreciation for the work of all the members of the Government presided by Mr. Maumoon Abdul Gayoom for the political and institutional reform process during the past four years that culminated in the adoption of the new constitution in August this year and the subsequent conduct of the first multi-party presidential elections.

The Special Rapporteur congratulates the newly elected President Mohamed Nasheed on his election and underlines that there are great expectations towards the incoming President to pursue the legal and judicial reforms in accordance with the new Constitution and international human rights standards.

Following his visit to the country in February 2007, the Special Rapporteur had addressed several recommendations to the Government to reform the judicial system, the majority of which have been introduced through the recent changes.

In his recent presentation to the General Assembly, the Special Rapporteur underlined that the Maldives' transition process provides a very interesting example of the benefits that can flow from a constructive dialogue between States and the UN's human rights machinery. The precedent set with the Maldives should be considered as an example of "best practices" and can act as an inspiration for the entire region, particularly small Island States considering or implementing similar human rights reforms.

The Special Rapporteur would like to join the Secretary General in congratulating the Maldives and encouraging the political parties to work in a cooperative manner and continue to carry forward the reform process in the field of justice. In this connection, Mr. Despouy calls for a greater participation of women in public affairs, in particular in the judiciary. The Special Rapporteur calls upon the United Nations to direct efforts for collaboration, particularly through its technical cooperation mechanisms, to further reform initiatives already taken by the Maldives."

## **Mauritania**

### **Communication sent**

191. On 28 July 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 the Special Rapporteur on the situation of human rights defenders, regarding the case of Mr Roberto de Oliveira Monte, founder of the National Movement for Human Rights, former General Coordinator of the State Program for Education in Human Rights, long-term employee of the Commission of Pontifical Justice and Peace in the arch-diocese of Natal, and member of the National Committee of Human Rights, the Centre of Human Rights and Popular Memory, and the State Council of Human Rights. He was also central to the creation of DHNet, a website which provides information on the issue of human rights. According to information received, in late October 2005, an accusation was made to the Military Court by the Military Public Attorney against Mr Roberto de Oliveira Monte. The accusation came after Mr Roberto de Oliveira Monte gave a lecture entitled "Human Rights - Thing of the Police" at an event organized by the Association of Soldiers of the Brazilian Army. In his lecture Mr Roberto de Oliveira Monte promoted respect for the rule of law within the armed forces, defended the creation of human rights commissions for the armed forces, and objected to the ban on unionization for soldiers. He also raised registered cases of internal human rights abuses in the army whereby members of the military were allegedly deprived of sleep, forced to drink chicken's blood, and made remain on their knees in ant colonies. On 24 January 2008, the Military Public Attorney, who had objected to what he considered inappropriate comparisons between current and former army officials by Mr Roberto de Oliveira in the lecture, filed a complaint against Mr Roberto de Oliveira Monte for incitement to disobedience and offense to the Armed Forces under Articles 155 and 219 of the Military Penal Code. These charges carry possible prison sentences of four years and one year respectively. On 23 July 2008, Mr Roberto de Oliveira Monte was scheduled for interrogation at the Special Council of the Army's Court. This interrogation did not take place, reportedly because there were not enough colonels available to represent the Council. No new date for the interrogation was given. Mr Roberto de Oliveira Monte was the only civilian out of a total of 14 defendants in the process Number 20/08-0, in the 7th Division of the Military Court, established in relation with the

declarations realized during the Congress of Military Law. In addition to Mr Roberto de Oliveira Monte, the colonel of the Military Police of Alagoas Joilson Gouveia was charged as well as the Army Sergeants Anderson Rogério dos Santos, Lindomar de Oliveira, Dalton Simão, Sílvio Pekanoski, Francisco Ribeiro, Francisco Lima, Antônio Lima, Lasser Saleh, Alberto dos Santos, Francisco Bezerra, Marcos França and Edvaldo da Silva. Concern was expressed that the charges brought against Mr Roberto de Oliveira Monte may be related to his legitimate activities in the defense of human rights, in particular his activities to promote human rights within the armed forces.

### **Communication received**

None

### **Special Rapporteur's comments and observations**

192. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Mauritanie to provide at the earliest possible date a detailed substantive answer to the above allegations.

## **Mexico**

### **Comunicaciones enviadas**

193. El 14 de abril de 2008 el Relator Especial conjuntamente con el Relator Especial sobre la tortura y la Vice-Presidenta del Grupo de Trabajo sobre la Detención Arbitraria envió un llamamiento urgente con relación a la situación del Sr. Miguel Ángel Tornez Hernández. Según las informaciones recibidas el Sr. Miguel Ángel Tornez Hernández fue arrestado el 2 de abril de 2008 cuando se presentó voluntariamente a los locales de la Policía Judicial del Estado de Guerrero en el Municipio de Ayutla de los Libres para aclarar su participación en un caso de asesinato y robo de cuatro agentes policiales y un funcionario público. El Sr. Tornez habría sido detenido sin cargos, interrogado con los ojos vendados y habría sufrido agresiones verbales, amenazas y descargas eléctricas para obligarle a confesar su participación en dichos crímenes. Posteriormente, un juez autorizó su puesta en "arraigo" en el estado de Guerrero. El 5 de abril de 2008 fue trasladado a otro centro de arraigo gestionado por la Procuraduría General de la República en la Ciudad de México, sin que su familia fuese informada de dicho traslado. Sus posibilidades de comunicarse con sus familiares o con el mundo exterior habrían sido seriamente limitadas por estas medidas. Se informa también que no se ha permitido que el Sr. Tornez Hernández sea representado por abogados de una organización local no-gubernamental de derechos humanos y que en su lugar se le ha designado un abogado de oficio. Asimismo, los expertos fueron informados de que una de las hermanas del Sr. Tornez Hernández, la Sra. Yesenia Tornez Hernández, fue interrogada bajo tortura para obligarla a declarar dónde se encontraba su hermano. Los expertos expresaron su temor de que el Sr. Tornez Hernández, dado el grado de imposibilidad de comunicación con el mundo exterior y las dificultades para preparar su defensa, sea sujeto de un proceso judicial que no reúna las condiciones necesarias del debido proceso legal, ni las garantías judiciales suficientes.

194. El 21 de mayo 2008 el Relator Especial conjuntamente con la Presidente-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, el Relator Especial sobre la situación de los

derechos humanos y las libertades fundamentales de los indígenas y la Relatora Especial sobre la situación de los defensores de los derechos humanos envió un llamamiento urgente para señalar a la atención del Gobierno de México la información recibida en relación con los Sres. Natalio Ortega Cruz, Romualdo Santiago Enedina, Raúl Hernández Abundio, Orlando Manzanarez Lorenzo, Manuel Cruz Victoriano y Cuauhtémoc Ramírez. El Sr. Ramírez es presidente de la Organización del Pueblo Indígena Me Phaa (OPIM) en la localidad de Ayutla de los Libres, Estado de Guerrero, las demás personas mencionadas son integrantes de dicha organización. De acuerdo con las informaciones recibidas el 24 de abril de 2008, el Juzgado de Primera Instancia del Municipio de Ayutla de los Libres habría dictado un auto de formal prisión contra los cinco integrantes de la OPIM antes mencionados. La detención de los cinco se habría efectuado el 18 de abril, luego de que, el 11 de abril, fueron dictadas órdenes de aprehensión en su contra, así como contra otros 10 miembros de la OPIM, por su supuesta participación en el asesinato del Sr. Alejandro Feliciano García, cometido el 1 de enero de 2008. Según los informes, hasta la fecha, la investigación del asesinato no habría hecho mayores progresos. Según las alegaciones, el juez se habría negado a recibir las declaraciones de los detenidos tras afirmar que no disponía del tiempo suficiente para leerlas, a pesar de que fueron entregadas antes del vencimiento del plazo correspondiente. De acuerdo a la información, antes de conducirles a la prisión municipal, agentes de la policía habrían amenazado a los detenidos con matarles y torturarles. Estas cinco personas se encontrarían detenidas en el Centro de Readaptación Social de Ayutla de los Libres. No se les habría permitido prestar declaración hasta el 15 de mayo, tras la presentación de un recurso de amparo. Se alega que la detención de estos cinco integrantes de la OPIM y los cargos formulados contra ellos podrían estar directamente relacionados con sus actividades legítimas para promover los derechos de las comunidades indígenas Me'phaa. Los expertos expresaron su temor de que su detención y las diligencias judiciales posteriores podrían formar parte de una política de hostigamiento sistemático y de criminalización en contra de las organizaciones indígenas y campesinas del Estado de Guerrero.

195. El 26 de mayo de 2008 el Relator Especial conjuntamente con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, la Relatora Especial sobre la situación de los defensores de los derechos humanos y la Relatora Especial sobre la violencia contra la mujer, envió un llamamiento urgente para señalar a la atención del Gobierno de México la información recibida en relación a la situación de la Sra. Luz Estela Castro Rodríguez (conocida como Lucha Castro), Directora del *Centro de Derechos Humanos de las Mujeres, A.C.* y abogada de la organización no gubernamental *Justicia para Nuestras Hijas*, quien trabaja en la defensa de los derechos de las mujeres en el contexto de la violencia de género y los femicidios en el Estado de Chihuahua. De acuerdo con las informaciones recibidas, el 14 de mayo de 2008, la Sra. Luz Estela Castro habría sido amenazada en dos ocasiones, a las 10 y luego a las 11 de la mañana, mediante llamadas a su teléfono celular. Durante la segunda llamada, el interlocutor le habría advertido “te va a llevar la chingada y a tu pinche Centro también”. Tras estos hechos, la Sra. Castro habría presentado una denuncia ante la Procuraduría estatal, donde habría solicitado que se le otorgaran medidas de protección y que se realizara una investigación de los mismos. Desde el 14 de mayo la Sra. Lucha Castro estaría acompañada por dos agentes. El 13 de mayo, la Sra. Castro habría participado en una manifestación convocada por la ONG *Justicia para Nuestra Hijas*, con ocasión del quinto aniversario del asesinato de la joven Neyra Azucena Cervantes, quien fue asesinada en 2003, cuando tenía 19 años. Según las alegaciones, esta amenaza también habría sido resultado de una declaración de la Sra. Castro, en la cual se pronunció por la salida del ejército mexicano del Estado de Chihuahua. Anteriormente, la

susodicha, en su calidad de abogada de la organización *Justicia para Nuestras Hijas*, se habría manifestado en contra del nuevo sistema de justicia penal que entró en vigencia a principios de 2008, el cual, según la Sra. Castro, no lograría una mayor protección de las mujeres, respecto a la violencia familiar. Cabe recordar que, según cifras de organizaciones de derechos humanos, más de 430 mujeres y niñas han sido asesinadas en el Estado de Chihuahua, junto con Ciudad Juárez, desde 1993 hasta la fecha, y que más de 40 están en paradero desconocido. Se expresó preocupación por las amenazas en contra de la Sra. Castro Rodríguez porque se teme que estos incidentes puedan estar relacionados con sus actividades en defensa de los derechos humanos y podrían formar parte de un intento de impedir sus actividades en defensa de los derechos de las mujeres. Se expresó profunda preocupación por la integridad física y psicológica de la Sra. Castro.

196. El 22 de julio de 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, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y la Relatora Especial sobre la situación de los defensores de los derechos humanos con relación a la situación de los Sres. Manuel Cruz Victoriano, Orlando Manzanarez Lorenzo, Natalio Ortega Cruz, Raúl Hernández Abundio y Romualdo Santiago Enedina, todos integrantes de la Organización del Pueblo Indígena Me'phaa (OPIM) quienes están detenidos desde el 17 de abril de 2008. Estos integrantes de la OPIM fueron objeto de un llamamiento urgente emitido el 21 de mayo de 2008. Al momento del envío del presente llamamiento urgente no se había recibido respuesta del gobierno. Según las nuevas informaciones recibidas el 7 de julio de 2008, los cinco detenidos habrían presentado el amparo Número 982/2008 ante la Justicia Federal como reclamación en contra del auto de formal prisión que el Juez Mixto de Primera Instancia habría dictado el 23 de abril de 2008 por el supuesto homicidio del Sr. Alejandro Feliciano García. Aunque no habría recibido suficiente evidencia el Juez Mixto de Primera Instancia de Ayutla, supuestamente bajo presiones políticas, habría sometido a los integrantes de la OPIM a un procedimiento de diez meses durante los que permanecerían en detención. Sin embargo, el 9 de julio de 2008 tres testigos habrían presentado nueva evidencia que habría probado que el expediente en contra de los detenidos habría sido fabricado. Por otra parte, según la información remitida, la Comisión Interamericana de Derechos Humanos (CIDH) habría solicitado al Estado Mexicano que amplíe a favor de los cinco indígenas de El Camalote presos en Ayutla, las medidas cautelares que otorgó a líderes e integrantes de la OPIM desde el año 2005. En su resolución del viernes 27 de junio de 2008, la CIDH también habría pedido extender las medidas de seguridad necesarias para líderes en comunidades y miembros de la OPIM que tienen orden de aprehensión por el mismo delito, así como para aquellos otros integrantes que tienen el carácter de líderes comunitarios y un trabajo importante en la organización. Los expertos expresaron su temor porque la detención de los cinco integrantes de la OPIM y los cargos contra ellos podrían estar relacionados con sus actividades, en particular su trabajo en defensa de los derechos de las comunidades indígenas Me'phaa. También se teme que la acción judicial contra ellos podría formar parte de un hostigamiento sistemático en contra de las organizaciones indígenas y campesinas del Estado de Guerrero.

197. El 18 de agosto de 2008 el Relator Especial envió una carta de alegación con relación a una situación que toca el mandato a él conferido por el Consejo de Derechos Humanos. Según información puesta en su conocimiento, la Jueza Sexta Civil en Materia Familiar y de Sucesiones del Primer Distrito Judicial del Estado de Morelos habría emitido una sentencia que no cumple con los requisitos de imparcialidad e independencia, en virtud de posibles presiones e influencias

indebidas del Presidente del Consejo de la Judicatura y del Tribunal Superior de Justicia del Estado de Morelos, como represalia al abogado que interviene en dicho juicio, que a su vez es el Presidente de la Barra de Abogados del Estado de Morelos, José Luis Urióstegui. Este abogado se ha opuesto a la reelección del Presidente del Consejo de la Judicatura y del Tribunal Superior de Justicia del Estado de Morelos. En este contexto, se alega, que podrían verse afectados adversamente los derechos de la Sra. Pura Leonor Guillermo Prieto Rivera y de su menor nieto, César Armando Gómez Lince Sardaneta, quien según se indica, desea seguir viviendo con su abuela, la que a su vez desea se le confirme definitivamente la custodia de su nieto. Por otra parte, según la información recibida, el juicio habría sido prolongado de manera excesiva, y la sentencia no habría tenido en cuenta la opinión y los deseos claramente expresados por el niño, ni otras pruebas científicas y documentales.

### **Comunicaciones recibidas**

198. El 16 de Junio de 2008 el Gobierno envió respuesta al llamamiento urgente enviado el 26 de mayo de 2008 relativo a la situación de la Sra. Luz Estela Castro Rodríguez. Según dicha respuesta, el Gobierno de México procedió de inmediato a solicitar ante la Comisión interamericana de Derechos Humanos la implementación de medidas cautelares, a favor de las Sras. Marisela Ortiz Rivera, María Luisa García Andrade, Norma Andrade y Luz Esthela Castro Rodríguez, con fundamento en el artículo 25.1 del Reglamento de la citada Comisión Interamericana. Asimismo, el Gobierno afirmó que se está en espera de recibir información solicitada a las autoridades competentes. Y se comprometió a que una vez que se contara con dicha información se hará del conocimiento del Relator.

199. El 4 de agosto de 2008 el Gobierno envió respuesta al llamamiento urgente enviado el 14 de abril de 2008. Según dicha respuesta el 4 de abril de 2008 el Ministerio Público solicitó al Juez Penal del Distrito Judicial de Allende Ayutla de los Libres Guerrero una orden de arraigo para el Sr. Miguel Ángel Tornez Hernández por el término de 30 días, medida que posteriormente fue ampliada por 30 días más, debido a que se requerían mayores elementos para comprobar su presunta responsabilidad en un hecho delictivo y por considerar que existía el temor fundado que el Sr. Tornez se ausentara o se ocultara antes de que las investigaciones concluyeran. Respecto a la pregunta sobre si se ha presentado alguna queja, el Gobierno indicó que representantes de la Comisión de Defensa de los Derechos Humanos del estado de Guerrero (CDDH Gro), a partir de la solicitud de una organización de la sociedad civil, brindaron apoyo al Sr. Tornez Mayo (padre) para que promoviera recurso extraordinario de exhibición de persona ante el Juez Mixto de primera Instancia del Distrito Judicial de Allende, Guerrero. Según se informa, el Coordinador de la Policía Ministerial presentó al Sr. Tornez, aclarando que su presencia se debía únicamente a que debía rendir su declaración y que no se encontraba en calidad de detenido. El Sr. Tornez manifestó al Juez Mixto haber sido víctima de actos de tortura por parte de elementos de la Policía Ministerial, en presencia del Coordinador de Zona de la Policía Ministerial del estado. El representante de la CDDH Gro pidió la intervención del perito médico para que elaborara un examen médico para que certificara su estado de salud con el fin de investigar los hechos de tortura; el certificado médico concluyó signos de tortura psíquica con multitraumas físicos. Con los elementos recabados la CDDH Gro inició el expediente de queja CODDEHUM-VG/065/2008-V. Asimismo, el Gobierno informó acerca de las quejas existentes respecto a las torturas alegadas perpetradas contra Yesenia Tornez Hernández, hermana del Sr. Tornez. Por otra parte, se indica que a partir de nuevas denuncias realizadas por los familiares por hechos de tortura, el día 8 de abril, la CDDH Gro solicitó al Procurador General de Justicia y

al Secretario de Seguridad Pública y protección Civil del estado de Guerrero la adopción de medidas cautelares a favor de Miguel Ángel, Yesenia y María del Socorro Tornez Hernández, Juana y Mercedes Hernández Garibay, Ninfa Sánchez Sierra y Dorotea Hernández Garibay, a fin de que las policías ministerial y preventiva del estado se abstengan de incurrir en actos de tortura, hostigamiento, amenazas, intimidación y en general cualquier acto de molestia. El 15 de abril de 2008, las medidas cautelares fueron aceptadas por ambas autoridades. Con respecto al expediente de queja iniciado por la Comisión Estatal de Derechos Humanos, el Gobierno, indicó que obran las siguientes constancias: testimonios de Miguel y Rafael Tornez Mayo, inspección ocular en el lugar de los hechos, certificados de lesiones del 7 de abril de 2008 practicados a los Sres. Miguel Ángel y Yesenia Tornez Hernández por un médico adscrito a la CEDDH Gro, solicitudes de informes dirigidas al Procurador General de Justicia y al Secretario de Seguridad Pública y protección Civil del estado de Guerrero sobre la situación jurídica del Sr. Tornez, informe emitido por la Secretaría de Seguridad Pública y protección Civil el 22 de abril de 2008. Con relación al hecho de si se han adoptado sanciones de carácter penal o disciplinario en contra de los culpables, el Gobierno ha informado que las averiguaciones previas y las quejas aún se encuentran en etapa de análisis. Por último, respecto de las medidas tomadas para garantizar al Sr. Tornez el acceso a un abogado de su elección el Gobierno indicó que le ha solicitado información a este respecto a la Procuraduría General de Justicia del estado de Guerrero.

200. El 19 de enero de 2009 el Gobierno envió respuesta a la carta de alegación enviada el 18 de agosto de 2008. Según dicha respuesta el Gobierno informó que no se encuentra en condiciones de determinar la exactitud y veracidad de los hechos dado que el Gobierno de México no tiene conocimiento de que el Sr. Urióstegui Salgado haya utilizado los mecanismos para la protección de la libertad en el ejercicio de la profesión que establecen tanto la legislación nacional como la del estado de Morelos. Con relación a la presentación de alguna queja, la Procuraduría General de Justicia del Estado de Morelos, informó que luego de que sus autoridades ministeriales realizaran una búsqueda exhaustiva en los libros de gobierno de las agencias del Ministerio Público del Estado de Morelos, no se halló registro alguno de investigación ministerial o averiguación previa que tenga relación con los hechos referidos en la comunicación. Por otra parte, la Comisión de Derechos Humanos del estado de Morelos informó que en sus archivos no existe antecedente de queja por falta de imparcialidad por parte del titular del Juzgado sexto civil en materia de familia y de sucesiones del primer distrito judicial del estado de Morelos. El Gobierno indicó que aparentemente el Sr. Urióstegui Salgado no ha denunciado ante instancias nacionales de justicia los hechos descritos en la comunicación. Respecto de las medidas implementadas por el Gobierno para garantizar el libre ejercicio de la profesión de abogados y que el Sr. Urióstegui Salgado no sea víctima de represalias el Gobierno informó que el estado de Morelos cuenta desde 1968 con la Ley de Profesiones para el Estado Libre y Soberano de Morelos (anexada a la respuesta), la cual regula para ese estado los artículos de la Constitución Política de los Estados Unidos Mexicanos relativos a la libertad en la elección y el ejercicio profesional. Según se indica esta ley cuenta con los mecanismos para el libre ejercicio de una profesión y establece las facultades y obligaciones que se otorgan a los profesionales para obtener su cédula profesional con efectos de patente. En lo relativo a posibles represalias por parte de representantes del Consejo de la Judicatura del Poder Judicial del estado de Morelos en contra del Sr. Urióstegui Salgado, el Gobierno informa, que la Ley Orgánica del Poder Judicial del estado de Morelos establece mecanismos de defensa a los cuales se puede recurrir en casos de acciones violatorias de la libertad en el ejercicio de la profesión por parte de jueces y empleados judiciales. Esta legislación establece además sanciones administrativas a los jueces y

servidores públicos judiciales en los casos en los que son encontrados responsables administrativamente de las faltas que cometen en el ejercicio de sus cargos, independientemente de las sanciones penales a las que hubiere lugar. Por último, el Gobierno recalcó que hasta el momento no se tiene conocimiento de que el Sr. Urióstegui Salgado haya utilizado alguno de estos mecanismos para denunciar los hechos que se describen en la comunicación. Por ello el Gobierno agradecerá invitar al Sr. Urióstegui a formular una denuncia o queja ante las citadas instituciones, a efecto de que inicien una investigación, misma que daría el sustento jurídico necesario para aplicar una medida cautelar o de protección en su favor.

### **Comentarios y observaciones del Relator Especial**

201. El Relator Especial agradece al Gobierno de México su grata cooperación y aprecia que el mismo haya tenido a bien enviarle información en respuesta a las comunicaciones enviadas el 14 de abril, el 26 de mayo y el 18 de agosto de 2008. En lo que respecta a la comunicación enviada el 14 de abril, el Relator Especial, hace un llamado al Gobierno para que lo mantenga informado sobre el curso y los resultados de averiguaciones previas relacionadas con las investigaciones penales y/o disciplinarias en contra de los culpables. Igualmente solicita al Gobierno que le informe sobre las medidas tomadas para garantizar al Sr. Tornez el acceso a un abogado de su elección. En lo que respecta a la comunicación enviada el 26 de mayo de 2008, el Relator Especial acoge con satisfacción la iniciativa de solicitar medidas cautelares a la Comisión Interamericana de Derechos Humanos y solicita se le informe qué medidas específicas han sido tomadas por las autoridades para proteger a la Sra. Luz Estela Castro Rodríguez. Asimismo, queda a la espera de la información referente a las investigaciones y diligencias judiciales iniciadas en relación con el caso, así como sobre las sanciones disciplinarias y/o judiciales que han sido impuestas a los presuntos culpables de las amenazas y hostigamiento sufridos por la víctima.

202. Asimismo, el Relator expresa preocupación por no haber recibido respuesta alguna del Gobierno de México con relación a los llamamientos urgentes del 21 de Mayo y 22 de julio de 2008, ambas comunicaciones hacen referencia al caso de 5 personas detenidas integrantes de la Organización del Pueblo Indígena Me'phaa (OPIM). Preocupa sumamente al Relator Especial que la acción judicial contra ellos podría formar parte de un hostigamiento sistemático en contra de las organizaciones indígenas y campesinas del Estado de Guerrero y al respecto llama la atención sobre los Principios básicos relativos a la independencia de la judicatura, especialmente el principio 6 que dispone: El principio de la independencia de la judicatura autoriza y obliga a la judicatura a garantizar que el procedimiento judicial se desarrolle conforme a derecho, así como el respeto de los derechos de las partes; también llama la atención sobre los principios de Bangalore sobre la conducta judicial -aprobados por el Grupo Judicial de Reforzamiento de la Integridad Judicial, tal y como fue revisado en la Reunión en Mesa Redonda de Presidentes de Tribunales Superiores celebrada en el Palacio de la Paz de La Haya, Países Bajos, el 25 y 26 de noviembre de 2002- en particular el Principio 3.1 que dispone que un juez deberá asegurarse de que su conducta está por encima de cualquier reproche a los ojos de un observador razonable. El Relator pide encarecidamente al Gobierno que tenga a bien enviarle a la brevedad posible, y preferentemente antes de la clausura del undécimo período de sesiones del Consejo de Derechos Humanos, informaciones precisas y detalladas acerca de las alegaciones arriba resumidas.

## Morocco

### Communication envoyée

203. 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<sup>5</sup> 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. M. Yahya Mohamed el Hafed Aaza serait détenu au poste de police de Tan-Tan pour interrogation, mais il n'aurait pas encore été inculpé et il n'aurait 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, ainsi qu'en 2005; ces mêmes services l'auraient kidnappé et retenu pendant deux semaines, au cours desquelles, il aurait été soumis à la torture. Au vu des allégations de sa détention incommunicado, des craintes furent exprimées pour l'intégrité physique et mentale de M. el Hafed Aaza. Des craintes furent aussi exprimées quant au fait que son arrestation ne soit liée à ses activités non-violentes de promotion et protection des droits de l'homme.

### Communication reçue

204. Le 20 juin 2008, le Gouvernement marocain a répondu à l'appel urgent du 7 mars 2008, au sujet des événements qui ont eu lieu à Tan Tan en février 2008. Le Gouvernement allègue que les droits d'opinion, d'expression, et de manifestation constituent des droits fondamentaux, consacrés par les instruments internationaux des droits de l'Homme. Dans ce cadre, il convient de souligner que l'article 19 du Pacte international relatif aux droits civils et politiques stipule que l'exercice des libertés comporte des devoirs et des responsabilités spéciales. Ce droit peut être soumis à certaines restrictions, expressément fixées par la loi pour garantir le respect des droits de chacun, et la sauvegarde de la sécurité nationale, et éviter tout dérapage susceptible de porter atteinte à l'ordre public, à la santé ou à la moralité publiques. D'autre part, l'exercice de ces droits lorsqu'il se fait de manière irresponsable peut être préjudiciable aux droits et libertés d'autrui et aura des conséquences graves sur la sécurité des individus, la préservation de leurs biens et le maintien de l'ordre public. L'article 20 du Pacte, interdit également toute propagande en faveur de la guerre, ou l'appel à la haine nationale, raciale ou religieuse qui constitue une incitation à la discrimination, à l'hostilité ou à la violence. Il en va de même du droit de rassemblement pacifique, reconnu par l'article 21 du Pacte, et dont l'exercice peut être soumis à des restrictions légales qui sont nécessaires dans une société démocratique, dans l'intérêt de la

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<sup>5</sup> This communication has already been included in the Communications Report of 28 May 2008, A/HRC/8/4/Add.1. The Special Rapporteur has included it again in order to facilitate the reader's comprehension.

sécurité nationale, de la sûreté publique, de l'ordre public ou pour préserver les droits et libertés d'autrui. Ainsi, la Constitution du Royaume du Maroc garantit, totalement, dans son article 9, le droit à la liberté d'opinion et d'expression, sous toutes ses formes, notamment la liberté d'association et de rassemblement, ce qui constitue une caractéristique marquante du régime démocratique moderniste au Maroc. Ce même Article stipule, également, qu'aucune limitation ne peut être apportée à ces libertés que par la loi. De même, le code des libertés publiques du 15 novembre 1958, qui régit l'exercice de ces droits, a été modifié, le 23 juillet 2002, dans le cadre de l'harmonisation de la législation nationale avec les standards internationaux en matière des droits de l'Homme et le pacte international relatif aux droits civils et politiques. Dans ce contexte, le Maroc veille à garantir l'exercice de tous les droits de l'Homme, sur l'ensemble du territoire du Royaume, conformément aux dispositions des instruments internationaux et à la législation nationale en vigueur, mais loin de toute pratique motivée par le racisme, la haine, la violence, la discrimination ou les atteintes à la liberté et à la propriété d'autrui.

205. Le Gouvernement stipule également que le 26 février 2008, une quarantaine de jeunes cagoulés ont organisé un attroupement armé au quartier Ain Errahma au centre-ville de Tan Tan, et ont installé des obstacles entravant la circulation sur la voie publique et se sont attaqués, par des jets de pierres, aux forces de l'ordre blessant, ainsi grièvement, au niveau du crâne, le gardien de la paix Abdelaziz Meski qui a succombé à ses blessures à l'hôpital, le 3 mars 2008. L'enquête menée, dans ce cadre, a permis l'arrestation des dénommés Lahcen Lafkir, Najem Bouba, Mohamed Salmi, Meyara Moujahid, Mahmoud Barkaoui et Yahya Aâza. Le dénommé Lahcen Lafkir a déclaré que Yahya Mohamed El Hafed Aâza était le commanditaire principal desdits troubles à l'ordre public. Ce dernier avait demandé à Lahcen Lafkir, Meyara Moujahid et Najem Bouba, à travers Mahmoud Barkaoui, d'organiser un rassemblement sur la voie publique en vue de porter atteinte à la sécurité dans la région, en récompense d'une somme d'argent. Ceci a été confirmé par Meyana Moujahid et Najem Bouba lors des interrogatoires. Pour sa part, Yahya Mohamed El Hafed Aâza a déclaré qu'il recevait des sommes d'argent du dénommé Omar Boulsane, soi-disant représentant du « polsario » à Las Palmas en Espagne, pour financer ses activités visant à perpétrer des actes portant atteinte à l'ordre public. Le 4 mars 2008, les mis en cause ont été traduits devant la cour d'appel d'Agadir pour attroupement armé sur la voie publique et violence à l'encontre d'un fonctionnaire de police dans l'exercice de ses fonctions ayant entraîné la mort. Il convient de préciser que l'interpellation et la mise en garde à vue de l'intéressé ont été effectuées dans le respect total des procédures et lois en vigueur. Compte tenu de ce qui précède, les personnes ayant fait l'objet de cette lettre ont été interpellés, non pas pour leurs activités de défense des droits de l'homme, lors d'une manifestation dite pacifique, mais principalement pour des actes criminels ayant causé la mort d'un policier en exercice de sa fonction.

### **Commentaires et observation du Rapporteur spécial**

206. Le Rapporteur spécial remercie le Gouvernement du Maroc de sa réponse à l'appel urgent envoyé le 7 mars 2008.

## Myanmar

### Communications sent

207. On 23 June 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 and the Special Rapporteur on the situation of human rights defenders, regarding the case of Mr Zarganar, a famous comedian in Myanmar who had been leading some of the relief efforts after the Nargis cyclone hit the country in early May 2008 and Mr Zaw Thet Htwe, Chief Editor of weekly journal *Sports Lovers* and former Editor-in-chief of *First Eleven Sports Journal* in Rangoon. According to information received, in the evening of 4 June 2008, some seven police led by the Yangon Western District police chief and the local council chairman came to Mr Zarganar's house and searched it. They seized personal belongings as well as USD 1,000 collected as part of the cyclone relief effort. They then arrested Mr Zarganar and took him to an undisclosed location. His whereabouts remain unknown as of today. Prior to his arrest, Mr Zarganar had given interviews to international radio stations and other media about his relief work and the needs of the population. He also criticized the response of the State authorities to the cyclone's aftermath. On 13 June 2008, Mr Zaw Thet Htwe was arrested by special branch police officers at his ailing mother's residence in the central city of Minbu, Magway township, central Myanmar. Following the arrest, officers proceeded to Mr Zaw Thet Htwe's home where they searched the premises and confiscated personal belongings, including his mobile phone, computer and various work related documents. Reports claim that Mr Zaw Thet Htwe's arrest may be related to his involvement in organising a number of deliveries of aid to victims of Nargis cyclone, which devastated the Irrawaddy Delta region. He had reportedly been prohibited from writing openly about the disaster prior to his arrest. Mr Zaw Thet Htwe has apparently been taken to an interrogation camp in Rangoon. Previously in July 2003, Mr Zaw Thet Htwe, was arrested following the publication of an article which questioned how authorities were spending a four-million-dollar football grant. Following his arrest, Mr Zaw Thet Htwe was charged with treason and sentenced to death for allegedly plotting to overthrow the government. The Supreme Court commuted his sentence and he was released after 18 months. Concern was expressed that the arrest and detention of Mr Zarganar and Mr Zaw Thet Htwe may be linked to their non-violent activities in defense of human rights, in particular their relief work in favour of the victims of the Nargis cyclone. In view of their incommunicado detention, further concern was expressed for their physical and psychological integrity.

208. On 19 August 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 situation of human rights defenders, and the Special Rapporteur on the situation of human rights in Myanmar, regarding the case of Mr Myint Aye, leader of the Human Rights Defenders and Promoters group. Mr Myint Aye was the subject of numerous communications in the past years, including a joint urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in Myanmar on 2 April 2008; a joint 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 situation of human rights in Myanmar and the then

Special Representative of the Secretary-General on the situation of human rights defenders on 28 August 2007; 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, the Special Rapporteur on the situation of human rights in Myanmar and the then Special Representative of the Secretary-General on the situation of human rights defenders on 18 October 2006, and a joint 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 Rapporteur on the situation of human rights in Myanmar on 6 October 2006. According to the new information received, on 8 August 2008, the house of Mr Myint Aye was searched by the Chief of Police of Kyi Myint Taing township, together with other police and administration officers. They seized a number of documents and personal belongings, and proceeded to arrest him. On 9 August, the family of Mr Myint Aye was visited by police officers who asked for some of his clothes and stated that he will remain in custody for an unspecified period of time without indicating the charges held against him. The whereabouts of Mr Myint Aye remained unknown. Concern was expressed that this latest arrest and detention of Mr Myint Aye may be linked to his non-violent activities in defense of human rights, and may form part of a pattern of harassment against him, and more generally against human rights defenders in Myanmar. In view of his incommunicado detention, further concern was expressed for his physical and psychological integrity.

209. On 5 November 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 situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights in Myanmar, regarding the case of Messrs Nyi Nyi Htwe and Saw Kyaw Kyaw Min, human rights lawyers who have participated in the defence of 11 youth members from Hlaing Thar Yar Township, Yangon, of the National League for Democracy (NLD). According to the information received, in September 2008, 11 youth members from Hlaing Thar Yar Township, Yangon, belonging to the NLD, were arrested for having reportedly peacefully marched towards the Shwe Dagon Pagoda on 19 June 2007, on Daw Aung San Suu Kyi's birthday. The 11 demonstrators were arrested during the march and released the next day by the authorities. One year later, they were arrested again, charged with 'instigation to public unrest' and brought to trial before the Hlaing Thar Yar Township Court. During the trial, the 11 defendants and their two lawyers, Messrs Nyi Nyi Htwe and Saw Kyaw Kyaw Min, submitted a complaint to the judge to address the violations of their rights, because, since the beginning of the trial, the lawyers have reportedly not been allowed to meet with their clients in private; the judge has not allowed them sufficient time to make counter questions against the prosecution witnesses; and their family members have not been allowed to attend the court hearings. Furthermore, it was alleged that the police and some plain-cloth persons have also been taking pictures and recording their voices during these hearings. During the trial, three defendants, Messrs Yan Naing Tun, Myo Kyaw Zin and Aung Min Naing (aka) Mee Thwe argued that they were released in June 2007 by the authorities, who claimed then that the authorities considered them as "sons and daughters" and gave them "great forgiveness". Therefore, these three defendants reportedly requested the judge to summon the Minister of Home Affairs Mr Maj-Gen Maung Oo, and the Chief of Police Mr Brig-Gen Khin Yee as their defence witnesses. The judge rejected their request and asked their lawyers, Messrs Nyi Nyi

Htwe and Saw Kyaw Kyaw Min, to control their clients. The two lawyers responded that they were to follow instructions made by their clients. Then the Prosecutor decide to sue the two lawyers along with Messrs Yan Naing Tun, Myo Kyaw Zin and Aung Min Naing (aka) Mee Thwe under Section 228 of the Penal Code, and issued a arrest warrant against Messrs Nyi Nyi Htwe and Saw Kyaw Kyaw Min. On 29 October 2008, Mr Nyi Nyi Htwe was reportedly arrested by the police, and on 30 October, he was sentenced by the Yangon Northern District Court to six months' imprisonment reportedly for "interruption and insulting the judiciary proceeding" under Section 228 of the Penal Code. He was sentenced along with Messrs Yan Naing Tun, Myo Kyaw Zin and Aung Min Naing (aka) Mee Thwe. None of them were reportedly allowed to have legal representation. When Mr Nyi Nyi Htwe asked the judge to allow him to make his own defence, the judge threatened him with another lawsuit. They were all detained in Insein Prison. As for Mr Saw Kyaw Kyaw Min, he failed to appear on 30 October 2008 and his whereabouts were unknown as of today. Serious concern was expressed that the arrest warrant against Messrs Nyi Nyi Htwe and Saw Kyaw Kyaw Min, and the subsequent arrest and detention of Mr Nyi Nyi Htwe may be linked to their non-violent activities in defence of human rights. Further concern was expressed for their physical and psychological integrity while in detention. Finally, concern was expressed that these latest incidents may form part of a pattern of harassment against human rights defenders in Myanmar.

210. On 5 November 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, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in Myanmar, regarding the situation of Mr. Min Ko Naing and 34 other members of the so-called "88 Generation Students", Mr. Ko Ko Gyi, Mr. Pyone Cho (aka) Htay Win Aung, Mrs. Min Zeya, Mya Aye, Mr. Kyaw Min Yu, Mr. Zayya, Mr. Kyaw Kyaw Htway, Mr. Ant Bwe Kyaw, Mr. Pannate Tun, Mr. Zaw Zaw Min, Mr. Thet Zaw, Mr. Nyan Lin, Mr. Than Tin, Mrs. Sandar Min, Mr. Htay Kywe, Mr. Hla Myo Naung, Mr. Aung Thu, Mr. Myo Aung Naing, Mrs. Thin Thin Aye, Mrs. Thet Thet Aung, Mrs. Lay Lay Mon, Mrs. Hnin May Ag, Mrs. San San Tin, Mrs. Thara Phee Theint Theint Tun, Mrs. Aye Thida, Mrs. Ma Nweah Hnin Ye, Mr. Zaw Htet Ko Ko, Mr. Chit Ko Linn, Mr. Thaw Zin Tun, Mr. Aung Thike Soe, Mr. Saw Myo Min Hlaing, Mr. Tin Htoo Aung, Mr. Thein Than Tun and Mr. Min Han. The above mentioned persons were the subject of an urgent appeal sent by the Special Rapporteur on the question of torture, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the then Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights in Myanmar and the then Special Representative of the Secretary-General on the situation of human rights defenders on 22 April 2008; an urgent appeal sent by the then Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights in Myanmar and the then Special Representative of the Secretary-General on the situation of human rights defenders on 31 January 2008; an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the then Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights in Myanmar and the then Special Representative of the Secretary-General on the situation of human rights defenders on 28 August 2007; and an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the then 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 Rapporteur on the situation of human rights in Myanmar on 6 October 2006. According to the new information received, starting on 27 August 2008, after over one year of detention without trial in Insein Prison, Min Ko Naing and 34 other members of the “88 Generation Students” have been brought before courts where they face charges under Section 130 (B) of the Penal Code, Section 4 of the Law Protecting the Peaceful and Systematic Transfer of the State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Opposition Endangering National Convention (SPDC Law No. 5/96), Section 17 and 20 of the Printers and Publishers Registration Act, Section 33 (A) of the Electronic Transactions Law, Section 17 (1) of the Unlawful Association Act, Section 505 (B) of the Penal Code, Section 32 (B) and 36 of the Television and Video Law and Section 24 (1) of the Foreign Exchange Regulation Act (1947) and Section 6 of the Law Relating to Forming of Organizations (SLORC Law 6/88) in a total of 21 trials. Their cases were initially heard by township courts and two district courts, but subsequently all transferred to the Rangoon Eastern District Court, the Yangon Western District Court and the Rangoon Northern District Court. It was alleged that all trials were held inside the Insein Prison Compound. During the hearing on 27 August, the defendants requested that their family members, the public, and media should be allowed to attend the hearing. In addition, they demanded not to be handcuffed during the hearing. During the hearing on 10 September, during which they were still handcuffed, family members were allowed to attend the hearing; however, no access was granted to other people wishing to attend. During the court hearing on 29 October 2008, Min Ko Naing, Ko Ko Gyi, Mya Aye, Nyan Lin, Pyone Choe, Aung Thu, Hla Myo Naung, and Aung Naing stood up and complained about the lack of an independent judiciary and that their rights were not respected. The judge then charged them with Section 288 of the Penal Code for disturbing the court procedure and sentenced them to six-month imprisonment for each of them. Subsequently, the judge ordered security forces to remove the defendants from the court and adjourned the trial. On 30 October, Zaw Zaw Min was sentenced to two years of imprisonment with hard labor under the Section 505 (B) of the Penal Code.

211. On 13 November 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, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the situation of human rights in Myanmar, regarding the case of Mr. Aung Thein and Mr. Khin Maung Shein, lawyers, representing members of the *National League for Democracy* in current criminal proceedings. According to the information received, on 7 November 2008, Mr. Aung Thein and Mr. Khin Maung Shein were sentenced to four months of imprisonment by the High Court for contempt of court, reportedly under section 3 of the Contempt of Courts Act. In October 2008, their clients had complained orally during judicial proceedings that they did not enjoy a fair trial. In order to show their distrust in the justice system, the lawyers’ clients had expressed their wish to no longer be represented by their defense counsels. On 6 November 2008, a written complaint had been submitted in this regard by the two lawyers to the Hlaing Township Court which reported the complaint to the High Court. The judge hearing the case at the Hlaing Township Court had instructed the defendants to submit their complaints in writing through their legal counsels. In the evening of 7 November 2008, Mr. Aung Thein and Mr. Khin Maung Shein were arrested by the police and taken to local police stations. They were subsequently transferred to Insein prison where they were to serve four months of imprisonment.

**Communications received**

212. On 22 July 2008, the Government replies to the urgent appeal of 23 June 2008, stating that due to the information received, Mr. Zaganar's residence was searched by the authorities and witnesses on 4th June 2008. According to the interrogation, action was taken related to the following charges: (a) section 32 (b)/36 of Television and Video Law for reproducing and distributing the VCDs without permission; (b) section 505 (b) (infringement of law and order) of the Penal Code for connecting and providing distorted information opposing the State to foreign news agencies; (c) section 505 (b) (infringement of law and order) and section 295-A (abusing religious beliefs) of Penal Code for providing supports during the Sanga unrest on 24 and 25 September 2007; (d) section 17 (2) of the Unlawful Association Law (contacting terrorists from the unlawful association and receiving financial assistance); (e) section 33 (a)/38 of the Electronic Communication Law (infringing peace and law and order of the State) for possessing hilarious cartoons and books to discredit and impair the dignity of the Government; (f) section 33(a)/38 of the Electronic Communication Law for infringing peace and law and order of the State; (g) section 33 (a)/38 of the Electronic Communication Law for accepting and replying anti-government letters which infringe peace and law and order of the State. The Government informs that the following charges, based on the interrogation, concern Mr. Zaw Thet Htwe (a) section 505(b) (infringement of law and order) and section 295-A (abusing religious beliefs) of Penal Code for supporting the Sanga unrest by buying food for the monks with the instruction given from Zaganar on 24 and 25 September 2007; (b) section 33 (a)/38 of the Electronic Communication Law for infringing peace and law and order of the State. In this connection, the arrests of Mr. Zaganar and Mr. Zaw Thet Htwe were carried out according to the violations of the above-mentioned laws and not on the accusation of providing donations to the cyclone victims.

213. On 23 October 2008, the Government replies to the urgent appeal of 19 August 2008, stating that Mr. Myint Aye was arrested for the involvement in the bombing incident which took place at the office of Shwepyitha Township Union Solidarity and Development Association in Yangon on 1 July 2008. According to the interrogations made by the concerned authorities, he accepted a packet of explosive wrapped in black polythene bag from an unidentified youth aged about 20, who was sent by Sit Naing (his organization under investigation) at Hinthada Street in Sanchaung Township, Yangon on 30 June 2008. Mr. Myint Aye personally handed over the packet to Htantabin NLD youth named Yan Shwe who left for Shwepyitha Township to plant the bomb. After the bomb explosion, Yan Shwe went to Myint Aye to report their success. Myint Aye then reported the information by telephone to Kyaw Htet (Forum for Democracy in Burma-FDB) living in Maesot. According to further investigation, Myint Aye sent NLD youths to Maesot for the explosives and political defiance courses conducted by anti-government groups and accepted illegal money to carry out anti-government activities. As a consequence, he was arrested at his house on 8 August 2008. The government informs that actions are being taken against Myint Aye under the section 3 of the Explosive Act of 1908, section 15 (5) of the Immigration Act and section 17 (1) of the Unlawful Association Act. At the court hearing held against Yan Shwe and Zaw Zaw Aung (Shwepyitha NLD) at the Shwepyitha Court on 8 August 2008, they confessed to the judge that Mr. Myint Aye accepted the bag containing the bomb and he personally handed over to Yan Shwe.

214. On 29 December 2008, the Government replies to the urgent appeal of 5 November 2008, stating that on 15 May 2007 at 7:30 a.m. eleven persons including Thant Zin Myo marched

from Shwe Yin Aye Bus Stop located in Hlaing Tharyar Township to Yangon-Nyaung Donc Road wearing white colour t-shirts with imprinted red colon logo “Free Aung San Suu Kyi” with an aim of creating a demonstration and attempting to disturb law and order. The group refused to disperse when local people led by U Tun Lwin, who did not wish to observe the demonstration, tried to control them. For that reason, Chief of Hlaing Tharyar Police Station took legal actions against them under Section 143/145/152/ 505(B) of the Penal Code on 3 July 2008. The information contained in the Rapporteurs’ letter that they marched on the Street on 19 June 2007 is incorrect. The correct date is 15 May 2007 at 7:30 am. In addition, the date that they were arrested is 28 August 2008, not in September of that year. In order to defend the charges being made against them at the court hearings, permissions were given to meet freely with their lawyers U Nyi Nyi Htwe and Saw Kyaw Kyaw Min in Insein Prison as well as in the detention area of the Hlaing Thar Yar Township Court during the trial period. Therefore, information contained in the Rapporteurs’ note mentioning that “the lawyers have reportedly not been allowed to meet with their clients in private” is incorrect. Furthermore during the trial, the township judge U Aung Myint Thein allowed sufficient time to make counter questions against the prosecution witnesses. Family members of the defendants were allowed to attend the court hearings which were carried out in the township court. Nevertheless, the defendants disrespected the court by sitting backward, saying they do not believe the justice system and talking with their family members in order to obstruct the court’s proceeding. Therefore, the court decided not to allow family members to attend the hearings according to Section 52 of the Code of Criminal Procedure on 4 November 2008. After the court’s decision, hearings were continued at the court located in the Insein Prison. Therefore, the information contained in the Rapporteurs’ letter that “their family members have not been allowed to the court hearings” is incorrect. Due to disrespected behavior of Yan Naing Tun, Myo Kyaw Zin and Aung Min Naing toward the court, the township judge requested the lawyer to control their clients and to refer what they would like to express only through their lawyers. However, the lawyers responded that they do not have responsibility to control their clients because they have to follow their instructions. For that reason, with an appeal made by the township judge, the Northern District Court heard their case relating to the Section 228 of the Penal Code on 23 October 2008. On 30 October 2008, the district court found that Yan Naing Tun, Myo Kyaw Zin, Aung Min Naing and the lawyer U Nyi Nyi Htwe have violated the Section 228 of the Penal Code and sentenced them to six months imprisonment without labour. The district court issued arrest warrant against lawyer Saw Kyaw Kyaw Min due to his absence during the court hearings. Regarding the sentence given to U Nyi Nyi Htwe and whereabouts of Saw Kyaw Kyaw Min: U Nyi Nyi Htwe was sentenced to six months imprisonment under the Section 228 of the Penal Code. Saw Kyaw Kyaw Min disappeared or went into hiding since the authorities are searching for him subsequent to the arrest warrant issued against him. Regarding the concern expressed to U Nyi Nyi Htwe and Saw Kyaw Kyaw Min, legal actions were taken against U Nyi Nyi Htwe and Saw Kyaw Kyaw Min for the violation of existing law. They intentionally disregarded the public servant who has been carrying out the judicial procedure in an attempt to obstruct it. Actions taken against the two lawyers are not in conflict with provisions of the Universal Declaration of Human Rights and the arrest made against them is also in line with the international human rights norms and standards

215. On 29 December 2008, the Government replies to the urgent appeal of 5 November 2008, stating that even though it took a year to gather information to take legal actions and apprehend the fugitives of the 88 Generation Students they were brought before the courts according to

rules and procedures of the law. Their case was acted upon on a group basis and was heard by the respective courts during the courts' hearing days. With the Order from the Supreme Court, cases of 35 members of 88 Generation Students were brought before the ten special courts on 27 August 2008. Since the second hearing which took place on 2 September 2008, permissions were given to family members of the defendants to attend the hearings and to have family visits. Furthermore, permission was given to the defendants to hire attorneys. Therefore, the court hearings were open since the above-mentioned rights and privileges were granted to them and their family members. Yet, as stipulated by the law they were handcuffed during the court hearings on account of the crimes that they committed and were not entitled to obtain bail. Although the court allowed the defendants to hire lawyers in order to have fair trials, the lawyers, aligned with their defendants, challenged the court on the matters relating to open court procedure and handcuffing during the trials. According to Section 352 of the Code of Criminal Procedure, public audiences should not be allowed to attend the trials which are being carried out by the special court. The nine defendants, namely Min Ko Naing, Ko Ko Gyi, Htay Kyawe, Mya Aye, Pyone Cho, Ma Myo Naung, Nyan Lin, Aung Thu and Myo Aung Naing were given 6 months imprisonment each under the Section 228 of the Penal Code for intentionally insulting the public servant sitting in judicial proceedings. Defendant Zaw Zaw Min (a member of the 88 Generation Students) was sentenced to a total of 65 years - 60 imprisonment for the four cases under the Section 33A of the Electronic Transactions Law and 5 years imprisonment under the Section 3 of the Law Relating to Formation of Organization by the Northern District Court on 11 November 2008. Members of the 88 Generation Students including Min Ko Naing were brought before the 10 special courts and allowed them to have family visits as well as granting of permission to their family members to attend the court hearings beginning from 2 September 2008. Nevertheless, court hearings were obstructed by raising several questions unrelated to their cases, disorderly responses and misbehavior toward the court by the defendants and their lawyers. Starting from 22 October 2008, twenty three defendants including Min Ko Naing were brought before the Northern District Court. However according to the Directive No. 6/2008 from the Supreme Court, a decision which is in line with Section 352 of the Code of Criminal Procedure was made by the ditrict court to allow only responsible personnel to enter the court after the defendants continued to show disrespect during the court hearings. Nine defendants including Min Ko Naing were given 6 months imprisonment each under the Section 228 of the Code of Criminal Procedure for intentionally disrespecting the court proceedings which relates to the decision made in line with the Section 352 of the Code of Criminal Procedure. According to the procedures of the law, the defendants should submit an appeal to the court for its decision. Instead, they defendants accused the court by not carrying out fair trial and decided not to hire lawyers any further and not to react during the court hearings. Although the court allowed having lawyers based on the rights of the defendants, the lawyers and defendants surrendered the appointed letter of the lawyers according to their own wishes. The Governmnet concludes that the court hearings of Min Ko Naing and 34 other members of the 88 Generation Students were carried out according to the law and the proceedings were in line with the Article 10 of the Universal Declaration of the Human Rights.

216. On 12 January 2009, the Government replies to the urgent appeal of 13 November 2008, stating that Mr. Aung Thein and Mr. Khin Maung Shein represented as lawyers the defendants Tun Tun oo, Htar Htar Thet, Maung Maung Latt and Aung Kyaw Moe. On the hearing day of 13 October 2008, Mr. Aung Thein and Mr. Khin Maung Shein orally presented to the court that they will repeal from representing their clients as defence counsels. On 20 October, they

submitted a letter of repeal signed by them and their clients mentioning that they are not willing to continue to give responses on the queries made at the hearings since the accused persons have no longer trust in the justice system, which was not stated during their oral appeal made on 13 October. Due to their contempt against the justice system, the Supreme Court (Yangon) heard their case under Section 3 of the Contempt of Courts Act on 6 November 2008. The court found them guilty and sentenced them to four months imprisonment each on 7 November 2008. Subsequent to the court decision, they were arrested by the authorities from the Insein Police Station on 7 November with the warrant issued for dispatching them to prison. At 10:05 a.m. the next day, they were sent to the Insein Prison. During the court hearing, the defendants have not complained that they did not enjoy a fair trial nor did they give instructions to their lawyers not to be represented any longer, with an intention of showing lack of faith in the legal system. No further inquiry was being made since there was no complaint submitted by the lawyers to the court during the proceedings. The two lawyers only submitted their letter of repeal to the Hlaing Township Court on 20 October 2008.

### **Press releases**

217. On 18 November 2008, the Special Rapporteur issued the following press release, together with the Special Rapporteurs Mr. Tomas Ojea Quintana (situation of human rights in Myanmar), Mr. Frank La Rue (freedom of opinion and expression), Ms. Margaret Sekaggya (situation of human rights defenders) and Ms. Asma Jahangir (freedom of religion or belief).

“Five United Nations experts strongly condemned severe convictions and the unfair trials of prisoners of conscience in Myanmar.

Following one year of arbitrary detention, dozens of individuals who had been arrested in connection with peaceful demonstrations in Myanmar last year, are since August 2008 being tried by courts.

The closed-door hearings are being held inside prisons by courts which lack independence and impartiality. Three of the defence lawyers have been sentenced to several months of imprisonment for contempt of court, after they transmitted their clients’ complaints of unfair trials. Since early November several other defence lawyers have been barred from representing their clients.

Last week, a dozen detainees, including several women, were each given 65-year prison sentences. More than twenty other detainees, including five monks, were recently sentenced to up to 24 years imprisonment. Many other detainees still await sentencing.

The UN experts strongly urge the Myanmar authorities to cease harassing and arresting individuals for peacefully exercising their internationally recognized human rights. They further demand that all detainees be retried in open hearings respecting fair trial standards and the immediate release of their defence counsels.

The experts reiterate previous calls to initiate reforms for a transition to a multiparty democratic and civil government, as envisaged by the new Constitution. In this context, they strongly urge the authorities to immediately commence work on ensuring those indispensable pre-conditions for free and fair general elections to be held in 2010.

These include a comprehensive review of national legislation to ensure its compliance with international human rights standards, the release of political prisoners of conscience, and reform of the armed forces and the judicial system.”

### **Special Rapporteur’s comments and observations**

218. The Special Rapporteur wishes to thank the Government of Myanmar for its replies of 22 July 2008, 23 October 2008, 29 December 2008 and 12 January 2009. With a view to the amount of information he continues to receive on questions of fair trial and the situation of defense lawyers in the country, he remains gravely concerned at the situation. The Special Rapporteur made a request to conduct an in situ visit to Myanmar on 11 March 2009. On 14 April 2009, the Government replies to his letter informing that Myanmar cannot accommodate his request at this moment. The Special Rapporteur is of the opinion that an invitation for his mandate would reflect the reform efforts by the Government and therefore wishes to ask for re-consideration.

## **Nigeria**

### **Communication sent**

219. On 17 April 2008, the Special Rapporteur sent a joint urgent appeal, together with the Vice-Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of Ms. Sandy Cioffi, Ms. Tammi Sims, Mr. Cliff Worsham, Mr. Sean Porter, U.S.- citizens and members of a Seattle-based film crew currently working in the Niger Delta on a documentary film project about the harmful impact of oil production on the human rights and environmental situation in the Niger Delta since 2005 entitled “Sweet Crude”, and Mr. Joel Bisina, Nigerian citizen and founder of an organization named “Niger Delta Professionals for Development”. According to the information received, after having entered the country legally on 5 April 2008 and informing the competent authorities about their intention to work on a film, the above-mentioned persons were arrested by forces of the military Joint Task Force under the command of Brigadier-General Rimtiip Wuyep on 12 April in the Delta State while travelling on a boat near the town of Warri. The reason given for their arrests was that they were travelling without military clearance. Reportedly, no laws require such clearance. Following a six-hour interrogation by Brigadier-General Wuyep they were ordered to be placed into custody and transferred to a detention facility of the State Security in Abuja, where they were held without charge. Their defence lawyer, Mr. Bello Lubebe, was denied access to his clients in the detention facility. Concern was expressed that the arrest and detention of the above-mentioned persons might be solely connected to their reportedly lawful exercise of their right to freedom of opinion and expression, which includes the right to seek, receive and impart information and ideas of all kinds. In view of their incommunicado detention, further concerns were expressed as regards their physical and mental integrity.

### **Communication received**

None

## Special Rapporteur's comments and observations

220. The Special Rapporteur is concerned at the absence of an official reply to his letter of 17 April 2008 and urges the Government of Nigeria to provide at the earliest possible date a detailed substantive answer to the above allegations.

### Pakistan

#### Communications sent

221. On 3 October 2007, the Special Rapporteur sent a joint allegation letter,<sup>6</sup> together with the Special Representative on the question of torture, regarding the case of Mr Ghulam Nabi, a lawyer in Peshawar. According to the information received, around 19:00 on 12 September 2007, six or seven men from the intelligence agency followed Ghulam Nabi as he left his office in the Khyber Bazaar. Some minutes later they stopped him and forced a black hood on him. Then he was put in a vehicle and taken to an unknown destination, where he arrived about 20 minutes later. He was confined in an unknown location and severely beaten for several hours, as a result of which he was severely injured. He was not deprived of sleep all night, and the next morning he was hooded again, forced to enter a vehicle and thrown out in a deserted place.

Mr Ghulam Nabi is a member of Jamiat e Islami. He was repeatedly involved in a campaign against General Musharraf and the role played by the army in Pakistan's politics and took part in a protest against the killing of a lawyer in Karachi.

222. On 21 April 2008, 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 case of Mr Parvez Aslam Choudhry, lawyer and Chairman of the non-governmental organization *Legal Aid for the Destitute and Settlement* (LADS) in Lahore. According to information received, on the night of 8 April 2008, Parvez Aslam Choudhry received an anonymous telephone call threatening both him and his family. Mr Choudhry was reportedly told he was to be killed because he was a Christian lawyer defending a Christian person accused of blasphemy. Similar threats were also made against him inside the court by witnesses. On 6 April 2008, Parvez Aslam Choudhry was reportedly attacked by a large mob when he arrived at court for the bail hearing in the aforementioned blasphemy case. His car was damaged and the mob threatened to kill him. Parvez Aslam Choudhry's application for the court to take legal action was accepted but it was believed that no action has yet been taken. Concern was expressed that the harassment, intimidation and death threats made against Parvez Aslam Choudhry may be directly related to his peaceful work in defense of human rights. In view of the above-mentioned threats, serious concern was expressed for the physical and psychological integrity of Mr Choudry, as well as that of his family members.

223. On 25 April 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Representative on the promotion and protection of the right to freedom of opinion and

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<sup>6</sup> This communication has already been included in the Communications Report of 28 May 2008, A/HRC/8/4/Add.1. The Special Rapporteur has included it again in order to facilitate the reader's comprehension.

expression and the Special Representative of the Secretary-General on the situation of human rights defenders, regarding the killing of at least 14 people, including Mr Haji Aftab Abbasi, a lawyer and Mr Naeem Querashi, General Secretary of the Karachi Bar Association, and a number of others beaten or disappeared following recent outbursts of violence in Karachi. According to information received, on 9 April 2008, 14 people reportedly died in Karachi following a series of violent incidents in which six of the deceased, four lawyers, including Mr Haji Aftab Abbasi and two clients, were reportedly burned alive. Reports from the Karachi Bar Association indicate that the whereabouts of 19 lawyers remain unknown and that they may have been abducted. More than 70 offices were reportedly ransacked and burned, including the office, residence and vehicle of Mr Naeem Querashi. The offices of the Malir Bar Association were also razed. In addition, five journalists were severely beaten, with one, a female journalist working for a local television channel, sustaining a fractured arm in the incident. More than 50 vehicles were reportedly vandalized and burnt-out and the drivers of two private busses were shot dead. It has been reported that these attacks, killings, burnings and abductions were carried out by members of a the Muttahida Quami Movement (MQM), allegedly following-up violent clashes between MQM members protesting outside the city court buildings and lawyers demonstrating in favour of the deposed Chief Justice. It was unknown whether any arrests have been made in connection with the aforementioned incidents. Concern was expressed that these most serious incidents could be related to the activities of the lawyers in defense of human rights, of the exercise of their right to freedom of expression and of the independence of the judiciary in Pakistan. In light of these very serious reports, grave concern was expressed for those lawyers whose whereabouts remain unknown.

224. On 7 October 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, regarding the execution of Mr. Zulfiqar Ali, which was reportedly scheduled for 8 October 2008. According to the information received, Mr. Zulfiqar Ali was arrested on a murder charge on 14 April 1998, imprisoned at Adiala prison, Rawalpindi, Punjab Province, tried, convicted and sentenced to death. The dates of trial, sentencing and appeals proceedings have not been reported to the Special Rapporteurs. In September 2008, the President of Pakistan rejected an appeal to commute the sentence and on 29 September 2008 the red warrant to execute Mr. Zulfiqar Ali, who was still detained at Adiala prison, was issued. The execution was scheduled for 8 October 2008. Mr. Zulfiqar Ali's family is very poor and could not hire a lawyer to defend him. Neither the courts nor any other institution provided him with legal counsel at any stage of the ten years his case has been pending, so that he had to defend himself. Moreover, Mr. Zulfiqar Ali does not speak English, the language of court proceedings in Pakistan.

### **Communication received**

225. On 28 August 2008, the Government replies to an allegation letter of 3 October 2007, regarding information about Mr. Ghulam Nabi, a lawyer in Peshawar, who was allegedly beaten by the intelligence agencies. The matter was referred to the Government of Pakistan for necessary inquiry and response. As per the information received from Islamabad, the local authorities have confirmed that Mr. Ghulam Nabi has not any initiated proceedings for legal remedy for the alleged torture. Such proceedings normally include a First Information Report (FIR), a writ petition or a complaint with the Court Administration.

226. On 15 October 2008, the Government replies to the urgent appeal of 21 April 2008, stating that the matter was referred to the authorities concerned for necessary investigation and response. In response, the concerned authorities have confirmed that they have neither received information regarding alleged harassment or death threats to Mr. Pervez Aslam Choudhary nor has any complaint been lodged by Mr. Choudhary in this regard. He has to lodge an official complaint, for necessary action under the law to be taken for his safety and security.

### **Special Rapporteur's comments and observations**

227. The Special Rapporteur wishes to thank the Government for its replies of 28 August and 15 October 2008. However, he is concerned at the absence of an official reply to his communications of 25 April 2008 and 7 October 2008. He urges the Government of Pakistan to provide at the earliest possible date a detailed substantive answer to the above allegations.

## **Paraguay**

### **Comunicación enviada**

228. El 11 de febrero de 2009 el Relator Especial envió un llamamiento urgente junto con el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, con relación a los Sres. Sebastián Martínez, sus hijos, Héctor Martínez y Alcides Martínez, Crispín Fernández, Américo Fernández y Néstor Daniel Ocampos, campesinos y dirigentes agricultores. Según la información recibida, a las 13 horas del 11 de enero de 2009, las personas referidas fueron detenidas por oficiales militares sin órdenes de aprehensión. Las detenciones se llevaron a cabo en la localidad de Curuzu de Hierro, Circunscripción de Concepción. Inmediatamente fueron trasladados al destacamento militar de Tacuaty, jurisdicción del departamento de San Pedro. Por la noche, habrían sido obligados a declarar en la sede militar y sin la presencia de sus abogados. Uno a uno habría sido retirado del calabozo, desnudo, con los pies y las manos atadas y los ojos vendados. Según se alega fueron torturados reiteradamente mientras les exigían que involucraran a algunos dirigentes campesinos en un incendio en el destacamento militar, ocurrido el 31 de diciembre de 2008. De acuerdo a la información remitida, el Obispo de Concepción y dos abogados vieron a los detenidos el 12 de enero, 25 horas después de su detención. Sin embargo, el acceso a sus familiares fue negado. Por otra parte, un habeas corpus y una denuncia ante la Policía Nacional fueron presentadas en Concepción, sin resultados.

### **Comunicaciones recibidas**

No se ha recibido ninguna comunicación del Gobierno.

### **Comentarios y observaciones del Relator Especial**

229. El Relator Especial manifiesta su preocupación por la ausencia de respuesta oficial al llamamiento urgente enviado el 11 de febrero de 2009 y urge al Gobierno de Paraguay a que envíe lo más pronto posible, preferiblemente antes de la finalización de la undécima sesión del Consejo de Derechos Humanos, una respuesta sustantiva al llamamiento arriba mencionado. Preocupa sumamente al Relator Especial que los detenidos no estén gozando de las garantías del debido proceso y al respecto llama la atención sobre el Pacto Internacional de Derechos Civiles y

Políticos, ratificado por Paraguay, en particular los artículos 9 y 14; así como también sobre los Principios Básicos sobre la Función de los Abogados, aprobados por el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, celebrado en La Habana (Cuba) del 27 de agosto al 7 de septiembre de 1990, y en particular el principio 5, que dispone que los gobiernos velarán por que la autoridad competente informe inmediatamente a todas las personas acusadas de haber cometido un delito, o arrestadas, o detenidas, de su derecho a estar asistidas por un abogado de su elección.

## Philippines

### Communication sent

230. On 5 November 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders, regarding the case of Atty. Remigio Saladero Jr., human rights and labor attorney, member of the *National Union of Peoples' Lawyers*, member of the chief legal counsel for the trade union alliance *Kilusang Mayo Uno (KMU)*, and Chairperson of the *Pro-labor Legal Assistance Centre (PLACE)*. A letter of allegation was sent to the Government by the Special Representative of the Secretary-General on the situation of human rights defenders regarding PLACE on 9 November 2007. No response from the Government had been received. According to the information received, on 23 October 2008, Atty. Remigio Saladero Jr. was arrested by members of the Philippines National Police from Antipolo City. The police officers allegedly entered the office where Atty. Remigio Saladero works, presented a warrant for arrest on charges of multiple murder and multiple frustrated murder cases, handcuffed him, confiscated his mobile telephone and computers, and took him to Calapan City Provincial Jail where he remained in detention. The warrant, issued by branch 40 of the Mindoro Oriental Regional Trial Court (RTC) in Calapan City, Oriental Mindoro, was apparently invalid given that the name on it was not that of Atty. Remigio Saladero Jr., showed a different address and was dated 2006. Atty. Remigio Saladero Jr. was charged for "multiple murder and multiple frustrated murder cases" with 72 other people, among whom there may have been human rights defenders. The legal team representing Atty. Remigio Saladero Jr. has requested documents relating to his arrest but has not yet been provided with any. Meanwhile, Atty. Remigio Saladero Jr. continued to face judicial proceedings for a previous case. He was being investigated in relation to a complaint for "conspiracy to commit rebellion, arson and destruction of property" made by Globe Telecoms against 27 leaders and activists from Southern Tagalog region following the bombing of a Globe Telecoms Cell site in Lemery Batangas on 2 August 2008. He has not yet been officially charged in relation to this case. Atty. Remigio Saladero Jr. has reportedly also been the victim of numerous attacks, supposedly in relation to his work as a human rights lawyer. Concern was expressed that the arrest and detention of Atty. Remigio Saladero Jr. may be related to his work in the defense of human rights. Further concern was expressed that this may form part of an ongoing pattern of harassment against Atty. Remigio Saladero Jr.

### Communication received

231. On 16 January 2009, the Government replies to the urgent appeal of 5 November 2008, stating that Atty Remingion Saladero's arrest was by virtue of the arrest warrant issued by the Regional Trial Court of Oriental Mindoro, Branch 40, in the case entitled "People of the Philippines vs Rustom Simbulan a.k.a Ka Bobby/Ka Bayan/Ka Silang/Ka Arthur, et al.", for

multiple murder and multiple frustrated murder, docketed as Criminal Case No. CR-06-8525, wherein he is one of the named accused. The above criminal case was based on the incident that transpired on 3 March 2006, wherein a New People's Army (NPA) (troop composed of seventy-one accused in the case) ambushed elements of the Regional Mobile Group of the Philippine National Police (PNP) at Barangay San Isidro, Puerto Galeria, Oriental Mindoro; three police officers died, while three others were seriously wounded. Accused Rustom Simbulan was identified by one of the surviving police officers in the incident, and hence was charged accordingly. On 19 August 2008, Vincent Urieta Silva executed a sworn statement in the presence of operatives/officers of the Criminal Investigation and Detention Group (CIDG) in Oriental Mindoro wherein he alleged, that: He is a deep penetration agent (DPA) of the Provincial Intelligence and Investigation Bureau (PIIB) - Police Provincial Office of Occidental Mindoro and has been such for the past five years; As such DPA, he was among those who burned the Globe tower on 1 March 2006 at around 3:30 a.m. at Barangay San Isidro, Puerto Galera, Oriental Mindoro; He was also among those who ambushed the elements of the Regional Mobile Group (RMG) at the same barangay; With him on those two incidents were the accused who were members of the NPA. He was able to name all the seventy-one NPA members/accused because he has been working with them the past five years that he was DPA, and his principal mission was to know/verify their real names and addresses; The plans to burn the Global tower and ambush the police were discussed at a meeting on 29 January 2006, in Barangay Monteclaro, San Jose, Occidental Mindoro due to the refusal of the Global manager to give revolutionary tax to the NPA. The decision to ambush was reached in order to "hit two birds with one stone" as the police would surely augment security in the area; It took him this long (more than 2 years) to narrate his knowledge of and/or participation in the said incidents because he had the opportunity to confer with his handler just recently, after he accomplished his mission to know the real names and identities and the respective residences of the people/NPA members actively involved in propaganda/movements against the government; Atty Saladero has filed with the court a Motion to Quash the information and/or warrant for his arrest. The prosecution for its part has filed its opposition. The arrest of Atty. Saladero and his subsequent detention were by virtue of a warrant of arrest and commitment order issued by the Court. As such there is no ground to sustain the allegations of harassment and arbitrary detention against him. Following are facts in connection with his arrest: a. On 23 October 2008, at about 2:15 p.m., police operatives proceeded to the law office of Atty. Remigio Saladero, Jr., located along Circumferential Road, Barangay San Jose, Antipolo City to effect the Warrant of Arrest issued against Atty. Saladero for the crime of Multiple Murder and Multiple Frustrated Murder docketed under Criminal Case No. 06-8525. The Warrant of Arrest was issued by Hon. Tomas C. Leynes, Presiding Judge, Regional Trial Court, 4<sup>th</sup> Judicial Region, Branch 40, Oriental Mindoro, Calapan City. b. After confirming the identity of the subject, the team arrested Atty. Saladero who was apprised of his constitutional rights. He was brought to the Rizal Police Provincial Office and then to the Regional Trial Court in Calapan City. c. Atty. Remigio Saladero, Jr. is currently detained at the Oriental Mindoro Provincial Jail in Calapan City by virtue of a Commitment Order issued by Executive Judge Manuel C. Luna, Jr. dated 24 October 2008. d. In another case, Atty. Remigio Saladero, Jr. was named as one of the respondents in a criminal complaint filed by the Batangas Criminal Investigation and Detention Team (CIDT) against Nestor Samarita of Rosario, Batangas and seventeen others with the Batangas Provincial Prosecutor's Office on 25 August 2008 for Violation of Article 324 of the Revised Penal Code (Arson), docketed under I.S. No. 08-1002. This is in connection with the

bombing of Globe Cell site at Barangay Mahabang Parang, Dahilig, Lemery, Batangas on 2 August 2008 at about 11:00 p.m. The case is now undergoing preliminary investigation before the Prosecutor's Office of Batangas.

### **Special Rapporteur's comments and observations**

232. The Special Rapporteur wishes to thank the Government of the Philippines for its reply of 16 January 2009.

### **Russian Federation**

#### **Communications sent**

233. On 12 June 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders, regarding the case of Ms Larisa Dorogova and her 20 year-old son, Khadzimurat Dorogov. Ms Dorogova is a lawyer and advocate of the rights of the Muslim community in the Republic of Kabardino-Balkaria (KBR). According to information received, on 9 May 2008, between 4 and 5 pm, Khadzimurat Dorogov, was forced into an unmarked white car by two unidentified Russian-speaking men on his way to the doctor's office. He was driven about in the vehicle for seven hours, during which time he was searched, had his mobile phone SIM card confiscated and was questioned about his mother's contacts and work. Ms Dorogova has also received death threats via email and post, including on 26 March 2008, when a live machine-gun cartridge was attached to the threatening letter. Reports indicated that Larisa Dorogova and her son have been under surveillance by unidentified individuals since 2005. Previously, on 16 April 2008, the president of the Lawyers' Chamber of Karabdinno-Balkaria initiated a disciplinary case against Dorogova, seeking to deprive her of her status as a lawyer. The case was based on a complaint received from the Federal Registration Service of Karabdinno-Balkaria and from the Prosecutor of Karabdinno-Balkaria. She was accused of unprofessional conduct because she allegedly had cursed and threatened to kill a worker of a pre-trial detention facility while trying to visit a client in detention. At the time, Ms Dorogova appeared to have been prohibited from entering the facility by order of the prosecutor's office, thus denying her clients in detention her legal assistance. The allegation from the prosecutor reportedly also claims that she tried to enter the pre-trial detention facility without permission and without written order. Ms Dorogova represented defendants arrested in connection with a raid by Islamic militants on the premises of police and security forces in the city of Nalchik on 13 October 2005, who have allegedly been subjected to ill-treatment while in detention. She has also represented family-members of some of the 94 militants killed during the incident, assisting in the preparation of complaints to the European Court of Human Rights which alleged violation of the families' right to have the remains of those killed returned to them. Concern was expressed that the intimidation of Larisa Dorogova and the threats made against her, as well as the abduction of her son, may be directly related to her activities in defense of human rights, in particular the right to provide legal representation to her clients. In view of the events outlined, serious concern was expressed for the physical and psychological integrity of Ms Dorogova and her son, Khadzimurat Dorogov.

234. On 20 June 2008, the Special Rapporteur sent an allegation letter, regarding the case of Mrs. Liudmila Grigorievna Moltshanova, a 61-year-old woman and second category invalid. According to the information received, on 29 May 2008, Mrs. Moltshanova was sentenced by

Mrs. Valentina Khaydarovna Khruzina, a judge of the “Justice of the Peace” court no. 112 of the Preobrazhenskoe district of Moscow, to one year and two months of imprisonment under article 312 para. 1 of the Criminal Code. On 24 April 2008, when the first hearing of the case was scheduled, Mrs. Moltshanova was not able to appear before the court. Prior to that date, she fell seriously ill, was driven to hospital no. 59 in Moscow in an emergency and had to stay in that hospital. Her defense lawyer, Mrs. Malysheva, attended the court hearing on 24 April and informed the court that Mrs. Moltshanova was in hospital, unable to stand trial. Prior to this, on 17 April 2008, Mrs. Malysheva’s defense lawyer handed a written motion to the above mentioned judge to make a request to the physicians treating Mrs. Moltshanova to certify whether she was able to stand trial. On 22 April, Mrs. Moltshanova herself wrote to the judge requesting to postpone the hearing. On 24 April 2008, judge Khruzina issued a decision that Mrs. Moltshanova had deliberately hidden from the court and therefore ordered her arrest. As a consequence, Mrs. Moltshanova was arrested on 28 April by officials of the criminal police in the hospital despite the fact that the physicians treating her confirmed her serious health condition and attested that she was unable to stand trial. Mrs. Moltshanova was taken to the specialized hospital of SIZO 77/1 where she remained.

235. On 5 August 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders, regarding the case of Mr Sergey Cherepovskiy, a human rights lawyer and Mr Valery Bychkov, chairperson of the Penza branch of the All-Russia Public Movement “For Human Rights. According to information received, on 22 July 2008, Mr Sergey Cherepovskiy was detained immediately after a court ruled in favor of releasing Mr Valery Bychkov on the condition that he does not leave Penza. Mr Sergey Cherepovskiy may face up to five years’ imprisonment. He was charged with “use of violence against a representative of the authorities” under part 1 of Article 318 of the Russian Criminal Code. The charges came following an argument between Mr Sergey Cherepovskiy and a court officer about whether taking video footage of the legal proceedings was permitted. Video footage had been banned during the session and the trial was declared closed to the public without any court ruling. The video footage taken by Mr Sergey Cherepovskiy reportedly documented guards dragging the chronically-ill Mr Valery Bychkov down the stairs. It was later shown on the news by local broadcasters. Mr Sergey Cherepovskiy was taken to the prosecutor’s office in Penza Oktyabrsky district before being moved to the investigatory prison. Concern was expressed that the detention of Mr Sergey Cherepovskiy may be directly related to his activities in the defense of human rights, in particular his work to defend Mr Valery Bychkov. Further concern was expressed for the physical and psychological integrity of Mr Sergey Cherepovskiy while in detention.

236. On 13 August 2008, the Special Rapporteur sent an allegation letter, together with the Special Rapporteur on the situation of human rights defenders, regarding the case of Mr Ilyas Timishev, a human rights lawyer currently working to defend the rights of Chechen police officers who have not been paid. According to information received, on 15 July 2008, Mr Ilyas Timishev and those who had appealed about salaries not being paid and court rulings not being implemented were summoned to the Chechen Prosecutor’s office. They did not reject the Prosecutor’s request for them to reach an agreement with the State on the matter in question, and they affirmed their need to assess damages and interest for the period of up to three years during which court rulings had not been implemented. That night, Mr Yunus Yakubovich Timishev and Mr Aslambek Khizirovich Timishev, Mr Ilyas Timishev’s brother and nephew respectively, were detained and their home was searched. A gun was allegedly found during the

search. Mr Aslambek Khizirovich Timishev was reportedly beaten up while being interrogated and lost a tooth after being kicked by a police officer. On 16 July 2008, Mr Arbi Kharonovich Timishev, also a nephew of Mr Ilyas Timishev, was detained and was reportedly beaten up in detention while being interrogated by police who asked him about where Mr Ilyas Timishev was. All three members of Mr Ilyas Timishev's family were released on 16 July 2008. However, Mr Aslambek Khizirovich Timishev and Mr Arbi Kharonovich Timishev were ordered to stay in the village where they live. No criminal case was opened against the members of Mr Ilyas Timishev's family, but they were worried that they may be accused of having links to rebel groups. Concern was expressed that the detention of members of Mr Ilyas Timishev's family and the restrictions on their movement may be directly related to his legitimate and peaceful work in the defense of human rights, in particular his work to ensure the payment of Chechen police officers. Concern was also expressed for the physical and psychological integrity of Mr Ilyas Timishev and his family.

237. On 29 August 2008, the Special Rapporteur sent a joint urgent appeal, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, regarding the case of Mr. Anatoly Ataev, born in 1970 in Krasnodar. According to the information received, Mr. Anatoly Ataev was serving a criminal sentence of 4.5 years for fraud and money laundering pursuant to articles 159 and 174 of the Criminal Code of the Russian Federation at the pre-trial detention centre No. 1 of Krasnodar. Despite a decision of the district court of Oktyabrsky ordering his immediate conditional release on 5 August 2008, Mr. Anatoly Ataev remained in detention as the authorities at the pre-trial detention centre suspended the court decision and requested confirmation thereof. This confirmation was then provided by the deputy chairperson of the court, recalling that the release should be immediate. However, approximately three weeks later Mr. Anatoly Ataev was still being detained. Mr. Ataev's lawyers addressed all competent instances including the Prosecutor's Offices, the Investigation Committee under the Prosecutor's Office of the Russian Federation, the State Administration of the Federal Penitentiary Service, the Human Rights Commissioner, and the President's Administration, however, to no avail. Mr. Anatoly Ataev had started a hunger strike.

238. On 10 September 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Mr. Vladimir Bogushevsky, born in 1984, currently held in remand prison 1 of Yekaterinburg. According to the information received, on 30 August 2007, around 9 a.m., Mr. Bogushevsky went to the Directorate of Internal Affairs in Yekaterinburg, located at Frunze Street 74. He was invited there by a phone call of the authorities to give evidence concerning Mr. Schneyder and Mr. Struyn, who had been arrested earlier in relation to the murder of Mrs. Irina Zlatina, which occurred on 10 April 2007 outside the Directorate of Internal Affairs of the Kirovsky district. Police officer Valery Zhernakov led Mr. Bogushevsky to office n° 505 and tied him to a chair with handcuffs. He then punched Mr. Bogushevsky in the chest with his fists. Since Mr. Bogushevsky has suffered from a heart condition since 1996, this triggered a heart attack. Mr. Bogushevsky told Mr. Zhernakov that he was in need of immediate medical assistance. However, Mr. Zhernakov went on to strangle Mr. Bogushevsky, hit his throat and pressed him on his eyeballs with his thumbs. Several times Mr. Anatoly Smirnov, Chief of the unit, entered the office and asked how the "case was going". Between 3 and 4 p.m., a third police officer entered office n° 505, alarmed by

Mr. Bogushevsky's screaming. This officer told Mr. Zhernakov and Mr. Smirnov to call the ambulance. Around 4 p.m., a physician entered office n° 505 and examined Mr. Bogushevsky. This physician confirmed an anomaly in Mr. Bogushevsky's heart and also explained to Mr. Zhernakov and Mr. Smirnov that Mr. Bogushevsky's condition was life-threatening. Mr. Zhernakov and Mr. Smirnov then pressured Mr. Bogushevsky to testify, among other issues, to having been involved in the murder of Mrs. Zlatina. They told him that, if he was to sign an agreement on his involvement, he would not be ill-treated any longer. They pointed out that Mr. Bogushevsky would need a lawyer in order to make such a statement. The two police officers then called a lawyer who presented himself as Mr. Kurnosov. When it became apparent to Mr. Bogushevsky that Mr. Kurnosov and Mr. Smirnov had close ties, Mr. Bogushevsky insisted on having a lawyer of his choice who would defend him. Later, in the night of 30 to 31 August 2007, Mr. Smirnov called Mr. Denis Kolganov, an acquaintance of Mr. Bogushevsky, who has a law degree. Mr. Bogushevsky then told Mr. Kolganov what had happened. Mr. Kolganov advised Mr. Bogushevsky that he should not testify against himself. He told this to Mr. Kurnosov, too. Mr. Kolganov and Mr. Bogushevsky were assured that no more interrogations would take place and that Mr. Bogushevsky would be moved to a temporary detention facility. Subsequently Mr. Kulgonov left. Mr. Zhernakov and Mr. Smirnov were again alone in the room with Mr. Bogushevsky. Mr. Zhernakov held Mr. Bogushevsky to the table and Mr. Smirnov strangled and kicked him. After that, while Mr. Zhernakov was holding Mr. Bogushevsky, Mr. Smirnov took a gas mask and put it over Mr. Bogushevsky's mouth. Then they beat him in the chest and the stomach. Mr. Bogushevsky then got nauseous. Mr. Zhernakov and Mr. Smirnov told Mr. Bogushevsky that they were disappointed with his refusal to testify and that - sooner or later - he would testify in any case. Mr. Bogushevsky was then taken to the temporary detention facility, where the first aid attendant was called immediately. Mr. Bogushevsky was taken to the hospital, where his condition was stabilized. Mr. Zhernakov and Mr. Smirnov accompanied Mr. Bogushevsky to the hospital, continuing to threaten him. Mr. Zhernakov pressured the physician in charge, who was writing the report, to note that Mr. Bogushevsky was "able to work". On the way back to the Directorate of Internal Affairs at Frunze Street, Mr. Smirnov continued to threaten Mr. Bogushevsky, who was then placed back in the temporary detention facility. On 31 August 2007, defense lawyer Kirill Mikhailovich Skorobogaty, who was sent there by Mr. Kolganov, came to visit Mr. Bogushevsky in the temporary detention facility. Mr. Bogushevsky consulted the lawyer about the legality of his detention. On 1 September 2007, Mr. Bogushevsky was taken before the court of the Kirovsky district, which confirmed the legality of his arrest. On 3 September 2007, Mr. Bogushevsky was again pressured to confess to having been involved in the murder. On 5 September 2007 Mr. Bogushevsky eventually confessed guilty of involvement in the murder of M. Zlatina. During the trial, which lasted for more than two months, the three witnesses, who were friends of the murdered Mrs. Zlatina, confirmed that they had never seen Mr. Bogushevsky with Mrs. Zlatina and that they were not aware of any fight that occurred between the two. No other evidence was produced against Mr. Bogushevsky during the trial. To date, Mr. Bogushevsky remained in detention. Concern was expressed as regards Mr. Bogushevsky's physical and mental integrity while in detention as well as with respect to his current state of health.

239. On 5 December 2008, the Special Rapporteur sent an urgent appeal, regarding the case of Mr. Nabi N. Sultanov, citizen of Uzbekistan, 29 years of age. According to the information

received, by decision of the General-Prosecutor of 18 September 2008, Mr. Nabi N. Sultanov was scheduled to be extradited to his home country Uzbekistan where he has allegedly been persecuted on religious grounds. Mr. Sultanov obtained the decision of the Prosecutor-General on 25 September 2008 while in detention in the detention facility (SIZO) in Perm, where he has not been allowed to have access to legal counsel. As Mr. Sultanov cannot speak Russian, he was not in a position to read the decision nor appeal it. In the beginning of November 2008, Mr. Sultanov was brought to Moscow, from where his extradition should be undertaken. By that time, the 10-day deadline to appeal the Prosecutor-General's decision to extradite him had already elapsed. Only upon arrival in the detention facility in Moscow did he learn from co-detainees that he had the right to apply for asylum in the Russian Federation. With the help of his co-detainees, he sent an application to the Federal Migration Service of the city of Moscow. On 7 November 2008, his lawyer was denied access to see him by the administration of SIZO-4 of the city of Moscow, as sustained by a decision of the Office of the General-Prosecutor. At the same time, Mr. Sultanov's lawyer sent a request to the Moscow city court for *restitutio in integrum*, i.e. an application for the time-limit for appeal against the decision of the Prosecutor-General to recommence. On 4 December 2008, the Moscow city court rejected this request. On 5 December 2008, Mr. Sultanov's lawyer had seen his client for the first time in the detention facility only to facilitate Mr. Sultanov's meeting with the Migration Service. He was, however, unable to speak to him in private regarding the specific case and provide him any legal counsel.

240. On 22 January 2009, the Special Rapporteur sent a joint allegation letter, together with the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, regarding the case of Mr Stanislav Markelov and Ms. Anastasia Baburova. Mr. Stanislav Markelov was a lawyer dealing with various human rights related cases and active in defending victims of enforced disappearances and other human rights violations committed in Chechnya. Mr. Markelov was the lawyer of the family of Ms. Elsa Kungaeva, a Chechen woman abducted and murdered by an officer of the armed forces of the Russian Federation in the year 2000, Mr. Yuri Budanov, and was instrumental in the 2005 conviction of a police officer, Sergei Lapin, who was sentenced to 11 years in prison for the torture and disappearance of a young Chechen man. Mr. Markelov previously also represented the journalist Anna Politkovskaya. Ms. Anastasia Baburova was a freelance investigative journalist working for the newspaper Novaya Gazeta. Mr Stanislav Markelov was the subject of an urgent appeal 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, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the then Special Representative of the Secretary-General on the situation of human rights defenders on 4 May 2004. No response had been received to that communication to date. According to the information recently received, on 19 January 2009, Mr Stanislav Markelov was shot dead by a masked gunman near the building where he had previously held a press conference. He was shot in the back of the head at close

range. Ms Anastasia Baburova, a journalist who also participated in the press conference and who tried to intervene when Mr Markelov was attacked, was also shot. She was taken to hospital in a critical condition where she died later of her injuries. The press conference held by Mr Markelov was entitled “Unlawful release of Budanov: neglect by the court and direct advantage for militants: who is next?” Mr. Budanov, who had been sentenced to 10 years in prison for the abduction and murder of Ms. Elsa Kungaeva, including time served, in 2003, had been granted an early release on 15 January 2009. Mr. Markelov stated at the press conference his intention to appeal the decision of the court of Dimitrovgrad to reject his appeal concerning Mr. Yuri Budanov’s early release from custody.

### **Communications received**

241. The Government replied by letter of 17 October 2008 to the Special Rapporteur’s communication of 5 August 2008, on 7 October to the Special Rapporteur’s communication of 13 August 2008, on 10 November 2008 to the Special Rapporteur’s letter of 29 August 2008, on 4 December 2008 to the Special Rapporteur’s communication of 10 September 2008, on 10 February 2009 to the Special Rapporteur’s letter of 5 January 2008 and on 14 April 2009 to the Special Rapporteur’s communication of 22 January 2009. At the time this report was finalized, the Special Rapporteur was not provided with a translation of the content of these replies by the relevant services.

### **Press releases**

242. On 29 May 2008, the Special Rapporteur issued the following statement, which includes his preliminary findings following his visit to the Russian Federation made public during a press conference held in Moscow.

“The Special Rapporteur visited the Russian Federation from 19 to 29 May at the invitation of the Government. He expresses his sincere gratitude for the cooperation extended to him by the authorities of the country. During the mission, Mr. Despouy held meetings with high-ranking federal, regional, and local officials, as well as representatives of the judiciary, bar associations, national human rights institutions, academics, international and non-governmental organisations in Moscow, Saint-Petersburg, Yekaterinburg and Verkhnyaya Pyshma.

In his capacity as Special Rapporteur, Mr. Despouy will present a report on the mission to the Russian Federation to the Human Rights Council. Its conclusions and recommendations will be discussed in public session by the Human Rights Council and the General Assembly. According to the practice adhered to by the UN Special Procedures, before leaving the country, the Rapporteur informed the general public through the media about his preliminary findings and recommendations.

The Special Rapporteur highlights the significant changes that have been taking place in the country over the past years and their enormous impact on all spheres of life. He notes that Government authorities at the highest level, including President Medvedev, have expressed concerns over deficiencies in the functioning of judicial institutions, including the question of their independence. The removal of these deficiencies is crucial for the future development of the country. Recent reform initiatives, such as the creation of a

special working group on the judicial reform and the establishment of a council to fight corruption, chaired by the President, demonstrate the political will to tackle the problems facing the justice system.

The Special Rapporteur makes the following preliminary observations:

**Institutional and legal framework:** The Special Rapporteur acknowledges the important reforms implemented since 1993, particularly the adoption of new legislation governing judicial proceedings, and the significant improvement of working conditions of the judiciary. Important concerns remain about the lack of equal access to the courts and the fact that an important percentage of judicial decisions, including those against state officials, are not implemented. In addition, in spite of early reform initiatives, there is still no legal framework at the federal level for juvenile justice and for a system of administrative courts.

**Judiciary:** With the adoption of new procedural legislation judges have been assigned the guiding role in judicial proceedings. The Special Rapporteur notes that in some cases judges have not yet been able to assume this central function. Problems with the implementation of judicial decisions have contributed to the poor image of the judiciary in the eyes of the population. Furthermore, criticism has been expressed with regard to the transparency in the selection process of judges and the lack of objective criteria in the allocation of court cases by court presidents, as well as in the implementation of disciplinary measures. Political interference in these spheres has been brought to the attention of the Special Rapporteur, as also confirmed by recent media reports.

**The Prosecution:** The reform of the office of the prosecutor has apparently led to a more specialized investigative procedure through the establishment of an investigation committee. However, various opinions were expressed as to whether this has actually resulted in a more effective and balanced system between different sides in judicial proceedings.

**The Bar:** The 2002 Federal law governing the activities of defense lawyers constituted a crucial step towards establishing the Russian bar as an independent and self-regulatory body. However, lawyers have expressed concerns about current proposals to amend this law which may threaten their independence. These relate to procedures for withdrawing the professional status of lawyers and requirements for providing working files as part of potential inquiry which would compromise the privileged nature of lawyer-client relations. The Special Rapporteur expresses his concern with the tendency to identify defense lawyers with the interests, opinions and activities of their clients. Lawyers also drew attention to the practical obstacles they face in becoming judges; in fact, it appears that the majority of judges - before being appointed - have served as prosecutors, investigators or court staff.

**Non-governmental organizations:** NGOs play a crucial role in the protection of human rights, particularly through the justice system.

On this basis, and before the submission of his full report, the Special Rapporteur advances the following preliminary recommendations related to measures for improving the functioning of the judicial system:

- Given the urgent nature of the need to resolve the problems identified above, full support should be given to the new working group on judicial reform and the recently created anti-corruption council. All pertinent parties whose interests may be affected by the work of these bodies should be fully involved in their activities.
- In tackling the problems facing the judiciary it is crucial to ensure transparency of legal proceedings and the functioning of the judicial system as a whole. In fact, this has been recognised by judicial authorities at different levels.
- Mechanisms for the rapid and comprehensive execution of judicial decisions should be established promptly.
- The existing procedures for providing free qualified legal assistance should be reviewed and best practices should be implemented throughout the country.
- The draft law on the establishment of a juvenile justice system should be adopted without delay.
- Renewed efforts should be taken to establish an administrative court system as this will strengthen the mechanisms to effectively fight corruption and to ensure the liability of state officials.
- As regards the prosecution, there is a need to analyse the results of the recently introduced reforms and their impact on the conduct of the investigation and judicial proceedings in general.
- The recently proposed amendments to the 2002 Federal law governing the activities of defense lawyers would compromise the principles of self-government and independence of the bar and, therefore, must not be adopted since they will run against existing international standards.
- Efforts should be made to ensure that lawyers can exercise their profession without intimidation or any other obstacles.
- The legitimate activities of non-governmental organisations, including their participation in the process of judicial reform, should be encouraged and facilitated.

The Special Rapporteur wishes to underscore his belief that the implementation of these recommendations will strengthen and deepen the process of judicial reform, which, in turn, will further promote democracy and allow the entire population of the country to enjoy the benefits of economic growth.

The Special Rapporteur once again would like to express his gratitude to the authorities of the Russian Federation for making this visit possible. He strongly hopes that the on-going

and envisaged reforms will be implemented in the shortest possible time. The Special Rapporteur trusts that his recommendations will assist the authorities in this process and he would like to be in a position to review the progress made in the country in two years time.”

### **Special Rapporteur’s comments and observations**

243. At the time this report was finalized, the Special Rapporteur was not in a position to reflect on the content of the replies from the Government of the Russian Federation dated 7 and 17 October 2008, 10 November 2008, 4 December 2008, 10 February 2009 and 14 April 2009 as he had not received the translation from the relevant services. He wishes to thank the Government for these replies.

244. The Special Rapporteur is concerned at the absence of an official reply to the communications of 12 and 20 June 2008. He urges the Government of the Russian Federation to provide at the earliest possible date a detailed substantive answer to the above allegations.

## **Saudi Arabia**

### **Communications sent**

245. On 20 April 2007, the Special Rapporteur sent a joint urgent appeal,<sup>7</sup> together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the human rights of migrants, and the Special Rapporteur on the question of torture, regarding the case of Mr. Suliamon Olyfemi, a citizen of Nigeria, who was reportedly at imminent risk of execution. The case of Suliamon Olyfemi was previously brought to the attention of the 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, their communication had remained without reply. According to information received since 2004, 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 were not allowed to see them. The death sentence imposed on Suliamon Olyfemi had been upheld by the Court of Cassation and ratified by the Supreme Judicial Council.

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<sup>7</sup> This communication has already been included in the Communications Report of 28 May 2008, A/HRC/8/4/Add.1. The Special Rapporteur has included it again in order to facilitate the reader’s comprehension of the Government’s reply.

246. On 1 April 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the question of torture, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the right to education, regarding the case of Mahmoud Badr Hozbor, born in Al-Ghoutah al-Sharquia in Syria and resident of Sekaka (Al-Jouf). According to the allegations received, on 3 July 2003, he was arrested by the security services (Al-Mabahit al-Aama) when he was on his way to Syria together with his wife and four children. He was ordered to stop his car, forced to get out, was beaten and taken to an unknown place. He was held in solitary confinement for several months. During this period, Mr. Hozbor was repeatedly beaten on different parts of his body, suspended from his wrists, deprived of sleep and threatened with being killed. For six months after his arrest, in spite of many attempts to find out from the Saudi authorities, his family had no information about his whereabouts. They later learned that he was held at the prison of Al-Hayr, not far from Riyadh. Mr. Hozbor was taken out of his cell in the middle of the night and transferred to an office where several persons were present for what appeared to be a trial. One of them, to whom he mentioned that he had been ill-treated, told him to shut up and said that he would merit hanging. This person, presumably the judge, sentenced him to 18 months' imprisonment. After sentencing, he was transferred to the detention centre in Al-Jouf. No one has been able to visit Mr. Hozbor. He has not had access to any lawyer. Despite the fact that his prison term ended on 3 January 2005, Mr. Hozbor has not been released. It was reported that he was again transferred to another unknown location. Since Mr. Hozbor's arrest, his four children have not been allowed to attend school, and the family has been deprived of access to certain basic services.

247. On 27 May 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 Rapporteur on the situation of human rights defenders, regarding the case Mr Matrouk al-Faleh, an academic and human rights defender in Saudi Arabia. Mr Matrouk al-Faleh was the subject of three previous communications 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 30 May 2005; 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, the Special Rapporteur on torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 26 April 2004; and by the Chairperson-Rapporteur of the Working Group on arbitrary detention, the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on torture and the Special Representative of the Secretary-General on human rights defenders on 19 March 2004. While the Special Rapporteurs acknowledged receipt of the replies of the Government dated 18 August 2005 and 18 December 2004, the Special Rapporteurs sought clarification on new information received. According to the new information received, on 19 May 2008, officers from the secret police arrested Mr Matrouk al-Faleh on the premises of King Saud University in Riyadh, where he teaches. Whereas his family was informed of his arrest later that same day, Mr Matrouk al-Faleh has not been given access to a lawyer or allowed any visit since then. Mr Matrouk al-Faleh's family has not been informed of the reasons for his detention or what the charges were, and his whereabouts were unknown. Two days before his arrest, on 17 May 2008, Mr Matrouk al-Faleh had publicly criticized the harsh prison conditions in the overcrowded Buraida General Prison,

where two other Saudi human rights defenders, Mr Abdullah al-Hamid and Mr 'Isa al-Hamid, are serving prison sentences. Mr Abdullah al-Hamid and Mr 'Isa al-Hamid were found guilty of "incitement to protest", charges that were brought against them after they had supported and taken part in a reportedly peaceful demonstration outside the Buraida General Prison. The demonstrators called for their relatives' rights to being promptly informed about the charges brought against them and to a fair trial to be respected or, alternatively, to release them. Mr Al-Faleh's statement criticized the restrictive procedures in relation to visits, the unhygienic conditions, the overcrowding, and the bad quality of medical services in the prison. His statement was later reproduced on <http://www.member-alhewar.info>, a Saudi website. According to the information received, on 19 May 2008, this site was blocked for persons in Saudi Arabia. Mr Matrouk al-Faleh had previously been arrested in March 2004 after calling for political reform, and was sentenced to six years' imprisonment in May 2005 on charges that included "sowing dissent and disobeying the ruler." He was released after having been granted a royal pardon by His Majesty King Abdullah on 8 August 2005. Since his release he has reportedly not been permitted to travel abroad. Concerns were expressed that the arrest and detention of Mr Matrouk al-Faleh might be solely connected to his reportedly peaceful activities in defending human rights and exercise of his right to freedom of opinion and expression. In view of the alleged incommunicado detention of Mr Matrouk al-Faleh at an unknown place of detention, further concerns were expressed that he might be at risk of ill-treatment.

248. On 5 June 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 freedom of religion or belief, regarding the cases of eight Bahraini teachers, all belonging to the Shi'a Muslims, namely Mr Majid Abdalrasol Salman Al-Ghasra, Mr Abbas Ahmed Ibrahim, Mr Sayed Ahmed Alawi Abdullah, Mr Issa A. Hasan Ahmed, Mr Mohammed Hassan Ali Marhoon, Mr Mohammad Abdullah Al-Moamen, Mr Ebaraim Marzam and Mr Mohamed Mahdi. According to the information received, the eight individuals named above were visiting Riyadh in early April 2008 during their holidays. It was believed that they had accidentally entered a restricted military area upon which they were arrested and detained at Hayr Prison in Riyadh. Despite intense efforts undertaken by their families in the Kingdoms of Bahrain and Saudi Arabia their detention was only disclosed by Saudi authorities four days after the arrests. The detainees were allowed to meet their parents only after 55 days of detention. Since their arrests they have been held in solitary confinement without charge or trial or access to legal counsel. The individuals were subjected to severe psychological pressure during interrogations on details of their lives, including their affiliations and beliefs. The investigators also accessed their email accounts. Concern was expressed that the arrest and detention of the eight above-mentioned individuals might be connected to the religious beliefs they hold as Shi'a Muslims.

249. On 13 June 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur 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, regarding the case of Mr Abdul Rahman Al Lahem, a human rights lawyer who has been active in defending the rights of women. According to information received, since 2004, a travel ban has been imposed on Mr Abdul Rahman Al Lahem, banning him from foreign travel. Mr Abdul Rahman Al Lahem recently received the International Human Rights Lawyer Award from the American Bar Association, but due to the travel ban he was unable to collect the award in person. Mr Abdul Rahman Al Lahem has allegedly attempted to challenge the travel ban in an

administrative court, but the case was refused by the court. In November 2007, Mr Abdul Rahman Al Lahem's lawyer's license was revoked because he objected to the sentencing of a nineteen-year old female victim of rape. He has also previously been imprisoned for publicly speaking out against human rights abuses in Saudi Arabia as well as for defending three pro-democracy activists. Concern was expressed that the imposition of the travel ban on Mr Abdul Rahman Al Lahem may directly be related to his peaceful professional activities in defending human rights and in particular women's rights. Concern was further expressed that the travel ban may be imposed to prevent the views of Mr Abdul Rahman Al Lahem from reaching a foreign audience.

250. On 22 July 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 the Special Rapporteur on the question of torture, regarding the case of Mr. Saleh Awad Saleh Al Hweiti, aged 62, born in Riyadh, where he studied and lived, stateless and therefore without any identity documents, a poet critical of the Government, who denounced poverty and the marginalisation of « Bidune ». His poems have been published and broadcast on several Saudi and international web-sites and radio programmes. According to the information received, Mr. Saleh Al Hweiti was arrested on 27 October 2004. For one month his whereabouts were unknown. Then it turned out that, following an allegedly unfair trial he had been sentenced to 21 months of imprisonment for defamation of Government officials and was held in Al Aicha prison not far from Riyadh. During the interrogations leading to the verdict, he had repeatedly been beaten. Mr. Saleh Al Hweiti was then transferred to Al Hayr, where he should have been released on 27 September 2005. Although his family intervened on his behalf, he was released only 18 months later, on 5 April 2007 in Tabuk. Since he has no identity documents, the secret service ordered him to stay in the city and wait for clarification of his administrative situation. Six days later he was called in by the security services who arrested him again. He was then held secretly in different prisons until 20 January 2008, when he was allowed to make a phone call from Ta'ef prison. On 1 July 2008, he was again allowed to call from a prison in Jeddah. He had not been brought before a judicial authority and had routinely been subjected to beatings and other forms of ill-treatment during interrogations. As a result several of his face bones were fractured.

251. On 14 August 2008, 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, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of seven Filipino men found guilty of a triple murder. Three of them were sentenced to death and four to eight years imprisonment and one thousand lashes each. According to the information the Special Rapporteurs have received, Edison Gonzales, Rolando Manaloto Gonzales, Eduardo Arcilla, Victoriano Alfonso, Efren Francisco Dimaun, Omar Basillo and Joel Sinamban, seven Filipino migrant workers, were arrested in April 2006 on charges of having murdered three other Filipino nationals. The seven men were tried by a General Court in Jeddah and sentenced in July 2007. Eduardo Arcilla, Edison Gonzales and Rolando Manaloto Gonzales were sentenced to death. Victoriano Alfonso, Efren Francisco Dimaun, Omar Basillo, and Joel Sinamban were sentenced to eight years imprisonment and one thousand lashes each. The seven men were held incommunicado and were not given access to lawyers until April 2008, i.e. eight months after their conviction and

sentencing in first instance. Allegedly, they were also tortured during interrogation in order to force them to confess to the murders, including by being beaten on the soles of their feet. The seven men were currently held at Briman Prison in Jeddah. It appeared that their appeals were still pending before the second instance court.

252. On 21 August 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of three foreign nationals, Mohamed Kohail, Mehanna Sa'd and Sultan Kohail. According to the information the Special Rapporteurs have received, Mohamed Kohail (now aged 23) and his brother Sultan Kohail (now aged 17) are citizens of Canada. Mehanna Sa'd (now aged 22) is a citizen of Jordan. The three were charged with the murder of a boy who died in a fight in January 2007. Following their arrest, they were held incommunicado for approximately one and a half months. They were allegedly beaten in an attempt to make them confess. In March 2008, the General Court in Jeddah sentenced Mohamed Kohail and Mehanna Sa'd to death. Their trial before the General Court in Jeddah had taken place over nine sessions, but their lawyer was allowed to attend only the last one or two, and was allegedly not allowed to challenge the evidence brought against his clients. The Court of Cassation subsequently reviewed the case and sent it back to the General Court with recommendations to review the sentence. On 9 August 2008, the Jeddah General Court rejected the recommendations of the Court of Cassation and/or sentenced the two men to death again. The case was again before the Court of Cassation. If upheld, the death sentences would be submitted to the Supreme Judicial Council for approval. Sultan Kohail was sentenced to 200 lashes and one year's imprisonment by the Jeddah Summary Court in April 2008. In his case, the Court of Cassation recommended that the case be re-tried by a General Court, which has the power to pass the death sentence against him. His case was awaiting retrial at a General Court.

253. On 24 October 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, regarding the case of two foreign men reportedly sentenced to death on charges of apostasy or witchcraft following trials in which they did not, allegedly, enjoy the fundamental fair trial guarantees. One of the men, Sabri Bogday, might soon be at risk of execution, while the other, Mustafa Ibrahim, was executed in 2007. According to the information the Special Rapporteurs have received, Sabri Bogday, a Turkish citizen, owned a barber shop in Jeddah. He was arrested on 11 March 2007 as he had been reported to the police to have insulted Islam and sworn at God in public. He was tried without the assistance of a lawyer or an interpreter, even though his knowledge of Arabic is apparently limited. On 31 March 2008 he was found guilty and sentenced to death on charges of apostasy. His case was reportedly currently at the review stage before the Court of Cassation. Sabri Bogday was detained in Briman Prison in Jeddah. Mustafa Ibrahim, a citizen of Egypt, was arrested in May 2007 in Arar, where he worked as a pharmacist, and accused of apostasy for having degraded a copy of the Qur'an. It was not known when his trial took place, whether he was assisted by a lawyer, whether he appealed against his first instance sentence. On 2 November 2007, Mustafa Ibrahim was executed in Riyadh. According to the announcement of the execution by the Ministry of the Interior, he was convicted of practicing sorcery and witchcraft.

254. On 11 December 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, regarding the case of

38 Syrian men allegedly at risk of execution. They were reportedly sentenced to death on charges of narcotics trafficking following trials in which they did not, allegedly, enjoy the fundamental fair trial guarantees. According to the information the Special Rapporteurs have received, thirty eight Syrian men, including one Mr. Bahjat Khalid Mas'ud, were sentenced to death on charges of drug trafficking in 2002. At no stage following their arrest were they given access to legal counsel. Their trial was secret and summary. The 38 Syrian prisoners appeared to have exhausted all available appeals and their cases were pending consideration by the King. The Syrian men were reportedly detained in al-Qurayyat Prison, in the province of al-Jawf, north-western Saudi Arabia. Recently some of them were moved to other, unknown places of detention, which raised fears among their relatives and friends in the Syrian Arab Republic that executions might be imminent.

255. On 21 January 2009, 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 situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Mr. Khaled Suleyman Al Omeir, aged 39, resident at Hai Badr in Riyadh, and a human rights defender. According to the allegations received, Mr. Khaled Suleyman Al Omeir was arrested by the security service (Al Mabahit) in Riyadh around noon on 1 January 2009, taken to Al Hayr prison, and has since then been detained incommunicado without any contact with the outside world. The arrest followed an attempted peaceful demonstration by a number of human rights defenders on 1 January 2009 to protest against the bombings of civilians in Gaza. Mr Al Omeir had been arrested previously, on 25 April 2005, following an interview with Al Jazeera television, during which he expressed his views about the political situation in the region. At that time, he remained in detention at Al Alichia prison for six months, during which he was ill-treated. He was subsequently released without any legal proceedings having taken place. With a view to the allegations that Mr Al Omeir was being held incommunicado, grave concern was expressed for his physical and mental integrity.

256. On 28 January 2009, the Special Rapporteur sent a joint urgent appeal, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of 16 Iraqi men allegedly at risk of execution in Saudi Arabia. They were reportedly sentenced to death following trials in which they did not enjoy the fundamental fair trial guarantees, such as access to a lawyer, and statements extorted under torture were allegedly used against them. Several of the men were reportedly sentenced to death on charges of drug trafficking and arms smuggling. According to the information the Special Rapporteurs have received, Mr. Mohammad Abdul Amir, aged 34, a citizen of Iraq, was arrested in Saudi Arabia in 1995 and charged with murder. He confessed to the crime after three months of interrogation during which he was allegedly beaten and suspended by his feet. He sustained a broken rib as a result of the treatment he was subjected to while being interrogated and was hospitalized for a month. A criminal court in Arar sentenced him to death after a trial closed to the public. He has not been allowed any access to lawyers or other legal assistance at any stage of the proceedings in his case. The death sentence has not yet been carried out as the children of the murder victim were too young to be consulted on whether Mohammad Abdul Amir was to be pardoned or executed. The children have now reached the age of majority and have informed the court that they want the execution.

Mr. Ayadh Mana' Wanas Matar, aged 37, was arrested in November 2004 on charges related to drug trafficking. He was interrogated for three months during which he was allegedly tortured, including by being beaten on the soles of his feet and all over his body. He confessed to the charges as a consequence of the treatment. Ayadh Mana' Wanas Matar was sentenced to death in July 2008 by a criminal court in Rafha. He had no lawyer during his trial proceedings, which were not open to the public. At least 14 other Iraqi men were held in Rafha prison on death row and might be at risk of imminent execution. They include Mr. Hussein Baida Abud, aged 23, Mr. Adnan Jamil, aged 25, Mr. Mahmoud Shekar, aged 42, Khaled Mitani, aged 25. The charges on which they were convicted and sentenced to death include drug trafficking, connection with armed groups in Iraq and smuggling of weapons into Saudi Arabia. None of them has been allowed access to lawyers since their arrests. They were all beaten until they confessed.

### **Communications received**

257. On 15 September 2008, the Government replies to the urgent appeal of 5 June 2008, stating that the competent authorities in the Kingdom of Saudi Arabia have indicated that the eight Bahraini teachers have been released few weeks ago and have returned to the Kingdom of Bahrain.

258. On 28 October 2008, the Government replies to the urgent appeal of 20 April 2007, on the requested information concerning the Nigerian prisoner Mr. Suliamon Alyfemi. In this connection, the competent authorities in the Kingdom of Saudi Arabia have indicated as follows: (1) The assistance of a lawyer during the investigatory stage was not requested by any of the accused or by their country's embassy. (2) The accused were assisted by accredited translators during the stage of interrogation and subsequent signature by them of the record of the interrogation proceedings. (3) The Nigerian authorities did not request access to the accused at any stage of the investigation. However, the Director of Prisons in the Governorate of Jeddah indicated that the Consulate General of the Republic of Nigeria at Jeddah had requested permission for some persons to visit the Nigerian prisoners on Saturday 12/3/1428 AH (31 March 2007). (4) During the interrogation of the accused the competent authorities did not observe any signs of torture or other ill-treatment to which some of the accused claimed to have been subjected during their preliminary questioning. A physical examination conducted at the time by the investigating officer did not reveal any signs of assault and a report to this effect was duly drawn up. (5) The attack by the accused on the police officers is attributable to the implementation, on 8/9/1423 AH (13 November 2002), of the first phase of the Diya' 90 campaign to arrest Nigerian national living in the Balad district of Jeddah in violation of the Kingdom's residence regulations. When one of the Nigerians, Salswa al-Lami, nicknamed "al-Mutawwa", was arrested, Suliamon and the other accused attacked the police officers, freed their friend, and then continued to pursue the officers, pelting them with empty bottles, sticks and skewers. When one of the police officers, senior patrolman Ali bin Tami Asiri, fell to the ground they assaulted him and beat him with the automatic weapon that he was carrying, thereby causing his death. Patrolman Essam bin Salim Al-Muwallad and private Fawaz bin Uweili Al-Muwallad were also injured during the assault and the window of a police patrol vehicle was broken so that one of the arrest persons could be taken out after the patrol commander was attacked. The accused person, Suliamon, confessed to taking the automatic weapon from the police officer's hand when the latter fell to the ground, after which he struck him three times with the butt of the weapon; first on his right cheek, then on the right side of the back of his head, and finally on his shoulder, after which he threw the weapon on the victim's body as he lay

on the ground. He observed blood flowing from the dying man's mouth before they fled. The accused also affirmed and legally testified that he and his associates had conspired in advance to attack the police officers. The case was investigated by a district police committee and examined by the Makkah branch of the Public Investigation and Prosecution Department, after which the accused were questioned again by the Department. The indictment was drawn up and reviewed by the Department's governing body (Review Decision no. 470/M of 1423 AH).

259. On 25 November 2008, the Government replies to the urgent appeal of 22 July 2008, stating that the said person was detained on 30 April 2003 on the basis of a security-related charge (relevant to terrorist activities) and subsequently released on 23 April 2007. New accusations made against him then necessitated his detention once again on 29 April 2007 for purposes of questioning. Since his detention he has been treated in accordance with the judicial regulations in the Kingdom, which respect human rights and comply with the International Covenants and other conventions.

260. On 27 November 2008, the Government replies to the urgent appeal of 21 August 2008, stating that: (1) Jeddah police has transmitted the suit of the above-mentioned persons to the Commission for Investigation and General Prosecution (Mecca Branch) regarding a mass quarrel resulted in the assassination of a man called Monzer Mo'in Al Haraki, a Syrian citizen. The inquiry and the interrogations made with these persons revealed the indictment of those involved in the incident namely Mohamed Kohail and Mehanna Sa'd of the assassination intentionally of Monzer Mo'in Al Haraki beating him fatal strokes. Afterwards, Monzer mo'in Al Haraki drops down dead. Likewise, a charge has been raised against Sultan Kohail for taking part with them in beating the man assassinated and making improper advanced to the girl called Raneem Al Haraki, and for his complicity and incitement in the quarrel according to the evidence and indication set forth in the bill of indictment. The lawsuit has been transmitted to the General Court in Jeddah in order to be examined with regard to the public and private rights. A legal judgement N. 13/300/7 was issued on 26/2/1429 (4 March 2008) comprising the sentence of death penalty against Mohamed Kohail and Mehana Sa'd. The case has been transmitted to the Court of Cassation. The legal documents of the juvenile Sultan Kohail have been forwarded to the penal court in Jeddah to be considered by the juvenile judge. A legal judgement has been issued comprising the imprisonment of the juvenile Sultan Kohail for one year and 200 lashes. (2) The above two persons accused were held incommunicado, without any violation of their rights to contact their lawyers, in the interest of the investigation, for a period not exceeding 60 days according to article (119) of the law of criminal procedures. They were registered and checked up in the presence of their lawyers and were legally endorsed by the General Court in Jeddah. (3) The governing rules in the Kingdom of Saudi Arabia is the Sharia which prohibits torture and the extraction of any confession under torture. The Sharia proscribes harming any person held in custody either hysically or morally, and forbids to be the subject to torture or degrading treatment for his dignity pursuant to article two of the law of criminal procedures which does not recognize any confession extracted under torture. (4) During the first hearing of investigation with each of the persons accused and before starting the interrogation, a reading of the guarantees has taken place regarding their rights to call upon the assistance of a lawyer. Subsequently, they have appointed a lawyer and he was present in the interrogation hearing and was apprised of the legal proceedings documents and has examined the entire procedure.

261. On 30 January 2009, the Government replies to the urgent appeal of 1 April 2008, stating that the competent authorities in the Kingdom of Saudi Arabia have indicated that the

above-mentioned person was detained on a security-related charge which necessitated his remand in custody for purposes of investigation in order to determine the legal action to be taken against him. Throughout the period of his detention he has been treated in accordance with the Kingdom's judicial regulations and the international fair trial standards.

### **Special Rapporteur's comments and observations**

262. The Special Rapporteur wishes to thank the Government of Saudi Arabia for its replies of 15 September, 28 October, 25 November, 27 November 2008 and 30 January 2009. The Special Rapporteur is concerned at the absence of an official reply to his letters of 27 May 2008, 13 June 2008, 14 August 2008, 24 October 2008, 11 December 2008, 21 January 2009 and 28 January 2009. He urges the Government of Saudi Arabia to provide at the earliest possible date detailed substantive replies to the above allegations.

## **Serbia**

### **Communication sent**

263. On 5 November 2008, the Special Rapporteur sent an allegation letter, regarding the Draft Law on Judges and the Draft High Court Act in conjunction with articles 142 to 155 of the 2006 Constitution. At the outset, the Special Rapporteur commended on the Government's efforts to reform the judicial system in order to live up to article 1 of the 2006 Constitution, enshrining, inter alia, the principles of the rule of law and democracy. In this context, the Special Rapporteur drew the Government's attention to two substantive areas that give rise to concern in relation to the above-mentioned provisions: 1) the requirement of re-election of sitting judges, and 2) procedures governing the membership of the High Court Council, including the establishment of its first composition. In the view of the Special Rapporteur, certain aspects of these draft provisions would require reconsideration in order to secure their compliance with international standards on the independence of the judiciary.

264. First, chapter 8 of the Draft Law on Judges prescribes that the mandates of judges elected under the present Law on Judges will cease on 31 July 2009 unless they are re-elected as judges by the National Assembly in accordance with article 147 of the Constitution. In this context, the Special Rapporteur drew the Government's attention to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, in particular principle 12 which stipulates "Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists." Furthermore, I would like to refer to principle 1.3. of Recommendation (94) 12 of the Committee of Ministers of the Council of Europe on the independence, efficiency and role of judges.

265. The irremovability of judges is one of the main pillars guaranteeing the independence of the judiciary. Article 101 para. 1 of the 1990 Constitution conferred life tenures upon judges. Furthermore, the principle of irremovability was enshrined in Article 101 para. 3 of the 1990 Constitution. Article 146 of the 2006 Constitution stipulates that "A judge shall have a permanent tenure. Exceptionally, a person who is elected a judge for the first time shall be

elected for the period of three years.” Consequently, current sitting judges who were appointed either pursuant to procedures under the 1990 Constitution and applicable legislation or according to the 2006 Constitution and related legislation enjoy life tenures, with exception of those elected for an initial period of three years.

266. The principle of irremovability must be comprehended as a means to achieve independence of the judiciary (so judges can act without fear of political retaliation of their decisions). It is understandable to have concerns about the independence and impartiality of judges who have aligned themselves with previous regimes. Nevertheless, as it has been stated by the Consultative Council of European Judges (CCJE), “The existence of exceptions to irremovability, particularly those deriving from disciplinary sanctions, leads immediately to consideration of the body and method by which, and basis upon which, judges may be disciplined. Recommendation No. R (94) 12, Principle VI (2) and (3), insists on the need for precise definition of offences for which a judge may be removed from office and for disciplinary procedures complying with the due process requirements of the Convention on Human Rights. Beyond that it says only that ‘States should consider setting up, by law, a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself’”.

267. Thus, only in exceptional circumstances the principle of irremovability may be transgressed. For example, in situations of transition, the objective of limitations to this principle is to end impunity and the reoccurrence of grave human rights violations.

268. Thus, in accordance with the above-mentioned principle, it would be key to inquire objectively on a case-by-case basis whether a judge was appointed unlawfully or whether he/she derives judicial power from an act of allegiance so as to determine to relieve the person from his/her functions. However, such objective decision cannot be made by a procedure whereby the legislature re-elects judges. Thus, it would be essential that such case-by-case inquiry be made by an independent body which would have the final decisive power in the case at hand.

269. In addition to that, the following safeguards need to be established: 1) the procedure must be conducted by an independent and impartial body and respect the principle of due process, 2) the review must be based on clear and transparent criteria, 3) the review must only address past behaviour incompatible with the role of an independent judge, and 4) there must be an opportunity to challenge the decision declining re-appointment in proceedings that meet the criteria of independence and impartiality.

270. Therefore, in view of the lack of provisions providing for a case-by-case review respecting the above-mentioned safeguards, in my opinion, the provisions relating to the re-election of all judges by the National Assembly are not in compliance with international standards on the independence of the judiciary.

271. Second, Article 20 of the Draft High Court Council Act stipulates that the members of the High Court Council are elected by the National Assembly at the nomination of the authorized nominators, i.e. the High Court Council, the Serbian Bar and the deans of accredited faculties of law of the Republic of Serbia. At the outset, the Special Rapporteur brought to the Government’s attention the general concern that the involvement of the legislature in judicial appointments,

such as enshrined in article 147 of the 2006 Constitution, risks to lead to their politicization. The benefit of such parliamentary procedure is specifically difficult to see for judges at the lower-level courts. Furthermore, in particular in times of transition, it is crucial that the population gain confidence in a court system administering justice in an independent and impartial manner free from political considerations. Therefore, specific efforts should be made that judicial appointments are made according to objective criteria having regard to qualifications, integrity, ability and efficiency.

272. In order to strengthen independence through the appointment of new judges, the composition of the High Court Council, as stated by the Constitution in Articles 153-155, should genuinely respect the proposals made by the authorized nominators. To ensure that such Council is apt to act in an objective and fair manner when selecting judges, its members must be appointed in such way so as to reflect the principle of independence in its composition. Only if composed in such a way, the Council will be able to guarantee the independence and autonomy of the courts and judges, as enshrined in article 153 of the 2006 Constitution. Thus, here again, election of the Council members by the legislature will put the Council in the center of politics, which is not likely not further its independence.

273. In this connection, it becomes obvious that the selection of the members of the first High Court Council is of utmost significance. Pursuant to article 50 para. 3 of the Draft High Court Council Act, the present High Judicial Council shall - in the transition period - perform the tasks related to the election of the members of the first composition of the High Court Council. According to the information available at the Special Rapporteur's disposal, the present High Judicial Council was established in line with articles 2 to 4 of the Law on the High Judicial Council, comprising five permanent members (President of the Supreme Court, the Public Prosecutor and the Minister in charge of judiciary, all ex officio, one member from the Bar and one member elected by the National Assembly) and eight invited members, among them six judges (elected by the Supreme Court) and two prosecutors (one elected by the deputy Public Prosecutor and one elected by district public prosecutors at joint session). According to article 52 para. 2 of the Draft High Court Council Act, candidates for the election of the members of the High Court Council should be proposed to the High Judicial Council by the sessions of all judges of the courts. According to article 52 para. 5 of the Draft High Court Council Act, it is then up to the High Judicial Council to propose the candidates for membership of the first composition of the High Court Council to the National Assembly. Therefore, the role of the present High Judicial Council is paramount in this context.

274. In order to conduct the judicial reform process in a proper and impartial manner, it is the Special Rapporteur's opinion that the judiciary and other parties directly linked with the administration of justice should have a say, a substantial one, with respect to selecting the candidates to the High Court Council.

275. In sum, in the Special Rapporteur's view the procedures for the appointment of the members of the High Court Council and specifically its first composition should be revisited. Furthermore, thorough reflection should be given to the procedures for nominating judges.

276. While the Special Rapporteur reaffirmed his appreciation of the Government's efforts to reform the judicial system and acknowledge that such reform process is of complex and difficult nature, the Special Rapporteur expressed concern at the above mentioned reform proposals.

Therefore, the Special Rapporteur encouraged the executive and legislative branches of government to consider the above mentioned concerns and to amend the relevant draft legislation accordingly in order to secure their compliance with international standards. In that context, transparent and inclusive deliberations with the main stake holders, particularly the judiciary, should be conducted prior to the adoption of the laws. The Special Rapporteur confirmed that he stands ready to provide the Government with support and assistance concerning the recommendations outlined in this letter and remain at your disposal with regard to any related question or request that your Government would wish to seek.

### **Communication received**

277. On 22 January 2009, the Government replies to the Special Rapporteur's letter of 5 November 2008. The following is a summary of the extensive and detailed letter of the Government. The Government informs that the Ministry of Justice has commenced with core changes and reform endeavours to revive the judicial system since the new Government was formed in May 2007. It is further noted that despite a number of legal changes implemented since 2000, the judicial system in the Republic of Serbia has not been functioning in line with European standards and the needs of the citizens of the country for a longer period of time. The need for reform has also arisen due to a number of complaints raised by the citizens in respect of considerable duration of cases, lack of possibilities to enforce court judgments and corruption. Among the identified weaknesses of the judicial system are the following: overly complex and broad system of courts, unclear standards of election, dismissal, performance and promotion of judges. The government further informs that a comprehensive package of judicial laws was adopted by the National Assembly on 22 December 2008 which comprises, inter alia, Law on the High Judicial Council, Law on Judges and the Law on the Organisation of Courts. Of exceptional significance is the establishment of a new judicial architecture with the Supreme Court of Cassation, Appealates Courts and the Administrative Court. The new laws also provide for the establishment of an independent judicial budget, the developments of clear and measurable criteria for election, promotion, disciplinary proceedings and the dismissal of judges. The judicial laws also provide for a complete reorganization of the judicial network that will facilitate access to justice. Under the new system, the High Judicial Council ensures and guarantees the autonomy of courts and judges. The High Judicial Council formulates criteria for election of judges, it elects and dismisses judges, decides on promotion, accountability, material position of judges, termination of judicial duty, proposes to the National Assembly candidates to be elected for the first time. Judges alone will elect the High Judicial Council members among themselves. In the first composition, this will be done by the High Judiciary Council (High Court Council) as the most relevant judicial body. The permanent composition of the High Judicial Council, in respect of elective members, will be elected by the entire judiciary at general elections within their own system according to rules stipulated by law. The laws regulating the status of judges will have two novelties: first, the evaluations of judge's performance to be conducted by the judges alone, and, second, detailed provisions regulating disciplinary liability of judges. The above mentioned legislative solutions are in compliance with the Constitution and the Constitutional Law on the Implementation of the Constitution. Consequently, transitional and final provisions of this Law provide for a general election to judicial institutions. Having in mind the current situation in Serbia, the general election is undoubtedly the only solution for the renewal of the judiciary in terms of human resources. Bearing in mind that the High Judicial Council will be exclusively competent for the general election, there is no fear of political influence by the Parliament. The general election will be based upon objective, professional

foundations and criteria in order to prevent the considerable influence exerted by political and executive power. The criteria will be based upon objective assessment of each judges' output in the preceding period, whereas the High Judicial Council will, as an additional factor, take into account the merit of a judge in the performance of its judicial duties. In accordance with the Law, the High Court Council will draft precise criteria and send them to the Vencie Commission to obtain their opinion prior to adoption. The letters then informs about other reforms and reform efforts in the areas of judicial training and the system of the public prosecutor. The Government concludes by stating that it highly appreciates if the Special Rapporteur could provide support to implement the judicial reform in line with international and European standards.

### **Special Rapporteur's comments and observations**

278. The Special Rapporteur wishes to thank the Government of the Republic of Serbia for its detailed reply to his letter and wishes to work further together on the implementation of the judicial reform.

## **Sri Lanka**

### **Communications sent**

279. On 8 December 2006, the Special Rapporteur sent a joint allegation letter<sup>8</sup> 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 the arrest of and charges brought against Fr. Jesuratnam Jude Bernard Omi, Director of the Centre for Peace and Reconciliation (CPR) in Jaffna, Sri Lanka. According to the information received, on 24 November 2006, Fr. Omi was arrested after he intervened in a matter concerning a young man, Mariyanayaham Godfry Morris Gnanageethan, who had been detained for allegedly distributing leaflets issued by the Justice Peace Commission (JPC) concerning the humanitarian situation in Jaffna. It is reported that Mr. Mariyanayaham had been queuing for food at the 6 CLI army camp when his cousin, Ms. Alanday Dinoshia, spoke with him and gave him one of the aforementioned leaflets to read. Members of the Sri Lankan Army (SLA) reportedly confiscated the leaflet and asked Mr. Mariyanayaham questions relating to its origin. When he referred to his cousin, troops allegedly went to her house in order to arrest her, but she had gone to seek the assistance of Fr. Omi, who immediately contacted and informed the JPC of the situation. A member of the JPC, Fr. Francis Xavier Jeyasegaram, accompanied Fr. Omi, Ms. Alanday and her mother to the army camp where Mr. Mariyanayaham was detained. They were allegedly photographed by SLA troops and threatened by Colonel Manjula who said, "If you all can organize a campaign against the forces we will also do things against you all. You all will face the consequences soon." As they left the camp with Mr. Mariyanayaham, the colonel allegedly circled around them on a motorcycle. Later that day, it is reported that Fr. Omi went to the High Court where Brigade Commander Godipilli stated that Fr. Omi and Fr. Jeyasegaram had distributed the leaflets to people in the queue. Two soldiers were apparently

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<sup>8</sup> This communication has already been included in the Communications Report of 5 April 2007, A/HRC/4/25/Add.1. The Special Rapporteur has included it again in order to facilitate the reader's comprehension of the Government's reply.

called as witnesses but they never appeared before the court. It is further reported that Fr. Omi then went to the District Court to record a statement, but while there, army troops surrounded the office of the CPR and arrested Fr. Jeyasegaram. According to reports, Fr. Omi went to the Human Rights Commission and recorded a statement before going to the 6 CLI camp escorted by members of the Non-Violent Peaceforce. The sources indicate that the SLA transferred the two priests, along with Mr Mariyanayaham, Ms. Alanday and their parents, in an army vehicle to the police station, where they were handed over to the police. Reportedly they all made individual statements and Ms. Alanday was subjected to a full-body search. At approximately 10.55 p.m. the two priests were allegedly taken to the acting magistrate in relation to a curfew pass and were released at 11.45 p.m. and taken to the bishop's house. Mr. Mariyanayaham and Ms. Alanday were reportedly released on bail the next day. On 29 November 2006, the four individuals appeared before the Magistrate's Court of Jaffna where they were allegedly charged under criminal law although they were not informed of the charges brought against them. They were told that their file would be sent to the Attorney General's Department and the charges against them should be announced by 31 January 2007. They have all reportedly been ordered not to leave the country and they will not be permitted to leave Jaffna before the start of the trial. Concern was expressed that the arrest of Fr. Jesuratnam Jude Bernard Omi may be related to his defence of the right of Mr. Mariyanayaham Godfry Morris Gnanageethan and Ms. Alanday Dinoshia to exercise their freedom of expression. Further concern was expressed that the charges against him are fabricated and that he will not receive a fair or impartial trial.

280. On 5 April 2007, the Special Rapporteur sent a joint urgent appeal,<sup>9</sup> together with the Special Representative of the Secretary-General on the situation of human rights defenders, regarding the case of 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 Parameswara 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 was reportedly being detained incommunicado at the Terrorist Investigation Unit in Colombo where he had 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 was 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

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<sup>9</sup> This communication has already been included in the Communications Report of 28 May 2008, A/HRC/8/4/Add.1. The Special Rapporteur has included it again in order to facilitate the reader's comprehension of the Government's reply.

during a press conference. Newspaper staff have been receiving death threats since February. Concern was expressed that arrest and detention of Mr Dushyantha Basnayake along with the arrest, detention and subsequent release of Ms Parameswarae 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.

281. On 19 June 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the question of torture, regarding the case of Mr. Gunasundaram Jayasundaram, a dual Sri Lankan-Irish citizen, usually residing in Singapore. According to the information received, on 4 September 2007, he was arrested by Terrorist Investigation Division (TID) officers at the airport upon arrival from Singapore. He was arrested without a warrant and on the orders of the Secretary of Defence. Mr. Jayasundaram was allowed access to his lawyers only twice, in October and December 2007, despite numerous written requests to the authorities for access to legal counsel. The Honorary Consul of the Republic of Ireland in Colombo was allowed to visit him only once, on 14 December 2007. On 29 October 2007, a writ of habeas corpus was filed by his lawyer and four court hearings have taken place since then: on 23 January, 5 and 26 March, and 11 June 2008. No decision was taken by the court and Mr. Jayasundaram was not presented before the court in persona. The next hearing was scheduled for 27 June 2008. No charges have been brought against Mr. Jayasundaram and no trial date has been scheduled yet. Mr. Jayasundaram has recently been transferred from the detention facilities of TID to Boossa Prison, where he spent 16 days in solitary confinement. One of his relatives was allowed to visit him on 13 June. Mr. Jayasundaram suffered from high blood pressure and had run a fever for about four days, which had caused muscle spasms, making movements in his cell difficult. He had to sleep on the floor, was not provided with any reading material, and had not been allowed to buy any food in the canteen. In view of the reported deterioration of his health and conditions of detention, concerns were expressed for Mr. Jayasundaram's state of health.

282. On 6 October 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders, and the Chairman of the Working Group on Enforced or Involuntary Disappearances, regarding the case of Mr. J.C. Weliamuna, lawyer and executive director of the Sri Lanka branch of the organisation Transparency International. According to the information received, on 27 September 2008, the premises of Mr. Weliamuna were attacked by two grenades. While the first grenade exploded, the second one was later found inside the house by the police. In the past, Mr. Weliamuna has dealt with important cases of bribery and corruption most of which involved state officials. He has also acted as a lawyer in bringing sensitive cases of alleged serious human rights violations to court, including extrajudicial killings, enforced disappearances and torture. On the day of the attack, Mr. Weliamuna moved a motion at the Bar Council in relation to a lawyer who had received death threats as a consequence of his appearance in a case of alleged extra-judicial killing. Concern was expressed that the attack against Mr. Weliamuna may be related to his activities in the defense of human rights, including as a lawyer.

283. On 6 November 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders, regarding threats received by registrars of all courts and a number of human rights lawyers in Sri Lanka. According to the information received, on 21 October 2008, registrars of all courts in Sri Lanka and a number of human rights lawyers reportedly received a notice from a group that identifies itself as the

Mahason Balakaya (Mahason Battalion), threatening death or other serious physical harm to any lawyers who may defend any suspected terrorist in any court in Sri Lanka. These lawyers were referred to as “traitors”, and should “be subject to the same fate that the terrorists mete out to [their enemies]”. Concern was expressed for the physical and mental integrity of lawyers who offer legal assistance to suspected terrorists.

### **Communications received**

284. On 2 September 2008, the Government replies to the urgent appeal of 8 December 2006 concerning the alleged arrest of Fr. Jeruratnam Jude Bernard, Fr. Francis Xavier Jeyasegaram, Mr. Mariyanaham Godfrey Morris Gnanageetham and Ms. Alanday Dinoshia and thereby allegedly violating their rights to the exercise of freedom of expression. The Government stated that upon receipt of the joint communication from the UN and upon consideration of the allegations contained therein, reports were called from the Police and the Army on the alleged arrest of Fr. Jesuratnam Jude Bernard, Fr. Francis Xavier Jeyasegaram, Mr. Mariyanaham Godfrey Morris Gnanageetham and Ms. Alanday Dinoshia and thereby allegedly violating their right to the exercise of freedom of expression. The Security Forces Headquarters Jaffna has submitted a report having conducted a full scale inquiry into the alleged arrest of the above mentioned persons on 24 November 2006. On the day of the incident the troops belonging to 6th Battalion, Sri Lanka Light Infantry of 512 Brigade manning an Army Welfare Shop, established at Colombathurai for the purpose of distributing essential food items, had been distributing food items to a large gathering of people. Around 11.30 hours in the morning a person who approached the troops had informed that there was a person distributing leaflets containing anti government slogans at the tail of the queue. Troops had gone to the tail of the queue about 100 meters away and found Mr. Mariyanayaham Godfry Morris Gnanageetham distributing the last few of the leaflets to the people in the queue. The troops had confiscated a copy of the leaflet. The leaflet contained anti governmental slogans in an obvious attempt to agitate the general public and disrupt the government’s effort to restore normalcy in the area. During an on the spot inquiry Mr. Gnanageetham had revealed that the leaflets were given to him by Ms. Alanday Dinoshia that morning to be distributed among the public. A message had been passed requesting Ms. Alanday Dinoshia to come to the location and she had come accompanied by her mother. On arrival Ms. Alanday Dinoshia had revealed that the leaflets were given to her by Fr. Francis Xavier Jayasegaram. Meanwhile, even before troops summoned him, Fr. Jesuratnam Jude Bernard had acknowledged that he gave the leaflets to Ms. Dinoshia to be distributed among the public. The Troops had contacted the Commanding Officer of 6th Battalion, Sri Lanka Light Infantry seeking instructions on further action. He had instructed troops to follow the normal procedure and hand over the suspects to the Police for further investigations. Troops had complied and hand over the suspects to the police for further investigations. Troops had complied and handed over the suspects to the Jaffna Police Station on the same afternoon. The Police had produced them before the Magistrate of Jaffna under M/C B 532/2006 who in turn had released them on bail. The case had been referred to Hon. Attorney General’s department under reference No. CN/17/2007 for instructions. Attorney General’s instructions on the case are still pending. Based on the reports received from the Brigade and the unit concerned the following observations are made with regards to the allegations made in the abovementioned joint communications: the contents of the leaflets were full of malice against the army, written with the aim of agitating the people and disrupting the government’s efforts at bringing normalcy to the area; the Commanding Officer who was not present at the scene could not have used any threatening language as alleged in the complaint;

Fr. Jeyasegaram and Fr. Jude Bernard have publicly acknowledge that they used the young male and female in question to distribute these leaflets; the troops have not done anything in excess of their mandates and they have followed the correct procedure by officially handing over the suspects to police for onward legal actions; The Female in question had been accompanied by her mother and there had been no attempt to harass her as the complainant attempts to imply; None of the suspects had been detained in an Army Camp as alleged in the complaint. They had only been held near a wealfare shop run by the Army and located in a public place in Colombathurai until properly handed over to the police; there is no information of a complaint made by the alleged victims to the Police seeking redress of their grievances. It is brought to the attention that the Security Forces had acted bona fide in the lawful performance of their duties in taking into custody the personnel involved in anti Government/anti Security forces propaganda campaign in order to maintain law and order in the Jaffna Peninsula.

285. On 2 September 2008, the Government also replies to the urgent appeal of 5 April 2007, concerning the arrest and detention of Dushyantha Basnayake and Parameshwarce Munusamy. Basnayake Mudiyanseelage Dushyantha Basnayake was taken into custody on 26 February 2007 at 21.15hrs in his office at no: 99/6, Rosmead Place, Colombo 07 for alleged complicity in terrorist activities and was detained at the Terrorist investigation Division at No: 101, Chaithya Rd, Colombo 01 on a detention ordre issued by Secretaria/ Ministry of Defense in terms of regulation 19(1) of the Eergency Regulations. Reasons for his arrests & detention were explained to him and also to his Attorney-at-Law i.e. suspected to have aided and abetted terrorist activities by way of providing financial assistance to a known LTTE activist named Luxmie Emi Kanthan who is absconding at present. Facts in this regard were reported to the Chief Magistrate, Colombo, under case no: 998/1/2007 periodically. In the course of this investigation, it was revealed that Dushyantha Basnayake is the Financial and Administration Director of the CEB Group of Companies at No: 99/6, Rosmead Place, Colombo 07. He is also the Financial Director of the "Standard Newspapers Private Limited" which publishes "Mawbima" Sinhala Newspaper. He is not a journalist, through he functions as the owner and the printer of "Mawbima" Newspaper. Financial transactions of the CBE Group of Companies are being investigated on an order given by the Colombo High Court. Inquiries also revealed that Dushyantha Basnayaka had sold nearly 12,000 "Dialog" mobile telephone connections through CEB Group of Companies to the North and East of Sri Lanka with the assistance of Luxmie Emil Katban. There is no documentation maintained concerning these transactions. It was also revealed during investigations that Dushyantha Basnayaka was instrumental in building a house at Pitakotte spending around RS. 13 Million for the mother of Luxmie Emil Kanthan. It also transpired that during the period of 1 April 2005 and 24 March 2006 Dushyantha Basnayaka had released about Rs. 57 million from the funds of CBE to Emil Kathan and to his nominees. Material elicited so far were forwarded to the Hon. Attorney General and he is of the view that Dushshyantha Basnayake and other Board of Directors of the CBE Group of Companies could be charged under section 3 of the Convention of the Supervision of Terrorist Financing act no: 25 of 2005. Accordingly Dushshyantha Basnayake was produced before the Colombo Chief Magistrate on the above charge and was enlarged on bail on 8 May 2007 pending legal proceedings. The Government also stated that consequent to information received by the Police to the effect that a suicide LTTE women cadre had come to Colombo, officers of the Special Task Force (STF) effected the arrest of one Tambirasa Sunsanthi of Batticaloa on 213 November 2006 at 21.00 hrs. at Wallawatte. At the time of his arrest Munisamy Paramenshwaray was responsible for providing accommodation to Tambirasa Sunsanthi at No: 28,

Ramakrishna Road, Wallawatte. On the basis of the evidence Parameswari too was arrested by the STF. Subsequently they were handed over to Special Task Force (TID) for further investigations. Munisamy Parameshwari was detained on a Detention Order issued by the Secretary /Ministry of the Defense in terms of Regulation 19(1) of the Emergency Regulations. Reasons for her arrest and detention were explained to her and to the Attorney at Law who represented her that she was alleged to have aided and abetted Thambirasa Susanthi for her intended terrorist activities in Colombo. Munisamy Parameswari was produced before the Chief Magistrate Court of Colombo in terms of Regulation 21(1) of the Emergency Regulations under case no: B 7875/1/6 on 22 December 2006 and detained at the TID for further investigation. Her relatives and attorneys had access to her during her detention and the International Committee of the Red Cross too visited her on several occasions. In depth investigations conducted by the TID revealed that Thambiasa Susanthi had ties with the LTTE leadership and was closely associated to a hardcore LTTE cadre in Colombo. It also revealed that Munisamy Parameswari had made arrangements to accommodate Thambirasa Susanthi in Colombo. It further revealed that Munisamy Parameswari is not a registered Journalist at the Department of Government Information. Even in the year 2005 she had been found loitering in the high security areas. Consequent to an application submitted to the Supreme Court of Sri Lanka by her attorneys against her arrest and detention, the Hon. Attorney General Advised that the material available is insufficient to institute legal proceedings against Munisamy Parameswari and accordingly she was released through the chief Magistrate Court of Colombo on 22 March 2007 under reference case No. B 8347/01/2206.

### **Press releases**

286. On 9 February 2009, the Special Rapporteur issued the following press statement, jointly with nine other special procedures mandate holders.

“Ten independent UN Experts expressed their deep concern at the deteriorating human rights situation in Sri Lanka, particularly the shrinking space for critical voices and the fear of reprisals against victims and witnesses which - together with a lack of effective investigations and prosecutions - has led to unabated impunity for human rights violations.

The UN Experts also unreservedly condemned this morning’s suicide attack, allegedly by a female Tamil Tiger, which reportedly killed 28 and injured about 90 civilians and soldiers in Mullaitivu district in north-east Sri Lanka.

Speaking of the general human rights situation in the country, Ms. Margaret Sekaggya, the Special Rapporteur on the situation of human rights defenders, said “A climate of fear and intimidation reigns over those defending human rights, especially over journalists and lawyers.” The safety of defenders has worsened considerably over the past year, most significantly following denunciations of human rights abuses committed by parties to the conflict, of corruption by state officials and of impunity. Serious and fatal aggression against journalists and the media are now a common occurrence as witnessed in the killing of the journalist Lasantha Wickremetunga and recent attacks on major media outlets.

The fighting in the North of the country has resulted in hundreds of thousands of civilians being internally displaced and trapped. The UN Experts share the deep concern of the United Nations High Commissioner for Human Rights over the rapidly deteriorating

conditions facing those civilians and the significant number of civilian casualties. They also deplore the restrictions on humanitarian access to conflict areas which exacerbate the ongoing serious violations of the most basic economic and social rights.

Notwithstanding the severity of the abuses in areas of conflict, the Experts wish to highlight that the problem is deeper and more endemic. The conflict deflects attention from the impunity which has been allowed to go unabated throughout Sri Lanka. The fear of reprisals against victims and witnesses, together with a lack of effective investigations and prosecutions, has led to a circle of impunity that must be broken. The Experts continue to receive disturbing reports of torture, extra-judicial killings and enforced disappearances throughout the country.

The UN Experts strongly urge the Government of Sri Lanka to immediately take measures to ensure that effective remedial action can be pursued in support of the victims of human rights abuses and their families. They also highlight that thorough reforms of the general system of governance are needed to prevent the reoccurrence of further serious human rights violations. The Experts call for an immediate end to impunity and to refrain from any reprisals. To strengthen the rule of law and to help ensure the safety and protection of the human rights of all persons in Sri Lanka, they continue to extend their offer of assistance to the Government.”

### **Special Rapporteur’s comments and observations**

287. The Special Rapporteur wishes to thank the Government of Sri Lanka for their replies of 5 September 2008. However, the Special Rapporteur notes the considerable delay in replying and is concerned at the absence of an official reply to his letters of 19 June 2008, 6 October 2008 and 6 November 2008 and urges the Government of Sri Lanka to provide at the earliest possible date detailed substantive replies to the above allegations.

## **Sudan**

### **Communication sent**

288. On 20 May 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, regarding the cases of Mustafa Nasir Al Din Tambor, aged 27, student, Gamar Eldin Abaker Abu Alkhairat, aged 27, student, Al Sadiq Abdalla Bashir, contractor, and Arbab Hussein Abudl Mula Ibrahim, aged 40, staff member of International Medical Corps. According to the information received, the four men were arrested by National Intelligence and Security Services officers between 13 and 15 April in Zalingei, West Darfur. Al Sadiq Abdalla Bashir was arrested on 13 April 2008 and Gamar Eldin Abaker and Mustafa Nasir Al Din Tambor were arrested on 15 April 2008 at the market in Zalingei. During the arrest Gamar Eldin was beaten with wooden sticks. Arbab Hussein was arrested at his home. They had all remained in the custody of the National Intelligence and Security Services in Zalingei since then. Arbab Hussein had not received any visits, while the other three men have seen their relatives twice. Witnesses report that the men might have suffered ill-treatment. No charges have been laid against any of the above mentioned individuals and none of them has

been allowed to see a lawyer. Concern for the physical and mental integrity of the four men was expressed. Further concern was expressed that their arrest might be related to their alleged affiliation to the “Abdel Wahid” faction of the so-called “Sudan Liberation Movement (SLA)”.

289. On 27 May 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 contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Independent Expert on Minority Issues and the Special Rapporteur on the question of torture, regarding the case of more than 230 individuals of mainly Darfuri origin. According to the information received, in connection with an armed attack by fighters of the “Justice and Equality Movement”, an armed opposition group based in the Darfur provinces, on the outskirts of Khartoum on 10 May 2008, more than 200 people, including the above-mentioned civilians, have been arrested by the Sudanese Police and officers of the National Intelligence and Security Services (NISS) between 9 and 23 May. It appeared that the arrests in the vast majority target Darfuri individuals, specifically members of the Zaghawa ethnic tribe, dwelling mainly in the Umbadda district of Omdurman. While around 500 individuals, including Mr Amin Mahmoud Osman, member of the Fur ethnic tribe and brother of human rights defender and parliamentarian Mr Salih Mahmoud Osman, may, according to unconfirmed reports, be in the process of being released, more than 230 were still believed to be detained incommunicado at undisclosed places of detention without charge or access to lawyers and families. It was believed that some of them were detained at NISS detention facilities in Khartoum and at Kober Prison in the Sudanese capital. However, their exact whereabouts remain unknown. The above-mentioned members of the unregistered “Popular Congress Party” had also been arrested following the attacks. Their current whereabouts were unknown. The party’s leader, Mr Hassan Al Turabi, and Mr Al-Nagi Abdullah (also known as Al-Nagi Dahab), Mr Abubkr Abdalrazeg, Mr Albusairy, Mr Hassen Gubara, Mr Tageldien Banaga, Dr Bashir Adam Rahman, Mr Hassan Satti, and around ten other members were released. The majority of arrests were believed to have been carried out on the basis of the provisions of the National Security Forces Act (NSFA), which allows for detention without charge for up to nine months, during the first six the detainee was denied applications for review of the legality of detention. The NSFA reportedly did not provide legal safeguards to the detained individuals and effectively provides for immunity from prosecution for officials who resort to ill-treatment in detention. In view of the reported incommunicado detention at undisclosed places of the afore-mentioned individuals concerns for their physical and mental integrity were expressed. Further concern was expressed that the arrest and detention of the above-mentioned persons might be solely connected to their alleged ethnic origin from the Darfur region and carried out in a discriminatory manner.

290. On 11 August 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on the situation of human rights in the Sudan, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the death sentences imposed against 30 men convicted on charges connected to the attack on Omdurman on 10 May 2008 led by the Justice and Equality Movement. According to the information the Special Rapporteurs received, Kamal Mohamed Sabun, Musa Hamid Osman Katar, Yunis Abdallah Al Nedif Bahar El Deen, a national of Chad, Musa Adam Hassan Omar, Bahar El Deen Beshir Idriss, Bushara Abdullah Eissa, Ibrahim Al Nur Zakaria, Shumu Osman Ishaq Gibril, Fadul Hussain Rezeg Allah, Mohamed Arabi Ismail Ahmed, Mahmoud Abaker

Mursal Yahia, Bushara Eissa Mohamed Salih, Mohamed Adam Abdallah Mohamed, Mohamed Hashim Ali Abdu, Haitham Adam Ali Adam, Awad Mohamed Hussein, Adam Abdallah, Haroun Abdelgadir, Mohamed Mansour Eissa, Osman Rabeh Mursal, Adam Mohamed Eissa Adam, Ibrahim Abaker Hashim, Mohamed Sharif Abdallah Suleiman, Mahmoud Adam, Adam Al Nour Abdelrahman Osman, Bashir Adam Mohamed Saleh, Abubaker Ibrahim Breima, Abdallah Adam Ibrahim Al Duma, Ibrahim Ali Rashid, Bashir Adam Sanusi Hashim and Mustafa Adam Sabun were arrested in the days following the Justice and Equality Movement (JEM) attack on Omdurman on 10 May 2008. Following their apprehension, they were held without access to the outside world for over one month and were not given access to lawyers until after the trial proceedings opened. As of 18 June 2008, these 30 men and other defendants were presented before newly created counter-terrorism courts in greater Khartoum. Five special courts were created in early June in response to the attack on Omdurman and these 30 men and other defendants were brought before three of these special courts. Observers noticed that the defendants looked tired and appeared to be in pain. The defendants complained that they were subjected to torture or ill-treatment, but the court did not investigate these allegations and refused to grant requests by the defendants' lawyers for independent medical examinations. On 29 and 31 July 2008, the courts announced their verdicts. They sentenced the 30 above named defendants to death, acquitted one, and ordered the transfer of four minors, to a detention facility where more than 90 children captured after the attacks were being held. One of those sentenced to death, Mahmood Adam Zariba, was reportedly a minor of 16 years of age, whose age was not determined by a medical examination. The 30 defendants were found guilty of a range of criminal charges defined in the 1991 Criminal Act, the 2001 Counter-Terrorism Act and the 1986 Arms, Ammunitions and Explosives Act. The charges included terrorist acts, participation in a terrorist criminal organization (respectively sections 5 and 6 of the Counter-Terrorism Act), as well as criminal conspiracy, waging war against the state and sedition (respectively sections 24, 51 and 63 of the Criminal Act). In reaching their verdicts, the courts relied as evidence primarily on confessions by the defendants which the defendants said they were forced to make under torture and ill-treatment and which they retracted in court. The court made reference to the Sudanese Evidence Act which permits the admission to judicial proceedings of statements obtained by unlawful means. The court also relied on the testimonies by children who have been detained since the attacks and who stated in court that they recognized the defendants as having been among the attackers. The Special Rapporteurs understood that judgments in respect of 28 further defendants were expected to be announced shortly, and that charges may be brought against others currently held without charge or trial.

291. On 23 September 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding information the Special Rapporteurs received regarding the death sentences imposed by counter-terrorism courts in greater Khartoum against 20 men on 17 and 20 August 2008. The men were convicted on charges connected to the attack on Omdurman on 10 May 2008 led by the Justice and Equality Movement. According to the information the Special Rapporteurs have received, on 17 August 2008, a counter-terrorism court in Khartoum found Abdelaziz Al Nour Aousher Fedail, Al Sadig Mohamed Jaber Al Dar Adam, Al-Taib Abdelkarim Idris Adam, Bashir Adam Aousher Fedail, Hamid Hassan Hamid Ahmed, Malik Adam Ahmed Mohamed, Mohamed Bahar Ali Hamadeen, and Tag Al Deen Mahmoud

Abdurahman Ali guilty on a range of offences under the 1991 Criminal Act, the 1986 Arms, Ammunitions and Explosives Act and the 2001 Counter-Terrorism Act and sentenced them to death. On 20 August 2008, a counter-terrorism court sitting in Omdurman sentenced another twelve men to death on similar charges: Azrag Daldoum Adam, Yahia Fadel Abaker Adam, Musa Abdallah Ali Shugar, Mohamed Abaker Naser Hussein, Ibrahim Saleh Ali, Idriss Omar Mohamed Ahmed, Mahjoub Suleiman Adam, Naser Jibreel Adam, Abdallah Mursal Tour, Adam Ibrahim Nur Mohamed, James Bol Francis, and Adam Suleiman Abaker. The court also acquitted four defendants in this trial and referred four defendants to be tried by juvenile offender courts. The allegations the Special Rapporteurs received with regard to the detention and trial of the persons named above were very similar to those they brought to the Government's attention on 11 August 2008 in relation to another 30 persons sentenced to death on 29 and 31 July 2008. They were arrested in the days following the Justice and Equality Movement (JEM) attack on Omdurman on 10 May 2008. Following their apprehension, they were held without access to the outside world by the National Intelligence and Security Service (NISS). It would appear that they were not given access to lawyers until after the trial proceedings opened. In reaching their verdicts, the Khartoum and Omdurman counter-terrorism courts appear to have relied primarily on confessions by the defendants as evidence. Most of the defendants said they were forced to make these confessions under torture and ill-treatment and retracted them in court. No investigations were opened to investigate these allegations. One of the defendants sentenced to death by the Khartoum counter-terrorism court on 17 August 2008 is a minor. Al Sadig Mohamed Jaber Al Dar Adam is 17 years old and the court accepted his birth certificate as valid documentation of his age. It found, however, that since Al Sadig Mohamed Jaber Al Dar Adam was found guilty of hiraba, or brigandage (Article 167 of the Criminal Act), a hudud offence, he could nevertheless be sentenced to death. Article 27(2) of the Sudanese Criminal Act allows the death penalty to be applied for hudud crimes regardless of age.

292. On 10 October 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the situation of human rights in the Sudan and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding reports the Special Rapporteurs have received regarding the use of the death penalty in Southern Sudan. In this connection, the Special Rapporteurs recalled that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Based on the reports the Special Rapporteurs have received, they brought to the Government's attention their concerns with regard to capital punishment in Southern Sudan in four regards: (1) the requirement that in capital punishment cases all fair trial guarantees are rigorously observed, including particularly the right to assistance by a lawyer, (2) the prohibition of the imposition of the death penalty against offenders aged under 18 at the time of the crime, (3) limitations on judicial discretion to apply prison sentences instead of the death penalty in murder cases, and (4) conditions of detention of prisoners sentenced to death.

293. Firstly, the Special Rapporteurs respectfully recalled to the Government that in capital punishment cases the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which Sudan is a party, admits no exception. Relevant to the case at hand, these guarantees include the right of every person accused of a criminal offence "to defend himself in person or through legal assistance of his own choosing" (Article 14(3)(d) ICCPR). The Human

Rights Committee has observed that “[i]n cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings” (General Comment no. 32, CCPR/C/GC/32, para. 38). According to article 27(3) of the Interim National Constitution and article 13(3) of the Interim Constitution of Southern Sudan (ICSS) these guarantees are “an integral part” of the constitutional Bill of Rights. Where a defendant does not have legal assistance, he must be informed of this right. Where the interests of justice so require, the Government must provide a defendant with legal counsel without payment by him if he does not have sufficient means to pay for it (Article 14(3)(d) ICCPR). These guarantees are further spelled out in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Principle 5 reads: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.” Principle 6 adds: “Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.” The Special Rapporteurs understood that the right to be assisted by legal counsel was reflected in Southern Sudanese law as well. The ICSS Bill of Rights (art. 23(6)), the 2003 New Sudan Code of Criminal Procedure and the 1991 Code of Criminal Procedure all provide, though in slightly different terms, that a person accused of an offence as serious as murder has the right to be assisted by an advocate. Where he does not have sufficient means to retain a lawyer, he has the right to have legal aid assigned to him by the government and at the government’s expenses. One important element that is clearly spelled out in the international standards cited above and might not be as clear in Southern Sudanese law is that, where a person accused of a crime carrying the death penalty is not assisted by a lawyer, the investigatory and judicial authorities are under an obligation to inform him of the availability of legal aid. In practice, however, the information the Special Rapporteurs have received suggests that most of the condemned prisoners do not have legal counsel, and even more did not have legal counsel during the trial in which they were sentenced to death. In Juba Central Prison, for instance, it would appear that the following prisoners sentenced to death are not assisted by legal counsel (and most probably were not assisted during their trial): Balla Kamal Tahir, Gabriel Nyara Pio, Moses Ohiti Lowa, Charles Lokudu Remeo, Mauro Ohisa Ogotow, Mario Oburau Okoloputa, Peter Jutti Budenga, Thiplious Tongun Wusang, Abdauraman Marino Lwarene, Sejeriwa Poni Tombe, Bol Makol Malual, Gabriel Sule Jada, Joseph Ladu Kamuka, Simplisio Ataka Adelio, Tadeo Lodu wani, Bulli Jelly Kewyi, Emanuel Gift Repent, Simon Mayuong Akoon, and Lojere Lorot Loseriko. It would also most regrettably appear that Joseph Jelly Morgo, who was reportedly executed in Juba Central Prison on 27 June 2008, did not have legal counsel. Wilson Elisa Basangi, who was found guilty of murder and sentenced to death by the Western Equatoria State High Court in Yambio on 30 November 2007, and was currently detained in Yambio Central Prison, was reportedly not assisted by legal counsel at his trial and was not informed on his constitutional right to obtain legal aid. He was, at the appeals stage, assisted *pro bono* by an advocate in private practice. In Upper Nile State, Nig Mashar, Khamis Joseph Lugi, Mohamed Adeng, Wier Quench Kwangang, Abiel Otuang, Mohamed Saleh Hassan and Tut Dol Rut were all, allegedly, not assisted by legal counsel at the time of the trial in which they were sentenced to death. Two of them were reported to now have retained advocates against a fee, while the other five have been able to secure assistance *pro bono* by an advocate in private practice for the appeals stage through the intervention of the

UNMIS Human Rights Section. There were reportedly eight prisoners sentenced to death in Bentiu Central Prison in Unity State. Allegedly, none of them was represented by a lawyer at the time of trial. Two of them appeared to have secured the assistance of an advocate for the appeals proceedings. In Bor, Jonglei State, there was one condemned prisoner. He was not assisted by a lawyer at the time of his trial. In Wau, a prisoner named Jacob Makoi Majok was reportedly executed in Wau Central Prison on 24 July 2008. The nine remaining condemned prisoners include two women, Nyanthuoi Ater Matim and Akoi Bol Manding Lual and seven men: Guriguri Andrea Akot, James Nyon Koch (aged 72), Wol Akolino Akoi, Issaa Abdul Hamid, Alfred Share Guer, Lawrence Wol Mayen, and Marial Mol Kon. Issaa Abdul Hamid, who was sentenced to death in August 2007, was reportedly temporarily assisted by an advocate, but as he had no money to pay him, the advocate did not assist him throughout the trial. None of the other condemned prisoners was assisted by legal counsel at any time of the proceedings in their case. The Special Rapporteurs' information indicated that in Aweil Central Prison, three prisoners were sentenced to death: Malik Ayi, Dut Ahoey, and Makol Malong. Neither were they assisted by legal counsel at any time of the proceedings in their case, nor were they informed or otherwise aware of their right to be assisted. In Rumbek Central Prison as well, there are three condemned prisoners: Chagao Mwopor Akech, Majur Manyur Mayom, and Chol Kor Dit Majok. None of them was assisted by legal counsel at any time of the proceedings in their case. The Interim Constitution of Southern Sudan provides in Article 138(3) that the Southern Sudan Ministry for Legal Affairs and Constitutional Development was mandated to "render legal aid". According to the Special Rapporteurs' information, although the majority of the accused charged with a capital offence and of the prisoners already sentenced to death neither had a lawyer nor the mean to retain one, not one of them had received legal aid from the Ministry for Legal Affairs and Constitutional Development. The Special Rapporteurs further note that in Judicial Circular No. 3 of 21 August 2007, the Supreme Court of Southern Sudan had acknowledged the problem of numerous persons being tried on murder charges without the assistance of an advocate. The Circular also observes that "[m]any accused persons who are not represented by advocates do not make appeals against the judicial decisions passed against them simply because they are ignorant of their right to appeal. This is their legal and constitutional right which they cannot lose because they are unaware of it." The Special Rapporteurs were very encouraged by this stance of the Supreme Court of Southern Sudan, which was in line with paragraph 5 of Article 14 of the International Covenant on Civil and Political Rights, reading: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." The Special Rapporteurs highlighted two concerns they had in this respect. Both were based on the principle that the right to review of the sentence must not only be respected formally, but also be made effective. The first one, already amply discussed above, was that, in order for the right to seek review of a death sentence to be effective, the defendant must be assisted by legal counsel. As the Human Rights Committee stated in a case concerning a capital punishment case in Jamaica, "it is axiomatic that legal assistance must be made available to a convicted prisoner under sentence of death. This applies to the trial in the court of first instance as well as to appellate proceedings." (Communication No. 250/1987, *Carlton Reid v. Jamaica*, para. 11.4). Secondly, it would appear that according to Articles 251 and 255 of the 2003 New Sudan Code of Criminal Procedure, the defendant has only seven days from the date of the judgment to submit to the Court of Appeals (and thereafter, to the Supreme Court) a written statement setting forth reasons why the judgment should not be confirmed. This extremely short delay to submit the appeal could in many cases negate the effective exercise of the right to appeal against conviction. Finally, the Special Rapporteurs stressed that it was not

sufficient for a person sentenced to death to be represented by legal counsel at the appeals stage, as seems to be the case of the Malakal condemned prisoners. Where someone was sentenced to death after a first instance trial in which he was not assisted by legal counsel, a full retrial must be ordered (or the death sentence commuted). Otherwise, not only the right to a fair trial, but also the right to life will be violated.

294. Secondly, the Special Rapporteurs would also like to draw the Government attention to the fact that Article 37 (a) of the Convention on the Rights of the Child, to which Sudan is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below the age of 18. In addition, Article 6 (5) of the International Covenant on Civil and Political Rights provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age. The Special Rapporteurs understood that also the Interim Constitution of Southern Sudan provides in Article 25 (2) that “no death penalty shall be imposed on a person under the age of eighteen”. Notwithstanding these unambiguous provisions, it would appear that there were four prisoners awaiting execution detained in Juba Central Prison who had not reached the age of 18 at the time of the murder for which they have been sentenced. Their names are Joseph George Modi, Peter Stephen Wawi, Adil Osaman Gwagwe, and Peter Taban Angelo. The Special Rapporteurs have also received information that Wier Quench Kwangang, who was sentenced to death in Malakal where he remains detained awaiting his appeal, may have been under 18 at the time of the offence he was found guilty of. Malik Ayi, who was reportedly sentenced to death by the High Court in Aweil at the beginning of 2008 and was being held in Aweil Central Prison, was allegedly aged 16 at the time of the offence in June 2007. The Special Rapporteurs were moreover informed that at the time of their trial there were no juvenile courts in Southern Sudan.

295. Thirdly, according to the information the Special Rapporteurs have received, many of the prisoners awaiting execution in Southern Sudan were found guilty of murder under Article 130 of the 1991 Criminal Code. Under this provision, the death sentence is the only possible punishment for murder, unless the family of the victim forgoes retribution in kind and opts for the payment of compensation. This provision deprives the judge of the necessary discretion to tailor the sentence to the specific circumstances of the case and of the accused. Inevitably, some accused will be sentenced to death even though that sentence is disproportionate to the facts of their crimes. The Special Rapporteurs urged the Government to review all death sentences imposed under Article 130 also on this ground. They were aware that many other prisoners sentenced to death in Southern Sudan were found guilty and sentenced under Article 251 of the 2003 New Sudan Criminal Law. This provision allows the judge to impose the death sentence or life imprisonment for murder. The Special Rapporteurs were, however, concerned about Article 244 of the 2003 Code of Criminal Procedure, which states that “[i]f the accused is convicted of an offence punishable with death and the Court sentences him to any punishment other than death, the Court shall in its judgement state the reasons why sentence of death was not passed.” This provision seems to suggest that for murder the death penalty is the rule and life imprisonment the exception, and that a judge must provide special reasons why he does not impose the death penalty. Such a rule would be incompatible with the principle that, under international law, the death sentence is an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner.

296. Finally, the Special Rapporteurs were very concerned about reports regarding the conditions of detention of prisoners sentenced to death. Reports they have received indicate that

because the Prisons Service considers that the walls, roofs and security at Juba Prison are insufficient to effectively prevent escapes, condemned prisoners are shackled at their feet day and night, every day of the week and year. In Malakal, Aweil and Wau as well, all death row prisoners are shackled above the ankle. It would appear that many of the prisoners have been detained in these conditions for years. To cite two extreme cases reported to them: Mohamed Adeng has been imprisoned in Malakal since 1999, as has Enoke Poli Jacob in Juba. In this regard, the Special Rapporteurs recalled that Article 10 of the International Covenant on Civil and Political Rights provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The Special Rapporteurs also stressed that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. They urged the Government to take all necessary steps to ensure that these prisoners are prevented from escaping without recourse to inhumane measures. To conclude, only the full respect for stringent due process guarantees distinguishes capital punishment as still permissible under international law from a summary execution, which violates the most fundamental human right. The Special Rapporteurs therefore urged the Government to take all necessary steps to ensure that the rights of those sentenced to death in Southern Sudan and those facing charges for which the death penalty could be imposed were respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty was not carried out until all concerns they have raised are dispelled in their entirety. This would require, as a minimum, that: the death penalty is not carried out against anyone who has not been assisted by defence counsel during the first instance trial and all subsequent appeals proceedings; that every one charged with murder is informed of the “right to have legal assistance assigned to him or her, [...], and without payment by him or her in any such case if he or she does not have sufficient means to pay for it”, as provided in Article 14 (3) (d) of the International Covenant on Civil and Political Rights and Article 23 (6) of the Interim Constitution of Southern Sudan; and that all death sentences imposed under Article 130 of the 1991 Criminal Code, and possibly also those imposed under Article 251 of the 2003 Criminal Code in conjunction with Article 244 of the 2003 Code of Criminal Procedure, are reviewed to establish whether, on the facts of the individual case, there are no circumstances militating in favour of a lesser sentence. Under international law, including the International Covenant on Civil and Political Rights, to which Sudan is a Party and which it has incorporated into the constitutional Bill of Rights, States deciding to retain capital punishment must provide a legal aid system meeting the highest standards. The Special Rapporteurs’ understanding was that the legal aid system in Southern Sudan was currently not in operation, inter alia as a consequence of the decades long armed conflict which has ravaged the country until the Comprehensive Peace Agreement entered into force. If that was correct, the Special Rapporteurs suggested that international law requires that all executions in Southern Sudan be suspended until there was a functioning system for legal aid in capital cases.

### **Communication received**

None

### **Special Rapporteur’s comments and observations**

297. The Special Rapporteur is concerned at the total absence of an official reply to his communication dated 20 and 27 May 2008, 11 August 2008, 23 September 2009 and 10 October 2008. He remains seriously concerned at the blatant violations of fundamental fair

trial guarantees, in particular in death penalty cases. The Special Rapporteur urges the Government of Sudan to provide at the earliest possible date detailed substantive replies to the above allegations.

### Syrian Arab Republic

#### Communications sent

298. On 25 February 2008, sent a joint urgent appeal,<sup>10</sup> 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".

299. On 3 April 2008, 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 as Special Representative of the Secretary-General on the situation of human rights defenders pursuant, regarding the case of Mr. Mazen Darwish, head of the *Syrian Centre for Media Freedom and Freedom of Expression*. According to the information received, on 12 January 2008, Mr. Darwish was detained for three days after publishing a report on riots that occurred in Damascus, criticizing the alleged failure of security agencies to protect civilians killed on that occasion. After his detention, Mr. Darwish was accused of "libelling and defaming the states' bodies", following a complaint made by the police station in the Damascus suburb of Adra. He appeared before a military tribunal on 17 March, when it was decided that his trial before a military court would take place on 15 April. Concern was expressed that the arrest and detention of Mr. Darwish and the charges against him may be related to his non-violent activities in defence of human rights, in particular the exercise of his right to freedom of expression.

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<sup>10</sup> This communication has already been included in the Communications Report of 28 May 2008, A/HRC/8/4/Add.1. The Special Rapporteur has included it again in order to facilitate the reader's comprehension of the Government's reply.

300. On 23 April 2008, the Special Rapporteur sent a joint urgent appeal, together with the Vice-Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, regarding the case of Mohammed Badih al-Bab, a member of the National Organisation for Human Rights in Syria, a non-governmental organization which promotes human rights. According to the information received, on 2 March 2008 Mohammed Badih al-Bab received a summons and was subsequently arrested by military security forces in Damascus. Mohammed Badih al-Bab was in detention, but his exact whereabouts were unknown. He was denied access to a lawyer and was not allowed any visitors. No charges had been brought against him. The reasons for his arrest remain unclear, but it appeared that he received the summons following articles he has recently written, in which he criticised the Minister for Information, Mr. Mohsen Bilal. In 2000, Mr. Mohammed Badih al-Bab was sentenced to 15 years' imprisonment. He was released in 2005 following a presidential amnesty. Concerns were expressed that the arrest and detention of Mr. Mohammed Badih al-Bab might be solely connected to his peaceful activities in defending human rights and the exercise of his right to freedom of opinion and expression. In view of the reported incommunicado detention of Mohammed Badih al-Bab at an unknown place of detention, further concerns were expressed that he might be at risk of ill-treatment.

301. On 16 October 2008, the Special Rapporteur sent a joint urgent appeal, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, regarding the situation of Mr. Ziad Ramadan, aged 32. According to information received, on 20 July 2005, Mr. Ziad Ramadan was summoned for questioning by military intelligence officers in Damascus, and arrested on the same day. He was allegedly detained at the Palestine Branch of Syrian Military Intelligence since this date. It was alleged that he was not informed of the reasons for the arrest, nor of any charges against him. On 21 May 2006, Mr. Ramadan was transferred to a prison in Homs. On 21 September 2007, he was returned to the Palestine Branch, where he remained in detention. Mr. Ramadan has reportedly been able to see a lawyer, however he was not allowed to appoint the lawyer of his choice. It was alleged that, until present, he has not been brought before a court to assess the legality of his detention. Reportedly, Mr. Ramadan has a heart condition, and it was alleged that he may not have adequate access to medical care. Furthermore, he had highly restricted access to family visits. It was alleged that Mr. Ramadan was detained as a result of having worked in the same software company as Mr. Ahmed Abu Adas, an individual who had reportedly made a televised confession of responsibility for the February 2005 assassination of former prime minister of Lebanon, Mr. Rafiq al-Hariri. Concern was expressed regarding Mr. Ramadan's physical and mental condition, and notably his reported heart condition and alleged lack of adequate access to medical care and attention.

302. On 21 October 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur 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, regarding the travel ban imposed against Mr. Akhtam Naisse, a lawyer, a founding member of the *Committee for the Defense of Democratic Liberties and Human Rights in Syria (CDF)*, Director of the *Cham Centre for Democratic and Human Rights Studies* in Syria, and winner of the *Martin Ennals Award for Human Rights Defenders* in 2005. Communications were sent in relation to Mr. Akhtam Naisse by various mandate-holders on 15 November 2001, 16 February 2004, 9 March 2004, 11 June 2004, and 6 August 2004. A response from the Government was received

on 20 September 2004. According to new information received, on 14 October 2008, Mr. Akhtam Naisse attempted to travel to the United Arab Emirates but was prevented from boarding the plane at Damascus Airport. He was detained for over two and a half hours by security forces at the airport. In the United Arab Emirates he was scheduled to participate in a regional human rights forum in conjunction with the fifth session of the Forum for the Future, an annual meeting which focuses on political reform and sustainable development and is organized by the Group of Eight (G8) nations as well as Middle East and North African nations. The authorities reportedly told Mr. Akhtam Naisse that the travel ban had been imposed against him because various security forces were looking for him. Earlier this year, travel bans were imposed against various human rights defenders in Syria. For instance, between 16 and 19 April 2008, Messrs. Rasim Al Atasy, Mahmoud Maree and Ahmed Manjonah were prevented from traveling and subsequently could not attend the general meeting of the Arab Organisation for Human Rights. Concern was expressed that the imposition of the travel ban against Mr. Akhtam Naisse may be directly related to his activities in the defense of human rights. Further concern was expressed that this may form part of an ongoing trend of harassment against human rights defenders in Syria.

303. On 18 February 2009, 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 torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Mr. Hassam Hussein 'Ali, aged 31, member of the unauthorized "Kurdish Azadi Party" and member of the board of directors of the Noubhar Cultural Society, which is related the "Kurdish Azadi Party". According to the allegations received, on 3 December 2008, Military Intelligence agents arrested Mr. Hassam Hussein 'Ali. Since then he has been in detention without charge or trial, possibly at the Palestine Branch of the Military Intelligence in Damascus. His whereabouts were not officially communicated to his family. He was not allowed to communicate with the outside world.

### **Communications received**

304. On 3 April 2009, the Government replied to the letter of 25 February 2008 concerning, Ms. Aisha Afandi and Ms. Kawthar Tayfur. The Government informs that the two women were arrested for stirring up unrest in the town of Ayn al-Arab in the Aleppo governorate. They were detained in Aleppo Central Prison, in women's ward 4, where women accused of the same class of offences are held. Contrary to the allegation transmitted, the women were not held in incommunicado detention and were neither of them subjected to ill-treatment; the law safeguards their rights and deals severely with persons who violate the rights of women, even if they are in prison and on trial for various offences. The two women appeared before an Aleppo court on 20 August 2008 following an inquiry that was conducted in accordance with the due process norms laid down in the Constitution and Syrian law. The case and investigation files were deposited with the military prosecutor's office, which is the legal authority with jurisdiction for the offences with which the women were charged, namely, stirring up sectarian strife and unrest. The two women were brought to the military prosecutor's office on 21 August 2008 and were charged with the aforementioned offences. The case was filed with the chief judge of the lower military court in Aleppo before whom the two women appeared for examination on 22 August 2008. At the end of the hearing, the judge decided to discharge the women and the decision was carried out that very day. The judge continues to review the rest of the case against the two women. If the proceedings had not been conducted fairly and transparently and the two

women had received no assistance, the judge would not have released them at the first hearing. Thus, there is no truth to any of the allegations transmitted to the Office of the High Commissioner, including those concerning arbitrary detention and denial of freedom of expression and the exercise of rights. The Syrian authorities, furthermore, verified the legality of the arrest procedures and found no evidence that the rights and freedoms of the two women had been infringed or that the women had been placed in arbitrary detention or subjected to mental or physical torture or any other serious violation. The two women are Syrian nationals, who were given a legal hearing consistent with the international standards and norms laid down in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. Neither the families nor the legal representatives of the two women filed any complaints with the Syrian authorities before or after the letter from the Office of the United Nations High Commissioner for Human Rights arrived. As for the health of the two women, we should point out that the laws on prisons in the Syrian Arab Republic stipulate that health and medical care must be provided for all persons in detention. All prisoners receive free medical attention as soon as they enter prison. When Ms. Afandi arrived at the prison, the doctor of the prisoners' welfare association diagnosed her as suffering from an inflamed right ear, and treated her regularly throughout her time in detention. This was treatment that she had not received beforehand. Ms. Tayfur was diagnosed as suffering from diabetes, rheumatoid arthritis pain and chest pains. She also had a condition known as "Aleppo boil" (leishmaniasis of the skin) and received free treatment for these conditions throughout the time that she spent in prison. Contrary to the information given to the Office of the High Commissioner, she did not complain of suffering from psychological trauma or epilepsy. The Government also referred to the information at the beginning of the letter from the Office of the High Commissioner stating that Ms. Afandi and Ms. Tayfur are members of the Kurdish minority. There is no such designation in the Syrian Arab Republic; these two women are Syrian nationals and there is no reference in their identity cards or other papers, or those of any Syrian citizen, to membership of a minority or a majority. Everyone is equal before the law and no reference is ever made to a person's race, religion or confessional group.

305. On 17 February 2009, the Government replied to the urgent appeal of 16 October 2008 concerning the situation of Mr. Ziad Ramadan, a Syrian national. The Government informed that Mr. Ziad Muhammad Midhat Ramadan was born in Damascus in 1976. The letter further informed that the Government received a letter dated 23 May 2006 from the former Commissioner of the United Nations International Independent Investigation Commission, Mr. Serge Brammertz, requesting assistance in corroborating information about Mr. Ramadan and arranging an interview with him. Mr. Ramadan was assigned a lawyer, Mr. Riad Tawuz, and was interviewed by the Commission. Considering that he had disappeared in September 2004, as confirmed in a fax dated 4 October 2004 that we received from the Belgrade office of the International Criminal Police Organization (INTERPOL), and that the interview with Mr. Ramadan suggested that his testimony was important for the investigations being conducted by the Commission into the assassination of the former Prime Minister of Lebanon, Rafiq Al-Hariri, that Mr. Ramadan was wanted by many parties and that his life was at risk, he was lawfully placed in protective custody on 21 July 2005 in order to ensure that he could be presented to the Commission in a timely manner, should it request an interview with him. At that time, the Commission was continuing its investigation, with which the Government was bound to cooperate, and discussing the creation of an international tribunal to investigate the assassination of Mr. Al-Hariri, a case in which Mr. Ramadan is a material witness. Mr. Ramadan

is receiving constant medical care and he has recently been diagnosed with a congenital heart defect. He has undergone the necessary tests and a specialist has confirmed that his life is not in danger. Mr. Ramadan enjoys all his rights with regard to contact with his family and all his needs have been met. In addition to the reasons given above for the holding Mr. Ramadan in protective custody as an important witness in the international investigation into the assassination of Mr. Al-Hariri. The name of Mr. Ramadan emerged during investigations that we have been conducting showing that he has links with a terrorist organization that perpetrated acts of sabotage in the Syrian Arab Republic and Lebanon, killing a number of innocent civilians. Consequently, he must be brought before the Syrian courts once he has served as a witness in the current investigations being conducted by the Commission.

306. The Government replied to the Special Rapporteur's letters of 16 and 21 October 2008 on 17 February and 8 April 2009, respectively. However, at the time this report was finalized, the Special Rapporteur was not in a position to reflect the content of these replies from the Government as he had not received the translation of their contents from the relevant services.

### **Special Rapporteur's comments and observations**

307. The Special Rapporteur wishes to thank the Government of the Syrian Arab Republic for their replies of 17 February and 8 April 2009. However, he is concerned at the absence of an official reply to his communications of 3 and 23 April 2008 and urges the Government of the Syrian Arab Republic to provide at the earliest possible date detailed substantive replies to the above allegations. He is also looking forward to receiving a reply to his letter of 18 February 2009 in the near future.

## **Tunisia**

### **Communications envoyées**

308. Le 10 avril 2008, le Rapporteur spécial a envoyé au Gouvernement de la Tunisie, 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, la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et la Vice-Présidente du Groupe de Travail sur la détention arbitraire, un appel urgent concernant la situation de MM. Adnane Haji, secrétaire général du Syndicat de l'enseignement de base de Redeyef, Foued Khenaisi, membre de l'Union locale du travail de Redeyef, Taeïb Ben Othmane, membre du Syndicat de l'enseignement de base de Redeyef, et Boujomâa Chraïti, secrétaire général du Syndicat de la santé de Redeyef. Selon les informations reçues, le 7 avril 2008, MM. Haji, Khenaisi, Ben Othmane et Chraïti auraient été violemment interpellés par la police, au lendemain de leur participation à une réunion, à Tunis, portant sur la question du chômage des travailleurs du bassin minier de Gafsa, dans le sud-ouest de la Tunisie. Cette réunion serait intervenue dans un contexte où, depuis le début du mois de janvier 2008, un mouvement de protestation aurait vu le jour dans la région de Gafsa et environ 30 syndicalistes, étudiants et chômeurs auraient été arrêtés depuis le 6 avril 2008. M. Haji, qui souffre d'une insuffisance rénale, ainsi que MM. Khenaisi, Ben Othmane et Chraïti auraient été frappés avant d'être arrêtés. Ils auraient ensuite été transférés au commissariat de Gasfa et l'accès à leurs avocats leur aurait été refusé. Des craintes furent exprimées quant au fait que l'arrestation de MM. Haji, Khenaisi, Ben Othmane et Chraïti et les mauvais traitements dont ils auraient fait

l'objet soient liés à leurs activités de défense des droits de l'homme, et en particulier à leurs activités syndicalistes. D'autres craintes furent exprimées au sujet de l'arrestation des manifestants lors du mouvement de protestation dans la région de Gafsa.

309. Le 6 juin 2008, le Rapporteur spécial a envoyé au Gouvernement de la Tunisie, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, la Rapporteuse Spéciale sur la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la torture, un appel urgent concernant la situation de M. Slim Boukhdir, 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*. Il publie aussi des articles sur plusieurs sites Internet dont *Tunisnews* et *Kantara*. M. Boukhdir a fait l'objet d'une lettre d'allégations envoyée par le Rapporteur spécial sur l'indépendance des juges et des avocats et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression le 12 décembre 2007. Les Rapporteurs spéciaux ont accusé réception de la réponse du Gouvernement reçue le 1<sup>er</sup> février 2008. Selon les nouvelles informations reçues, depuis son incarcération à la prison de Sfax, M. Boukhdir aurait contracté la gale en raison de conditions de détention précaires, notamment l'insalubrité de sa cellule et la privation de douche depuis un mois et demi, et les soins fournis par les autorités pénitentiaires s'avèreraient insuffisants. Par ailleurs, il était allégué que les provisions que l'épouse de M. Boukhdir lui apporterait seraient confisquées par les autorités pénitentiaires. Enfin, l'avocat de M. Boukhdir et la famille ne seraient plus autorisés à lui rendre visite depuis mi-avril 2008. Des craintes furent exprimées pour l'intégrité physique et mentale de M. Boukhdir. D'autres craintes furent exprimées quant au fait que les mauvais traitements dont serait victime M. Boukhdir seraient liés à ses activités non-violentes de protection des droits de l'homme, en particulier dans l'exercice de son droit à la liberté d'opinion et d'expression.

310. Le 8 juillet 2008, le Rapporteur spécial a envoyé au Gouvernement de la Tunisie, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire et le Rapporteur spécial sur la torture, un appel urgent concernant la situation de M. Ziad Fakraoui. M. Ziad Fakraoui a été l'objet d'un appel urgent envoyé par le Rapporteur spécial sur l'indépendance des juges et des avocats et le Rapporteur spécial sur la torture, le 19 août 2005; ainsi que d'une lettre d'allégation envoyée par le Rapporteur spécial sur la torture, le 14 mai 2007. Aucune réponse à ces communications n'a été reçue. D'après de nouvelles informations reçues, le 25 juin 2008, M. Ziad Fakraoui aurait été arrêté par des agents de sécurité en civil et aurait été emmené au Ministère de l'Intérieur. La famille de M. Ziad Fakraoui serait sans nouvelles de lui. L'arrestation de M. Ziad Fakraoui ferait suite à la publication récente d'un rapport de l'organisation non-gouvernementale Amnesty International intitulé « Au nom de la sécurité : abus routiniers en Tunisie » (*In the Name of Security: Routine Abuses in Tunisia*). Ce rapport évoquerait notamment le cas de M. Ziad Fakraoui, détenu de 2005 à 2007, qui aurait subi des actes de torture le laissant sexuellement impuissant. En mars 2007, M. Ziad Fakraoui aurait informé un juge de ces actes de torture et aurait demandé qu'un médecin l'examine et que les responsables soient traduits en justice. Or, le juge aurait refusé que les allégations de M. Ziad Fakraoui soient enregistrées par le greffier et les plaintes subséquentes des avocats de M. Ziad Fakraoui déposées devant le Procureur public en avril 2007 n'auraient pas été instruites. M. Ziad Fakraoui aurait alors entamé une grève de la faim qui aurait duré 2 mois au cours desquels ses avocats et les membres de sa famille n'auraient pu lui rendre visite à de nombreuses reprises. En décembre 2007, M. Ziad Fakraoui aurait été condamné à 12 ans d'emprisonnement pour notamment appartenance à une mouvance terroriste et incitation au terrorisme. La sentence

aurait été réduite en appel et M. Ziad Fakraoui aurait été libéré le 24 mai 2008 après avoir purgé sa peine. En raison de sa détention incommunicado, de sérieuses préoccupations furent exprimées quant à l'intégrité physique et psychologique de M. Ziad Fakraoui.

311. Le 7 août 2008, le Rapporteur spécial a envoyé au Gouvernement de la Tunisie, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, un appel urgent concernant la situation de M. Abderraouf Ayadi, avocat, ancien membre du Conseil de l'Ordre des avocats et ancien secrétaire général du Conseil National pour les Libertés en Tunisie (CNLT). M. Ayadi a été l'objet de plusieurs communications envoyées par la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, le Rapporteur spécial sur l'indépendance des juges et des avocats, 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 le 13 novembre, le 27 juillet, le 4 mai 2007, le 11 novembre, le 21 octobre, le 12 mai et le 25 janvier 2005. Selon les nouvelles informations reçues, le 2 août 2008, M Abderraouf Ayadi aurait été violemment agressé par le directeur de la prison Mornagia, M. Ibrahim Mansour. M. Ayadi terminait une visite de son client, M. Mohamed Hédi Ben Said, quand le directeur de la prison a exigé de passer à la fouille sa serviette. M. Ayadi l'a refusé. Le directeur de la prison se serait ensuite jeté sur lui, aurait arraché de force sa serviette et confisqué son téléphone portable, avec l'aide de trois de ses agents. M. Abderraouf Ayadi souffre d'une entorse au poignet droit, ainsi que d'hématomes sur le corps. Par la suite, M. Ayadi a porté plainte et le barreau a publiquement dénoncé cette agression. Des préoccupations furent exprimées quant au fait que les actes de harcèlement répétés contre M. Ayadi soient liés à ses activités non-violentes de promotion et protection des droits de l'homme, et s'inscrivent dans un contexte d'intimidation et de répression systématique à l'encontre des avocats défenseurs de droits de l'homme.

312. Le 27 août 2008, le Rapporteur spécial a envoyé au Gouvernement de la Tunisie, conjointement avec la Rapporteuse spéciale sur 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, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, la Rapporteuse spéciale chargée de la question de la violence contre les femmes, y compris ses causes et ses conséquences, une lettre d'allégation concernant la situation de Mme Zakia Dhifaoui, membre de l'Association de lutte contre la torture en Tunisie, de la section de Kairouan de la Ligue tunisienne des droits de l'Homme et du Forum démocratique pour le travail et les libertés; M. Abdelaziz Ahmadi, enseignant; M. Mammam Amidi, instituteur; M. Fawzi Al Mas, technicien; M. Abdessalem Dhaouadi, enseignant; M. Kamel Ben Othmane, enseignant et M. Nizar Chebil, ouvrier. Mme Zakia Dhifaoui a fait l'objet d'un appel urgent envoyé par l'ancien 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 l'ancienne Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme le 19 octobre 2005. Selon les informations reçues, le 27 juillet 2008, Mme Zakia Dhifaoui, MM. Abdelaziz Ahmadi, Mammam Amidi, Fawzi Al Mas, Abdessalem Dhaouadi, Kamel Ben Othmane et Nizar Chebil auraient participé à Redeyef à une manifestation présentée comme pacifique dont le but était de dénoncer des actes de répression, notamment des arrestations, de la part des forces de l'ordre à l'encontre des habitants du bassin minier de Redeyev. Mme Zakia Dhifaoui aurait pris la parole au cours de cette manifestation. Le 14 août 2008, Mme Zakia Dhifaoui aurait été condamné par le Tribunal de première instance de Gafsa à huit mois de prison ferme pour «insubordination, troubles de l'ordre public, entraves à

un fonctionnaire dans l'exercice de ses fonctions, détérioration des biens d'autrui et atteinte aux bonnes mœurs». MM. Abdelaziz Ahmadi, Mammam Amidi, Fawzi Al Mas, Abdessalem Dhaouadi, Kamel Ben Othmane et Nizar Chebil auraient, quant à eux, été condamnés pour les mêmes charges à six mois de prison ferme. Des accusations de harcèlement sexuel et de menace de viol auraient été formulées au cours du procès par Mme Zakia Dhifaoui à l'encontre du chef du district policier de Gafsa, mais celles-ci n'auraient pas été retenues. De même, MM. Abdelaziz Ahmadi, Mammam Amidi, Fawzi Al Mas, Abdessalem Dhaouadi, Kamel Ben Othmane et Nizar Chebi auraient accusé ce même chef de leur avoir extorqués des aveux sous la torture, ce qui n'aurait également pas été pris en compte par le tribunal. Des craintes furent exprimées quant au fait que les condamnations de Mme Zakia Dhifaoui et MM. Abdelaziz Ahmadi, Mammam Amidi, Fawzi Al Mas, Abdessalem Dhaouadi, Kamel Ben Othmane et Nizar Chebil étaient liées à leurs activités non-violentes de protection et promotion des droits de l'homme, et ce dans l'exercice de leur droit à la liberté d'opinion et d'expression ainsi que le droit de se rassembler pacifiquement.

313. Le 12 janvier 2009, le Rapporteur spécial a envoyé au Gouvernement de la Tunisie, 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 autres peines ou traitements cruels, inhumains ou dégradants et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, un appel urgent concernant la situation de Adnane Haji, Béchir Labidi, Adel el Jayari, Tayeb Ben Othmane, Tarek Hlimi, Hassen Ben Abdallah, Maher Fajraoui, Fayçal Ben Amor, Sami Ben Ahmed dit Amid, Haroun Halimi, Ghanem Chraïti, Moudhafer Labidi, Ridha Ezzedinne, Abdessalem Hlati, Abid Klayifi, Rachid Idaoui, Fahem Boukaddouss, Boubaker Ben Boubaker, Hafnaoui Ben Othman, Mahmoud Raddadi, Hedi Bouslah, Ridha Amaïdi, Issam Fejraoui, Thamer Maghzaoui, Mouhieddine Cherbib, Mouadh Ahmadi, Abdallah Fajraoui, Mohamed Baldi, Radhouane Bouzayane, Makram Majdi, Othman Ben Othman, Mahmoud Helali, Mohsen Amidi, membres du mouvement de protestation sociale dans la région de Gafsa. M. Adnane Haji a fait l'objet d'un appel urgent envoyé par le Rapporteur spécial sur l'indépendance des juges et des avocats, l'ancien Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, le Rapporteur spécial sur la torture, l'ancienne Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et l'ancienne Vice-Présidente du Groupe de Travail sur la détention arbitraire le 10 avril 2008. Selon les informations reçues, le 11 décembre 2008, la Chambre criminelle du Tribunal de première instance de Gafsa aurait retenu les charges de «participation à une entente criminelle en vue de commettre des attentats contre les personnes et les biens, rébellion armée commise par plus de dix personnes et troubles à l'ordre public» contre les 33 personnes précitées et les aurait condamnées à des peines allant de deux ans d'emprisonnement avec sursis à dix ans et un mois de prison ferme. Cinq autres personnes auraient été relaxées dans le cadre de ce procès. Il fut allégué que ces 33 personnes n'auraient pas bénéficié d'un procès juste et équitable dans la mesure où les droits de la défense n'auraient pas été respectés. En effet, la défense n'aurait pu présenter sa plaidoirie et les prévenus n'auraient été interrogés. Par ailleurs, le verdict aurait ignoré les éléments de l'ordonnance de clôture du juge d'instruction faisant mention des stigmates physiques (traces de coups, hématomes) qu'il aurait constatés sur 10 des 38 prévenus. Les 33 personnes condamnées dans le cadre de cette affaire auraient interjeté appel et l'audience en appel se tiendrait devant la Cour d'appel de Gafsa le 13 janvier 2009. Des craintes furent exprimées quant au fait que la condamnation en première instance des 33 personnes précitées soit liée à leurs activités

non-violentes de promotion et protection des droits de l'homme. Des craintes furent également exprimées que les dysfonctionnements précités lors du procès en première instance aient compromis le principe du droit à un procès équitable. Il fut à craindre que des dysfonctionnements graves affectent également le bon déroulement du procès en appel.

### **Communications reçues**

314. Le 26 janvier 2009, le Gouvernement tunisien a répondu à la lettre d'allégation du 27 août 2008, indiquant que selon les éléments de l'instruction préparatoire diligentée par le procureur de la République de Gafsa, les prévenus Zakia Dhifaoui, Abdelaziz Ahmadi, Mammam Amidi, Fawzi Al Mas, Abdessalem Dhaouadi, Kamel Ben Othmane et Nizar Chebil ont tenté, sur fond de certains troubles enregistrés dans la région de Gafsa, sud de la Tunisie, de transformer le mouvement de contestation pacifique en une véritable rébellion comme l'indiquent les actes d'agression et de voies de fait contre les agents de l'ordre ainsi que l'installation de barricades sur les voies publiques. Il est établi que les prévenus susvisés avaient pris, dans ce cadre, le 27 juillet 2008, la tête d'une manifestation au cours de laquelle ils ont procédé à l'obstruction de la voie publique devant toute circulation en y dressant des barricades par l'utilisation de pneus, de vide-ordures et de grosses pierres. Les forces de l'ordre, intervenant pour rouvrir la voie publique à la circulation et assurer la sécurité des personnes et des biens, avaient essuyé des jets de pierres et des coups de bâtons. Une voiture de police a été gravement endommagée (vitres brisées et traces de coups de pierres sur la tôle). La sécurité publique s'était trouvée, de ce fait, gravement menacée. Contrairement à ce qui est allégué, les suspects, appréhendés en flagrant délit, n'ont subi aucune forme de mauvais traitement lors de leur arrestation. Ils ont été conduits au siège de la police judiciaire où ils ont été interrogés sur les faits qui leur sont reprochés. Le procureur de la République a été, immédiatement, avisé de l'enquête ainsi que de la mise des prévenus en garde à vue conformément à l'article 13 bis du code de procédure pénale. L'enquête préliminaire menée par la police judiciaire s'était, donc, effectuée en toute légalité et sous le contrôle de la justice. Après clôture de l'enquête préliminaire, les prévenus ont déférés au parquet qui a décidé d'émettre des mandats de dépôt à leur encontre et de les renvoyer devant la chambre correctionnelle pour répondre des chefs d'inculpation qui leur sont reprochés. Il est à noter que les prévenus ont avoué lors de leurs interrogatoires avoir procédé à l'obstruction de la voie publique devant la circulation et jeté des pierres sur une voiture des forces de l'ordre. Le procès s'est tenu publiquement devant le tribunal de première instance de Gafsa. Il a été procédé à l'interrogatoire d'usage des prévenus en présence de leurs avocats. Contrairement à ce qui est allégué, le tribunal n'a nullement refusé de consigner les allégations de mauvais traitement des prévenus dans les procès-verbaux d'audience, ceux-ci font état effectivement d'allégations se rapportant à des aveux extorqués sous la contrainte, outre des soi-disant menaces de viol qui auraient été proférées contre Zakia Dhifaoui. Le tribunal a ensuite recueilli les plaidoiries des avocats. Après délibéré, le tribunal de première instance de Gafsa a déclaré les prévenus coupables des faits qui leur sont reprochés. Zakia Dhifaoui a été condamnée à huit mois d'emprisonnement ; Abdelaziz Ahmadi, Mammam Amidi, Fawzi Al Mas, Abdessalem Dhaouadi, Kamel Ben Othmane et Nizar Chebil ont été condamnés quant à eux à six mois d'emprisonnement chacun. Sur exercice de leur droit d'appel, les prévenus ont été de nouveau jugés par la Cour d'appel de Gafsa qui a décidé un non-lieu pour l'ensemble des prévenus des chefs d'inculpation de rébellion commise par plus de dix personnes non armées, outrage à fonctionnaire public à l'occasion de l'exercice de ses fonctions et atteinte publique aux bonnes mœurs. S'agissant des autres chefs d'inculpation, la Cour d'appel a décidé de ramener la peine de Zakia Dhifaoui de 8 mois à 4 mois et demi d'emprisonnement. Quant aux autres

prévenus, ils ont bénéficié de réduction de peines. Fawzi à 3 mois d'emprisonnement; Abdelaziz Ahmadi, Kamel Ben Othmane et Nizar Chebil ont bénéficié d'un sursis à l'exécution. Les prévenus ont attaqué par voie de cassation le jugement de condamnation rendu à leur encontre. Le pourvoi a été rejeté en la forme; les avocats des prévenus s'étant limités à présenter leurs pouvoirs sans les accompagner des mémoires indiquant les moyens du pourvoi et les griefs à l'encontre de la décision attaquée comme l'exige l'article 263 bis du code de procédure pénale. Le jugement de condamnation est ainsi passé en force de chose jugée. Le 5 novembre 2008, Zakia Dhifaoui a bénéficié d'une libération conditionnelle décidée par le juge d'application des peines. Les autres prévenus ont, également, été libérés soit après avoir purgé leurs peines soit en vertu du sursis à l'exécution accordé à certains d'entre eux.

315. Aucun des prévenus ou des membres de leurs familles ou de leurs avocats n'a déposé plainte pour mauvais traitement : aucune plainte pour menace de viol ou harcèlement sexual n'a été déposée par Zakia Dhifaoui ou en son nom, aucune plainte pour mauvais traitements n'a été enregistrée au nom des autres prévenus. Il y a lieu, toutefois, de souligner que les autorités tunisiennes ne subordonnent pas l'ouverture d'une enquête, pour mauvais traitement, au dépôt d'une plainte par l'intéressé. En effet, le ministère public est habilité à procéder d'office à l'ouverture d'une enquête chaque fois qu'il y aurait motifs raisonnables laissant croire que des actes de mauvais traitements aient été commis et ce, en application de l'article 9 de la Convention des Nations Unies contre la torture et d'autres peines ou traitements cruels, inhumains ou dégradants dûment ratifiée par la Tunisie en vertu de la loi du 11 juillet 1988. En l'espèce, les autorités tunisiennes n'ont constaté aucun «motif raisonnable» laissant croire qu'un mauvais traitement aurait été commis. Les procès-verbaux de la garde à vue font état de l'information donnée aux prévenus de leur droit de demander d'être soumis à examen médical, ceux-ci avaient déclaré ne pas en avoir besoin. En outre, aucun des membres de leurs familles n'avait présenté de demande dans ce sens. Cela dit, les prévenus ont été soumis à un examen médical lors de leur première admission, sur mandat de dépôt du Procureur de la République, au sein de l'unité pénitentiaire. Cet examen n'a fait que confirmer l'absence de toutes traces de violence, physique ou psychologique, en relation avec un soi-disant mauvais traitement qu'ils auraient subi. Comme sus-indiqué, le tribunal de première instance de Gafsa a consigné les allégations de mauvais traitement présentées par les prévenus dans les procès-verbaux d'audience. Après examen de ces allégations, le tribunal a estimé qu'elles étaient dénuées de tout fondement. De telles allégations étaient manifestement dictées par la volonté de certains prévenus de motiver leur rétractation quant à leurs aveux consignés dans les procès-verbaux établis par les officiers de police judiciaire. Le système tunisien offre à toute personne qui prétend être victime de mauvais traitements tout un arsenal juridique lui permettant de faire valoir ses droits. Il faut rappeler, à cet égard, que la Tunisie a ratifié sans aucune réserve la Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants. Elle a ainsi reconnu la compétence du Comité contre la torture pour recevoir et examiner les communications présentées par ou pour le compte des particuliers relevant de sa juridiction qui prétendent être victimes de violation des dispositions de la Convention. Les dispositions de ladite Convention ont été transposées en droit interne. L'arrestation des prévenus est compatible avec les instruments internationaux de protection des droits de l'homme. Les données de l'affaire montrent que cette arrestation a été imposée par des atteintes de leur part à la sécurité des personnes et des biens et qu'elle obéit aux garanties internationales consacrées aux personnes, provisoirement, privées de leur liberté. En procédant à l'obstruction des voies publiques et en jetant des pierres sur les forces de l'ordre, les prévenus susvisés ont transgressé le

droit de réunion «pacifique» et se sont mis dans une situation d'infraction de la loi. Les poursuites déclanchées contre eux s'inscrivent dans le cadre et ne représentent, par conséquent, aucun rapport avec la défense des droits de l'homme. On ne peut nullement prétendre qu'un prévenu, en jetant des pierres sur les forces de l'ordre et en procédant à l'obstruction des voies publiques et à leur fermeture à toute circulation défend les droits de l'homme. Ces faits portent gravement atteinte à l'ordre public et tombent sous le coup de la loi pénale. Il est donc impératif d'attirer l'attention sur la gravité de prendre la défense des droits humains pour prétexte afin de s'adonner de manière délibérée à la violation des normes élémentaires visant à garantir la liberté de la circulation et l'intégrité physique des personnes. Etant justifiée par la commission de faits délictueux, l'arrestation des prévenus ne viole aucun des instruments internationaux de protection des droits de l'homme. Cette arrestation a été, pour le reste, entourée de toutes les garanties consacrées aux personnes, provisoirement privées de leur liberté. Finalement, la garde à vue des prévenus lors de l'enquête préliminaire menée par les officiers de police judiciaire est une mesure entourée, en droit tunisien, par toutes les garanties consacrées par l'article 9 du Pacte international relatif aux droits civils et politiques. Toute irrégularité qui aurait entaché l'arrestation des prévenus leur ouvre la possibilité de demander l'annulation de la procédure sur la base de l'article 199 du code de procédure pénale. En tout état de cause, ledit article 199 étant texte d'ordre public, le tribunal saisi de l'affaire n'aura certainement pas manqué de contrôler automatiquement la régularité de la procédure et éventuellement de soulever d'office tout motif de nullité qui aurait pu être décelé.

316. Le 4 février 2009, le Gouvernement de la Tunisie a répondu à l'appel urgent du 10 avril 2008, indiquant qu'aucune personne portant l'identité de «Foued Khenaisi», visée dans la communication, ne fait l'objet de poursuites judiciaires. La consultation des actes de procédure, dressés suite aux troubles enregistrés dans la région de Gafsa, démontre que l'identité susvisée ne correspond à aucune des personnes impliquées dans ladite procédure. S'agissant des prévenus Adnane Haji, Taieb Ben Othmane et Boujhemaa Chraïti, il convient de préciser que selon les éléments de l'instruction préparatoire diligentée par le Procureur de la République de Gafsa, une entente s'est constituée entre lesdits prévenus et autres, sur fond de certains troubles enregistrés dans la région de Gafsa, sud de la Tunisie, afin d'appeler à la désobéissance publique transformant ainsi le mouvement de contestation pacifique en une véritable rébellion comme l'indique la diffusion de tracts d'incitation à la commission d'acte d'agression et des voies de fait contre les agents de l'ordre, la fabrication et l'utilisation de cocktails Molotov, de barres de fer et de bâtons ainsi que de l'installation de barricades sur les voies publiques aussi bien que routières et ferroviaires. Les prévenus avaient effectivement mis leur plan à exécution se mettant à la tête d'une manifestation de plusieurs dizaines de personnes au cours de laquelle les agents de l'ordre public étaient la cible de cocktails Molotov et de jets de pierre provoquant ainsi des lésions corporelles à plusieurs d'entre eux. Les édifices, aussi bien publics que privés, les voitures et les vitrines de commerce n'ont pas été épargnés subissant également des dégâts graves. Il s'en est suivi un état de panique parmi les populations de la région de Gafsa dont la sécurité était bel et bien gravement menacée. Contrairement à ce qui est allégué, les prévenus n'ont subi en aucune manière de mauvais traitements aussi bien lors de leur arrestation que pendant leur interrogatoire, par la police judiciaire, sur les faits qui leur sont reprochés. Le Procureur de la République a été, immédiatement, avisé de l'enquête préliminaire en cours et de la mesure de garde à vue décidée à l'encontre des prévenus pour une première période de 3 jours et ce, conformément aux articles 11 et 13 bis du code de procédure pénale. Une prolongation de 3 jours supplémentaires a été décidée par ordonnance écrite et motivée du Procureur de la

République, pour certains des prévenus, dictée par les besoins de l'enquête. L'enquête préliminaire menée par la police judiciaire s'est donc effectuée en toute légalité sous le contrôle de la justice. La garde à vue des prévenus lors de l'enquête préliminaire menée par les officiers de police judiciaire est une mesure entourée, en droit tunisien, par toutes les garanties consacrées par l'article 9 du Pacte international relatif aux droits civils et politiques.

317. Dès clôture de l'enquête préliminaire, le procès verbal a été transmis au ministère public qui a décidé de la libération des prévenus gardés à vue et ordonné un complément d'information. Une instruction préparatoire, confiée à l'un des juges d'instruction près le tribunal de première instance de Gafsa, a été par la suite ordonnée par le réquisitoire du Procureur de la République en date du 20 juin 2008 aux fins d'instruire sur les faits reprochés aux prévenus et procéder à tous les actes nécessaires à la manifestation de la vérité. L'ouverture d'une information confiée à un magistrat constitue une garantie supplémentaire pour les prévenus, eu égard, d'une part, à son caractère inquisitoire offrant au prévenu, outre la présence à ses côtés de son avocat, la possibilité de contester les preuves à charge et par conséquent de se disculper, et par le fait, d'autre part, que toutes les ordonnances du juge d'instruction sont susceptibles d'appel devant la chambre d'accusation, agissant, selon les cas, en tant que second degré d'instruction ou chambre d'appel, ses ordonnances étant à leur tour susceptibles de pourvoir en cassation. Le juge d'instruction en charge du dossier a décidé, après interrogation des prévenus en présence de leurs avocats, en date du 23 juin 2008 de mettre en détention préventive Adnane Haji et Taieb Ben Othmane. Les détenus Adnane Haji et Taieb Ben Othmane jouissent, en prison, du droit de recevoir la visite de leurs avocats et des membres de leurs familles conformément à la réglementation en vigueur et sans restriction aucune. Dans le cadre de l'instruction préparatoire, le juge d'instruction en charge du dossier a procédé notamment à: l'audition du représentant de la municipalité de «Redeyef» qui a déclaré que les manifestants ont gravement endommagé les biens communaux notamment plusieurs poteaux d'éclairage public, des horloges publiques, un grand nombre de plaques de signalisation routière, presque tous les bancs publics, la barrière de protection d'un pont ainsi que les pavés sur de longues parties de la voie publique. Il a ajouté que les premières estimations des dommages s'élèvent à 160 000 dinars tunisiens; l'audition de 7 agents de l'ordre ayant présenté chacun des expertises médicales faisant état de blessures et de traces de violence occasionnées par des jets de pierres et des coups de bâton; le constat de dommages occasionnés à 20 voitures des forces de l'ordre (vitres brisées et traces de coups de pierres sur la tôle); l'interrogatoire des prévenus en présence de leurs avocats; la saisie d'un grand nombre de bâtons de grande taille, de cocktails Molotov et de tracts d'incitations à la violence. Plusieurs dommages à des édifices publics et privés ont également été observés. Après accomplissement de tous les actes nécessaires à la manifestation de la vérité, le juge d'instruction a procédé à la clôture de l'information et a ordonné le renvoi des prévenus devant la chambre d'accusation avec un exposé détaillé de la procédure et une liste complète des pièces saisies. Le juge d'instruction a notifié l'ordonnance de renvoi devant la chambre d'accusation à chacun des prévenus. La garantie du double degré de juridiction au stade de l'instruction étant consacrée en droit tunisien, les prévenus ont décidé d'interjeter appel, devant la chambre d'accusation, de l'ordonnance de renvoi rendue à leur encontre par le juge d'instruction. Saisie du dossier, la chambre d'accusation a décidé le rejet du recours en appel et le renvoi des prévenus Adnane Haji, Taieb Ben Othmane et Boujemaa Chraïti devant la juridiction compétente pour répondre des chefs d'accusation suivants: Affiliation à une bande et participation à une entente dans le but de préparer et de commettre un attentat contre les personnes et les propriétés; Fourniture de lieux de réunion et de contribution pécuniaire aux membres d'une bande de malfaiteurs; Participation à

une rébellion armée par plus de dix personnes au cours de laquelle des voies de fait ont été exercées sur un fonctionnaire dans l'exercice de ses fonctions; obstruction à la circulation sur les voies publiques; dommage volontaire à la propriété d'autrui; fabrication et détention sans autorisation d'engins incendiaires; jets de pierres sur les propriétés d'autrui; distribution, mise en vente, exposition au regard du public, détention en vue de la distribution de tracts et de bulletins de nature à porter atteinte à l'ordre public; collecte de fonds sans autorisation; bruit et tapage de nature à troubler la tranquillité des habitants.

318. Le droit tunisien consacre une garantie supplémentaire pour le prévenu en lui reconnaissant le droit de se pourvoir en cassation contre l'arrêt de la chambre d'accusation rendu à son encontre. Les prévenus ont exercé ce recours après que l'arrêt de la chambre d'accusation leur a été notifié. L'affaire a été examinée par la Cour de Cassation qui n'a décelé dans la procédure d'instruction aucune violation de la loi ou atteinte aux droits de la défense et a, par conséquent, décidé le rejet du pourvoi. Le procès des prévenus s'est tenu publiquement en première instance devant le tribunal de première instance de Gafsa. Lors de cette audience, le tribunal a recueilli la constitution des avocats des prévenus puis a donné suite à la demande de libération de huit d'entre eux et au renvoi de l'affaire, sur demande des avocats, à l'audience du 11 décembre 2008 pour leur permettre de préparer leurs moyens de défense et poursuivre l'examen de l'affaire. Dès le début de l'audience, certains avocats de la défense ont affiché leur hostilité au respect de la procédure telle que prévue par la loi s'opposant à la poursuite normale de l'examen du dossier, appelant leurs clients à refuser tout interrogatoire se limitant par la même à la présentation de demandes formelles relatives à un nouveau report de l'affaire et à la demande d'audition de témoins. Appelés par le tribunal à présenter leurs plaidoiries afin que leurs demandes formelles soient examinées en même temps avec l'examen du dossier quant au fond, ces avocats s'y sont refusés. Le tribunal a dû alors renvoyer l'affaire en délibéré. Après délibéré, le tribunal a rendu tard son verdict décidant de la relaxe de 5 des prévenus condamnant les autres prévenus à des peines allant de deux ans d'emprisonnement avec sursis, à 10 ans et un mois d'emprisonnement ferme du chef d'entente criminelle portant atteinte aux personnes et aux biens et rébellion armée commise par plus de dix personnes au cours de laquelle des voies de faits ont été exercées sur des fonctionnaires dans l'exercice de leur fonction, jet de pierres sur les propriétés d'autrui et bruit et tapage de nature à troubler la tranquillité des habitants ; les autres chefs d'accusation ayant été par ailleurs considérés comme faisant partie intégrante desdits chefs d'inculpation dans le cadre du concours d'infractions. Le principe du double degré de juridiction en matière criminelle étant garanti par le droit tunisien, les prévenus condamnés ont décidé d'exercer ce droit de recours en attaquant par la voie de l'appel les jugements rendus à leur encontre. L'affaire est actuellement enrôlée devant la Cour d'appel de Gafsa. Aucun des prévenus n'a jamais fait l'objet de torture ou de mauvais traitements. En effet, aucun des intéressés ou des membres de leurs familles ou de leurs avocats n'a déposé une plainte pour mauvais traitements. D'ailleurs, Adnane Haji a déclaré au juge d'instruction, en réponse à une question qui lui a été posée par son avocat, n'avoir subi aucun mauvais traitement lors de son arrestation. Il y a lieu, toutefois, de souligner que les autorités tunisiennes ne subordonnent pas l'ouverture d'une enquête, pour mauvais traitements, au dépôt d'une plainte par l'intéressé. En effet, le ministère public est habilité à procéder d'office à l'ouverture d'une enquête chaque fois qu'il y aurait motifs raisonnables laissant croire que des actes de mauvais traitements ont été commis et ce, en application de l'article 9 de la Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants dûment ratifiée par la Tunisie en vertu de la loi du 11 juillet 1988. En l'espèce, les autorités n'ont constaté aucun «motif raisonnable» laissant croire

qu'un acte de mauvais traitement a été commis. Les procès verbaux de la garde à vue font état de l'informatin donnée aux prévenus de leur droit de demander d'être soumis à examen médical, ceux-ci avaient déclaré ne pas en avoir besoin. En outre, aucun des membres de leurs familles n'avait présenté de demande dans ce sens. Ce qui révèle le caractère infondé des allégations de mauvais traitements formulés par les prévenus. Cela dit, les prévenus ont été soumis à un examen médical lors de leur première admission, sur mandat de dépôt du Procureur de la République, au sein de l'unité pénitentiaire. Cet examen n'a fait que confirmer l'existence de toutes traces de violence, physique ou psychologique, en relation avec un soi-disant mauvais traitement qu'ils auraient subi. Par ailleurs, le système juridique tunisien offre à toute personne qui prétend être victime de mauvais traitement tout un arsenal juridique lui permettant de faire valoir ses droits. Il a été précédemment démontré que les prévenus n'ont jamais été mis en cause pour des faits en rapport avec des activités touchant de près ou de loin à la défense des droits de l'homme mais pour des faits érigés en infraction par la loi ayant trait au port d'armes, fabrication de cocktails Molotov, agression des agents de l'ordre et détérioration des biens publics et privés. Aucun des chefs de poursuite susvisés ne se rapprote à des activités en rapport avec une quelconque participation à des contestations pacifiques ou défense des droits de l'homme. On ne peut aucunement dire qu'un prévenu détenant des armes, fabriquant des cocktails Molotov et agressant physiquement les agents de l'ordre défend les droits de l'homme et exerce sa liberté de manifester. La défense des drois de l'homme ne se fait pas par jet de pierres et cocktails Molotov et voies de fait associés à l'usage de bâtons et barres de fer outre les barricades et l'obstruction faite à la liberté de circulation des personnes sur les voies ouvertes à la circulation publique.

319. Le 31 mars 2009, le Gouvernement de la Tunisie a répondu à l'appel urgent du 12 janvier 2009. Le Gouvernement a repeté les faits et arguments enoncés dans la lettre du 4 février 2009. Le Gouvernement rajoute que, saisie du recours, la cour d'appel de Gafsa a commencé, lors d'une première audience tenue le mardi 13 janvier 2009, par appeler les prévenus afin de vérifier leurs identités et de procéder à leur interrogatoire avant de recueillir les constitutions d'avocats. Certains des avocats ont sollicité le report de l'affaire afin de préparer les moyens de défense appropriés de leurs clients. Après délibéré, la cour a décidé de donner suite à la demande de la défense renvoyant l'affaire à l'audience du 3 février 2009. Au cours de cette audience, la cour a tout d'abord procédé à l'interrogatoire des prévenus. Elle a ensuite donné la parole aux avocats qui ont présenté les moyens jugés utiles à la défense de leurs clients. Au terme de ces plaidoiries et après délibéré, la cour a rendu son verdict, mercredi 4 février 2009, revoyant à la baisse les peines prononcées à l'encontre de tous les prévenus, non en état de fuite. Le recours en cassation étant garanti par le droit tunisien, les prévenus condamnés ont exercé ce droit de recours en attaquant par la voie de cassation les jugements rendus à leur encontre.

#### **Commentaires et observations du Rapporteur spécial:**

320. Le Rapporteur spécial remercie le Gouvernement de la Tunisie pour les réponses du 26 janvier, 4 février 2009 et 31 mars 2009.

321. Le Rapporteur spécial regrette de devoir constater qu'il n'a reçu du Gouvernement de la Tunisie aucune réponse aux lettres du 6 juin, 8 juillet et 7 août 2008. Il invite le Gouvernement instamment à lui transmettre au plus tôt des informations précises et détaillées en réponse à ces allégations.

## Turkey

### Communication sent

322. On 27 August 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Abdullah Öcalan (subject of a previously transmitted communication, E/CN.4/2000/9, para. 1058-1059), detained in Imrali Island High Security Closed Prison, since 15 February 1999. According to the allegations received, the total isolation of Mr. Öcalan-the sole inmate at Imrali Island-for almost ten years has resulted in severe deterioration of his mental health. Results of psychiatric examination have showed that this deterioration is linked with situations of chronic stress and prolonged social and emotional isolation, along with feelings of abandonment and disappointment. Mr. Öcalan inhabits a 12 square meter cell with a table, chair, bed, wash basin, toilet and a shower cabin. He was confined to his cell for 23 hours per day under round-the-clock video surveillance. Except for consultations, he had no access to the adjoining room. The exercise yard, which he could use for one hour per day is 45 square meters, covered by wire netting, and was surrounded by a 4 m high wall. He had no access to basic fitness or sports equipment. There was no availability of other types of activities, nor access to a television. Contact with prison staff was minimal and perfunctory. Visits by his lawyers were restricted to Wednesdays only and are recorded. Although he was allowed two visits per month (one separating panel visit and one table visit, each of one hour's duration on a Wednesday), it was reported that table visits were effectively denied because of the restricted class of visitors permitted. He did not have monitored access to a telephone. According to the European Committee for the Prevention of Torture, "there had been no favourable response from the Turkish authorities to the various recommendations made by the CPT as early as 1999, and subsequently expanded on, to alleviate the harmful effects of his detention" (Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 22 May 2007, CPT/Inf (2008) 13)". According to Special Rapporteurs, the weight of accumulated evidence to date points to the serious and adverse health effects of the use of solitary confinement. The key adverse factor was that socially and psychologically meaningful contact was reduced to the absolute minimum, to the point that it was insufficient for most detainees to remain mentally well-functioning. Regardless of the specific circumstances of its use, effort was required to raise the level of social contacts for prisoners: prisoner - prison staff contact, allowing access to social activities with other prisoners, allowing more visits, and providing access to mental health services.

### Communication received

323. On 27 October 2008, the Government replies to the allegation letter of 27 August 2008, stating that the recent allegations constitute another attempt by the supporters of the terrorist organization PKK/KONGRA-GEL to bring this matter to the international agenda by exploiting the UN human rights mechanisms. The Government also included an information note to his reply, stating that the European Committee for the Prevention of Torture (CPT) is the competent and independent body of the Council of Europe which monitors the implementation of the provisions of the "European Convention for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment". The CPT has been closely monitoring the imprisonment and health

conditions of convict Öcalan. CPT reports on the detention conditions are all published with the consent of the Turkish Government. The European Court of Human Rights, in its judgment on 12 May 2005, has already declared the imprisonment conditions of Öcalan to be in conformity with the requirements of the European Convention on Human Rights and international law. The Grand Chamber of the Court has occurred with the fact that Öcalan's "detention poses exceptional difficulties for the Turkish authorities" and that "it is understandable that the Turkish authorities should have found it necessary to take extraordinary security measures to detain Öcalan". The Court further decided that "Öcalan cannot be regarded as being kept in sensory isolation or cellular confinement". Öcalan enjoys the basic rights accorded to all inmates in high security closed prisons in Turkey. These include access to means of redress, health and psycho-social services, outdoor privileges, as well as books, newspapers, periodicals and radio. Receiving visits, consulting with legal representatives, establishing communication with the outside world through letter and telegram is also available. As to consultations with his representatives, between 11 March 1999 and 11 June 2008, Öcalan received 326 visits from a total of 1055 visitors. Out of 326 visits, 324 were by his legal representatives including foreign lawyers, amounting to 1041 visitors. The remaining 14 visitors were 8 officials, visiting him twice and 6 interpreters who were accompanying foreign lawyers. Moreover, the convict met his sisters and brothers 135 times at 108 visits between 2 April 1999 and 30 April 2008. International law, guidelines and practices regarding the execution of penal sentences show that it is suitable and common to detain dangerous criminals in high security institutions. In countries such as Germany, France, Italy, the UK, the Netherlands, Belgium, Norway, Sweden, Denmark, Switzerland, Spain, Portugal and Austria to name a few, dangerous criminals are also detained alone in maximal security cells where extraordinary security measures are applied. According to Recommendation R(82)17 and its explanatory memorandum concerning dangerous criminals adopted by the Committee of Ministers of the Council of Europe, activities of such prisoners can be restricted for the security of the prison and they can be detained in single rooms separated from the prison community. Article 67, 68, and 69 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provide that some convicts by reason of their criminal records or bad character may be separated from other convicts and this can be done within the same institution or in separate institutions. In light of the foregoing, the allegation that Öcalan is kept in isolation remains baseless.

### **Special Rapporteur's comments and observations**

324. The Special Rapporteur wishes to thank the Government of Turkey for its reply of 27 October 2008.

## **Uganda**

### **Communication sent**

325. On 12 August 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Usaam "Auf" Mukwaya, Onziema Patience, Valentine Kalende, and Julian "Pepe" Onziema, all members of Sexual Minorities Uganda (SMUG), a local organization advocating on behalf of Uganda's lesbian, gay, bisexual, and transgender (LGBT) people and on HIV/AIDS issues in Uganda; and Nikki Mawanda, programme coordinator of Transgender, Intersex, Transsexual

(TIT), an organization that supports the needs of transgender, transsexual, and intersex Ugandans. According to the allegations received, on 4 June 2008, police arrested Usaam Mukwaya, Onziema Patience, and Valentine Kalende in Kampala, after a protest at the 2008 “HIV/AIDS Implementers Meeting.” The activists were protesting against statements made by Kihumuro Apuuli, director general of the Uganda AIDS Commission, who on 2 June declared that “gays are one of the drivers of HIV in Uganda, but because of meagre resources we cannot direct our programmes at them at this time.” Police took the three activists to the Jinja Road Police Station and detained them until 6 June. Authorities finally released the activists on bail after charging them with criminal trespass, under Section 302 of the Uganda Penal Code, despite the fact that sponsors of the Implementers Meeting had invited the activists to attend the conference. The defendants last appeared before a Kampala court on 25 July, where several witnesses of the State (mainly police officers) and the defendants were cross-examined. The judge adjourned the hearing until 1 August. At previous hearings held on July 9 and 10, the judge adjourned the case following the public prosecutor’s request to give police additional time to locate new witnesses. After the court hearing, a patrol car stopped the taxi Mukwaya was riding in and four men identifying themselves as police officers, three of them with uniforms and the fourth with plain clothes, detained him and put him in the police’s pickup truck. The police officers drove towards Jinja Road where a civilian car with tinted screens was waiting for them parked in front of Shoprite. Police officers forced Mukwaya into the other car with three other policemen; two wore suits and one wore a police uniform. The men drove around for about 30 minutes and took Mukwaya to an undisclosed location. Two female and one male police officer were waiting. The police confiscated Mukwaya’s mobile phone, which contained contact names and numbers of members of SMUG and other LGBT rights organizations. The police asked Mukwaya if he was Nikki, when he said he was not they asked him his name. The three police officers then pushed him through a dark corridor into a room where they made him sit on a chair. Mukwaya, 26, saw four other men around his age in the room. One had a broken leg and the other three appeared to have been beaten. One of the women officers scraped his knuckles with a razor-like object. His abductors asked him questions in Luganda, a local language, about the activists’ funders and supporters, and about his own role “among the homosexuals.” They also demanded information about Pepe and Nikki. They demanded the address of the SMUG office, as well as the residence and office of Mukwaya’s lawyer. Before dawn, they forced him to strip to his underwear, asked him if he was a man or a woman, and made him walk around the room in his underwear. In the room, there was a machine that suspended above a cushioned bench, and a prisoner’s arms are restrained by extensions alongside the device. As it is lowered by a switch, the extensions stretch the prisoner’s arms. Mukwaya was ordered by a policeman to lie on the bench face-up, and threatened that he should provide information on the organization’s source of funds. Mukwaya said nothing and his arms were stretched, leaving him with intense pain. After about 15 minutes, the machine was turned off and he was asked how much he was paid to be a homosexual. When he did not answer, they left him sleeping on the bench. The following day, 26 July, the police dropped Mukwaya off at Mulago round-about in central Kampala. On 28 July, activists accompanied Mukwaya to file an official complaint before the Uganda Human Rights Commission (UHRC). He also visited a doctor who documented the ill-treatment. On 29 July he went to the African Centre for Torture Victims (ACTV) to receive psychological support. As of today, police have not detained the people responsible for Mukwaya’s torture. Concern was expressed that Usaam Mukwaya, Onziema Patience, Valentine Kalende, and Julian Onziema, and Nikki Mawanda may be at risk of torture or other forms of ill-treatment. Concern was also expressed in regard to the physical and psychological integrity of

Usaam “Auf” Mukwaya. Further concerns were expressed that the arrests and detention of Usaam “Auf” Mukwaya, Onziema Patience, Valentine Kalende, Julian Onziema and Nikki Mawanda might be solely connected to the reportedly non-violent exercise of their right to freedom of opinion and expression, of assembly and of association.

### **Communication received**

None.

### **Special Rapporteur’s comments and observations**

326. 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 a detailed substantive answer to the above allegations.

## **United Arab Emirates**

### **Communications sent**

327. On 20 October 2008, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on violence against women, its causes and consequences, regarding the case of Ms. Fatima Zahra Moussa, a Moroccan national, alleged victim of rape in Dubai in July 2007. According to the information received, Ms. Moussa started working in the United Arab Emirates (UAE) in 2005, and in Dubai on 17 April 2007. A few days after moving to Dubai from Abu Dhabi, Ms Moussa got acquainted with two Moroccan men who were facing economic hardship and to whom she ended up providing shelter at her apartment. In July 2007, one of the two men, Mr Youssef Ahmada, raped her. Afterwards, the rapist called Ms. Moussa and threatened to kill her if she reported the rape to the police. Later on, two of his friends, Mr Salim Al Wazzani and Mr Rashid Haboush also threatened to harm Ms Moussa and her family in Morocco if she ever reported the rape incident to Dubai Police. Ms Moussa had her contract in Dubai terminated shortly after. As she received another job offer in Lebanon, she left Dubai on 26 August 2007 to begin her new work, without reporting the rape to the police out of fear. In November 2007, Ms Moussa returned to Dubai and filed a complaint for rape and threats at the Qusais police station. The three suspects were arrested on the same day and later referred to the Dubai Public Prosecutor. The Prosecutor interrogated the three men but eventually released them without interrogating the victim or the witnesses. In his non-suit decision on case 19203/2007, the chief of the 1st Deira Prosecutor’s Office alleged that the complainant’s having allowed the perpetrator to live in her apartment and prior loss of virginity made the allegation of rape unlikely. In April 2008, Ms Moussa’s attorney filed a complaint with the Dubai Public Prosecutor to ask him to interrogate witnesses and to reconsider the decision not to prosecute the suspects. He also questioned the legal basis for considering the fact that Ms Moussa was no longer a virgin at the time of the rape as a ground for not prosecuting the man she identified as her rapist. Concern was expressed in relation to the way the Prosecutor’s Office has handled Ms Moussa’s case.

328. On 4 February 2009, 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 torture and other cruel, inhuman

or degrading treatment or punishment, regarding the case of Mr. Khellil Abdurahmane Abdelkarim Al Junahi, born 1971 in Bahrain, citizen of the United Arab Emirates. According to the information received, Mr. Al Junahi was arrested by authorities of the United Arab Emirates some time on or after 24 November 2008. Two weeks after his arrest, upon insistence of his relatives residing in Bahrain, the authorities of the United Arab Emirates acknowledged that Mr. Al Junahi was held in detention “for questioning”. They maintained that his detention formed part of a “routine procedure” and that his release could be expected within the following two weeks. However, Mr. Al Junahi has been held at an undisclosed place of detention without access to lawyers or his family since his arrest. Mr. Al Juhani had allegedly been arrested by intelligence service officials of the Kingdom of Saudi Arabia at the airport of Riyadh on 26 April 2007 and detained without charge or trial until 24 November 2008. Mr. Al Juhani had regularly performed religious studies in Al Qassim in Saudi Arabia for several years. While he was in custody in Saudi Arabia, his family could visit him after three months in detention. The Saudi authorities maintained that keeping Mr. Al Juhani in custody was only a “preventive measure” and that his release could be expected soon. He was “released” on 24 November 2008. However, it appeared that he might have been transferred to the United Arab Emirates under circumstances not explained to his family. In view of Mr. Al Juhani’s reported detention at an undisclosed place of detention concerns were expressed with respect to his physical and mental integrity.

### **Communication received**

329. At the time this report was finalized, the Special Rapporteur was not in a position to reflect the content of the reply from the Government of the United Arab Emirates dated 26 January 2009 as he had not received the translation of its content from the relevant services.

### **Special Rapporteur’s comments and observations**

330. The Special Rapporteur is concerned at the absence of an official reply to his communication of 4 February 2009. He urges the Government of the United Arab Emirates to provide at the earliest possible date a detailed substantive answer to the above allegations.

## **United States of America**

### **Communications sent**

331. On 1 July 2008, the Special Rapporteur sent an allegation letter, together with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The Special Rapporteur wished to inform the Government of the United States of America that they have received allegations relating to trials taking place in Afghanistan of detainees previously held in custody in the U.S. administered Bagram Theatre Internment Facility (BTIF), as well as detainees repatriated from Guantánamo Bay Naval Base facilities to Afghanistan. The Special Rapporteurs informed the Government that they have addressed a similar letter to the Government of Afghanistan. According to the information received, some of the individuals formerly detained by the United States Government at Guantánamo Bay and Bagram have been, and continue to be, transferred to the Afghan National Detention Facility (ANDF) where they await prosecution. This system of detention and transfer of detainees would seem to allow for prolonged detention in BTIF custody, and the prosecution

and conviction of detainees without due consideration to legal requirements. Based on the information received, in our opinion, the system of detention and transfer of detainees failed to comply with fair trial international standards including the right to court review over any form of detention, the presumption of innocence, the right to defence and access to legal counsel and the right to be tried without undue delay as laid down in Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which provides, inter alia, that “anyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest and should be promptly informed of any charges against him” and that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.

According to the information received, many detainees, prior transfer to the ANDF were under United States custody without charge for several years. In addition, to date, trials of ANDF detainees lacked many basic due process of law guarantees, including access to a lawyer while under investigation and adequate time and facilities for the preparation of the defence. With respect to trials and the evidence before the prosecution, the information the Special Rapporteurs received suggests that the United States Government provides the Afghan prosecution that investigates national security cases, with supposedly general and declassified versions of the Detainee Assessment Branch Reports of Investigation (ROIs), which typically state the date of capture, the capturing force and the detainee’s alleged actions. These ROIs then form the basis of the Afghan Government’s prosecution charges. However, this was done without any examination of individual witnesses or statements in the court dossier - sworn or unsworn, often United States personnel or officials involved in the capture and/or interrogation of the detainee. To date an estimated number of 303 detainees have been transferred from United States custody to the Government of Afghanistan. The National Directorate for Security has investigated some 201 cases. The situation of the other 102 detainees was not clear regarding the grounds for their detention, and concerning some of them having been detained for several months. Furthermore, it has been brought to our attention that the default status for these detainees transferred to the ANDF was that of pre-trial detention until a judicial decision regarding their cases are taken. The Special Rapporteurs were concerned over the potential negative effects of the prolonged pre charge detention in Guantanamo Bay and BITF that may compromise the ability of the Government of Afghanistan to ensure a fair trial for these persons. Moreover, the trials were conducted based on the in-court reading of investigative summaries prepared by United States and Afghan officials which do not respect the principle of equality of the parties before the court. The use of evidence in this way, and the fact that the convictions can be based on it, may violate international standards, including the prohibited use of evidence obtained under torture and other cruel, inhuman or degrading treatment or punishment. The Afghan Constitution explicitly prohibits the introduction, as evidence, of statements obtained “by means of compulsion” and “recognizes a confession as voluntary only if taken before a judge.” The Special Rapporteurs urged the Government to assure full compliance with the Afghan criminal procedure code and international fair trial standards included in the Universal Declaration of Human Rights (UDHR) and the ICCPR, including by requiring in-court witness testimony, and by allowing the defendant to challenge the evidence through cross-examination. They called on the Government to ensure that trials were conducted in accordance with international fair trial standards, as laid down in the UDHR and ICCPR.

332. On 27 November 2008, the Special Rapporteur sent an urgent appeal, regarding the cases of Mr. Antonio Guerrero Rodriguez, Mr. Fernando González Llord (Rubén Campa), Mr. Gerardo Hernández Nordelo (Manuel Viramontes), Mr. Ramón Labanino Salazar (Luis Medina) and

Mr. René González Schwerert. These five persons were arrested in September 1998 in Florida on charges of spying for the Government of Cuba. They were the subject of an allegation letter sent by the Special Rapporteur on the independence of judges and lawyers on 31 August 2005. No answer to this communication had been received from the Government. The aforementioned individuals were tried between November 2000 and June 2001 in Miami Dade County. Lawyers for the defendants requested that the trial be conducted in another city, located in Broward County, because they considered that impartiality could not be guaranteed in Miami. The lawyers' request was however rejected. The trial court condemned the five persons as follows: Antonio Guerrero Rodríguez was sentenced to life imprisonment plus 10 years. He was charged found guilty of acting as an agent of a foreign government without notifying the attorney general, conspiracy to do so, and conspiracy to gather and transmit national-defense information. Gerardo Hernández Nordele was sentenced to two life sentences plus 15 years on charges of conspiracy to gather and transmit national-defense information, acting as an agent of foreign government without notifying the attorney general, conspiracy to do so, fraud and misuse of documents, possession and intent to use five or more fraudulent identification documents, and conspiracy to murder. Ramón Labanino Salazar was sentenced to life imprisonment plus 18 years on conspiracy charges. He was found guilty of acting as an agent of a foreign government without notifying the attorney general, conspiracy to do so, conspiracy to gather and transmit national-defense information, fraud and misuse of documents, possession and intent to use five or more fraudulent identification documents, and making a false statement in a passport application. Fernando González Llord was sentenced to 19 years' imprisonment on charges of acting as an agent of a foreign government without notifying the attorney general, conspiracy to do so, fraud and misuse of documents, and possession and intent to use five or more fraudulent identification documents. René González Schwerert was sentenced to 15 years' imprisonment on charges of acting as an agent of a foreign government without notifying the attorney general and of conspiracy to do so. The appeal took place in March 2004, and a decision to order a retrial was announced on 9 August 2005 by the US Court of Appeals of the 11<sup>th</sup> Circuit. A three judge panel ruled that the original trial concerning these five defendants had been unfair due to the biased environment in which the trial was held and due to the large number of Cuban exiles who held prejudicial views regarding the Government of Cuba. On 27 May 2005, the UN Working Group on Arbitrary Detention issued Legal Opinion No. 19/2005, in which is found that the detention of the five defendants was arbitrary and noted a number of due process violations. According to new information received, the Government requested the twelve judges of the US Court of Appeals of the 11<sup>th</sup> Circuit to review the ruling of 9 August 2005, through an *en banc* procedure. On 9 August 2006, the Court affirmed the denial of the defendants' motions for a change of venue and a new trial; and remanded the appeal to the three panel judge for consideration of the remaining issues. The Court considered that nothing in the trial suggested that twelve fair and impartial jurors could not be assembled by the trial judge to try the defendants fairly in Miami. On 4 June 2008, the three panel judge decided to affirm the convictions of each defendant and the sentences of Gerardo Hernández Nordele (Manuel Viramontes) and René González Schwerert. Concerning the sentences of Fernando González Llord (Rubén Campa), Ramón Labanino Salazar (Luis Medina) and Antonio Guerrero Rodríguez, the panel considered that the trial judge erred in the application of several norms and requested to resentence the three defendants, in the light of its ruling.

### **Communication received**

333. On 6 May 2009, the Government of United States of America replied to the allegation letter sent on 27 November 2008 related to Mr. Antonio Guerrero Rodriguez, Mr. Fernando González Llorca (Rubén Campa), Mr. Gerardo Hernández Nordelo (Manuel Viramontes), Mr. Ramón Labanino Salazar (Luis Medina) and Mr. René González Schwerert. The Government affirms that during the trial the 5 men did not deny their covert service to the Cuban Directorate of Intelligence. On the contrary, they presented a defense which focused on their professed motives to protect Cuba. The five men were convicted following a seven-month jury trial at which they were afforded full due process, including unimpeded access to all evidence used against them, and to voluminous additional material provided by the United States in discovery.

334. The Government states further that facts, as described in the communication sent by the Special Rapporteur, do not fully or accurately reflect the facts and procedural protections afforded the defendants in this case, which did accord with the United States' obligations under the International Covenant on Civil and Political Rights. The Government informs that all the judges that have presided over this case are fully independent federal judges who are appointed to the judiciary for life and subject to strict ethical rules with regard to any potential conflicts of interest. From initial arrests in 1998 through the trial and the eight years that the appeals have been under consideration, no defendant has raised in any of the judicial proceedings any claims or allegation of judicial partiality, improper influence, or lack of independence. Nor has any defendant raised any claim or complaint about the quality, competence or independence of their defense lawyers. Though many of the defense lawyers acted as free legal counsels, they served their clients independent of the government and with the benefit of confidentiality of communications and attorney-client privilege afforded all counsel.

335. Moreover, the Government states that the defendants received all guarantees of due process and a fair trial, and benefited from vast procedural protections and from provision of U.S. taxpayer-funded legal assistance, including counsel, investigators, surveys, experts and foreign travel. The United States Court of Appeals for the Eleventh Circuit, based in Atlanta, has considered their case on multiple occasions and has sustained all of their convictions, while remanding three defendants for resentencing. The defendants are now seeking further review in the United States Supreme Court.

336. The Government details the events in chronological order: The defendants were arrested on 12 September 1998. Upon arrest, each of the five was informed that he had the right to remain silent; that anything he said could be used against him in court; that he had the right to talk to a lawyer for advice before questioning; that he had the right to have a lawyer with him during questioning; that if he could not afford a lawyer, one would be appointed for him before any questioning if he wished; that if he decided to answer questions without a lawyer present, he had the right to stop answering at any time. No defendant was denied access to counsel. The defendants were promptly brought before a judicial magistrate, and on 14 September 1998, the first day court was in session following their arrests, each defendant had his initial appearance in court. The magistrate judge again informed the defendants of their rights. The defendants stated they could not afford lawyers.

337. The court arranged for free legal counsel to be appointed for each defendant. These lawyers were provided with numerous means to conduct a defense, including expert witnesses, community surveying investigators, and multiple trips to Cuba at which videotaped testimony was taken of defense witnesses unwilling to travel to the United States. These videos were used by the defense during the trial. The defendants did not complain about their lawyers, many of whom continued to represent the defendants during the appeals.

338. The jury selection process was subjected to exhaustive judicial review, including by the entire Eleventh Circuit Court of Appeals, which found the process fair; indeed, this Court en banc opinion described it as “model” for a high profile case (*United States v. Campa*, 459 F.3d 1121, 1147 (11th Cir. 2006)). The jury was selected after a week-long examination process, with careful questioning by the court based in part of defense’s stated concerns, and posing follow-up questions suggested by the defense. The defense was allowed to challenge prospective jurors as legally unsuitable; no prospective juror the defense challenged was selected to sit on trial jury. The defense also was allotted peremptory challenges they could use to eliminate prospective jurors who, though legally eligible, they did not like. They were able to eliminate Cuban-Americans from the jury, and at the end of jury selection they tendered the panel of jurors picked for the trial without objection, and without having exhausted all the peremptory challenges allotted them. Defense counsel praised the ongoing jury selection process as extraordinary, later during the trial. Defense counsel stated that they had worked very hard to pick the jury, and that they had gotten a jury they were very happy with (Id. At 1137).

339. The trial was open to the public, transparent and widely covered in the press. The trial lasted seven months, almost three months were devoted to the defense’s presentation of evidence. The trial was preceded by a lengthy period, sought by the defense for trial preparation and study of voluminous discovery material provided by the United States. Much of the discovery was classified, and the United States’ Classified Information Procedures Act, Title 18, United States Code, Appendix three, was utilized to ensure due process in the use and production of classified material. Defense counsels were granted security clearances to review classified discovery. The defendants were also allowed to review the discovery, including the classified discovery. The defense counsels were able to review, copy, make notes and consult with their clients as to the classified discovery, within a secured space within the United States Courthouse. All evidence used at the trial was provided to the defense, including evidence sought by the defense to be used at the trial was declassified before being entered in evidence at the trial, ensuring transparency and access to all trial exhibits, many of which were examined and reported on by the press.

340. The United States sought and was granted ex parte, in camera hearing pursuant to the Classified Information Procedures Act Section four, which addresses discovery of classified information, and which provides for the court to authorize the U.S. to delete and substitute specified items of classified information from discovery production. On appeal, the defendants contended that only an ex parte written submission, not a hearing is permitted, the eleventh Circuit Court of Appeals rejected this contention (*United States v. Campa*, 459 F.3d., 994-996).

341. Acting pursuant to longstanding criminal procedures established under law and applicable to all such criminal defendants, the jury convicted the five men of conspiracy to act as agents of a foreign government without notification to the attorney general and conspiracy to defraud the United States. Three of them were convicted of conspiracy to commit espionage, related to

efforts to acquire non-public U.S. National Defense information. Of those three, one also was convicted of conspiracy to commit murder in connection with lethal shoot down of two U.S. registered civilian aircraft in international space. This defendant, as well as the other two defendants convicted of conspiracy to commit espionage, was sentenced to life prison. The other two, were sentenced to 15 to 19 years of imprisonment.

342. The Government also informs that all five men are held in U.S. civilian prison facilities, where they have the same rights and restrictions as other inmates, including access to their attorney and Cuban consular officials.

343. The defendants have made full use of their appellate rights under the United States judicial system. Shortly after sentencing, defense counsel filed notices of appeal, and vigorously pursued the right to test the propriety of the trial procedures and of the judgements against them. During the extensive appeals, they raised numerous claims. The Court of Appeals carefully considered all these claims, in three detailed judicial proceedings, and granted some, ordering resentencing of three defendants due to incorrect application of federal sentencing guidelines. All other claims were rejected by the Court of Appeals. They have filed a petition for a writ of certiorari to the United States Supreme Court, which is currently pending. In sum, the defendants have benefited from the ample due process afforded under the U.S. criminal justice system, and they continue to seek additional review through the courts.

### **Press releases**

344. On 22 December 2008, the Special Rapporteur issued the following press statement, jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

“Four independent UN experts welcome the announcement by President-elect Barack Obama to close the Guantanamo Bay detention center and to strengthen the fight against torture. Following his election in November, Mr. Obama declared that both these undertakings are part of his efforts “to regain America’s moral stature in the world.”

The experts state that “The regime applied at Guantanamo Bay neither allowed the guilty to be condemned nor secured that the innocent be released.” It also opened the door for serious human rights violations. In addition to being illegal, detention there was ineffective in criminal procedure terms. Similar severe abuses also occur at places of secret detention. Thus, with the same emphasis, the experts urge that all secret detention places be closed and that persons detained therein be given due process.

The experts further emphasize that “moving forward with closing Guantanamo is a strong symbol that will help to repair the image of the country after damage by what was widely perceived as attempts at legitimizing the practice of torture under certain circumstances. At the same time they urge that in closing the Guantanamo Bay detention center and secret facilities, the U.S. government fully respect its international human rights obligations, notably the principle of non-refoulement that prohibits removing persons to countries where they would be at risk of torture, and not to transfer individuals to third countries for

continued detention at its behest (proxy detention). The experts also stressed that those detainees facing criminal charges must be provided fair trials before courts that afford all essential judicial guarantees. They emphatically reject any proposals that Guantanamo detainees could through new legislation be subjected to administrative detention, as this would only prolong their arbitrary detention.

In this context, the experts call on third countries to facilitate the closure through their full cooperation in resettling those Guantanamo detainees that cannot be sent back to their countries of origin. The UN experts particularly welcome the recent announcement of Portugal to accept detainees and support its call to other States to follow.

The experts strongly support the commitment expressed by President-elect Obama which, in addition to restoring the moral stature of the United States in the world, will allow a dark chapter in the country's history to be closed and to advance in the protection of human rights.

### **Background information**

345. Following the tragic events of 11 September 2001, many countries adopted measures to combat terrorism. Several UN bodies, including the former Commission on Human Rights and the General Assembly, reiterated in multiple resolutions that this must be done in accordance with human rights.

346. In 2006, five UN Independent Experts issued a report on the Situation of detainees of Guantánamo Bay. In this report, the experts concluded that the detentions were arbitrary due to the absence of independent tribunals and the denial of the right to adequate defense and other guarantees of due process, that interrogation practices were contrary to internationally accepted standards, above all the prohibition of torture and other forms of ill-treatment and the prohibition of religious discrimination, that the indeterminate character of the length of detention amounted to inhuman treatment and that conditions of detention violated the right to health. The experts called upon the United States Government to cease these practices immediately, to provide fair trials to the detainees or release them, and to proceed to the urgent closure of the detention center.

347. In 2007, the UN Special Rapporteur on human rights and counter-terrorism conducted a country mission to the United States, followed by a visit to Guantanamo Bay in order to observe military commission proceedings there. His report addresses a number of issues where the 2006 Military Commissions Act and the treatment of Guantanamo detainees are incompatible with international law. It also reiterates that the detention facility be closed in compliance with international law and outlines proposals in this regard.

348. The United States Supreme Court has in a series of cases pronounced itself on the rights of detainees at Guantanamo Bay, thereby affirming the independence of the judiciary. In its most recent decision, the Court found the Military Commissions Act unconstitutional and granted the detainees access to the federal courts' jurisdiction, including the right to habeas corpus.

349. Following his election in November, President-elect Obama publicly expressed his commitment to lead the Administration's efforts to close the Guantanamo Bay prison camp as one of his priorities.

350. On 23 January 2009, the Special Rapporteur issued the following press statement, jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment:

"The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, welcome the signing of executive orders by President Barack Obama yesterday, which set a timeline for closure of the Guantanamo Bay detention center and require the Central Intelligence Agency to shut its secret detention facilities. They also provide that all agencies should follow the same interrogation rules as the military and revoke orders and regulations adopted after 11 September 2001, which might contradict international and national minimum standards.

"This is a very important step that symbolizes a break with previous policies that were in violation of international human rights norms," stressed Mr. Despouy.

Referring to a joint report issued by several UN independent experts in 2006, the two experts recalled that, in implementing these decisions, the United States Government should fully respect all human rights obligations, including the absolute prohibition of torture and the principle of non-refoulement that prohibits removing persons to countries where they would be at risk of torture. The experts further welcomed that proceedings before the Military Commissions have been halted, and expressed their hope that the persons accused would be prosecuted in accordance with fair trial norms. They also recalled that all persons found to have been detained arbitrarily or ill-treated have the right to reparation under international human rights law.

"Already in the 2006 report, we recommended that all persons found to have perpetrated, ordered, tolerated or condoned torture and ill-treatment, up to the highest level of military and political command, should be brought to justice - now the time has come to do so," said Mr. Nowak.

Both experts emphasized that they stand ready to lend their full support in resolving the outstanding legal and practical issues, in particular in relation with the closure of the detention facilities at Guantanamo Bay."

### **Special Rapporteur's comments and observations**

351. The Special Rapporteur wishes to thank the Government for its detailed reply which he associates with the change of policy of the new US administration. The Special Rapporteur notes that the response by the Government also answers allegations to his letter addressed to the US Government on 31 of August 2005, which had been pending for almost four years. The Government reply clarifies several issues of the judicial proceedings. The Special Rapporteur is particularly grateful for the detailed information provided in relation to access to defense lawyers and to legal aid provided to the five individuals. The Special Rapporteur also appreciates the

information provided on the process of the selection of the jurors and the efforts made to make evidence available. However, the Special Rapporteur remains concerned that the record of the ex parte in camera hearing between the prosecution and the trial court was not unsealed. While the Special Rapporteur is aware that the Classified Information Procedures Act allows the Government, with the authorization of the court, to delete or substitute specified items of classified information from discovery production, he believes that this could have affected the right to defense of the defendants. In this connection, he would like to refer again to article 14 of the International Covenant on Civil and Political Rights 3(b) of the International Covenant on Civil and Political Rights and General Comment 32 of the Human Rights Committee (CCPR/C/CAN/CO/5 (2005), para. 13). Finally, the Special Rapporteur would like to clarify that according to the mandate granted to him by the Human Rights Council (Resolution 8/6) he inquires into any substantial allegation transmitted to him and reports his conclusions and recommendations thereon; even if the domestic remedies have not yet been exhausted in the case.

352. The Special Rapporteur is concerned at the absence of an official reply to the communications dated 1 July 2008. He urges the Government of the United States of America to provide at the earliest possible date detailed substantive replies to the above allegations.

## **Uzbekistan**

### **Communications sent**

353. On 31 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, 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 cases of Mr. Yusuf Juma, a prominent writer and pro-democracy activist, his two sons, Mr. Bobur and Mr. Mashrab Juma, and Mr. Ruhiddin Kamilov, their lawyer. Mr Yusuf Juma was the subject of a communication sent on 19 February 2008 by the Special Representative of the Secretary-General on the situation of human rights defenders, 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. According to allegations received, Yusuf, Bobur and Mashrab Juma were detained in Otbozor Prison in the Bukhara region. They have been subject to verbal abuse and beatings on a daily basis by prison authorities since their arrest in mid-December 2007. Yusuf Juma was examined at Bukhara's Medical Law Centre after he had fainted from the torture he was subjected to. He was found to be suffering from heart and respiratory problems and had injuries from the beatings. Yusuf and Bobur Juma were being denied access to food and prevented from writing letters and meeting with their lawyer, Mr. Kamilov. Mashrab Juma was detained on allegedly fabricated charges in the run-up to the re-election of President Karimov, and was sentenced to three years' imprisonment. Yusuf and Bobur Juma have been charged under two articles of the Criminal Code with "insulting" and "resisting representatives of power". Yusuf Juma has been openly critical of President Islam Karimov in his writings. Mr. Kamilov was threatened by the prison governor, whose name was known to the mandate-holders, that he would soon be killed because he and Yusuf Juma were serving the interests of US imperialism. Concern was

expressed for the physical and mental integrity of Yusuf, Bobur and Mashrab Juma, and in relation to acts of intimidation against their lawyer, Mr. Kamilov. Further concern was expressed that the arrest and detention of the three men may be directly related to the activities of Yusuf Juma for the promotion of democracy and freedom of expression in Uzbekistan.

354. On 23 September 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 situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding the case of Mr. Akzam Turgunov and Mr. Salijon Abdurahmanov. Mr. Akzam Turgunov is the executive director of *Mazlum*, a non-governmental organization dedicated to the defense of human rights and has worked as a public defender in cases involving human rights violations. Mr. Salijon Abdurahmanov is a founding member and leading journalist with *Uznews.net*, a member of the *Real Union of Journalists of Uzbekistan*, and a member of the *Committee to Protect Individuals' Rights* in Karakalpakstan. He has also worked for *Radio Liberty* and the *Institute for War and Peace Reporting*, and has spoken out against human rights violations in Uzbekistan. Mr. Abdurahmanov was the subject of an allegation letter sent by the Special Representative of the Secretary General on human rights defenders on 22 January 2007, and an urgent appeal regarding his recent arrest sent by the Special Rapporteur 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 24 June 2008. Responses from the Government were received on 6 February 2007 and on 19 July 2008. According to new information received, on 11 July 2008, Mr. Akzam Turgunov was arrested in Manget, Karakalpakstan, on charges of extortion. While being held at a police detention centre in Nukus, he was taken to an investigator's office on 14 July 2008, where boiling water was poured on his back. On 4 September 2008, Mr. Akzam Turgunov's trial began at the Amudarya District Court in Nukus. It was resumed on 16 September 2008. Mr. Akzam Turgunov may face up to 15 years imprisonment on charges of extortion under Article 165, Part 3 of the Criminal Code of Uzbekistan. The next hearing was to be scheduled once a medical report on the alleged ill-treatment of Mr. Akzam Turgunov would be available. Mr. Salijon Abdurahmanov was arrested on 7 June 2008, after drugs had reportedly been planted in his car. His trial before the Tahtakupir District Court commenced on 12 September 2008. The hearing was not open to the public. The police officers and the sniffer-dog specialist who had reported finding illegal drugs in Mr. Salijon Abdurahmanov's car were not present at the trial. Mr. Salijon Abdurahmanov has now been charged with "selling drugs in large consignment" under Article 25-273 (5) of the Criminal Code of Uzbekistan. The new charges against Mr. Salijon Abdurahmanov could result in a sentence of up to 20 years imprisonment. According to the Government's response to Special Procedures mandate holders, received on 19 July 2008: "on 9 June 2008, Mr Abdurakhmonov was indicted [...] under article 276, paragraph 2 (a) (Unlawful production, storage, purchase, carriage or transmission of narcotic or psychotropic substances in large quantities, *without the purpose of sale*) [italics added] of the Criminal Code of Uzbekistan". In view of the above allegations of ill-treatment of Mr. Akzam Turgunov, concern was expressed for his physical and psychological integrity. Further concern was expressed that the above described arrests, detention and trials may be related to their activities in the defense of human rights. It was feared that the above incidents may form part of an ongoing pattern to restrict the work of members of *Mazlum* and other human rights defenders in Karakalpakstan.

355. On 29 October 2008, the Special Rapporteur sent an allegation letter, regarding the Presidential Decree of 1 May 2008 on “Measures for the further reform of the legal profession (‘advocatura’) in the Republic of Uzbekistan” (henceforth Presidential Decree) and the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan no. 112 of 27 May 2008 on the “Organisation of the activities of the Chamber of Lawyers of the Republic of Uzbekistan” (henceforth Governmental Resolution) and other related legal provisions. The Presidential Decree provides for the creation of a Chamber of Lawyers with compulsory membership of all lawyers on the basis of the pre-existing Association of Lawyers. The Governmental Resolution is meant to be the implementing mechanism for the Presidential Decree. First, the Special Rapporteur commended the State on the Government’s intention to introduce reforms to, *inter alia*, improving the mechanisms of self-government of the legal profession which aim at strengthening the independence of lawyers, thereby reinforcing the right of every citizen to professional legal assistance at any stage of judicial proceedings, as enshrined in articles 26 and 116 of the Constitution, articles 46 and 50 of the Criminal Procedure Code and reiterated in the preamble of the Presidential Decree. In this context, the Special Rapporteur drew the Government attention to two substantive areas that give rise to concern and one issue of particular interest in relation to the above-mentioned provisions: 1) appointment procedures of the chairperson and the deputy chairpersons of the Chamber of Lawyers and the chairpersons of the regional Chambers, 2) the current licensing regime under the Ministry of Justice, and 3) the equality of arms in criminal proceedings. In the Special Rapporteur’s view certain aspects of these provisions require profound reconsideration in order to secure their compliance with international standards on the independence of lawyers.

356. Firstly, according to section 1 paragraph 2 of the Governmental Resolution, the chairperson and his/her deputies are elected by the Conference of the Chamber of Lawyers among the members of the Chamber’s Executive Board, following nomination by the Ministry of Justice. Pursuant to paragraph 3 of the same section, chairpersons of the regional branches of the Chamber of Lawyers are appointed and dismissed by the chairperson of the Chamber of Lawyers. Two of the main safeguards of an independent legal profession are self-governance and self-regulation. According to principle 24 of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, from 27 August to 7 September 1990, “Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.” While principle 25 of these Basic Principles stipulates that “Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics”, it should be noted that the central role in the establishment and the work of the legal profession should remain with the lawyers. Therefore, the Special Rapporteur was concerned that the competency of the Ministry of Justice to nominate the chairperson, who in turn designates the chairpersons of the regional chamber branches, and the deputy chairpersons of the Chamber of Lawyer was not in compliance with the above mentioned principles. This was even more disquieting, as the Presidential Decree and the Governmental Resolution do not detail the procedures applicable on the designation of the members of the Chamber’s Executive Board, among whom the Chamber’s chairperson is elected. The

above-mentioned concern was even aggravated in light of section 2 of the Governmental Resolution. Pursuant to this provision, the constituent conference of the of the Chamber of Advocates should have been conducted by the Ministry of Justice together with the Lawyer's Association of Uzbekistan within two months. During this constituent conference, the Statute of the Chambers should be adopted, the Chamber's Executive Board established and the chairperson and the deputy chairpersons of the Chamber elected. Sections 1 and 2 of the Governmental Resolution together with section 6, which stipulates that the implementation of the Governmental Resolution be monitored by the First Deputy Prime Minister, indicate an overarching role of the executive branch in the establishment and functioning of the legal profession which violate the above-mentioned provisions of the Basic Principles of Lawyers.

357. Secondly, according to article 3 of the 1996 Law "On the legal profession ('advocatura')", lawyers are required to pass a qualification exam so as to obtain a license from the Ministry of Justice. According to this provision, the license will be issued by the Ministry of Justice on the basis of a decision made by the respective Qualification Commission. Qualification Commissions are established by order of the Ministry of Justice and are composed of an equal number of lawyers and of civil servants of the executive organs of justice (article 13 of the Law "On the legal profession"). While the Presidential Decree states that the improvement of the licensing regime is one of the main objectives for the further reform, no provisions have been included in the Governmental Resolution in this regard. According to the information received, no amendments have thus far been made to the relevant legislation, including the Law "On the legal profession". A key to ensuring the independence of lawyers is to allow them to work freely without being obliged to obtain clearance or permission from the executive branch to carry out their work. This also entails the procedures governing access to the legal profession. The Human Rights Committee, in its concluding observations on Belarus (see CCPR/C/79/Add.86, para. 14) raised its concern that a presidential decree, which gives competence to the Ministry of Justice for licensing lawyers and obliges them to be able to practise, to be members of a centralized State controlled body, is undermining the independence of lawyers. Likewise, the Committee against Torture, in its concluding observations on Belarus (see A/56/44(SUPP), Belarus, para. 45 g), expressed concern at the subordination of lawyers to the control of the Ministry of Justice and an obligatory membership in a State-controlled Collegium of Advocates. In this vein, it was the Special Rapporteur view that in order to ensure the independence and self-governance of the legal profession, access to the profession must be governed by independent bodies established by the legal profession itself. In this connection, it is important to grant the new Chamber of Lawyers the right to establish independent bodies regulating access to the legal profession, i.e. to the Chamber of Lawyers. Access to the legal profession should be granted on merit only, based on an objective qualification examination. Therefore, provisions related to the current licensing scheme under the Ministry of Justice taken together with the compulsory membership of the newly established Chamber of Lawyers require urgent reconsideration so at to secure compliance with international standards.

358. Thirdly, the Special Rapporteur noted with interest the intention of the Government to take further reform steps in order to ensure the equality of arms of both parties in criminal proceedings, as stipulated in section one of the Presidential Decree. In this context, the Special Rapporteur expressed his interest in receiving substantive detailed information on the amendments to relevant pieces of legislation, including the Criminal Procedure Code and the Law "On the guarantees of lawyers' activities and the social protection of lawyers", that the Government envisages to introduce to Parliament in the foreseeable future. In summary, while

the Special Rapporteur wished to reaffirm his appreciation of the Government's intention to conduct a reform of the regulations governing the legal profession, he was seriously concerned that the above-mentioned provisions were not in accordance with international standards on the independence of lawyers. The Special Rapporteur urged the executive and legislative branches of government in Uzbekistan to consider the above mentioned concerns and to amend the relevant legislation and other related norms on the legal profession in order to secure their compliance with international standards. In that context, transparent and inclusive deliberations with the main stake holders, particularly the legal profession, should be conducted prior to the adoption of the necessary amendments. The Special Rapporteur express his readiness to provide the Government with support and assistance concerning the recommendations outlined in this letter and remain at their disposal with regard to any related question or request that the Government would wish to seek.

### **Communications received**

359. On 22 April 2008, the Government replies to the urgent appeal of 31 March 2008, stating that on 10 December 2007, the procurator's office of the Karakul municipal district, Bukhara Province, initiated criminal proceedings under articles 219, part 2, and 140, part 3, of the Uzbek Criminal Code against Mr. Y. Zhumaev and his son, B. Zhumaev. The basis for prosecution was that they had publicly insulted, resisted the authority of and inflicted bodily harm on a law enforcement officer of the Karakul municipal district, Bukhara Province, Mr. T. Itokov, who was attempting to stop illegal actions of Mr. Y. Zhumaev and his son, Mr. B. Zhumaev, which took the form of an unauthorized march with placards containing anti-constitutional material. According to the information available to the law enforcement agencies: Yusufzhon Ollokulovich Zhumaev (Yusuf Juma), born 1958 in Karakul municipal district, Bukhara Province, citizen of the Republic of Uzbekistan, two previous convictions, was taken into custody on 17 December 2007 by the procurator's office of the Karakul municipal district, Bukhara Province, on charges of having committed offences listed in articles 140, part 3, paragraph (a) ("Insults") and 219, part 2 ("Resistance to authority or a person fulfilling a civic duty") of the Uzbek Criminal Code. He entered Bukhara municipal correctional institution UYa-64/IZ-3 on 22 December 2007. A medical examination showed him to be free of bodily harm; he did not visit the Bukhara forensic medical institute for an examination. His state of health is satisfactory. During his time at the correctional institution, he did not make any complaints to the medical service. During the time he was held in custody, he made no complaints or representations about unlawful acts by the institution's administration.

360. Yusufzhon ugli Bobur (Bobur Juma), born 1983 in Karakul municipal district, Bukhara Province, citizen of the Republic of Uzbekistan, no previous convictions, was taken into custody on 17 December 2007 by the procurator's office of the Karakul municipal district, Bukhara Province, on charges of having committed offences listed in articles 140, part 3, paragraph (a) ("Insults") and 219, part 2 ("Resistance to authority or a person fulfilling a civic duty") of the Uzbek Criminal Code. He entered Bukhara municipal correctional institution UYa-64/IZ-3 on 22 December 2007. A medical examination showed him to be free of bodily harm. During his time at the correctional institution, he did not make any complaints to the medical service. His state of health is satisfactory. During the time he was held in custody, he made no complaints or representations about unlawful acts by the institution's administration. The detention conditions of Mr. Zhumaev and Mr. Yusufzhon ugli are entirely in accordance with the standards established by the Penal Enforcement Code of the Republic of Uzbekistan. Since their arrest,

Mr. Zhumaev and Mr. Yusufzhon ugli have had one meeting with their counsel, Mr. R. Kamilov, who visited them once on 2 February 2008. On 7 March 2008, Mr. Zhumaev and Mr. Yusufzhon ugli submitted a written dismissal of their counsel Mr. Kamilov to the procurator's office of Karakul municipal district. During Mr. Kamilov's meeting with his client Mr. Zhumaev, the prison administration uncovered a breach of security, i.e. counsel Kamilov gave the prisoner some papers, which the latter attempted to conceal surreptitiously on his person. In response to this, the prison staff stopped their meeting and invited Mr. Zhumaev to present the hidden papers for inspection. When Mr. Zhumaev was searched, photographs of a group of people picketing near the headquarters of the Office of the Procurator-General of the Republic of Uzbekistan were found upon him and confiscated, together with telephone numbers on a slip of paper, including some of telephone service subscribers in the Russian Federation. Counsel Kamilov was then asked to explain his actions, to which he cynically responded that "the prison administration is acting unlawfully". Counsel Kamilov was invited into the office of the prison governor, Lieutenant-Colonel S.U. Shukurov, for an explanation of the incident and in observance of legal standards. The latter explained to him the need to ensure respect for the rules in pretrial detention and remand facilities, in order to prevent collusion by persons in custody, and also explained that the papers and items confiscated from the prisoner could have been used for agitation and provoked unpredictable reactions among the prison population.

361. In addition, he was told that in fulfilling their duties in accordance with their professional responsibilities, the prison staff had the task of imposing security measures and, in the specific case of remand facilities, preventing remand prisoners from having outside contacts. At the end of the discussion counsel Kamilov, in an inappropriate response to the administration's demands and having failed to draw the appropriate conclusions, left the premises of the institution, warning the administrator that he would complain about him and his staff. On the basis of the complaint by counsel Kamilov concerning unlawful actions by the staff of Bukhara municipal correctional institution UYa-64/IZ-3, an official investigation was carried out by the Bukhara procurator's office and an internal investigation was conducted by the Central Penal Correction Department of the Ministry of Internal Affairs, which established that the information about the use of physical force and psychological pressure against the detainees Y.O. Zhumaev and B. Yusufzhon ugli and threats to counsel Kamilov by the prison governor, Lieutenant-colonel Z. Shukurov, was groundless and had been invented by counsel Kamilov himself.

362. Yusufzhon ugli Mashrab (Mashrab Juma), born 1985 in Karakul municipal district, Bukhara Province, citizen of the Republic of Uzbekistan, no prior convictions, was taken into custody on 5 December 2007 by the procurator's office of Karakul municipal district, Bukhara Province, on charges of having committed offences listed in article 104, part 1 ("Intentional infliction of serious bodily injury") of the Uzbek Criminal Code. On 11 March 2008, he was sentenced under article 104, part 1 ("Intentional infliction of serious bodily injury") of the Uzbek Criminal Code by Jondor municipal court, Bukhara Province, to four years' deprivation of liberty in a prison colony. He is currently serving his sentence in correctional institution UYa-64/70, Qashqadaryo Province.

363. On 10 November, the Government of Uzbekistan replied to the urgent appeal of 23 September 2008, stating that, regarding the case of Mr A. Turgunov, on 11 July 2008, the Office of the Procurator in the Republic of Karakalpakstan opened a criminal investigation into citizen Akzam Olimovich Turgunov and citizen Khamza Nurullaevich Salaev on the basis of

indications of an offence under article 165, paragraph 2 (a) and (b), of the Criminal Code of the Republic of Uzbekistan. The investigation was prompted by a statement made on 10 July 2008 by citizen Oybek Sadullaevich Khuzhaboev, and by evidence gathered during an initial inquiry. According to this statement, in late May 2008, Turgunov, who already had a criminal record, together with Khamza Salaev, the brother of his ex-wife, Ms. M. Salaeva, from whom he had been officially divorced in 2007, knew that Mr. Khuzhaboev had earned money working in the Republic of South Korea. They invited Mr. Khuzhaboev to the home of Mr. S. Eshzhanov where, threatening him with violence, they demanded that he acquire a house for Salaev's younger sister or give her 20 million som. Should he not comply, they threatened to drown him, burn down his house and reduce his younger brothers to penury. Based on Mr. Khuzhaboev's statement, officers of the Karakalpakstan Ministry of the Interior and Office of the Procurator mounted a joint operation at about 8 p.m. on 11 July 2008. Salaev and Turgunov were detained at a tea shop in Mangit, Amudarya district, as they extorted from Khuzhaboev the sum of 500,000 som and the maintenance logbook to a Neksiya car. Turgunov and Salaev were arrested under article 221 of the Uzbek Code of Criminal Procedure on 12 July 2008; they were informed of their rights and obligations under article 48 of the Code. Since their detention, Turgunov's and Salaev's constitutional rights have been fully respected, they have been provided with a State defence and, in conformity with article 217 of the Uzbek Code of Criminal Procedure, their families were given timely notice of their arrest. On 13 July 2008 the case was referred for investigation from the Office of the Procurator-General to the Investigation Division of the Ministry of the Interior of Karakalpakstan. On 14 July 2008, Turgunov and Salaev were named as suspects in the case and charged, in the presence of counsel, under article 165, paragraph 3 (a) and (b), of the Uzbek Criminal Code. The Nukus criminal court ordered them to be remanded in custody as a preventive measure. On 28 October 2008, the Investigation Division of the Republic of Karakalpakstan Ministry of the Interior conducted an official inquiry into the scalds that Turgunov suffered. This established that at around noon on 14 July 2008, while Turgunov was being interrogated as an accused person at the Nukus remand centre, senior investigator A. Kutybaev gave the accused, at his own request, a cup of hot tea. To escape criminal liability by spreading rumours about being tortured by Ministry of the Interior staff, Turgunov deliberately poured the hot tea down his back, scalding himself. He was given first aid then and there. That Turgunov had deliberately done himself harm was fully corroborated at the official inquiry by the testimony of senior investigator A. Kutybaev, investigator S. Ismailov and other Nukus remand centre staff. Claims by defence counsel R. Tulyaganov that [Turgunov] was tortured - alded - by investigator S. Ismailov are fictitious, since investigator Ismailov was not present at Turgunov's interrogation. Senior Investigator A. Kutybaev put no pressure of any kind upon [Turgunov] throughout the preliminary investigation. That Turgunov was guilty of extortion was thoroughly established by the evidence gathered in the preliminary investigation. The official inquiry also established that in giving hot tea to the accused Turgunov, senior investigator A. Kutybaev breached departmental instructions on the guarding and escorting of suspects, accused persons and prisoners in custody by internal affairs bodies. In view of the fact that Kutybaev has been relieved of his post, however, it was decided to limit disciplinary action to a stern warning. It was decided on 31 July 2008 to press the charges in the case, which was referred to the Amudarya district criminal court. The court found Turgunov and Salaev guilty on 3 October 2008 and sentenced them each to ten years' deprivation of liberty.

364. Concerning the case of Mr. S. Abdurahmanov the Government informs that, on June 2008, the investigative department of the internal affairs office in the town of Nukus, Republic of

Karakalpakstan, instituted criminal proceedings against Mr. Salijon Abduraimovich Abdurahmanov on the basis of evidence of an offence contrary to article 276, part 2, paragraph (a), of the Criminal Code of Uzbekistan. The grounds were as follows: on 7 June 2008, at approximately 7 p.m., on Dosnazarov Street in Nukus, a Zhiguli VAZ-2106 car with licence plate number 30 Y 3346 was stopped for a document check by officers of the traffic police and canine patrol squad of the Republic's Ministry of Internal Affairs, who were carrying out an operation to prevent and suppress illicit trafficking in narcotic drugs and psychotropic substances, known as Black Poppy 2008. During the check, it was ascertained that the car in question was being driven by Mr. Salijon Abduraimovich Abdurahmanov, who was unable to produce a driver's licence. In addition, Mr. Abdurahmanov was not the owner of the car. With his permission, a canine patrol officer and a police dog inspected the vehicle. As a result, substances with a specific odour were discovered hidden in the boot of the car, wrapped in a paper and cellophane package. In the presence of witnesses, these substances were confiscated for forensic analysis and sealed, and the appropriate documentation was completed. The results of the chemical analysis performed on 7 June 2008 showed that the substances found and confiscated from Mr. Abdurahmanov's car included 114.18 grams of marijuana and 5.98 grams of opium, which was wrapped in paper. On 9 June 2008, Mr. Abdurahmanov, defended by Mr. B. Abdurahmanov, was charged under article 276, part 2, paragraph (a), of the Criminal Code and remanded in custody by a criminal judge. On the basis of all the evidence gathered, it was decided that Mr. Abdurahmanov had intended to attempt the sale of a large quantity of narcotics. Accordingly, on 5 August 2008, pursuant to article 362 of the Code of Criminal Procedure, the charges previously brought against Mr. Abdurahmanov were amended, and he was charged under articles 25 and 273, part 5, of the Criminal Code. On 6 August 2008, the pretrial investigation was completed, and the criminal case was referred for trial, in accordance with the established procedure, to the Takhtakupyr District Criminal Court of the Republic of Karakalpakstan. The Takhtakupyr District Criminal Court found the accused, Mr. Abdurahmanov, guilty and sentenced him to 10 years' deprivation of liberty. It should also be noted that the Criminal charges brought against Mr. Akzam Olimovich Turgunov and Mr. Salijon Abduraimovich Abdurahmanov are in no way related to their human rights work. No complaints or statements from Mr. Turgunov regarding the use of unlawful investigation methods have been received by the Ministry of Internal Affairs of Uzbekistan.

365. The Government replied on 29 December 2008 to the Special Rapporteur's letter of 9 October 2008. At the time this report was finalized, the Special Rapporteur was not in a position to reflect the content of these replies as he had not received the translation of its content from the relevant services.

### **Special Rapporteur's comments and observations**

366. The Special Rapporteur wishes to thank the Government of Uzbekistan for its replies and expresses his wish to continue to work together with the Government concerning the reform of the legal profession ("advocatura").

## Venezuela (Bolivarian Republic of)

### Comunicación enviada

367. El 14 de agosto de 2008 el Relator Especial envió una carta de alegación para señalar a la atención urgente del Gobierno de Venezuela la información recibida en relación con una sentencia de fecha 14 de febrero de 2008 de la Sala Constitucional del Tribunal Supremo de Justicia de la República Bolivariana de Venezuela. Mediante esta decisión, que haría lugar a un amparo presentado por un grupo de ciudadanos solicitando la realización de elecciones para designar a los miembros de la Junta Directiva del Colegio de Abogados de Caracas, se estarían incluyendo resoluciones que podrían afectar las garantías del debido proceso, de la libertad de asociación y el principio de la representación, todo ello expresamente contemplado en las normas de la Constitución Nacional y de los Tratados Internacionales vigentes. Según la información recibida, la Sala Constitucional del Tribunal Supremo de Justicia habría hecho lugar al mencionado amparo, y no sólo habría ordenado la realización de elecciones sino que también habría suspendido en el ejercicio de sus funciones a los miembros de la Junta Directiva y del Tribunal Disciplinario, a fin de designar de manera provisional a sus nuevos miembros. Asimismo, los profesionales que resultaron suspendidos no habrían sido citados para intervenir en ese proceso, vulnerándose, por lo tanto, sus derechos a la defensa y a las garantías judiciales básicas. De acuerdo a la información remitida, la Sala Constitucional habría efectuado el nombramiento de los integrantes de la Junta Directiva en una suerte de “intervención” que desconoce el derecho de los agremiados abogados, en este caso, a participar en la elección de sus representantes (artículos 137 y 138 de la Constitución Nacional).

368. El 9 de marzo de 2009 el Relator Especial envió una carta de alegación para señalar a la atención urgente del Gobierno de Venezuela la información recibida en relación con una sentencia de fecha 18 de diciembre de 2008 del Tribunal Supremo de Justicia - Sala Constitucional de la República Bolivariana de Venezuela. En dicha sentencia declara “inejecutable” la sentencia de la Corte Interamericana de Derechos Humanos de fecha 5 de agosto de 2008, en la que se ordenó la reincorporación en los cargos de los ex jueces de la Corte Primera de lo Contencioso Administrativo Anna María Ruggeri Cova, Perkins Rocha Contreras y Juan Carlos Apitz B.; se condenó a la República Bolivariana de Venezuela al pago de cantidades de dinero a título de indemnización a las personas mencionadas; así como a la publicación de la sentencia, al pronunciamiento de disculpas públicas y al pago de costas y gastos en los que las personas arriba mencionadas incurrieron. El Tribunal Supremo de Justicia estimó que la sentencia de la Corte Interamericana de Derechos Humanos se pronunció sobre asuntos que son competencia exclusiva y excluyente del Tribunal Supremo de Justicia y que estableció directrices para el poder legislativo en materia de carrera judicial y responsabilidad de los jueces, “violentando la soberanía del Estado venezolano en la organización de los poderes públicos y en la selección de sus funcionarios, lo cual resulta inadmisibles”. Para el Tribunal, la ejecución de la sentencia de la Corte Interamericana además afectaría los principios y valores del orden constitucional y podría conllevar aun caos institucional del sistema de justicia, al pretender modificar la autonomía del Poder Judicial previsto en la Constitución y el régimen disciplinario instaurado por la ley. Asimismo, estima el Tribunal que el fallo de la Corte Interamericana de Derechos Humanos equipara de forma absoluta los derechos de los jueces titulares y los provisorios, lo cual es “absolutamente inaceptable y contrario a derecho”. El Tribunal, citando un fallo de la Sala Político-Administrativa (No. 0673-2008), consideró que la Comisión de Funcionamiento y Reestructuración del Sistema Judicial ejerce la función

disciplinaria plena respecto de los jueces titulares que han alcanzado la estabilidad en su cargo, la cual encuentra su base en la aprobación del concurso de oposición respectivo. Sin embargo, respecto de los jueces provisorios, dicha atribución se encuentra a cargo de la Comisión Judicial del Tribunal Supremo de Justicia, la cual tiene la potestad para dejar sus nombramientos sin efecto de manera discrecional. En efecto, sostiene el Tribunal, que el acto administrativo que pronuncia la remoción de un juez provisional no requiere de ningún procedimiento administrativo, puesto que los jueces provisorios no gozan de la garantía de estabilidad. El Pacto Internacional de Derechos Civiles y Políticos ratificado por Venezuela establece la obligación internacional del Estado de garantizar el acceso a jueces y tribunales independientes e imparciales (art. 14.1). El Relator Especial recordó al Gobierno de su Excelencia que los principios de estabilidad e inamovilidad del juez son una garantía fundamental para proteger la independencia del poder judicial. Dichos principios deben aplicarse a todas aquellas personas que ejercen funciones jurisdiccionales, incluso a los jueces provisorios, quienes deben gozar de ciertas garantías mínimas que aseguren que actúan de manera independiente, dada la importancia de la función a ellos encomendada, la cual es administrar justicia. La única excepción a estos principios aceptada por los estándares internacionales son las sanciones que se imponen en el marco de un proceso disciplinario que cumple con las garantías de un juicio justo. Tal como lo ha expresado el Comité de Derechos Humanos, los jueces sólo podrán ser destituidos por razones graves de mala conducta o incompetencia, de conformidad con procedimientos equitativos que garanticen la objetividad y la imparcialidad. El Comité se ha pronunciado en varias oportunidades en este sentido. Asimismo, los Principios básicos relativos a la independencia de la judicatura adoptados por el Séptimo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, celebrado en Milán del 26 de agosto al 6 de septiembre de 1985, y confirmados por la Asamblea General en sus resoluciones 40/32 de 29 de noviembre de 1985 y 40/146 de 13 de diciembre de 1985, establecen que toda acusación contra un juez debe ser tramitada de manera pronta e imparcial con arreglo a un procedimiento que respete el derecho a un proceso justo (Principio 17). Principio que ha sido recogido por diversas normatividades internacionales en diferentes regiones del mundo. Además, el Relator Especial llamó la atención del Gobierno de Venezuela respecto de lo establecido por el Principio 11 de los Principios arriba mencionados, según el cual, la ley garantizará la permanencia en el cargo de los jueces por los períodos establecidos, su independencia y su seguridad. A este respecto el Comité de Derechos Humanos ha considerado que la destitución de jueces sin que se les dé ninguna razón concreta y sin que dispongan de una protección judicial efectiva para impugnar la destitución, es incompatible con la independencia del poder judicial. Asimismo, el Principio 12 establece que se garantizará la inamovilidad de los jueces, tanto de los nombrados mediante decisión administrativa como de los elegidos, hasta que cumplan la edad para la jubilación forzosa o expire el período para el que hayan sido nombrados o elegidos. El Comité de Derechos Humanos ha manifestado en múltiples ocasiones su preocupación por la existencia de períodos cortos de servicio, los cuales ponen en entredicho la independencia del poder judicial. Dicha preocupación se acentúa en los casos en que ni siquiera existe un término corto de servicios, sino que el juez está en situación de provisionalidad, la cual puede ser terminada en cualquier momento por una decisión de naturaleza discrecional. La Constitución de la República Bolivariana de Venezuela ha recogido los principios de estabilidad e inamovilidad, en especial en su artículo 267, el cual establece: “La jurisdicción disciplinaria judicial estará a cargo de los tribunales disciplinarios que determine la ley. El régimen disciplinario de los magistrados o magistradas y jueces o juezas estará fundamentado en el Código de Ética del Juez Venezolano o Jueza Venezolana, que dictará la Asamblea Nacional. El procedimiento disciplinario será

público, oral y breve, conforme al debido proceso, en los términos y condiciones que establezca la ley. Para el ejercicio de estas atribuciones, el Tribunal Supremo en pleno creará una Dirección Ejecutiva de la Magistratura, con sus oficinas regionales.” Sin embargo, hasta la fecha la Asamblea Nacional no ha adoptado el Código de Ética del Juez y la Jueza Venezolanos, lo que tiene como resultado que el régimen disciplinario no esté regulado de manera clara y que tenga su base en disposiciones que no tienen rango legal, lo que es contrario a los estándares internacionales en la materia. Esto ha sido a su vez constatado por la propia Sala Constitucional del Tribunal Supremo de Justicia, la cual ya en una sentencia del año 2006 había declarado que existía una inconstitucionalidad por omisión legislativa de la Asamblea Nacional, con motivo de la no promulgación de la normatividad en cuestión. Es por este mismo motivo que en su sentencia de 18 de Diciembre de 2008 una vez más instó a la Asamblea Nacional a que dicte el Código de Ética del Juez y Jueza venezolanos. El Relator Especial notó con preocupación que los llamados jueces provisorios sean susceptibles de ser removidos “dejando sin efecto” su nombramiento, sin que medie ningún tipo de procedimiento ni causa legal, ya que, tal como lo afirma el Tribunal Supremo de Justicia en su sentencia de 18 de Diciembre de 2008, éstos son de libre remoción y su destitución es discrecional. Como ya ha sido anotado anteriormente, dicha inestabilidad genera un grave peligro para su independencia, presupuesto fundamental para el buen funcionamiento de cualquier sistema judicial, el cual además de hacer parte de los estándares internacionales en la materia, está consagrado en la Constitución de la República Bolivariana de Venezuela. De otra parte, el Tribunal Supremo de Justicia afirma que su decisión no busca interpretar el sentido y el alcance de la sentencia de la Corte Interamericana de Derechos Humanos, ni de desconocer la Convención Americana de Derechos Humanos, ni de eludir el compromiso de ejecutar las decisiones de la Corte Interamericana de Derechos Humanos, sino aplicar un estándar mínimo de adecuación del fallo al orden constitucional interno. Sin embargo, a su vez solicita al poder Ejecutivo que con fundamento en el artículo 78 de la Convención Americana de Protección de los Derechos Humanos, proceda a la denuncia de dicho tratado. El Relator Especial llamó la atención del Gobierno de Su Excelencia sobre el principio de derecho internacional que obliga a los Estados a cumplir de buena fe con las obligaciones internacionales que se derivan de los tratados internacionales que suscribe de manera libre y voluntaria. Dicho principio, conocido como Pacta Sunt Servanda, ha sido reconocido en múltiples ocasiones por la jurisprudencia internacional como un principio del derecho de gentes. Según el mismo, los Estados no pueden invocar normas de su ordenamiento jurídico interno como un obstáculo para sustraerse del cumplimiento de una obligación internacional. La Convención de Viena sobre el Derechos de los Tratados consagró este principio en sus artículos 26 y 27. Asimismo, el Comité de Derechos Humanos y los organismos jurisdiccionales de los sistemas regionales de protección de los derechos humanos han reafirmado este principio, incluso afirmando que el mismo, al ser considerado un principio general del derecho, es de aplicación aún cuando se invoquen normas de carácter constitucional como obstáculo de derecho interno para incumplir una obligación internacional. En este orden de ideas, los Estados no pueden invocar disposiciones de orden interno con el fin de incumplir una obligación internacional, en este caso la ejecución de una sentencia dictada por un organismo internacional, estando vigente la Convención, y cuya competencia ha sido reconocida de manera voluntaria por el Estado en cuestión. En efecto, el artículo 68.1 de la Convención Americana de Derechos Humanos establece que las sentencias de la Corte Interamericana de Derechos Humanos son de obligatorio cumplimiento. Por lo tanto, no existe ninguna hipótesis jurídica que autorice su incumplimiento. La Corte Interamericana de Derechos Humanos ha reiterado en varias ocasiones que en virtud del carácter definitivo e inapelable de las sentencias de la Corte,

según lo establecido en el artículo 67 de la Convención Americana, éstas deben ser prontamente cumplidas por el Estado en forma íntegra. En consecuencia, las obligaciones convencionales de los Estados Partes vinculan a todos los poderes y órganos del Estado. Finalmente, el Relator expresó su preocupación por la solicitud del Tribunal Supremo de Justicia al poder Ejecutivo en el sentido de denunciar la Convención Americana de Protección de Derechos Humanos. Como es de público conocimiento el Sistema Interamericano de protección de los Derechos Humanos ha contribuido de manera invaluable a la protección de los derechos humanos en las Américas. A lo largo de su existencia ha construido una jurisprudencia sólida en materia de Derecho Internacional de los Derechos Humanos, la cual goza de reconocimiento, tanto de parte de los demás sistemas regionales de protección de los derechos humanos, como del sistema de Naciones Unidas. El Relator Especial ha hecho referencia a la jurisprudencia interamericana en múltiples ocasiones. Denunciar la Convención Americana de Derechos Humanos, además de poner en peligro la integridad del Sistema Interamericano, constituiría un retroceso en materia de protección internacional de los derechos humanos.

### **Comunicaciones recibidas**

No se ha recibido ninguna comunicación del Gobierno.

### **Comentarios y observaciones del Relator Especial**

369. El Relator Especial manifiesta su preocupación por la ausencia de respuesta oficial a la carta de alegación enviada el 14 de agosto de 2008 y urge al Gobierno de Venezuela a que envíe lo más pronto posible, preferiblemente antes de la finalización de la undécima sesión del Consejo de Derechos Humanos, una respuesta sustantiva a dicha comunicación arriba mencionada. Preocupa al Relator Especial la situación descrita previamente y llama la atención sobre los Principios Básicos sobre la Función de los Abogados, aprobados por el Octavo Congreso de las Naciones Unidas sobre la Prevención del Delito y el Tratamiento del Delincuente, celebrado en La Habana (Cuba) del 27 de agosto al 7 de septiembre de 1990, en particular el Principio 24 que establece que los abogados estarán facultados a constituir asociaciones profesionales autónomas e incorporarse a estas asociaciones, con el propósito de representar sus intereses, promover su constante formación y capacitación, y proteger su integridad profesional. El órgano ejecutivo de las asociaciones profesionales será elegido por sus miembros y ejercerá sus funciones sin injerencias externas. Respecto de la carta de alegación enviada el 9 de marzo del corriente el Relator expresa su profunda preocupación por el fallo del Tribunal Superior de Justicia (TSJ) que establece que los jueces provisorios no gozan de la garantía de estabilidad, ya que, tal como lo afirma el Alto Tribunal, éstos son de libre remoción y su destitución es discrecional. Cabe recordar, que los principios de estabilidad e inamovilidad del juez son una garantía fundamental para proteger la independencia del poder judicial, presupuesto éste fundamental para el buen funcionamiento de cualquier sistema judicial. Asimismo, preocupa al Relator Especial la solicitud del TSJ al poder ejecutivo de denunciar la Convención Americana de Protección de los Derechos Humanos. Al respecto el Relator Especial quisiera destacar que no existe ninguna hipótesis jurídica que autorice al Ejecutivo a incumplir la sentencia de la Corte Interamericana. El Relator Especial hace un llamado al Gobierno para que envíe una respuesta sustantiva a esta comunicación lo más pronto posible, con el fin de poder dar cuenta sobre la misma en su próximo informe sobre la situación en países específicos y territorios.

## Yemen

### Communications sent

370. On 26 May 2008, the Special Rapporteur sent an urgent appeal, regarding the case of Mr. Abdeladhim Ali Abdeljalil Al-Hattar (hereafter Mr. Al-Hattar), a citizen of Yemen, born in 1982, resident in Sanaa, who is an Imam at the Al-Haramayn mosque, in Al-Asbahi in Sanaa. According to the information received, Mr. Al-Hattar was arrested on 14 December 2007 at the mosque by agents of the Political Security Organisation, and taken to an undisclosed location. No arrest warrant was shown to him, nor was he informed of the reasons and legal basis for his arrest. Mr. Al-Hattar was held in incommunicado detention in police facilities for the first three (3) months since his arrest. He remained in detention without having been formally charged with an offence, without having received any information on the proceedings initiated against him or on the legal basis of his detention, without access to a lawyer, and without having had the possibility to challenge the legality of his detention before a judicial or other authority. Mr. Al-Hattar's parents have appealed to the authorities for their son's release but have not received any reply. The Constitution of Yemen stipulates that any person accused of a penal offence must be brought before a judge within 24 hours of his arrest. Article 73 of the Criminal Procedure Code of Yemen (Law no. 31 of 1994) establishes that everyone who is arrested must be immediately informed of the reasons for his arrest, must be shown the arrest warrant, must be allowed to contact any person he wishes to inform of the arrest and must be allowed to contact a lawyer. According to the source, none of these guarantees has been respected in Mr. Al-Hattar's case, his detention thus being devoid of any justification in Yemeni law. The Special Rapporteur requested the Government to provide him with detailed information about the current situation of the above-mentioned person and clarify the legal provisions justifying his continued detention.

371. On 14 August 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 situation of human rights defenders, regarding the case of Mr Mohamed al-Saqaf, a lawyer and university lecturer. Mr al-Saqaf supported and defended peaceful protesters from Southern Yemen, and expressed criticism about the repression of these protests. According to the new information received, on 11 August 2008 Mr Mohamed al-Saqaf was arrested by security agents on charges of "undermining national unity". He had been arrested at Sana'a airport, and was currently being held at the Criminal investigation prison in Sana'a. Mr al-Saqaf was the lawyer of Mr Hassan Ba'oom, who participated in demonstrations organized by retired South Yemeni soldiers, and was arrested on 2 August 2007. Mr Ba'oom was among those participating in the sit-in protest in Liberty Square in central Aden, about discrimination against South Yemeni soldiers in the spheres of employment, salaries and pensions. Concern was expressed that the arrest and detention of Mr Mohamed al-Saqaf may be solely connected with his activities of defending Mr Hassan Ba'oom in court proceedings, and for peacefully exercising his freedom of expression. Further concern was expressed regarding the physical and psychological integrity of Mr al-Saqaf, who may be at the risk of torture and ill-treatment.

### Communication received

372. On 17 October 2008, the Government replies to the urgent appeal of 14 August 2008, stating that Mr. Mohamed Al-Saqaf is not detained at their custody.

### **Special Rapporteur's comments and observations**

373. The Special Rapporteur is concerned at the absence of an official reply to the communication dated 26 May 2008 and urges the Government of Uganda to provide at the earliest possible date, and preferably before the end of the 12<sup>th</sup> session of the Human Rights Council, a detailed substantive answer to the above allegations.

### **Zimbabwe**

#### **Communications sent**

374. On 30 April 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, regarding the case of Frank Chikowore, freelance journalist accredited with the Media and Information Commission and the Zimbabwe Electoral Commission, on behalf of whom an urgent appeal was sent on 16 April 2008 by the Vice-Chairperson 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. On 15 April 2008, Mr. Chikowore was arrested by police officers. His lawyer tried to obtain information about his whereabouts with the Harare police headquarters, which at first denied that Mr. Chikowore was being held. According to additional information received, Mr. Chikowore has been detained from the time of his arrest on 15 April to 21 April at the Harare Central Police Station, and then transferred to a remand prison in Harare. It was reported that although the police made numerous accusations against Mr. Chikowore, no charges have yet been brought against him. It was further reported that on 17 April, Mr. Chikowore's lawyer filed an urgent High Court application requesting that his client be hospitalized for abdominal and chest pains, but that to date, Mr. Chikowore had not received any medical treatment.

375. On 8 May 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 the Special Rapporteur on the situation of human rights defenders, regarding the case of Mr Zimbabwe Chimbga, lawyer and member of the non-governmental organization Zimbabwe Lawyers for Human Rights (ZLHR). Mr Chimbga 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 28 March 2007. According to the information received, on 2 May 2008, on his way to Swaziland to attend the 43rd Ordinary Session of the African Commission on Human and Peoples' Rights, Mr Zimbabwe Chimbga was approached by security agents before the immigration desk at Harare International Airport. A total of nine confidential sets of documents were reportedly seized. These documents were case files of communications and complaints set to be argued by a ZLHR legal team against the Government of Zimbabwe. Also taken were copies of pre- and post-elections reports. The security agents recorded the personal and professional details of Mr Chimbga, and warned him that they were going to "deal with [him] when [he] return[s] to Zimbabwe". Concern was expressed that these acts of intimidation against Mr Chimbga and the seizure of the aforementioned documents may be solely related to his non-violent activities in defense of human rights.

376. On 23 June 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 situation of human rights defenders, regarding the case of Mr. Eric Matinega, a registered lawyer and Advocate of the High Court of Zimbabwe. Mr. Matinega is also an elected Member of the House of Assembly of Zimbabwe for Buhera West Constituency. According to the information received, on 31 May 2008, Mr. Matinega travelled to Buhera to investigate the alleged arrest, assault and detention of his clients and to enforce a court order he had obtained against Zimbabwe's Defence Forces in Buhera West Constituency over persecution of supporters of the Movement for Democratic Change. Upon arrival at Buhera police station, Mr. Matinega requested to visit his clients and produced his Law Society of Zimbabwe identity. However, he was denied access to his clients and instead he was subjected to questioning by an Assistant Inspector. Mr. Matinega was advised by the said inspector that he would not be allowed to see the persons in question, but was free to leave. When Mr. Matinega re-claimed his right to see his clients, Major Svosve arrived at the scene and consulted privately with the Assistant Inspector. At 00:30 hours, following this consultation, the Assistant Inspector advised Mr. Matinega that he had been instructed to arrest and detain him on unspecified charges of "public violence". Furthermore, Mr. Matinega's car was searched and confiscated, although nothing incriminating could be found. On 1 June, Mr. Matinega's legal counsel came to the police station and was allowed to see Mr. Matinega. When the legal counsel asked the representatives of the Criminal Investigation Department (CID) to specify the charges, they said that they did not know the reasons for his arrest. The CID representatives promised to return early on 2 June in order to take Mr. Matinega to court. On 2 June, the alleged investigating officer, Chief Superintendent Makone, decided to transfer Mr. Matinega to Mutare, where he was detained overnight at Mutare Central police station. On 3 June, Mr. Matinega was charged with "contravening section 187 (1) (a) as read with section 26 (1) (a) of the Criminal Law Act for incitement to public violence". Mr. Matinega denied the allegations orally and in writing. On the same day, when Mr. Matinega's lawyers approached the Area of the Public Prosecutor to see whether Mr. Matinega could be brought before the court, they were told that the Area of the Public Prosecutor was busy and hence this was not possible. On 5 June, Regional Magistrate, Mrs. Mwayera, ordered Mr. Matinega's immediate release as Mr. Matinega had spent four days in custody, which was beyond the legally provided period of detention. After one day of freedom, in the morning of 7 June, Mr. Matinega was once again arrested by the police at his Harare home. He was driven by the police to Buhera and detained at Murambinda police station. His lawyers urgently petitioned the High Court, presided over by Justice Chitakunye, who ordered in form of a provisional court order to produce Mr. Matinega at 10:00 on 8 June 2008 before the court. The order also stated that the reasons for detaining Mr. Matinega should be produced in the absence of which Mr. Matinega should be immediately released. As Mr. Matinega was not produced before the court as requested by Justice Chitakunye, the provisional court order was confirmed as the final order of the court. However, Chief Superintendent Makone, declared to Mr. Matinega's legal counsels that he would not comply with the order. Police officers tried to compel Mr. Matinega to sign new statements which he refused to do. Mr. Matinega was then detained at Buhera police station in spite of the court order for his immediate release. Mr. Matinega's lawyers subsequently filed a contempt of court application which was then pending before the High Court. On 10 June, Mr. Matinega was transferred from Buhera police station to Rusape police station. On 11 June, none of the magistrates in Rusape were prepared to preside over the matter as they were reportedly aware of the existing court orders as well as the pending application for contempt of court. Mr. Matinega

was locked up at the Rusape police station. On 13 June, Chief Magistrate, Herbert Mandeya, heard the case and decided on 14 June to place Mr. Matinenga on remand, following a fresh application by the Attorney General's office, for the same charges dismissed by the previous magistrate on 4 June 2008 and despite the High Court order for his release dated 8 June 2008. An application for bail was made, which was granted by the court. However, a representative of the Attorney-General's office invoked section 121 of the Criminal Procedure and Evidence Act to keep Mr. Matinenga in custody pending appeal of the decision to grant bail. Mr. Matinenga was then remanded in custody at Rusape Remand Prison until 26 June where he was still being detained.

377. On 30 June 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 the Special Rapporteur on the situation of human rights defenders, regarding the case of Mr. Mawadza, Bindura Provincial Magistrate; Ernest Jena, lawyer; and Mr. Trust Maanda, Zimbabwe Lawyers for Human Rights Regional Project Manager. According to the information received, on 23 June, Magistrate Mawadza was attacked and assaulted by Zimbabwe African National Union - Patriotic Front (ZANU-PF) youths as he left a supermarket in Bindura. He had previously granted bail to detained Movement for Democratic Change (MDC) activists. Mr. Mawadza continues to live in fear as no protection has been provided by the state. On 24 June 2008, around 9:00 am, Mr. Ernest Jena was abducted from his office by ZANU-PF youths who forced him into a green car. Some of the youths came back to his office looking for his assistant, Mr. Mashayamombe. They told Mr. Mashayamombe that Mr. Jena was at a base in Bindura. There are three ZANU-PF bases in Bindura, i.e. in Chiwaridzo, Chipadza and another. Mr. Jena was scheduled to appear before Magistrate Mr. Mawadza to argue matters of other detained activists. Reports from Mashonaland Central province suggest that Mr. Jena had been taken around to ZANU-PF militia bases across the province and being 'taught a lesson'. It was reported that he was last seen or heard of at a base in Chiweshe. However, his concrete whereabouts continue to remain unknown. On 23 June 2008, between 10.00 p.m. and 12.00 a.m., the police attempted to search the house of Mr. Trust Maanda without a warrant. When Mr. Maanda refused to open the door, they forced the gardener to open the gate. The police then searched the gardener's lodgings, but could not find anything of interest. They interrogated and threatened the gardener and then requested him to appear at the police station at 9:00 a.m. the following day. On 24 June 2008, just before midnight, Mr. Trust Maanda returned home after working late when his way was blocked by several ZANU-PF militias waving placards. When he stopped the car, three or four of the militia forced him to turn the car and drive back to town. He called Mr. Tinoziva Bere, Law Society of Zimbabwe Counselor, who drove to meet him. The two met and had to wait at a roadblock at Mutare Teachers college gate where they asked the police officers for help. However, they refused to assist and referred the two to Mutare Central Police. They were required to wait at that police station until they received reports that the militias had moved away from Mr. Maanda's house. Mr. Bere then escorted Mr. Maanda to his house around 1.15 a.m. and left only after Mr. Maanda had entered his house.

378. On 27 October 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, the Special Rapporteur on the right to education, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding information the Special Rapporteurs have received in relation to demonstrations organised by the *Zimbabwe National Students Union*

(ZINASU) and *Women of Zimbabwe Arise (WOZA)*. Previous communications were sent to the Government by several mandate-holders regarding ZINASU on 15 May 2006, 19 February 2007, 20 March 2007 and 20 July 2007. Responses from the Government were received on 21 May 2004, 5 August 2004, and 12 October 2007. Several communications have been sent regarding WOZA. On 8 July 2008, the Special Rapporteur on the situation of human rights defenders sent a communication regarding Ms. Jenni Williams and Ms. Magadonga Mahlangu of WOZA. No response was received from the Zimbabwe Government. According to information received, on 14 October 2008, at approximately 2.15 p.m., over 500 demonstrators gathered outside August House to present a petition to the Government of Zimbabwe in defense of their right to education. The petition reportedly addressed sanitation problems in colleges, uninhabitable student residences, educational materials, access to education and quality of education, academic freedom and institutional autonomy, and the closure of schools in Zimbabwe. The demonstrations included a reportedly peaceful march which was disrupted four times by armed riot police from the Zimbabwe Republic Police (ZRP). The President of the ZINASU, Mr. Clever Bere; the Secretary General, Mr. Lovemore Chinoputsa; the Legal and Social Affairs Secretary, Mr. Courage Ngwarai; a General Councillor, Ms. Edwina Burira; and a Youth Forum member, Mr. Tawanda Mutema, were all arrested. Some demonstrators were also hospitalized because of police violence. The Gender and Human Rights Secretary, Ms. Priviledge Mutanga was assaulted, sustaining head injuries and a swollen arm. Mr. Obert Masaraura, a General Councillor from Midlands State University, sustained serious head injuries. On 16 October 2008, another peaceful demonstration was organized by WOZA to call for food to be provided for all Zimbabweans. Police reportedly used force against demonstrators, including the Co-leader of WOZA, Ms. Magadonga Mahlangu, breaking one woman's finger with batons and causing bruises to another two women. Nine arrests were made in total. Seven protesters, who had been arrested before the demonstrations began, were released on the same day without charge after the intervention of a lawyer. However, Ms. Jenni Williams, the National Coordinator of WOZA, and Ms. Magadonga Mahlangu were detained in Bulawayo Central police station overnight and were moved to a remand prison on 17 October 2008. They were remanded in custody until their bail hearing on 21 October 2008. Neither of the women was present for the bail hearing because, according to the State, there was no transport available to take them there. They were charged with "disturbing the peace, security or order of the public" under Section 371(a) of the Criminal Law (Codification and Reform) Act. They were reportedly being held at Bulawayo Remand Prison. It was unclear whether they have had access to a lawyer. Serious concern was expressed that the action taken against the demonstrators mentioned above may be directly related to their legitimate activities in the defense of human rights, in particular the right to education. Further concern was expressed for the physical and psychological integrity of Ms. Jenni Williams and Ms. Magadonga Mahlangu, as well as both groups of demonstrators. It was feared that the described incidents form part of an ongoing pattern of harassments against demonstrators petitioning to defend human rights in Zimbabwe.

**Communication received**

None

**Special Rapporteur's comments and observations**

379. The Special Rapporteur is concerned at the absence of an official reply to communications dated 30 April 2008, 8 May 2008, 23 and 30 June 2008 and 27 October 2008. He urges the Government of Zimbabwe to provide at the earliest possible date detailed substantive replies to the above allegations. The Special Rapporteur remains concerned at the situation of defense lawyers and the violation of basic fair trial guarantees, particularly in the cases of human rights defenders. In view of this and the total absence of any Government's reply to communications, the Special Rapporteur reiterates his request to carry out an in situ visit to Zimbabwe, which his predecessor made in 2001 and which he repeated several times.

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