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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

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

Addendum

Situation in specific countries or territories [*]

[*] The present document is being circulated as received, in the languages of submission only, as it greatly exceeds the word limitations currently imposed by the relevant General Assembly resolutions.

CONTENTS

Introduction

1. The present report supplements the main report and the mission reports presented by the Special Rapporteur on the independence of judges and lawyers to the Commission on Human Rights. It aims at reflecting specific situations alleged to be affecting the independence of the judiciary or at violating rights to a fair trial in 52 countries and, in a couple of cases, recent important developments concerning the judiciary. It further aims at presenting any replies received from the Government of the country concerned in response to specific allegations together with comments and observations from the Special Rapporteur.

2. Readers will thus find in it: (a) Summaries of the urgent appeals and allegation letters transmitted by the Special Rapporteur to governmental authorities between 1 January and 31 December 2005 and of press releases issued during the same reporting period together with references to communications sent in 2004 which have so far remained unanswered. In this connection, the Special Rapporteur wishes to emphasize that the communications presented in the report exclusively reflect allegations he received. Where information was insufficient and it could not be supplemented, or where the information received was outside the mandate, the Special Rapporteur was not in a position to act and hence such allegations were not included in the report; (b) summaries of the replies received from some of the States concerned between 1 January and 31 December 2005. In certain instances, the Government reply came quite late, since it refered to allegations that were presented in the previous report concerning the year 2004 or or even earlier. On the other hand, it may be noted that certain responses received from the Governments of Algeria, Argentina, Belarus, Brazil, Democratic People's Republic of Korea, Kazakhstan, Morocco, Nepal, Saudi Arabia and Turkey 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 31 December 2005. 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; and (c) observations or specific comments by the Special Rapporteur.

3. The report also includes five tables of statistical data so as to help the Commission on Human Rights to have an overview of developments in 2005 and the past three years.

4. As may be seen from the tables, action has mainly been taken in the form of urgent action and this in conjunction with other Special Rapporteurs. This does reflect not only a personal choice of the Special Rapporteur aimed at strengthening the functioning and impact of Special Procedures, but also the fact that it is far from uncommon that situations affecting the judiciary occur in contexts in which other democratic institutions are also at risk or where a wide range of human rights are being violated such as the right to life, the right not to be subjected to torture and ill-treatement or the right to freedom of expression.

5. The Special Rapporteur notes that no less than a good quarter of all existing countries, in all parts of the world, are concerned, and that the type of allegations received cover a wide range of subjects. He fears that this may reveal increased wide-ranging assaults on the independence of the judiciary around the world, weakening it as an institution, and also direct attacks on judges and lawyers, all of which results in dramatic violations of the right to due process and to a fair trial. He further notes an increase in the number of allegations reaching him and attributes this to the fact that more people are aware of the procedure, especially non-governmental organizations and jurists and judges associations.

6. At the same time, the Special Rapporteur notes that he has enjoyed increased cooperation on the part of Governments. Although preoccupied by the proportion of specific allegations that are still unanswered, he finds it remarkable that only 15 of the 52 States referred to in this report have so far not send any form of reply to one or various of his communications while the other Governments have generally offered detailed substantive information. He welcomes and further encourages governmental cooperation and invites those States which are lagging behind to avoid situations in which they do not offer any form of substantive reply to allegations transmitted to them. Fearing that such absence of reply may expose these States to various interpretations ranging from administrative negligence to an admission by omission of the allegation relayed to them, he urges them to provide precise and detailed answers at the earliest possible date and preferably by the end of the 62nd session of the Commission on Human Rights.

7. In general, he trusts that the situation just described shows the relevance of the existence and the concrete impact of this special procedure which, in his view, should definitely be continued and strengthened in the context of the future Human Rights Council. The above also shows the value and relevance of technical assistance in the field and the importance of strengthening international capacity in this connection. As stated in his main report, the Special Rapporteur trusts that it is important and relevant in this connection to promote the role and work of the international associations of jurists and judges having especially in mind the role they are able to perform in the defense of lawyers and magistrates'rights whenever they are being violated nationally and also their capacity to help and support progress in defending judicial institutions.

8. In the same vein, the Special Rapporteur finds that the above shows the relevance and urgency of better promoting at the national level United Nations guidelines regarding the judiciary. This should be done systematically in the context of legal education, including continued legal education, so as to improve the capacity of judges, lawyers and prosecutors to perform their functions with independence and to raise their human rights awareness. To this end, means should be made available so as to make sure that prosecutors, judges and lawyers and judicial assesors have access to these guidelines in their language around the world.

I. STATISTICAL DATA

9. The following six tables are aimed at helping the Commission on Human Rights to have an overview of developments in 2005 and the past three years

Table 1 - Type of communications sent to Governments by the Special Rapporteur in 2005

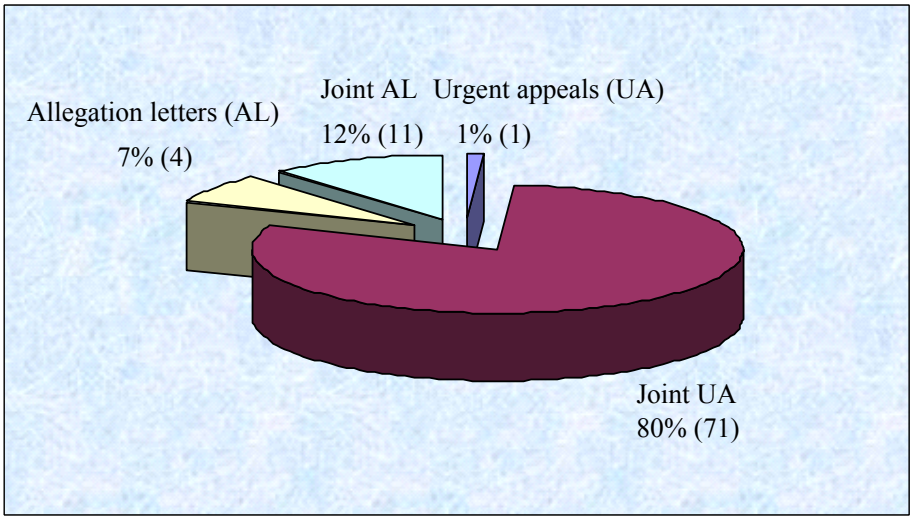


Table 2 - Communications sent by the Special Rapporteur and Government replies received in 2005

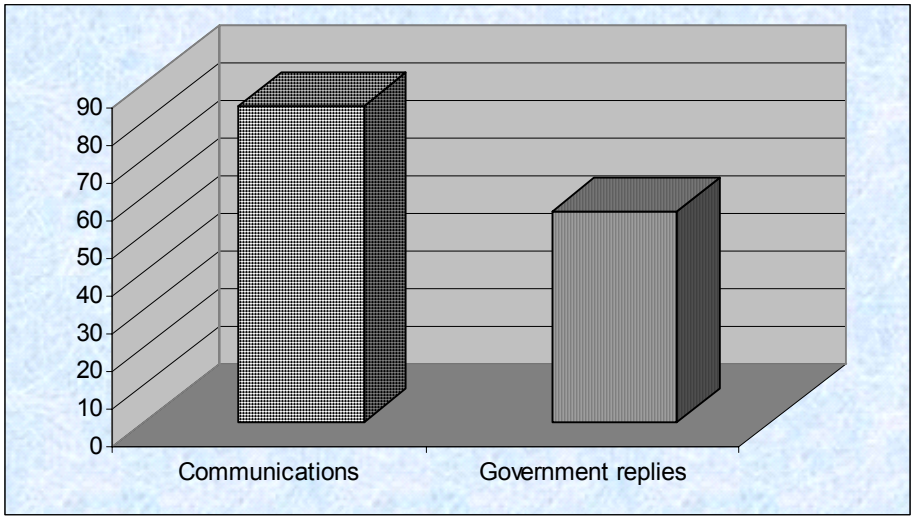


Table 3 - Thematic issues addressed in allegations brought to the Special Rapporteur's attention and transmitted to Governments in 2005

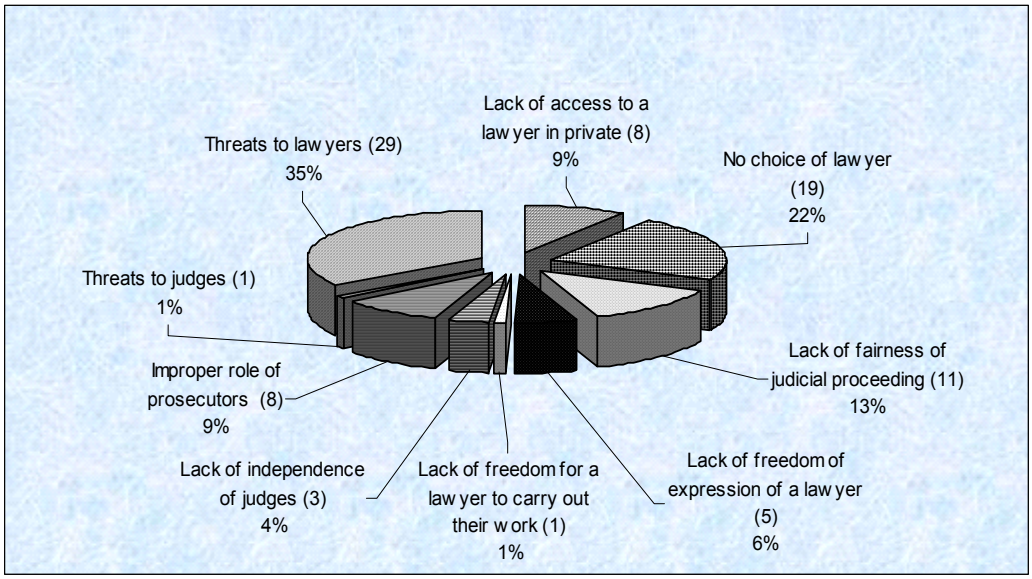


Table 4 - Communications sent by the Special Rapporteur and Government replies received in the past 3 years

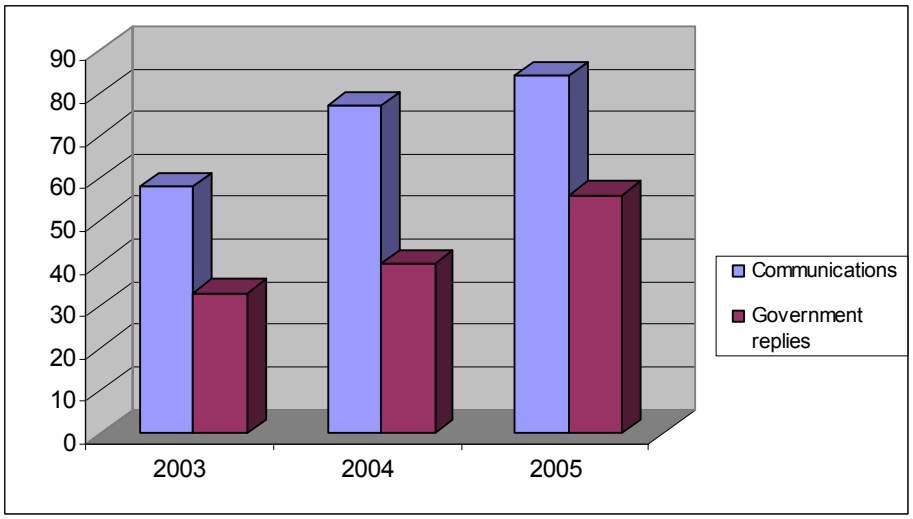
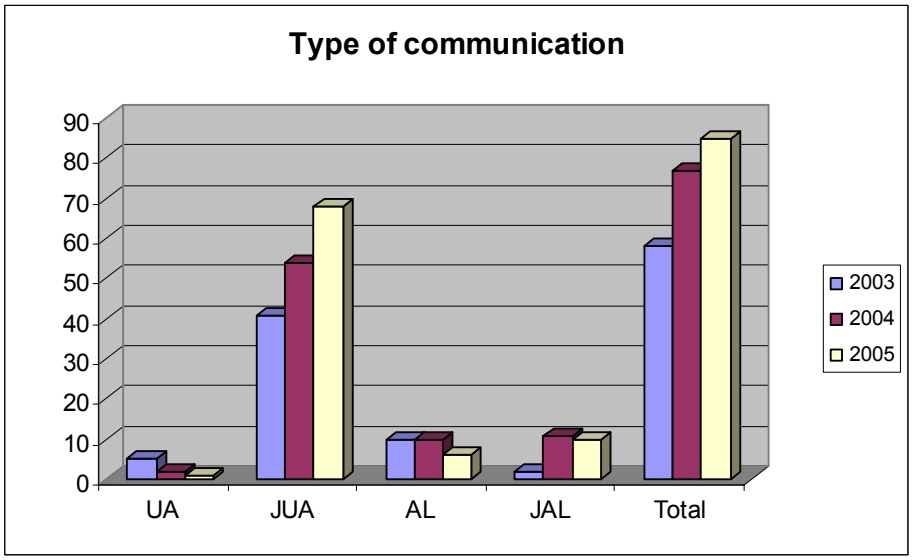


Table 5 - Type of communications sent over the past 3 years



II. SPECIFIC SITUATIONS IN VARIOUS COUNTRIES

Algeria

Communications envoyées au Gouvernement par le Rapporteur spécial

10. Le 1er mars 2005, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent sur la situation de Brahim Ladada, Abdelkrim Khide, militants des droits humains, et Rachid Mesli, avocat algérien. Selon les informations communiquées, Rachid Mesli avocat algérien ayant défendu dans le cadre de son travail de nombreuses personnes accusées de «crimes et délits d'atteinte a la sûreté d'état» et de «terrorisme», et qui en collaboration avec Amnesty International aurait dénoncé les mauvais traitements subis par ses clients ainsi que les irrégularités de nombreuses procédures judiciaires, aurait été enlevé le 31 juillet 1996 par des membres des services de sécurité algériens. Il aurait été déféré devant un tribunal 12 jours plus tard pour « appartenance à un groupe terroriste armé» et aurait été condamné à trois ans de prison pour «apologie du terrorisme». A sa libération en juillet 1999, Me Mesli aurait repris ses activités d'avocat. Devant les intimidations persistantes dont il aurait fait l'objet, il se serait réfugié en Suisse le 10 août 2000, où il aurait obtenu l'asile en novembre

de la même année. Depuis, il serait un membre actif de Justicia Universalis, une association à l'origine de plaintes pour crimes de tortures et de disparitions forcées, déposées contre des personnalités algériennes ayant exercé des responsabilités officielles. Le 23 mars 2002, Brahim Ladada et Abdelkrim Khider, militants des droits humains et anciens co-détenus de Me Mesli, auraient été arrêtés à leur domicile à Dellys. Ils auraient été transférés dans une caserne de la sécurité militaire où ils auraient été torturés pendant 12 jours. Selon les informations reçues, durant leur détention et sous la torture, les deux hommes auraient reconnu avoir communiqué à Me Mesli des informations relatives aux violations des droits de l'homme dans leur région, en particulier sur des cas de disparitions forcées. Ils auraient tous deux été inculpés par le tribunal d'Alger pour «appartenance à une organisation terroriste» et «apologie du terrorisme». Me Mesli quant à lui aurait fait l'objet d'une inculpation pour «appartenance à une organisation terroriste active à l'étranger et ayant pour but de semer l'effroi au sein de la population et de créer un climat d'insécurité». Un mandat d'arrêt international aurait été délivré contre lui. Le 18 mars 2004, Brahim Ladada et Abdelkrim Khide auraient été acquittés par le tribunal d'Alger alors que Me Mesli aurait été condamné par contumace à 20 ans de réclusion criminelle pour «appartenance à une organisation terroriste activant à l'étranger et ayant pour but de semer l'effroi au sein de la population et de créer un climat d'insécurité». Des craintes ont été exprimées que la condamnation par contumace contre Rachid Mesli, ainsi que l'arrestation de deux de ses anciens co-détenus toujours en contact avec lui, ne visent à faire entrave à son action en la faveur des droits de l'homme.

11. Le 27 avril 2005, le Rapporteur spécial, conjointement avec le Rapporteur Spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, et le Président Rapporteur du Groupe de travail sur les disparitions forcées ou involontaires, a envoyé un appel urgent sur l'annonce faite par le Président Abdelaziz Bouteflika d'une proposition d'amnistie générale s'appliquant aux personnes responsables de violations des droits de l'homme commises depuis 1992 lors du conflit interne qu'a connu l'Algérie. Bien qu'aucun projet de loi n'ait été rendu public à ce jour, les Rapporteurs et le Président Rapporteur ont été informés que le Président Bouteflika a annoncé que celui-ci sera soumis à referendum populaire et exemptera de poursuites les membres des groupes armés, des milices armées par l'Etat et des forces de sécurité pour les exactions dont ils sont responsables. Par ailleurs, il a été porté à leur attention que la commission consultative sur les droits de l'homme a rendu le 31 mars 2005 son rapport à la présidence de la République. Il apparaît que son président, M. Ksentini, recommande que les familles de victimes reçoivent une indemnisation. D'après certaines sources qu'il n'a pas été possible de vérifier, les familles qui récusent cette option pourraient recourir à la justice. M. Ksentini aurait également déclaré que 6146 cas de disparitions de civils seraient le «fait d'agents de l'Etat» et constitueraient autant de «dérives individuelles». Il aurait par ailleurs ajouté que la responsabilité pénale des supérieurs hiérarchiques desdits agents et leur poursuite en justice ne pourrait être engagée car ceux-ci devraient bénéficier de l'amnistie à venir.

Communication reçue du Gouvernement

12. Le 2 avril 2005, le Gouvernement a répondu à l'appel urgent envoyé par le Rapporteur spécial le 1er mars 2005. La Mission Permanente a demandé au Rapporteur Spécial des précisions afin de compléter une phrase mentionnée dans l'appel urgent envoyé, précisions qui lui ont été envoyées. Par lettre du 9 janvier 2006, le Gouvernement a transmis des informations qui, compte tenu des délais de réception de la lettre, n'ont pu être reflétées dans le présent rapport, ce que le Rapporteur spécial regrette. D'ores et déjà, le Rapporteur spécial remarque

que ces informations concernent les allégations transmises le 1er mars, tandis que celles transmises le 27 avril demeurent encore sans réponse au moment de finaliser ce rapport.

Commentaires et observations du Rapporteur spécial

13. Le Rapporteur spécial remercie le Gouvernement de l'Algérie pour sa coopération et souhaite l'assurer que sa réponse est à l'étude au moment de clore ce document et sera reproduite dans son prochain rapport. S'agissant des allégations qui lui ont été transmises le 27 avril, le Rapporteur spécial espère en outre que le Gouvernement de l'Algérie pourra lui faire parvenir toutes les informations nécessaires au plus tôt, et de préférence avant la clôture de la 62ème session de la Commission des droits de l'homme.

Argentina

Comunicaciones enviadas al Gobierno por el Relator especial

14. El 13 de octubre de 2005, el Relator Especial envió una carta de alegación en relación con la grave crisis institucional por la que está atravesando el Poder Judicial de la provincia de Neuquén como consecuencia de supuestas injerencias del Poder Ejecutivo y Legislativo Provincial. El Relator Especial recibió información según la cual estarían cometiendo una serie de irregularidades en el ámbito del Poder Judicial y que atentarían contra la independencia del mismo. Entre ellas se denuncian:

(a) En el transcurso del 2004 el Gobierno habría cambiado totalmente la composición del Tribunal Superior de Justicia (TSJ), conformando una supuesta "mayoría automática" integrada por cuatro penalistas que tendrían como común denominador el haber intervenido a favor del sobreseimiento del Gobernador de Neuquén en alguna causa judicial.

(b) En ese mismo año el nuevo jefe de la Policía habría reemplazado a más de la mitad del personal del Servicio de Investigaciones de Fiscalías, incluido su Jefe. Este servicio estaba integrado por personal policial con entrenamiento especial útil para la investigación de delitos de corrupción y delitos complejos. Aparentemente los nuevos agentes no tendrían entrenamiento específico y las designaciones habrían sido realizadas sin consultar al Ministerio Fiscal. Una situación similar habría ocurrido en el ámbito del Gabinete Técnico Contable del Poder Judicial, donde se habría reemplazado a casi todo el equipo por profesionales sin la formación necesaria.

(c) La modificación, por parte del TSJ, del Reglamento de Funcionamiento de la Comisión Asesora para la designación de magistrados y funcionarios con categoría de Ministerio Público o superior. Dicha Comisión habría sido creada por el TSJ (en su anterior composición) a fin de autolimitar sus funciones en materia de designaciones, pues estaba integrada por miembros del Colegio de Abogados, de la Asociación de Magistrados y del Tribunal Superior de Justicia y su función era evaluar los antecedentes de los candidatos y elegir a tres candidatos, debiendo el TSJ elegir a un candidato de la terna votada por la Comisión. Con la modificación implementada el TSJ puede designar a cualquier candidato, aunque haya obtenido un

sólo voto. Ello traería aparejado la dilución de las facultades de la Comisión Asesora, pues al encontrarse la misma integrada por miembros del TSJ, quienes también intervienen en la designación, el peso a favor de quienes ellos postulen adquiriría un efecto desequilibrante. De esta manera el TSJ habría llevado a cabo designaciones y recategorizaciones masivas sin concurso ni fundamentación alguna. Incluso habiendo candidatos que contaban con seis votos de la Comisión Asesora, se habría designado a candidatos que contaban con un único voto, el del miembro del TSJ en la Comisión.

d) Uno de los Ministros del TSJ presentó un proyecto de reforma de la Ley de Protección Integral de la Niñez y Adolescencia que aparentemente buscaría neutralizar la actuación de la Defensoría del Niño y Adolescente y de las defensorías del interior. El Relator ha recibido información sobre una serie de amenazas que habrían sufrido la Defensora del Niño y Adolescente, Dra. Nara Osés, y las Adjuntas, configurándose de esta manera un episodio de coacción que involucra a Defensores de Derechos Humanos.

e) En octubre de 2004 el Vicepresidente de la Legislatura, Diputado Oscar Gutiérrez (perteneciente al partido gobernante, el Movimiento Popular Neuquino), manifestó públicamente su intención de promover juicio político contra el Fiscal ante el TSJ, Dr. Alberto Tribug, y un jury de enjuiciamiento contra el Fiscal de Cámara, Dr. Ricardo J. Mendaña. Ello, debido a declaraciones críticas que hicieran ambos funcionarios respecto de ciertas medidas adoptadas por el TSJ, lo que afectaría seriamente su libertad de expresión. En noviembre de ese mismo año se presentó el pedido de juicio político de Tribug y el jury de enjuiciamiento de Mendaña, fundando ambos pedidos en la participación que tuvieron los dos fiscales en una experiencia piloto de investigación a cargo de Fiscalías. Dicha experiencia piloto fue aplicada por numerosos funcionarios pero la denuncia sólo se habría dirigido a estos dos fiscales. Por lo demás, la experiencia piloto fue implementada por Acordada del TSJ, en su anterior composición, que habilitó los órganos jurisdiccionales y miembros del Ministerio Público Fiscal que intervendrían en ella. Asimismo, en declaraciones públicas el Sr. Gutiérrez habría manifestado que las denuncias contra Tribug y Mendaña son *"una cuestión personal"*.

En diciembre el Dr. Mendaña recusó a los vocales del TSJ Sommariva, Fernández y Badano por falta de imparcialidad fundada en los siguientes motivos:

1) La mayoría de las declaraciones críticas reprochadas al Fiscal estaban dirigidas a los propios recusados, quienes reconocieron sentirse agraviados, de modo que si actuaban como jurado se convertían en jueces y partes.

2) Por encontrarse en una posición funcional equivalente a la del denunciado ya que los tres vocales intervinieron en casos en los que se aplicó la experiencia piloto.

El jury, a pesar de haber recusado a tres de sus miembros, decide que las recusaciones se tratarían más adelante y, en tanto, toma decisiones trascendentes: declara la admisibilidad de la denuncia; decreta la suspensión de Mendaña en sus funciones y la retención de la mitad del salario.

En enero el jurado de enjuiciamiento trató las recusaciones. Se rechazaron todas las pruebas ofrecidas para fundar la recusación, por considerar que "de los informes de los recusados no surge una negativa en relación a los hechos objetivos que se plantean". Asimismo, decidió que los jurados recusados podían intervenir en la resolución que trata la recusación, absteniéndose sólo de intervenir en el tratamiento de la propia recusación, a pesar que las causales que afectaban a los tres vocales eran comunes, ya que no eran de tipo personal. Al momento de decidir las recusaciones se arribó a un empate con tres votos a favor de la recusación y tres en contra (dos de ellos recusados por las mismas causas). Para desempatar se habría recurrido a un voto calificado o doble voto de la presidencia, que siempre estuvo en cabeza de alguno de los recusados. Este doble voto, no está previsto en la ley del jurado y resulta absolutamente extraño a los procedimientos judiciales. Con posterioridad los procedimientos del jury se suspendieron por una medida cautelar deducida por el Dr. Mendaña solicitando el apartamiento de los jurados Fernández, Sommariva y Badano. El amparo fue rechazado en segunda instancia. Contra esta decisión se interpuso recurso de casación por inaplicabilidad de la ley. El Tribunal Superior de Justicia rechaza el amparo, en virtud de lo cual el amparista dedujo recurso extraordinario que se encuentra actualmente en trámite. A pesar de no estar firme la decisión del Tribunal Superior de Justicia el jurado decide reanudar los procedimientos a pesar de la medida cautelar. Asimismo, la ley ha previsto noventa días hábiles (más una prórroga de sesenta) para que el jurado concluya el proceso y dispone que si vencido dicho plazo el proceso continúa, deberá absolver al acusado. No obstante encontrarse vencido dicho plazo, el jurado hizo caso omiso a esta norma y decide la "suspensión" de los plazos sin ningún respaldo legal.

15. El 27 de diciembre de 2005, el Relator especial, conjuntamente con la Representante especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la situación de inseguridad y peligro en la que se encontrarían el Sr. Pablo Gabriel Salinas, abogado de derechos humanos, y su familia, así como la Sra. María Angélica Escayola y el Sr. Alfredo Guevara Escayola, ambos abogados de derechos humanos. Los tres abogados han trabajado como representantes de varias familias de víctimas de violaciones de derechos humanos cometidas durante el periodo de gobierno militar en Argentina entre 1976 y 1983, así como a familias de víctimas de presuntos homicidios cometidos por la policía en la provincia de Mendoza. Además han conseguido que la Corte Interamericana de Derechos Humanos intervenga en casos de trato inhumano y de duras condiciones de detención en los establecimientos penitenciarios de la provincia. Según la información recibida, el 16 de diciembre del 2005, aproximadamente a las 05:00, la esposa de Pablo Gabriel Salinas habría recibido una llamada telefónica en casa de la familia en Mendoza. Una voz masculina desconocida habría dicho: "te voy a hacer de todo […] te voy a culiar".

16. El 15 de diciembre del 2005, a la misma hora, Pablo Salinas habría recibido una llamada en la que se podía escuchar una grabación de la voz de su hijo de ocho meses. Anteriormente, el 5 de diciembre del 2005, alguien habría pintado la palabra "ratas" en el muro de las oficinas que comparten Pablo Salinas y sus colegas María Angélica Escayola y Alfredo Guevara Escayola, con una flecha que señalaba a la puerta. Además, el 15 de noviembre del 2005, tras la muerte de uno de los colegas de Pablo Salinas, Alfredo Ramón Guevara, alguien habría pintado "chau cerdo" en los muros de la oficina. Pablo Salinas ha presentado una

denuncia judicial ante la Fiscalía pero todavía no han recibido ninguna protección. Los Relatores expresaron graves temores por la seguridad y la integridad física y psicológica de Pablo Gabriel Salinas y su familia, María Angélica Escayola y Alfredo Guevara Escayola. Se teme que el acoso de los abogados esté relacionado con su trabajo de defensa de los derechos humanos.

Respuestas del Gobierno

17. Por cartas fechadas 24 de enero y 14 de febrero, el Gobierno argentino envió respuestas que, por la fecha de las mismas, no pudieron ser incluidas en este informe.

Comentarios y observaciones del Relator especial

18. El Relator Especial agradece al Gobierno argentino su grata cooperación y desea asegurarle que sus respuestas están siendo examinadas y serán reflejadas en su próximo informe.

19. Por otro lado, el Relator Especial celebra la decisión del 14 de junio de 2005 de la Corte Suprema de Justicia de la Argentina, por medio de la cual invalida dos leyes de amnistía que impedían el enjuiciamiento de los crímenes cometidos por oficiales militares durante la llamada "Guerra Sucia" (1976-1983) en la Argentina.

Bangladesh

Communication sent to the Government by the Special Rapporteur

20. On 7 December 2005, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders, concerning a series of threats and attacks against the judiciary, which had been taking place across the country. During the period from 29 November to 1 December 2005, a number of suicide bomb attacks occurred at a courthouse, a law office and at an office where lawyers were due to meet, killing 12 people and wounding approximately 130 people. These attacks followed a series of attacks and death threats against the judiciary that began on 17 August 2005. According to the information received, two judges had been killed, three had been wounded and 13 had received death threats in the three months prior to the communication. A number of groups, including Harkat-ul-Jehad-al-Islami (HuJI), Jagrata Muslim Janata Bangladesh (JMJB), Jama'atul Mujahideen Bangladesh (JMB), and Bangladesh Assembly of Holy Warriors were thought to be responsible for the attacks. It was reported that the attacks and threats had been targeted against the judiciary in order to force them to conduct court proceedings according to Islamic Laws, according to the intent of these groups to seek to replace the secular legal system with Islamic law. One suicide bomb attack occurred at an office where lawyers were due to meet. This attack coincided with a public strike in Dhaka protesting against such attacks to the judiciary in support of the Supreme Court Bar. Concern was expressed about the safety of judges and lawyers in Bangladesh and their freedom to carry out their legal work without pressures, threats or interferences. It was feared that the judiciary cannot conduct its work in this insecure environment, and that its independence is seriously threatened.

Communications from the Government

21. On 15 December 2005, the Permanent Mission of Bangladesh acknowledged the Special Rapporteur's joint urgent appeal of 7 December 2005 and on 27 December 2005, the Government provided a response and advised that immediate action had been taken to arrest those found associated with these incidents and they would carry out an investigation. The organizations to which these militants belonged had been banned. A team of explosive experts from abroad had been helping in the investigations. At the time of the reply, around 700 militants had been arrested by the law enforcement agencies, around 160 cases had been filed, and 80 cases had been charge-sheeted. The Government had taken specific security measures to protect courts throughout the country. Police presence in, and around, the court premises had been reinforced. Justices had been provided with full-time armed police escort. The Government also advised it had launched a country-wide motivation campaign to counter the influence of extremism and nefarious ideologies. The Government stated that it was also moving towards enacting stricter laws to curb the menace of bomb blasts and terrorism.

Special Rapporteur's comment and observations

22. The Special Rapporteur thanks the Government of Bangladesh for its cooperation and value its efforts in providing within a short delay substantive information in response to the above allegations. He wishes to assure the Government that their replies are being studied at the time of finalizing this report and will be commented shortly.

Belarus

Communication sent to the Government by the Special Rapporteur

23. On 16 November 2005, 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 in Belarus, and the Special Representative of the Secretary-General on the situation of human rights defenders concerning the situation of Vera Stremkovskaya, a lawyer and human rights activist. On 28 October 2005, the Minsk Bar Association rejected her application to leave the country to participate in an international conference on the "Role of defence lawyers in guaranteeing a fair trial". The conference was organized by the Organization of Security and Co-operation (OSCE) and held on 3 and 4 November in Tbilisi, Georgia. There was also a concern that her application to attend the conference may have been refused in order to prevent her from discussing potential changes to the legislation on the independence of judges and lawyers in Belarus. It was reported that Mrs. Vera Stremkovskaya had been prevented from traveling to international conferences on a number of previous occasions.

Communication from the Government

24. The Government of Belarus replied to the urgent appeal sent by the Special Rapporteur on 16 November 2005 with a letter dated 10 January 2006, which, due to the fact that it was received with delay, could unfortunately not be included in this report, a circumstance which the Special Rapporteur regrets.

Special Rapporteur's comment and observations

25. The Special Rapporteur thanks the Government of Belarus for its cooperation and wishes to assure it that the information it kindly provided will be analysed shortly and will further be reflected in his next report.

Bolivia

Comunicación enviada al Gobierno por el Relator especial

26. El 19 de enero de 2005, el Relator Especial, conjuntamente con el Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, la Representante Especial del Secretario-General para los defensores de los derechos humanos, y el Relator Especial sobre la situación de los derechos humanos y libertades fundamentales de los indígenas, envió un llamamiento urgente relativo a la situación de los miembros del Centro de Estudios Jurídicos e Investigación Social (CEJIS), en particular, el abogado y miembro Cliver Rocha, cuyo caso fue objeto de dos llamamientos urgentes enviados el 2 de abril y el 7 de mayo de 2003. De acuerdo con la información recibida, el 5 de enero de 2005, la entrada de la oficina del CEJIS en la localidad de Riberalta, departamento de Beni, fue violentada por 30 hombres armados y supuestos dirigentes de la Asociación Agroforestal de Riberalta (ASAGRI), quienes habrían destruido el interior de la oficina y quemado varios documentos relacionados con la propiedad de la tierra. Según los informes, el ataque habría estado acompañado por un aviso general de abandonar la zona en 48 horas y una amenaza de "quemar vivo" a Cliver Rocha si regresaba a Riberalta. El 8 de enero, por medio de un 'Manifiesto Público', la ASAGRI habría justificado el ataque contra el CEJIS y lo habría acusado de 'enfrentarlos con los hermanos campesinos e indígenas'. Asimismo, la ASAGRI habría amenazado a otras organizaciones que trabajan sobre problemas agrarios, con tomar acciones de hecho si no se van antes de fin de enero de 2005. La ASAGRI habría también amenazado de expulsar por la fuerza a los indígenas tacañas de la zona de Miraflores si se niegan a irse de la tierras comunales que les habrían oficialmente concedidas en 2002. Hasta la fecha los amenazados no habrían recibido medidas cautelares de las autoridades. Solo se les habría recomendado que las oficinas del CEJIS se cierren hasta el 13 de enero cuando una comisión nacional llegará a la zona para tentar de resolver los problemas de tierras. A la luz de estas alegaciones, los relatores especiales expresaron sus temores por las amenazas recibidas por Cliver Rocha y otros miembros del CEJIS relacionadas con su trabajo como defensores de los derechos humanos, en particular, la asistencia legal que ofrecen a las comunidades indígenas y campesinas que luchan por el derecho a la tierra.

Comunicación recibida del Gobierno

27. Mediante comunicación del 6 de abril de 2005, la Misión Permanente de Bolivia ante las Naciones Unidas transmitió la siguiente información en respuesta a la comunicación del 19 de enero de 2005 sobre el caso del Centro de Estudios Jurídicos e Investigación Social (CEJIS) y las acciones realizadas por el Viceministerio de Justicia a través del Proyecto Pueblos Indígenas y Empoderamiento. El 6 de enero la fiscalía de Riberalta fue solicitada para la investigación y la sanción a los responsables de los supuestos allanamientos y destrozos El 19 de enero una comisión, constituida por representantes del Ministerio de Asuntos Indígenas, Gobierno y Viceministerio de Justicia, se encontró con la Dra. Paulina Coronado, encargada de

la investigación preliminar, para que se acelere el proceso contra los presuntos responsables del vandalismo. Ese mismo día la Fiscal admitió la demanda presentada por CEJIS. Un Fiscal Especial fue luego designado para hacerse cargo particular e inmediato de las investigaciones, adoptar las medidas necesarias para proteger las víctimas y informar al Viceministro de Justicia de sus actividades cada semana. El 9 de febrero, se firmó una resolución triministerial en la que se resolvió: garantizar el derecho de los indígenas a sus tierras de origen, prestar asistencia a las comunidades indígenas o a sus asesores ante toda amenaza, apoyar al Ministerio Público en todo proceso que involucre a comunidades indígenas. El 23 de febrero, una comisión que fue designada por el Viceministerio de Justicia participó en la audiencia de reconstrucción del asalto de la oficina del CEJIS por parte de miembros de ASAGRI. También se reunió con miembros de la Central Indígena de la Región Amazónica de Bolivia que denunciaron la negligencia de las autoridades con respecto a este caso. Finalmente se reunieron con miembros de ASAGRI quienes se presentaron como victimas de una mala aplicación de la ley y denunciaron a las ONGs de la zona como responsables de enfrentamientos entre indígenas y campesinos. El 21 de marzo, el Viceministerio de la Justicia se enteró a través de los medios de comunicación, pero no de manera oficial, que la Comisión Interamericana de Derechos Humanos solicitó al estado boliviano medidas cautelares para proteger la comunidad indígena de Miraflores y los miembros del CEJIS, garantizar al ejercicio libre como defensores de derechos humanos y llevar adelante una investigación exhaustiva de los hechos denunciados.

Comentarios y obervaciones del Relator especial

28. El Relator especial agradece al Gobierno de Bolivia su grata cooperación y la respuesta recibida. Tomando en cuenta los recientes y significativos cambios en la conducción del país, el Relator especial ofrece al Gobierno enviarle, si procede, cualquier información adicional acerca de este caso.

Brazil

Communications sent to the Government by the Special Rapporteur

29. On 4 March 2005, the Special Rapporteur sent a joint allegation letter with the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions in relation to the alleged killing of Sister Dorothy Stang, an environmentalist, human rights defender and member of the Pastoral Land Commission (Comissão Pastoral da Terra), an organization of the Catholic Church which works to promote and defend the rights of rural workers and land reforms in Brazil. On 12th February 2005 Sister Dorothy Stang was shot several times, resulting in her death, as she walked to attend a meeting in the town of Anapu, Pará. The early morning attack came less than a week after Sister Stang had met with the Brazilian Human Rights Minister, Secretary Nilmário Miranda, to report that four local farmers had allegedly received death threats from loggers and landowners. Sister Dorothy had received a number of awards for her work as a human rights defender, including the "Human Rights Award" from the Bar Association of Brazil (OAB - Ordem dos Advogados do Brasil), which she received on 10th December 2004. It was also reported that the OAB had included Sister Dorothy on a list of human rights defenders who faced possible murder. On 22 October 2004, Sister Dorothy met with the Special Rapporteur on the Independence of judges and lawyers in Belém during his mission to Brazil. It was feared that Sister Dorothy Stang was killed as a direct result of her

human rights work, in particular her work to denounce violations landowners and illegal loggers in the state of Pará. The Special Rapporteurs requested the Government for a swift action to bring those responsible to justice and adopt steps to address the climate of vulnerability experienced by human rights defenders in the state of Pará.

30. On 13 April 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture, concerning the safety of Francisco Lúcio França, José de Jesus Filho, both lawyers ; and Isabel Peres, Coordinator of the Brazilian branch of Action by Christians for the Abolition of Torture (ACAT-Brazil). They had been involved in the prosecution of two police officers, Maurício Miranda and Silvio Ricardo Monteiro Batista, who were accused of severely beating and murdering Anderson do Carmo and Celso Gioelli Magalhães Júnior between 27 September and 5 October 2002. The two officers were dismissed from the Military Police and charged with the killings. The trial took place in Mongagúa municipality from 21 to 23 March 2005. The officers were acquitted at the end of the trial and the public prosecutor's case lodged an appeal. At the end of the first day of the trial, two black cars followed Francisco Lúcio França and José de Jesus Filho to the place they were staying. On 25 March 2005, Francisco Lúcio França was approached in a shopping centre in São Paulo by a man, who identified himself as a police officer, and told him that he should drop the case or he would die. On 26 March, a black car followed Isabel Peres to the place where she was staying. Key witnesses to the murder were believed to be in a particular danger.

31. On 6 June 2005, the Special Rapporteur sent an urgent appeal in relation to the alleged killing of Rossine Alves Couto, Public Prosecutor in the State of Pernambuco, Northeast Brazil. On 10 May, Mr. Rossine Alves Couto was sitting in a restaurant next to the Tribunal where he worked, when two men approached on a motorbike, wearing helmets and visors, so that their faces were disguised. One of the men approached the victim and shot him 3 times in the neck. Mr. Rossine Alves Couto died enroute to the City Hospital “José Veríssimo de Souza”. The Regional Police Chief Officer (delegado regional – Civil Police), in charge of the investigation, interviewed a number of witnesses but had not, at the date of this communication, made any arrests in relation to this criminal act. The State Attorney’s Office (Procurador-Geral de Justiça do Estado) had reportedly requested that the Federal Police take over the investigation of Mr. Couto’s death from the Civil Police as the former are specialized in such serious cases. Mr. Rosshine worked as a Prosecutor since 1992 in a number of cities in the region. Since 2000, he was in charge of the judicial district of Panelas, and since May 2005 he was in charge of the judicial district of Lagoa dos Gatos. High crime rates in the cities had had a negative impact on the State of Pernambuco and Mr. Rossine was well respected for his commitment to prosecute crime and support activism activities in the community. The State Attorney-General (Procurador-Geral de Justiça do Estado), Mr. Francisco Sales de Albuquerque, announced that all the cases Mr. Rossine Alves Couto was working on were being examined to see if they could be linked to his murder. According to the initial information provided by the State Public Prosecution Office, Mr. Rossine Alves Couto was investigating several cases of corruption and organized crime in the region. He also worked on issues related to land property, involving local farm owners and without-land workers. Of further concern was that on 12 May, two days after Mr. Rossine Alves Couto’s murder, his widow, Ms. Sara Souza Silva, who is also a Public Prosecutor in the judicial districts of Cupira and Agrestina, received an anonymous phone call in which she and her three sons were threatened with death. Other public prosecutors from the State of Pernambuco expressed security concerns while carrying out their functions, in

particular in the countryside, and for the lack of structure in their duties including being responsible for more than one judicial district. This was not the first time that public prosecutors have been targeted in the State of Pernambuco. On 10 April, Luciano Bezerra da Silva, city prosecutor, was wounded by gun shots when he was driving towards São Joaquim do Monte, Agreste region.

32. On 10 October 2005 the Special Rapporteur sent a joint urgent appeal 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, regarding Antonio Fernandez Saenz,, lawyer, Manuel Fernando Fernandez Saenz, evangelical minister, José Fernandez Saenz, evangelical minister, and Dirce Ramiro de Andrade, journalist working for the evangelical church. Antonio Fernandez Saenz is a lawyer who provides legal assistance to socially deprived inhabitants of the Jardim Lavínia, Silvinha and Montanhão neighbourhoods in São Bernardo do Campo, a town south of São Paulo. In addition he provides voluntary legal support to the human rights chapter of the Pentecostal and Apostolic Church of the Mission of Jesus in São Paulo, which is run by his two brothers Manuel Fernando Fernandez Saenz and José Fernando Saenz, who, like him, have dual Spanish and Brazilian citizenship. Journalist Dirce de Andrade works at the same church as the two brothers. According to the information received, on 3 September 2005, after midnight, it was reported that several military police officers forced their way into Antonio Fernandez Saenz's office in São Bernardo do Campo. The officers reportedly presented no search warrant and took several documents containing statements by local residents accusing the civil and military police of torture, extortion and sexually assaulting children. After reporting the robbery to the military police, officers from the 2nd Company of the 6th Battalion in the State of São Paulo allegedly tried to dissuade Antonio Fernandez Saenz from filing a complaint, and threatened and intimidated him and his wife. Journalist Dirce de Andrade was also threatened with detention and prohibited from taking any photographs at the scene. Subsequently, Dirce de Andrade, Antonio Fernandez Saenz, Manuel Fernando Fernandez and José Fernandez Saenz went to the 2nd police station of São Bernardo do Campo to file a complaint there. They were reportedly charged with "disobedience" and "disrespect of authority" before being released. Following the reported intervention of a local police officer, Antonio Fernandez Saenz filed a complaint regarding the unlawful entry to, and theft of documents from, his office. Dirce de Andrade, Antonio Fernandez Saenz, Manuel Fernando Fernandez and José Fernandez had reported continuing harassment and anonymous telephone calls threatening them and urging them to drop the complaint. Concern was expressed for the safety of Antonio Fernandez Saenz and his wife, Manuel Fernando Fernandez Saenz, José Fernandez Saenz and Dirce Ramiro de Andrade. It was feared that the search of Antonio Fernandez Saenz's office and the subsequent threats constitute an attempt to silence these individuals and prevent them from documenting and reporting on alleged human rights violations committed by the civil and military police.

Special Rapporteur's comment and observations

33. On 14 November 2005, the Special Rapporteur sent a letter to the Governement requesting information on the actions taken to follow-up on the recommendations made in his mission report to Brazil (E/CN.4/2004/60/Add.3), as well as other more general information on the progress made in the country in matters pertaining to his mandate.

Communications from the Government

34. On 29 March 2005 the Government replied to the Special Rapporteurs' joint allegation letter of 4 March 2005 and provided the following information. Born in the United States of America and naturalized Brazilian, Sister Dorothy Stang was shot dead in the morning of 12 February 2005 at a village 40 km from the Municipality of Anapu, in the western region of the State of Pará, on the edges of the Transamazonica Route. Immediately after the assassination of Sister Dorothy Stang, the Federal Government took the following measures. On 12 February the Special Secretary for Human Rights, Minister Nilmario Miranda, traveled to the Municipality of Altamira, in the State of Pará, when he left for the Municipality of Anapu; The Minister of Environment, Mrs. Marina Silva, who was in the State of Pará on the same day, went to the place where the attack had occurred; the Federal Police that was accompanying the Minister of Environment in a event in the State of Pará went to the place of the crime in order to initiate the necessary procedures, to take the body, to preserve the crime site (to collect evidence) and to provide police protection to the witnesses. Federal policemen belonging to the Regional Superintendence of Belem were also sent to the scene. The Federal Police opened an inquiry and, in partnership with the Civil Police of the State of Pará, was carrying out an investigations, at the time this reply was sent. On 13 February, the Attorney-General of the Republic, the National Land Ombudsman ("Ouvidor Agrario Nacional") and the President of the INCRA ("National Institute for Colonization and Land Reform") traveled to the State of Pará in order to help with the investigation. On 13 February, the Justice of the State of Pará issued an order of preventive arrest of four people suspected of being involved in the assassination of Sister Stang. The arrest order referred to the two alleged executioners of the crime, to the person who supposedly had given the order to kill Sister Stang, and to another person who allegedly had made the intermediation between them. On 15 February, a meeting was convened in Brasilia, at the Cabinet of Presidential Chief of Staff with the participation of the Ministers of Environment, Justice, Agrarian Development, National Integration and Human Rights to discuss the conflict in the State of Pará. The President of the Republic had ordered that 2000 militaries of the Army, supported by airplanes of the Air Force, be located to the crime site. On 19 February, an individual suspected of having intermediated the process presented himself in the Police Station Specialized in Crimes Against Women in the Municipality of Altamira. On 20 February, another individual accused of being one of the executioners was under preventive arrest by the Civil Police of the State of Pará with the help of the Army. On 21 February, the Federal Police arrested another suspect, who was alleged to be the second executioner of the crime. At the date this reply was sent, a farmer accused of having planned the crime was the only fugitive from justice. In the context of measures taken to identify and punish those liable for the murder of Sister Stang, the Federal Government of the State of Pará had been acting with a view to strengthening the structures of the administration and of police in order to fight against deforestation and promote the economic and ecologic zoning, land regularization and sustainable settlements. The Government also assured that it had taken measures to strengthen and guarantee the protection of human rights in the region. On 21 February, a Working Group was created in the Special Secretary for Human Rights of the Presidency of Republic to monitor the situation in the State of Pará. One of the most important measures to be taken was the protection of people threatened in the region. Accordingly, the Working Group would present suggestions of actions to be taken by federal and state officials in order to fight the violation of human rights. The Brazilian Government reiterated its commitment to punish those responsible for the death of Sister Dorothy Stang.

35. Le 17 mai 2005, le Gouvernement a envoyé des informations supplémentaires concernant la lettre envoyé par le Rapporteur spécial le 4 mars 2005. Le Gouvernement a indiqué que le Secrétariat Spécial des Droits de l'Homme de la Présidence de la République, sachant que la reconquête démocratique au Brésil est liée à la lutte des défenseurs des droits de l'homme, a établi, par le biais de l'Arrêté n° 66 et 89/2003, un Groupe de Travail ayant comme objectif l'élaboration du Programme National de Protection pour les Défenseurs des Droits de l'Homme. Apres un long travail, ce programme a été lancé le 26 octobre 2004 en audience publique de la Commission des Droits de l'homme de la Chambre de Députés. Ont participé à l'élaboration de ce programme et à son lancement les représentants des Pouvoirs Législatif, Judiciaire et Exécutif, les Polices Fédérale et Routière, le Ministère Public Fédéral, le Conseil National de Procureurs Généraux de Justice, l'Ordre des Avocats du Brésil, la société civile, parmi d'autres. Etant donné la structure fédérale du Brésil établie par la Constitution de 1988, l'implantation de ce programme dépend de l'engagement des Organisations fédérales et des Etats. Le 28 juin 2004, le Conseil de Défense des Droits de la Personne Humaine (CDDPH) a crée la coordination Nationale du Programme, composée par le Pouvoir Législatif, les Polices Fédérale et Routière, le Ministère Public Fédéral, les Organisations Civiles, le Pouvoir Judiciaire et, par les coordinations des Etats. Le fonctionnement du Secrétariat Exécutif de la Coordination Nationale est à la charge du Secrétariat Spécial des Droits de l'Homme. Avec pour objectif l'adoption d'une nouvelle législation de protection des défenseurs des droits de l'homme, le Congrès National est en train d'étudier le Projet de Loi n° 3616/2004, lequel ajoute un chapitre destiné aux défenseurs des droits de l'homme dans la Loi n° 9.807/99, qui a créé le Programme de Protection des Victimes et Témoins Menacés. Pour la mise en œuvre les actions prévues dans ce programme, un budget d'une valeur de R$ 1.200.000,00 a été approuvé par le Congrès National, pour l'année 2005. A débuté, également, l'élaboration d'un projet de constitution d'une base de données pour le suivi des cas de violation qui impliquent les défenseurs des droits de l'homme, qui comprend également les dénonciations qu'ils avaient présentées. La Coordination Nationale du programme s'est aussi fixée comme but la création de coordinations d'Etats dans les neuf Etats de la Fédération choisis comme Etats-Pilotes : Paraiba, Pará, Rio Grande do Norte, Pernambuco, Bahia, Espirito Santo, Sâo Paulo, Mato Grosso et Paraná. Parmi ces Etats, Espirito Santo et Pará ont déjà crée ses coordinations. Le 13 avril 2005, la Coordination Nationale a été décidé la mise en œuvre de la Coordination des Etats dans l'Etat du Espirito Santo, Parà et Pernambuco, ainsi que la réalisation d'un premier Séminaire Méthodologique du Programme National de Protection des Défenseurs des Droits de l'Homme dans le premier semestre de 2005, et la création d'une Commission Technique Spécialisée dans la Normalisation de Procédures d'Urgence de Protection. Les réunions de la Coordination Nationale sont bimestrielles et présidées par le Ministre Nilmário.

La mise en œuvre du programme dans l'Etat du Pará a débuté le 3 février 2005. Cependant, le 12 février, après le décès de Soeur Dorothy et la publication dans les journaux local et national de grand tirage d'une liste d'à peu près 40 personnes menacées de mort, le Pará a été considéré en situation de crise et nécessitant l'exécution du programme en urgence. La Coordination du Programme au Pará est constituée par des Représentants des organes et organisations civiles suivantes: le Ministère Public, le Secrétariat de l'Etat de Justice, la Police Militaire, la Police Civile, la Police Fédérale, le tribunal de Justice de l'Etat, le Ministère Public de l'Etat, l'Assemblée Législative de l'Etat, la Coordination des Médiateurs du Système de Sécurité Public, l'Ordre des Avocats du Brésil- Section Pará, la Société « Paraense » de Défense des Droits de l'Homme, la Coordination Générale des Procureurs de l'Etat, la Fédération de Travailleurs de l'Agriculture, la Commission Pastorale de la Terre, le Mouvement des Femmes du Terrain et de la Ville, le Centre d'Etudes de Défense de l'Homme

Noir au Pará, le Centre de Défense de l'Enfant et de l'Adolescent. Le Programme da Protection des Défenseurs des Droits de l'Homme de l'Etat du Pará est en train d'être crée par le biais d'un Décret gouvernemental. Le Programme du Pará se réunit tous les 15 jours, et convoque également des réunions exceptionnelles. Il prévoit également la création de sous-commissions pour l'élaboration de la structure du Programme et la priorité dans l'exécution de la protection pour les défenseurs des droits de l'homme dans le municipe d'Anapù et au sud du Pará. Les principales actions qui ont été mise en œuvre sont : le calcul des listes des défenseurs des droits de l'homme menacés de mort per le biais du journal « O Liberal » (« Le Libéral ») de la Fédération des Travailleurs de l'Agriculture - FETAGRI/PA et de la Commission Pastorale de la Terre - CPT : la création des sous-commissions; des recherches auprès des autorités policières pour la vérification des accusations concernant les policiers civils et militaires et l'identification de policiers qui puissent agir dans ces domaines à risque. Finalement, le Gouvernement a signalé que la création de la Coordination de l'Etat à Espirito Santo a eu lieu sur des bases méthodologiques similaires à celles de l'Etat du Pará. L'installation du Programme dans l'Etat de Pernambuco débutera au mois de mai 2005. La Commission Technique Spécialisée dans la Normalisation de Procédures d'Urgence et de Protection, composée par les représentants de la Coordination Générale de la Protection aux Défenseurs des Droits de l'Homme de la SEHD/PR, de la Coordination de l'Etat du Pará et de la Société Civile, s'est réunie le 27 avril dernier et a prévu de finir son travail en mai 2005.

36. On 26 January 2006, the Government sent an additional reply to the Special Rapporteurs' joint allegation letter of 4 March 2005, which, due to the fact that it was received with delay, could unfortunately not be included in this report, a circumstance which the Special Rapporteur regrets.

Special Rapporteur's comments and observations

37. The Special Rapporteur received information from non-governmental sources in relation to his communication dated 9 February 2004, concerning Erastótenes de Almeida Gonçalves, Nelson José da Silva and João Batista Soares Lages, according to which eight suspects of the killing of the three inspectors were indicted. They were reportedly awaiting trial in liberty, after delays in judicial and buraucratic process.

38. The Special Rapporteur thanks the Government of Brazil for its cooperation and its responses to his communications. He regrets that the latest communication received could not be included in this report and wishes to assure the Government that it will duly be reflected in next year's report. He urges the Government also to provide at the earliest possible date, and preferably before the end of the 62nd session of the Commission on Human Rights, detailed substantive answers to the allegations relayed to them successively on 13 April, 6 June and 10 October 2005. Having in mind the Government reply of 17 mai 2005, the Special Rapporteur invites the Government to kindly provide at the earliest possible date additional information of the results of the work of the National and Local Coordination Commissions on the killings of human rights defenders. With regard to Erastótenes de Almeida Gonçalves, Nelson José da Silva and João Batista Soares Lages, who were reportedly awaiting trial in liberty, after delays in judicial and buraucratic process, the Special Rapporteur would similarly appreciate details of the outome of the judicial proceedings against them and their current situation. The Special Rapporteur would further welcome receiving at the earliest convenience of the Government information on any action taken to follow-up on recommendations presented in his mission

report to Brazil (E/CN.4/2004/60/Add.3), and on progress made in the country regarding matters pertaining to his mandate.

Cambodia

Communication sent to the Government by the Special Rapporteur

39. On 6 September 2005, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, concerning the situation of Cheam Channy, a Member of Parliament for the opposition party Sam Rainsy Party (SRP) and Kom Piseth, a SPB-member in exile. On 8 August 2005, Cheam Channy was sentenced to seven years imprisonment by the National military court following a trial which lasted half a day, on charges of fraud and organized crime for forming an illegal armed force. Khom Piseth was convicted in absentia and sentenced to five years in prison on the same charges. It was reported that the Judge presiding their case prevented Cheam Channy's defense counsel from calling witnesses to testify on his behalf and also prohibited them from cross examining all the prosecution witnesses. No evidence was presented to substantiate the charges that both defendants had weapons or had plotted or committed any act of violence. Cheam Channy was tried before a military court and was being detained in a military prison at the date this communication was sent, despite the fact that he was a civilian tried for non-military offences. Cambodian law does not provide for civilians to be tried before a military court. Sam Rainsy and Chea Poch, two other SRP parliamentarians, whose Parliamentary immunities were lifted at the same time as that of Cheam Channy left Cambodia the same day as their immunity was lifted. The Special Rapporteur expressed his concern that charges against Cheam Channy and Kom Piseth were politically motivated.

Communication from the Government

40. None.

Special Rapporteur's comments and observations

41. The Special Rapporteur is concerned by the absence of official reply and urges the Government of Cambodia to provide at the earliest possible date, and preferably before the end of the 62nd session of the Commission on Human Rights, a detailed substantive answer to the above allegations.

China

Communications sent to the Government by the Special Rapporteur

42. On 22 February 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, concerning the situation of Mr. Zhang Lin, a dissident writer and pro-democracy advocate, who was reportedly arrested on 29 January 2005 by the National Security Police from

the Public Security Bureau of Bangbu City, Anhui Province, for "disturbing social order". He was placed in detention for a period of 15 days. His house was then searched by police on 6 and 12 February 2005. Shortly before he was due to be released, he was charged with "suspicion of endangering national security" and placed in detention for an additional 30 days. Mr. Zhang Lin was being detained incommunicado at the No. 1 Detention Centre of Bangbu City, Anhui province. His lawyer had not had access to him and was in the process of requesting a visitors' permit. The Notice of the Administrative Detention issued by the Public Security Bureau of Bangbu City stated that Mr. Zhang Lin was being detained because of allegations that he had written "radical" articles, which were posted on the internet.

43. On 1 July 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, to express their concern about the arrest of Mr. Zhu Jiuhu, a lawyer from the Jietong Law Office of Beijing, aged 39. At the time of his arrest Mr. Zhu was staying in Yulin City, Jingbian County, Shaanxi Province, where he was serving as lead counsel for the plaintiffs in the Shaanxi Petroleum Case, to date, the largest administrative lawsuit filed in the Peoples' Republic of China. On 26 May 2005, approximately at 1.00 a.m., 17 officers of the Jingbian County Police arrived at the Shoufin Hotel, Yulin City. Seven of them entered Mr. Zhu's room and detained him, while the other ten waited outside. They did not show Mr. Zhu an arrest warrant or any document justifying his detention. Mr. Zhu's wife received a warrant through the post on 6 June 2005. The warrant, issued on 27 May 2005, charged Mr. Zhu with "involvement in illegal gathering, [and] disruption of social order". Since then Mr. Zhu had been held by the Jingbian County Police at the Jingbian County Police Detention Center. On 27 May 2005 he was placed under criminal detention. On 22 June 2005 a declaration of formal arrest was issued. On two occasions, 3 June 2005 and 13 June 2005, lawyers attempted to see Mr. Zhu but were denied access. The reason given was that Zhu's case is "a matter of national security". Mr. Zhu's wife had also been denied the right to visit him. Concern was expressed that the arrest and detention were in response to Mr. Zhu's advocacy work as these events took place just as the Shaanxi Petroleum Case was about to go to trial, and that the arrest of Mr. Jiuhu was linked to his activities as a lawyer in the cases related to the nationalization of oil fields in the Shaanxi Province.

44. On 25 November 2005, the Special Rapporteur sent a joint urgent appeal, together with the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Mr. Gao Zhisheng, a prominent human rights lawyer and Director of Shengzhi Law Firm in Beijing. According to the allegations, Gao Zhisheng and his family had been subjected to continual surveillance and threats by the secret services. In one incident on 20 November 2005, a secret service car drove into Gao Zhisheng's car before a meeting that he attended with the Special Rapporteur on the question of torture. Mr. Zhisheng and his family had previously been chased on several occasions by the secret police cars, which struck their car several times. When Mr. Zhisheng challenged the behaviour of the secret service agents, they made threats against his life. The Beijing Bureau of Justice was also considering suspending the activities of Shengzhi Law Firm for a period of one year. Concern was expressed that the decision was linked to Gao Zhisheng's professional activities on a number of high profile human rights cases.

45. On 21 December 2005 the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders, concerning the situation of Gao Zhisheng, a lawyer in Beijing, for whom a joint urgent appeal was sent on behalf of the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers, on 25 November 2005. His firm, Shenghyhi Law Firm, was reportedly ordered by the Justice Bureau, Beijing, to cease operations from 30 November 2005 to 29 November 2006. According to the information, the authorities ruled that the firm improperly changed the registration of the firm when it moved office in June 2005, in contravention of Lawyers Law, article 9(2); and, in violation of article 47 of the Lawyers Law, it failed to use the firm's formal letterhead when it issued a letter of introduction for two of its lawyers, one of whom was not registered at the firm, to visit a client, Mr. Yang Maodong, detained in Gunagzhou Panyu Police Detention Centre. Accordingly Mr. Gao was required to handover the firm's license, official stamps, financial records, and licenses of its lawyers to the authorities before 29 December, or face further penalties. Mr. Gao met with the Special Rapporteur on the question of torture during his mission to China.

Communications from the Government

46. On 31 December 2004, the Government replied to the Special Rapporteurs' joint allegation letter of 15 October 2004 (E/CN.4/2005/60/Add.1, para. 24) and advised that Falun Gong is a cult that developed in various places in China in the early 1990s that has illegally accumulated wealth as its objective. Its founder is Li Hongzhi, who initially claimed that the self possesses a supernatural "energy" and that this "energy" can be used to "heal diseases"; he has used this ruse to fraudulently obtain wealth. He later claimed that as long as persons practiced Falun Gong as invented by him and followed his theories, they would never get sick, and all followers would become "spirits" or "buddhas". The Government advised that, in order to convince people of his reasoning and talk, he had also threatened that the Earth will explode and the world would be destroyed, at which time all those who do not believe his theories, including those who have abandoned Falun Gong, would perish forever. He requires all Falun Gong practitioners to buy his books, recordings and various kinds of exercise equipment. Through these methods Li Hongzhi exerts mind control over Falun Gong practitioners and carries out numerous illegal criminal acts in China. Furthermore, according to the Government, Falun Gong has carried out many illegal and criminal acts. The Government has, in accordance with the law and pursuant to the relevant national legislation, sought to protect the basic human rights and freedoms of the masses by banning the Falun Gong cult. In 2003 China's Shaanxi Province conducted a one-time survey, which yielded the following results: 99.39 per cent of those surveyed thought that Falun Gong was a cult and 98.75 per cent supported the banning of the organization. The Government advised that it has a great concern and care for the vast majority of Falun Gong practitioners; it recognizes that they have been mislead and that they, too, are victims. Its policy toward them had been one of unity, education and assistance. The Government further provided that, as for the extremely small number of Falun Gong extremists who engage in illegal criminal acts, China's judicial authorities would punish them, in accordance with the law, not because they practice Falun Gong but because they engage in illegal criminal acts that violate criminal law. In order to conceal its criminal activities, the Falun Gong organization had fraudulently obtained the sympathy of a number of public figures who were unaware of the truth and has disseminated many untrue allegations abroad, claiming that it is "persecuted" in China. Falun Gong propaganda outside China, in the form of e-mail

messages and even letters from eminent persons belonging to international organizations or political circles as well as literary and artistic propaganda such as "torture exhibits" and art exhibits, are all full of lies. The Government advised that Falun Gong portrays itself outside China as a "spiritual movement" that seeks "perfection" and reflects traditional Chinese culture, thus concealing its true nature. However, this is a case in which facts speak louder than words, and the preaching's of Li Hongzhi to his more than 20 million practitioners and criminal acts that are perpetrated by Falun Gong in China cannot be denied. All countries opposed to prejudice and all upright individuals hold objective facts in esteem and support action taken in accordance with the law to deal with cults that engage in illegal activities and to protect and guarantee human rights.

47. On 31 December 2004, the Government replied to the Special Rapporteurs´ joint urgent appeal of 19 October 2004 (E/CN.4/2005/60/Add.1, para. 25) and advised that A'an Zhaxi [Tenzin Delek Rinpoche] was a Tibetan monk at the Wutuo monastery in Honglong village, Yajiang County, Sichuan Province prior to his arrest. On 2 December 2002 the Intermediate People's Court of the Tibetan Autonomous Prefecture of Kardze, as court of first instance, sentenced him in an open hearing to death, deferred for two years, and deprived him of his political rights for life for the crime of causing explosions. He was also sentenced to 14 years' imprisonment and 3 years' deprivation of political rights for the crime of inciting separatism. After the sentencing by the court of first instance, A'an Zhaxi rejected the verdict and filed an appeal. On 23 January 2003 the Sichuan Province Supreme People's Court found that the facts of the original case were clear, the evidence was conclusive and sufficient, the judgment had been accurate, the severity of the penalty was appropriate and the proceedings had been conducted in accordance with the law; and accordingly, it upheld the original verdict. A'an Zhaxi was serving his sentence in the Chuandong prison in Sichuan Province at the date this reply was sent. The court-ordered deferral of his death sentence expires on 23 January 2005. The Government stated that Article 50 of the Constitution of the People's Republic of China stipulates that if a person sentenced to death with a suspension of execution does not intentionally commit a crime during the period of suspension, his sentence shall be reduced to life imprisonment upon the expiration of the two-year period; if he demonstrates meritorious service, his sentence shall be reduced to not less than 15 years and not more than 20 years of fixed-term imprisonment upon the expiration of the 2-year period. In fact in recent years 99 per cent of all criminals sentenced to death ultimately avoid the death penalty and have their sentences commuted to life or fixed-term imprisonment. This system significantly reduces the number of persons actually put to death. According to the Government, in the course of a trial, particularly in cases in which the death penalty may be imposed, China's judicial authorities scrupulously respect the defendant's right to a defence; they ensure that defendants obtain the prompt and effective services of a defence lawyer and fully respect defendants' procedural rights. Throughout this case all trial-related procedures were conducted in accordance with the law: during the trial A'an Zhaxi had a lawyer to ensure his defence; after the initial verdict was issued he lodged an appeal, pursuant to the Criminal Appeals Act; after the court of second instance rejected his appeal, he delivered materials relating to his new appeal to the prison authorities, who transmitted them to the Sichuan Supreme People's Court and the Investigations Office of the Sichuan People's Procuratorate. It can thus be seen, the Government advised, that there were no legal or procedural irregularities, such as the alleged violation of the defendant's right to a public trial or his right to have a lawyer of his own choosing. Legislation such as the Criminal Code and the Police Act contain stringent provisions banning torture with a view to

preventing and punishing the use of torture and other cruel, inhuman or degrading treatment or punishment by State employees, particularly those working in the justice system.

48. On 31 December 2004, the Government replied to the Special Rapporteurs´ joint urgent appeal of 25 October 2004 (E/CN.4/2005/60/Add.1, para.26) and advised that Chen Yulin [Chan Yu-lam] is a resident of Hong Kong born in 1950; he was formerly on the staff of the Hong Kong bureau of the Xinhua News Agency, where he was deputy chief and secretary, and deputy chief administrator of a company belonging to the Aohai Group. In January 2003 the State security authorities investigated Mr. Chen, in accordance with the law, on suspicion of the crime of espionage; Mr. Chen truthfully confessed his crime. In March 2004 the Guangzhou People's Court found Mr. Chen guilty of the crime of espionage and accordingly sentenced him to life imprisonment and deprivation of political rights for life. Mr. Chen filed an appeal. In June 2004 the Supreme People's Court of Guangdong Province issued a final judgment in which it rejected the appeal and upheld the original sentence. The Government stated that China is a country governed by the rule of law; in dealing with this case, China's judicial authorities consistently acted in accordance with the law. This case involved State secrets, and the Chinese Criminal Code stipulates that while being investigated the defendants in such cases may not have contact with anyone such as a lawyer or an individual attached to a foreign embassy without the authorization of the investigating or judicial authorities. The judicial authorities' decision in respect of Mr. Chen was consistent with the provisions of article 110 of the Criminal Code, concerning espionage. Legislation such as the Criminal Code and the Police Act contain stringent provisions banning torture with a view to preventing and punishing the use of torture and other cruel, inhuman or degrading treatment or punishment by State employees, particularly those working in the justice system. The Government denied the allegations that Mr. Chen was tortured during interrogation to extract a confession, that he was denied treatment when ill and that his lawyer was threatened and intimidated.

49. On 22 February 2005, the Government replied to the Special Rapporteurs´ joint urgent appeal of 1 December 2004 (E.CN.4/2005/60/Add.1 para. 27) and advised that Zheng Enchong, from Shanghai, formerly employed at the Minjian Legal Services Bureau in Shanghai (he did not pass his end-of-year lawyers' examination) was taken into custody on 6 June 2003 and arrested on 18 June 2003 on suspicion of illegally providing State secrets to entities outside China. The Government stated that on 15 August 2003, the second division of the Shanghai Municipal People's Procuratorate brought a prosecution against Zheng in Shanghai No 2 Intermediate People's Court on charges of supplying State secrets to entities outside China. Because the case involved State secrets, the court heard the case behind closed doors on 26 August, pursuant to article 152 of the Code of Criminal Procedure. The court established that, in May 2003, Zheng had faxed State secret material to an organization outside the country. In late May he had also faxed and telexed abroad a Shanghai Public Security report about the public security organs' response to an emerging situation. The court found him in breach of article 111 of the Penal Code and determined that his conduct amounted to the offence of illegally supplying State secrets to entities outside China. It sentenced him, on 28 October 2003, to three years' imprisonment and stripped him of his political rights for one year. Zheng appealed to the Shanghai Municipal Higher People's Court, which rejected Zheng's appeal on 18 December 2003 and upheld the lower court's judgment. For the hearings both in first instance and on appeal, the family of the accused, Zheng Enchong, appointed Zhang Sizhi, an advocate from the Wu, Luan, Zhao and Yan Legal Office in Beijing, and Guo Guoting, an advocate from the Tianyi Legal Bureau in Shanghai, to conduct Zheng's defence. Both advocates presented ample

views for the defence at both hearings. Since being sent to prison, Zheng had never been harshly treated nor confined in a high-security area. The director of the Shanghai Judicial Bureau, Mr. Miao Xiaobao, had never spoken to Zheng. Furthermore, according to the Government, China's Constitution and laws clearly state that citizens have freedom of speech and opinion. Article 35 of the Constitution reads, "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration." In exercising their rights and freedoms, however, citizens must honour the associated legal obligations. The Universal Declaration of Human Rights, while acknowledging citizens' various rights, also clearly states that, in exercising their rights and freedoms, people are subject to the limits laid down by law. The Government advised that Mr. Zheng's case related to the criminal communication of State secrets to entities outside China: all coercive action taken by the Chinese law-enforcement authorities against Zheng had been based on his criminal conduct and had been consistent with Chinese law and the relevant requirements of international human rights agreements. The Government advised that Chinese law protects criminals' lawful rights and interests. Under Chinese law, the people's courts can reduce sentences passed on convicts who show signs of genuine reform or perform meritorious service, but signs of reform do include admitting that one has committed a crime. This is a point that the prison authorities must bring to the knowledge of every convict entering prison. Zheng's right to receive visits from his family is guaranteed under the law. Convicted persons' lawyers can, by approval and arrangement with the prison authorities, meet their clients while they are serving sentence.

50. On 8 July 2005, the Government replied to the Special Rapporteur's joint urgent appeal of 22 February 2005. The Government provided that Zhang Lin had written and posted on the internet a large number of articles fomenting the subversion of the political power of the State. The Government also stated that he obtained economic support for the conduct of unlawful criminal activities designed to foment subversion of the State political authority. On 13 February 2005, the Bangbu city public security authorities took Zhang into criminal custody on suspicion of the offence of fomenting subversion of State political authority. On 19 March, with the due approval of the procuratorial authorities, he was arrested. The case was under consideration at the time this reply was sent. The Government also assured that the Constitution and Chinese law clearly establish that citizens shall enjoy the right to freedom of expression and opinion. At the same time, citizens are obliged to assume certain legal duties. This case, according to the Government, is a case involving the contravention of criminal law, and the measures taken by the Chinese judicial authorities against Zhang Lin were based on his criminal conduct and had nothing to do with his publishing or articles or other such activities. In the course of these proceedings, the judicial authorities strictly respected the legal provisions of the Chinese Code of Criminal Procedure and of other instruments.

Special Rapporteur's comments and observations

51. The Special Rapporteur notes the number of communications that had to be addressed to the Government of China between 2004 and 2005. He thanks the Government for its cooperation and the substantive information it provided in answer to his requests while being concerned by the delays in receiving them. He similarly regrets and apologizes for the particularly long delays in translations of the Government latest reply wich have made it impossible for him to make appropriate and timely follow-up on them. Both delays have no small incidence for the alleged victims and he is concerned that they may be avoided in the

future. With this in mind, he urges the Government also to provide at the earliest possible date, and preferably before the end of the 62nd session of the Commission on Human Rights, detailed substantive answers to the allegations relayed to them in his letters of 1 July, 25 November and 21 December 2005, and the Secretariat to arrange for early translation of the Government responses.

52. With regard to Mr. Zhang Lin, the Special Rapporteur was worried to be informed by non-governmental sources that he was sentenced on 28 June 2005 by a court in Benghu to five years imprisonment and deprived of his political rights for four years after his release. In the light of any information provided by the Government, he intends to follow-up on this case with in mind issues relating to the fairness of judicial proceedings and the cross-cheking of the above allegation regarding the verdict. With regard to Li Hongzi, the Special Rapporteur would appreciate receiving detailed information regarding any formal charges and judicial proceedings against him for the matters referred to in the Government letter of 31 December 2004. With regard to the case of A'an Zhaxi (Tenzin Delek Rimpoche), the Special Rapporteur wishes to request the Government for updated information and wishes to learn whether, as suggested, the death penalty against him was eventually commuted to a prison term. The Special Rapporteur notes with special interest in this connection the Government comment that in recent years 99 per cent of all death sentences were commuted to life or fix-term imprisonment. He wishes to take this opportunity to reiterate his firm opposition to the death penalty and to urge the Chinese Government to move towards removing it from national legislation. With regard to Mr. Chen Yulin (Chan Yu-lan) and Mr Zheng Enchong, the Special Rapporteur notes the Government responses. He is concerned at the absence of details regarding the specific charges against Mr. Chen Yulin and the concrete facts adduced in support of them, which may have justified a life sentence and a deprivation for life of political rights. He is similarly concerned at the absence of the same information regarding Mr. Zeng Enchong who was sentenced to three years' imprisonment and suspension of his political rights for one year. He kindly requests the Government to provide this additional information at the earliest possible date, preferably by the end of the 62d session of the Commission on Human Rights Commission.

Colombia

Comunicación enviada al Gobierno por el Relator especial

53. El 21 de noviembre de 2005, el Relator especial, conjuntamente con el Relator especial sobre formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia, envió un llamamiento urgente relativo a la situación de Orlando Valencia, líder afrodescendiente de la comunidad de Curbaradó, y con la situación de las comunidades afrodescendientes del Jiguamiandó y Curbaradó, departamento del Chocó, Colombia. El Sr. Orlando Valencia fue objeto de un llamamiento urgente y de una carta de alegaciones enviados por el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario-General para los defensores de los derechos humanos respectivamente el 19 de octubre de 2005 y el 1 de noviembre de 2005. De acuerdo con la información recibida, el 15 de octubre de 2005, Orlando Valencia, líder afrodescendiente de la comunidad de Curbaradó desplazada en la cuenca del río Jiguamiandó, fue desaparecido por grupos paramilitares en el casco urbano de Belén de Bajirá, 15 minutos después de que fuera detenido por la policía durante tres horas. El 26 de octubre de 2005, las autoridades habrían informado que se habría encontrado el cuerpo sin vida de Orlando Valencia, con un tiro en la

frente y con signos de haber sido amarradas sus manos. Orlando Valencia sería la última de una serie 111 víctimas que las comunidades afrodescendientes del Curbaradó y Jiguamiandó habrían tenido desde 1996 por asesinatos o desapariciones forzadas, además de los 12 desplazamientos forzados que habrían sufrido en este mismo período. Se informa que estos casos de violaciones de derechos humanos se encuentrarían en total impunidad. La Fiscalía General de la Nación no habría presentado avances en las investigaciones sobre las violaciones de los derechos humanos cometidas contra los miembros de estas comunidades, ni habría sancionado a los responsables. Pocos días antes, el 9 y 10 de octubre de 2005, soldados de la Brigada XVII del Ejército nacional se habrían llevado más de 50 cabezas de ganado pertenecientes a los pobladores de las Zonas Humanitarias de Bella Flor Remacho y Nueva Esperanza, cuenca del Jiguamiandó. Los soldados habrían también amenazado a los pobladores y a sus acompañantes de organizaciones no gubernamentales de derechos humanos nacionales e internacionales con que después de ellos iban a venir los paramilitares a "mochar cabezas". A la luz de la gravedad de la situación, el 7 de noviembre de 2002, la Comisión Interamericana de Derechos Humanos solicitó al Gobierno colombiano adoptar medidas cautelares para proteger a estas comunidades. Sin embargo, el Estado no habría respondido de manera efectiva a esta solicitud, lo que habría motivado a la Corte Interamericana de Derechos Humanos a decretar medidas provisionales de protección a favor de esas comunidades el 6 de marzo de 2003. Nuevamente, en marzo de 2005, la Corte Interamericana de Derechos Humanos requirió al Estado de Colombia que adopte, entre otras medidas, las que sean necesarias para proteger la vida e integridad personal de todos los miembros de estas comunidades, investigar los hechos que motivan la adopción de estas medidas provisionales, con el fin de identificar a los responsables e imponerles las sanciones correspondientes. A la luz de estas alegaciones, se expresó preocupación en relación con la violencia a la cual estarían sometidas las victimas de las comunidades afrodescendientes del Curbaradó y Jiguamiandó y las violaciones a su derecho a la tierra aparentemente perpetradas por empresas palmicultoras y grupos paramilitares, que ponen en riesgo su integridad étnica, cultural y económica, y su sobrevivencia como pueblo tribal.

Respuesta del Gobierno

54. Ninguna

Comentarios y observaciones del Relator Especial

55. El Relator Especial se preocupa por la ausencia de respuesta oficial y pide encarecidamente al Gobierno de Colombia tenga a bien enviarle a la brevedad posible, y preferentemente antes de la clausura de la 62a sesión de la Comisión de Derechos Humanos, informaciones precisas y detalladas acerca de las alegaciones arriba resumidas.

Côte d'Ivoire

Communication envoyée au Gouvernement par le Rapporteur spécial

56. Voir dans le document E/CN.4/2005/60/Add1, para. 40, l'appel urgent conjoint du 26 juillet 2004.

Réponse du Gouvernement

57. Aucune.

Commentaires et observations du Rapporteur spécial

58. Le RS regrette l'absence de réponse officielle et invite Gouvernement de la Côte d'Ivoire à lui faire parvenir au plus tôt, et de préférence avant la fin de la 62ème session de la Commission des droits de l'homme, des informations précises et détaillées en réponse aux allégations rapportées dans son précédent rapport.

Cuba

Comunicación enviada al Gobierno por el Relator especial

59. Ver el llamamiento urgente enviado el 19 de mayo de 2003 en E/CN.4/2004/60/Add.1, párr.21.

Repuesta del Gobierno

60. Ninguna.

Comentarios y observaciones del Relator Especial

61. El Relator Especial nota que, según nueva información recibida de fuentes no-gubernamentales, los funcionarios de la prisión en la que se encuentra encarcelado Oscar Elías Biscet habrían aumentado las restricciones penitenciarias como castigo por su protesta pacífica por las condiciones de la prisión y existe preocupación por su estado de salud. Por otra parte, el Relator Especial nota con satisfación que, según las mismas fuentes, el Sr. Mario Enrique Mayo Hernández, periodista cubano preso, habría recibido licencia extrapenal por motivos de salud pero solicita al Gobierno tenga a bien confirmar si es así y enviar detalles pertinentes al respeto. Por otro lado, el Relator Especial esta muy preocupado por alegaciones recibidas en momento de finalizar este informe en el sentido que, otros 24 periodistas seguirían presos en las cárceles de Cuba. El Relator Especial pide encarecidamente al Gobierno de Cuba tenga a bien señalar a la brevedad posible, y preferentemente antes de terminar la 62ª sesión de la Comisión, si están fundadas dichas alegaciones. En caso de estar confirmada la detención de dichas personas, agradecería al Gobierno señalar los cargos específicos retenidos contra las mismas y los hechos concretos que los fundamentan así como la juridicción encargada del proceso, la ley aplicable, las perspectivas en cuanto al proceso, el lugar y las condiciones de detención y el estado de salud de los detenidos.

Democratic People's Republic of Korea

Communications sent to the Government by the Special Rapporteur

62. On 20 December 2005, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the question of torture, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on violence against women, its causes and consequences,

concerning allegations of trafficking of female citizens of the Democratic People's Republic of Korea (DPRK) in the People's Republic of China (PRC). According to the information received, nationals of the DPRK commit a criminal offence if they leave the country without official permission, punishable by up to two years in a labour training camp (*nodong danryundae*) or a detention centre (*jipkyulso*), in grave cases up to three years. Defection to a foreign country or to the enemy in betrayal of the country and the people is also a criminal offence punishable by no less than five years of detention in a political labour camp (*kwanliso*) or a re-education labour camp (*kyohwaso*). In extremely grave cases the offence allegedly carries the death penalty.

63. Reports indicate that a considerable number of citizens of the DPRK clandestinely cross international borders. The People's Republic of China has a general policy of arresting and deporting DPRK citizens who do not possess a valid visa. The problem is exacerbated by their cruel, inhuman and degrading punishment upon their deportation from the PRC to the DPRK. After the interrogations, the majority of persons are sent without trial or any form of judicial process to a labour training camp (*nodong danryundae*) or a provincial detention centre (*jipkyulso*). Citizens of the DPRK, who the authorities believe to have made contact with churches, citizens of the Republic of Korea or journalists or to have engaged in any other conduct officials consider to be political betrayal, are usually sent without trial or any form of judicial process to a political labour camp (*kwanliso*) or a re-education labour camp (*kyohwaso*), and detained for periods ranging between several years and a lifetime. Detainees have to perform hard labour while being perpetually kept on the verge of starvation. There is a real concern that the deported citizens of the DPRK are systematically denied their right to fair proceedings before an independent and impartial tribunal.

Communication received from the Government

64. By letter dated 4 January 2006, the Government of the Democratic People's Republic of Korea provided a reply which, due to the fact that it was received with delay, could unfortunately not be included in this report, a circumstance which the Special Rapporteur regrets.

Special Rapporteur's comments and observations.

65. The Special Rapporteur thanks the Government of the Democratic People's Republic of Korea for their cooperation and wishes to assure them that the information they kindly provided will duly be analysed shortly and will further be reflected in his next report.

Democratic Republic of the Congo

Communication envoyée au Gouvernement par le Rapporteur spécial

66. Le 7 janvier 2005, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent sur la situation de Me Franck Mulenda, Avocat auprès de la Cour d'Appel de Kinshasa/Gombe et Consultant du Bureau du Haut Commissariat aux droits de l'homme en République Démocratique du Congo dans le cadre de la mission des bailleurs de fonds sur l'audit de la justice, qui aurait reçu des menaces de mort. Selon les informations reçues, le 26

décembre 2004, aux environs de 22 heures, alors qu'il rentrait à son domicile, Me Mulenda aurait vu des hommes en uniforme non identifiés à bord d'une Jeep de marque Cherokee, nouveau modèle, de couleur claire et sans plaque d'immatriculation, lui barrer la route sur l'avenue Bongolo, non loin de l'Université Kimbanguiste, dans la commune de Kasa-Vubu à Kinshasa. Sous prétexte qu'il les avait heurtés avec sa voiture, ces hommes, après avoir dispersé les personnes accourues à son secours en brandissant leurs armes, l'auraient fait descendre de sa voiture, l'auraient roué de coups sur tout le corps et se seraient emparés de tous ses objets de valeur et d'une importante somme d'argent. L'abandonnant avec un visage tuméfié, l'un de ses agresseurs l'ayant identifié comme l'Avocat du Colonel Eddy Kapend (ancien aide de camp du défunt président Laurent-Désiré Kabila condamné à mort par l'ex-Cour d'ordre militaire dans le procès des assassins présumés du président Kabila), lui aurait signifié "qu'ils allaient le tuer". Des craintes ont été exprimées que l'agression contre Me Mulenda et les menaces de mort faites à son encontre soient liées à ses activités d'avocat et de défenseur des droits de l'homme.

Communications reçues du Gouvernement

67. Aucune

Commentaires et observations du Rapporteur spécial

68. Le Rapporteur spécial regrette de devoir constater qu'en une année il n'a reçu du Gouvernement de la République démocratique du Congo aucune réponse aux allégations ci-dessus et il invite le Gouvernement à lui transmettre au plus tôt, et de préférence avant la fin de la 62ème session de la Commission des droits de l'homme, des informations précises et détaillées en réponse à ces allégations.

Ecuador

Comunicación enviada al Gobierno por el Relator especial

69. Ver comunicación de 28 de diciembre de 2004 reflejada en E/CN.4/2005/60/Add.1. párr. 43.

Respuesta del Gobierno

70. Mediante comunicación del 28 de febrero de 2005, el Gobierno de Ecuador respondió la comunicación de 28 de diciembre de 2004, indicando que en relación a la convocatoria a Congreso Extraordinario, el Presidente de la Republica, en ejercicio de las atribuciones que le confiere el artículo 171 numeral 8 de la Constitución, convocó a Congreso Extraordinario para tratar de la situación jurídica de los Tribunales Supremo Electoral, Constitucional y de la Corte Suprema de Justicia. En cuanto al Tribunal Supremo Electoral, su integración se había realizado en forma ilegal y sin cumplir lo que dispone el tercer inciso del Art. 209 de la Constitución. En cuanto al Tribunal Supremo Constitucional, sus vocales eran mayoritariamente miembros de une partido político, que controlaba las decisiones del tribunal. En cuanto a la Corte Suprema de Justicia, la designación de los jueces se había hecho desatendiendo la obligatoriedad de la Consulta popular de 1997 que decidió que "desde esta fecha" los jueces no serían designados por el Congreso nacional. Con lo expuesto y considerando que 18 de los 31 jueces de la Corte Suprema eran dependientes del mismo partido que controlaba el Tribunal

Supremo Constitucional, se producía un riesgo para el estado de derecho y una violación del art. 199 de la Constitución que garantiza la independencia de los jueces. Por estas razones, el Presidente de la Republica convocó el Congreso para que pudiera analizar esta situación: su rol se limitó a esta convocatoria, la decisión de revocar los jueces fue tomada por el Congreso. El Congreso tomó la decisión de cesar los anteriores ministros de la Corte Suprema aplicando la Disposición Transitoria Vigésima Quinta de la Constitución según la cual los funcionarios designados a partir del 10 de agosto de 1998 para un periodo de cuatro años habrían permanecido en el desempeño de sus funciones hasta enero del 2003. Esta disposición se aplicaría a los ministros de la Corte Suprema debido a que ellos serían de considerarse funcionarios conformemente al artículo 118 de la Constitución que establece que son instituciones del Estado las funciones ejecutiva, legislativa y judicial. Por lo que se refiere a la designación de los nuevos magistrados, no se podía aplicar el sistema de la designación por los otros magistrados de la Corte Suprema (cooptación) contemplado por la Constitución, debido a que se produjo la vacancia de todos los magistrados. Por esta razon, el Congreso, en el ejercicio de su atribución de interpretar la Constitución y la Ley de manera generalmente obligatoria, conforme al art. 130 num. 4, procedió a la designación de los nuevos magistrados. De todo eso se desprende que las actuaciones del poder ejecutivo y legislativo fueron apegadas al derecho. El Gobierno termina con reiterar su invitación al Relator especial para que visite el país los días 21 y 22 de abril de 2005.

Press releases relating to the Special Rapporteur's visits to Ecuador

71. On 18 February 2005, the Special Rapporteur issued the following press release:

> "EXPERT ON INDEPENDENCE OF JUDGES AND LAWYERS REQUESTS VISIT TO ECUADOR TO EXAMINE ONGOING JUDICIAL CRISIS "The Special Rapporteur of the United Nations Commission on Human Rights on the independence of judges and lawyers, Leandro Despouy, issued the following statement today:
>
> "The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, today reiterated his wish to undertake a visit to Ecuador in light of the serious crisis the Ecuadorian judiciary is undergoing. "On 28 December 2004, the Special Rapporteur wrote to the Government following a move by Congress to replace 27 out of 31 Supreme Court judges with magistrates of its own choosing. This appeared to constitute grave interference by the executive and legislative into the judicial sphere and hence a violation of the independence of the judiciary, a principle recognized by article 199 of the country's Constitution. This is an essential requirement of the rule of law and of democracy, guaranteed also by international instruments to which Ecuador is a party. "On 1 February 2005, the Special Rapporteur again addressed himself to the Government, pointing out that the situation of the judiciary in Ecuador was a matter of growing concern among many sectors of Ecuadorian society and in the international community. This was due in particular to the measures adopted with regard to the Supreme Court, as well as steps taken with respect to the Constitutional and Electoral Courts. "The crisis has worsened since, with the resignation of the President of the Supreme Court, Ramón Rodríguez, over his disagreement concerning the nomination of the members of the National Council of the Judiciary, a body which exercises such essential functions as the establishment of a shortlist of three candidates from

which the Congress must choose the country's Chief Prosecutor. "Since these urgent concerns are of significant magnitude and could affect, in an irreversible way, the independence of the judiciary in Ecuador, the Special Rapporteur's letter of 1 February communicated his interest in conducting a visit to the country from 21 to 24 February 2005. The proposed visit is intended to provide the Special Rapporteur with the opportunity to assess the situation on the ground and to then convey to the United Nations Commission on Human Rights accurate information on the issues within his mandate and competence. "On 7 February the Government of Ecuador, which has issued a standing invitation to all special rapporteurs and other independent experts of the Commission on Human Rights, responded positively to the request of the Special Rapporteur, but suggested dates for his visit from the first week of May 2005, for reasons of availability. "Considering the gravity of the situation and recent developments, the Special Rapporteur has made it known to the Government his interest in undertaking a visit at an earlier date and is currently taking steps towards that goal".

72. On 3 March, the Special Rapporteur issued the following press release:

"UN EXPERT ON INDEPENDENCE OF JUDICIARY TO VISIT ECUADOR

"The Special Rapporteur of the United Nations Commission on Human Rights on the independence of judges and lawyers, Leandro Despouy, issued the following statement today: "The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, said today the Government of Ecuador has reiterated its invitation for him to visit the country and has now indicated that the visit can take place this month, in conformity with the request the Special Rapporteur made in February."The Government and the Special Rapporteur will agree in the coming days on the exact dates of the visit. It has already been decided that the visit will take place before Mr. Despouy presents his reports to the Commission on Human Rights on 1 April, according to the preliminary schedule."As indicated in his statement of 18 February, the Special Rapporteur will undertake this visit in light of the serious crisis affecting the Ecuadorian judiciary, in particular in the context of measures adopted with regard to the Supreme Court and the Constitutional and Electoral Courts. In the view of the Special Rapporteur, such measures could irreversibly affect the independence of the judiciary in Ecuador".

73. On 23 March 2005, the Special Rapporteur, issued the following press release (see E.CN.4/2006/52/Add.2):

"UNITED NATIONS EXPERT CONCERNED OVER REMOVAL OF HIGH-COURT JUDGES IN ECUADOR

"The Special Rapporteur on the independence of judges and lawyers of the United Nations Commission on Human Rights, Leandro Despouy, ended a one-week visit to Ecuador on 18 March. The following note from the Special Rapporteur is a summary of a news briefing held in Quito to provide local media with his preliminary observations:

”The Special Rapporteur thanked the Government and all the authorities and sectors of the civil society that cooperated very openly in making the visit possible and for having provided valuable information, as well as the United Nations Office for its precious assistance.
”In Quito, the Special Rapporteur met with the President of the Republic and other authorities of the State, including the President of the National Congress and a number congressman, the magistrates of the Supreme Court of Justice, the Constitutional Tribunal and the Supreme Electoral Tribunal, both the newly-designated and the recently dismissed ones. He also met with the members of the National Council for the Judiciary, the Mayor and the members of the Council of the Metropolitan District of Quito, representatives of the Catholic Church, the Andean Parliament, judges and judicial officials' associations, non-governmental organizations, as well as renowned Ecuadorian jurists. He maintained constant contacts with the press throughout the visit.”In view of the urgency of the judicial crisis the country is undergoing, the Special Rapporteur considered it necessary to make a number of preliminary observations. The Special Rapporteur identified a number of serious irregularities in the measures adopted by the National Congress concerning both the removal of the previous magistrates of the Supreme Court of Justice, the Constitutional Tribunal and the Supreme Electoral Tribunal, and the designation of the new ones.”The Special Rapporteur ended the news briefing by indicating some preliminary recommendations:
It is urgent and imperative to reestablish entirely the rule of law in Ecuador;
It is the duty of the National Congress, as the organ that adopted the key measures of removal and designation which provoked the current crisis, to take measures to rectify the situation;
The formula for the establishment of the Supreme Court of Justice should include the following elements: the independence of the judges, a procedure by which vacant posts are filled through an election by the rest of the judges of the Court, a system of designation of judges which guarantees their capability and probity and includes a transparent process allowing for the participation of citizens;After having solved the problems affecting the Supreme Court of Justice, as well as the ones relating to the Constitutional Tribunal and the Supreme Electoral Tribunal, a number of other issues relating to the functioning of the entire judicial system will have to be addressed.”The Special Rapporteur will present his preliminary recommendations in an addendum to his general report to the sixty-first session of the Commission on Human Rights at the beginning of April 2005. His final findings, conclusions and recommendations will be included in a report to be submitted to the Commission's sixty-second session”

74. On 21 July 2005, the Special Rapporteur issued the following press release:

“UNITED NATIONS EXPERT CONCLUDES SECOND MISSION TO ECUADOR

”The Special Rapporteur on the independence of judges and lawyers of the United Nations Commission on Human Rights, Leandro Despouy, undertook a

one-week visit to Ecuador from 11 to 15 July. The following note is a translated summary of his preliminary observations on the mission originally distributed in Quito on 15 July:"The Special Rapporteur thanked the Government and all the authorities and sectors of the civil society that cooperated very openly in making the visit possible and for having provided valuable information, as well as the United Nations Office of the High Commissioner for Human Rights and the United Nations Development Programme for their precious assistance. "The Special Rapporteur met with the President and the Vice President of the Republic and other authorities from the Executive; the President of the National Congress and members of the different political parties; members of the Supreme Electoral Tribunal, the National Council for the Judiciary and the Constitutional Tribunal; the Mayors of Quito and Guayaquil; the members of the Selection Committee, non-governmental organizations, international organizations, lawyers, diplomats and the media. "These are his preliminary observations and recommendations:

a) Regarding the Selection Committee of the Supreme Court of Justice, the Special Rapporteur observed that Congress failed to re-establish the Supreme Court which was illegally dismissed on 24 December 2004. Rather, a law was adopted by Congress (published in the Registry office on 26 May 2005) which approved the rules of procedure of the Committee for the qualification and appointment of the judges of the new Supreme Court.

b) The Selection Committee adopted a Decree which governs the procedure of the notification, qualification and rebuttal process for the final appointment of the new judges of the Supreme Court of Justice. The Special Rapporteur observed that both the law and the Decree contain a number of provisions which violate some Constitutional principles and international norms, in particular UN Basic Principles on the Role of Lawyers. This restriction affects potential judicial candidates who have practiced on behalf of the defence on certain causes against the State and could violate the free practice of the legal profession and the right of defence including principles such as non-discrimination and non identification of lawyers with their clients. During the meeting with the Selection Committee, the members informed the Special Rapporteur of their willingness to improve and rectify the deficiencies in the law and in the Decree which may be in breach of the Constitution and international human rights treaties. The Special Rapporteur indicated that it is important that the Committee add a clause in order to recognize and acknowledge the supremacy of the Constitution and the hierarchy of the international treaties. The Special Rapporteur stated as well the importance of recognizing the principles related to gender equity and equality between men and women especially regarding Article 102 of the Constitution which refers to the participation of women in the administration of justice.

c) Regarding the process: the qualification and appointment of the future members of the court is the sole responsibility of Ecuador. However, the law invites the United Nations to have an observer status regarding the functioning of the court system. This suggestion is supported by the majority of actors who were consulted, hence the Special Rapporteur has requested that the United

Nations undertake this activity on a permanent basis. Also the Special Rapporteur has promoted the presence of the international organizations which have worldwide prestige and which specialize in judicial matters, like the International Associations of Judges (IAJ-UIM).

d) Regarding the Constitutional Court: the Special Rapporteur stated that the National Congress has adopted a similar decision to the one adopted with regard to the Supreme Court of Justice, which was dismissed at the end of 2004. The Special Rapporteur is still concerned that the Constitutional Court is yet to be established.

e) Regarding the Electoral Supreme Court: The Special Rapporteur stated that the Electoral Supreme Court was re-composed. The Electoral Supreme Court is perceived more like a political organ than a court which gives electoral justice. The appointed members recognize the need to promote institutional reform regarding this court.
Final Considerations : "The Special Rapporteur stated that at this time in the history of Ecuador it is important that all actors and sectors be concerned about the resolution of this critical subject, the Supreme Court of Justice, as it is in the interest of democracy and will show the beginning of the institutional reconstruction and a step away from the events which took place between November 2004 and April of this year. In this regard, the Special Rapporteur hopes to be able to inform the General Assembly of the United Nations this October that the country has taken important steps on the full re-establishment of the rule of law and the reconstruction of the institutional framework and, in particular, in the integration of the high courts. "The Special Rapporteur will continue to monitor the judicial situation and the high courts and he expressed his interest in visiting Ecuador again before the presentation of his report to the sixtieth session of the General Assembly this autumn".

Comentarios y observaciones del Relator Especial

75. Los resultados de las dos visitas que el Relator Especial realizó en el Ecuador, la primera del 13 al 18 de marzo de 2005 y la segunda del 11 al 15 de julio de 2005, son relatados en su informe de misión presentado a la Comisión de Derechos Humanos en su 62º período de sesiones (E/CN.4/2006/52/Add.2), así como en su informe preliminar presentado a la Comisión de Derechos Humanos en su 61º período de sesiones (E/CN.4/2005/60/Add.4) y en su informe presentado a la Asamblea General en su 60º período de sesiones (A/60/321). El 30 de noviembre de 2005, después de haber monitoreado de cerca todo el proceso de designación, el Relator Especial viajó por tercera vez al Ecuador para asistir al acto de asunción de los nuevos magistrados de la Corte Suprema de Justicia.

El Salvador

Comunicación enviada al Gobierno por el Relator especial

76. El 4 de mayo de 2005, el Relator Especial, junto con la Presidente-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la situación de Ariel Hernández, Wuilian Iraheta, ambos miembros del equipo jurídico de la Procuraduría para la Defensa de los Derechos Humanos de El Salvador, una institución con rango constitucional surgida de los Acuerdos de Paz, y Daniel, Flores, motorista. De conformidad con las informaciones recibidas, el 28 de abril de 2005 a las 19.30 horas, Ariel Hernández, Wuilian Iraheta y Daniel Flores fueron arrestados en el Aeropuerto Internacional de Comalapa. El arresto de estas tres personas se produjo por decisión del Comisionado Douglas Omar García Funes, Subdirector de Investigaciones de la Policía Nacional Civil, quien ordenó también el decomiso del vehículo institucional en el que se transportaban los funcionarios detenidos y la toma de fotografías del mismo.

77. Se afirma que estos funcionarios fueron arrestados mientras ejercían funciones constitucionales y legales de protección de los derechos humanos. Específicamente, los funcionarios detenidos se encontraban observando, en el marco del procedimiento de observación y seguimiento de la Procuraduría, la expulsión del país, aparentemente irregular, del médico de nacionalidad ecuatoriana Pedro Enrique Banchón Rivera, asesor laboral del Sindicato de Médicos Trabajadores del Instituto Salvadoreño del Seguro Social (SIMETRISSS). Se alegaba también que el Comisionado García Funes se encuentraba bajo investigación por la muerte de dos agentes policiales y un interno y disparos efectuados contra personal de la Procuraduría para la Defensa de los Derechos Humanos durante un motín penitenciario que ocurrió en San Salvador en diciembre de 2002. Se alegaba que la detención de los tres funcionarios arriba nombrados formaba parte de una serie de actos de intimidación, hostigamiento y represalias contra personal de la Procuraduría para la Defensa de los Derechos Humanos, tales como amenazas anónimas; campañas públicas de difamación; asaltos a vehículos de la institución y seguimiento y hostilización de sus funcionarios.

Respuesta del Gobierno

78. Mediante comunicación del 24 de junio de 2005, el Gobierno informó que las actuaciones del Ministerio de Gobernación, de la Dirección general de migración y extranjería, de la policía nacional civil y de la Comisión ejecutiva portuaria Autónoma estuvieron en todo momento apegadas a la ley. El día 28 de abril, los agentes de la Policía Nacional Civil que habían solicitado y previamente recibido la autorización de ingresar en la zona aeronáutica para transportar al Sr Lanchón Rivera hasta la aeronave que lo haría salir del país entraron en el recinto aeroportuario. En el mismo momento ingresó un vehículo con matrícula N-17539 sin autorización, que no se paró a pesar de que los agentes que guardan el ingreso le indicaron la señal de alto constituyendo una grave violación de las instalaciones del Aeropuerto internacional de El Salvador.

79. La Policía Nacional procedió a la captura de las personas que viajaban a bordo del vehículo, quienes eran auxiliares de la Procuraduría de derechos humanos. En este caso no se

aplicaba el artículo 40 de la Ley de la Procuraduría para la defensa de los derechos humanos según el cual los auxiliares de la Procuraduría pueden ingresar sin restricción en los lugares de carácter público cuando se presuma que se encuentra una persona privada de libertad. El área era de acceso restringido y para entrar los auxiliares tendrían que haber presentado una autorización judicial. El delito que se les imputó a las tres personas fue el de actos arbitrarios tipificado en el artículo 320 del Código Penal y sancionable con prisión de dos a cuatro años e inhabilitación especial para el desempeño del cargo para el mismo tiempo.

80. La Policía Nacional Civil respetó en todo momento los derechos que tienen las personas cuando tienen la calidad de imputado informándoles sobre los hechos que se les atribuyen, de realizar las primeras diligencias de investigación, de ponerlos a disposición de la Fiscalía General de la República dentro del plazo señalado por la ley. Tras la audiencia inicial del día 2 de mayo durante la cual se garantizaron todos los derechos a un debido proceso, el Juez de Paz de San Luis Talpa decretó sobreseimiento definitivo a favor de los imputados. A modo de conclusión, el Gobierno reiteró su reconocimiento y apoyo a la labor independiente de la Procuraduría para la Defensa de los Derechos Humanos y consideró que como institución nacional, la Procuraduría debe apegarse, en su actuación, al respeto de las leyes y al Estado de Derecho y establecer el principio del deber de cooperación con los otros organismos estatales para realizar inspecciones.

Comentarios y observaciones del Relator Especial

81. El Relator especial agradece al Gobierno de El Salvador su grata cooperación y aprecia que el mismo haya tenido a bien enviarle en un plazo razonable informaciones sustantivas en respuesta a las alegaciones que les transmitió. El Relator especial nota con satisfacción la declaración del Gobierno que reconoce y apoya la labor independiente de la Procuraduría para la Defensa de los Derechos Humanos, y la interpreta como la reiteración de un compromiso constitucional inderogable. Asimismo, nota con satisfacción el sobreseimiento definitivo decretado por el Juez de Paz de Lima que da por cerrado el incidente señalado. Por otro lado, el Relator especial comparte el criterio señalado por el Gobierno que los distintos organismos estatales tienen el deber de cooperar en la realización de sus misiones respectivas.

Eritrea

Communication sent to the Government by the Special Rapporteur

82. See the Special Rapporteurs' joint urgent appeal of 11 November 2004 in E/CN.4/2005/60/Add.1, para. 47.

Communication from the Government

83. On 27 January 2005, the Government replied to the joint urgent appeal of 11 November 2004 and acknowledged that members of the Eritrean Defence Forces had conducted routine round-ups in search of male individuals between the age of eighteen and forty who had been considered to have failed to respond to the government's call to report for National Service, or had been away without leave. The Government stated that participation in the National Service programme is the constitutional duty of the able-bodied Eritreans within the mentioned age. The Government has the right and responsibility to make National Service

mandatory, and this right and responsibility is not limited by any human rights provisions. Furthermore, according to the Government, it is a matter of public record that a riot occurred in a temporary shelter during which some of the draft-dodgers attached the guards.

84. Preliminary investigation by the Government indicated that about four have been fatally injured while a few more had received minor injuries. The Government stated that very few non-draft dodgers that had also been rounded up with the culprits had been freed after preliminary inquiries. The Government advised that none had been held incommunicado, and they had not been imprisoned since they were only temporarily assembled in shelters until their transfer to the training centers or duty stations almost immediately. The Government also indicated that no criminal charges had been made.

Special Rapporteur's comments and observations

85. The Special Rapporteur thanks the Government of Eritrea for its coopeation and appreciates its efforts in sending a substantive reply within reasonable time. From the response, he understands that no further action is warranted in this specific case.

France

Communication envoyée au Government par le Rapporteur spécial

86. Le 25 avril 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel urgent concernant Florence Moulin, avocate, membre du Barreau de Toulouse. Selon les informations reçues, Mme Moulin aurait été arrêtée le 19 avril 2005 à Toulouse et placée en détention provisoire par décision de la chambre d'instruction de la cour d'appel d'Orléans pour être soupçonnée d'avoir révélé des informations contenues dans un dossier d'instruction, alors qu'elle assurait la défense d'un numismate toulousain, M. Georges Danicourt, qui a été arrêté en juin 2004 dans une affaire de blanchiment supposé d'argent de la drogue. Selon l' article 434-7-3 du Code pénal, Mme Moulin risque une peine pouvant aller jusqu'à 5 ans d'emprisonnement pour "le fait pour toute personne, qui du fait de ses fonctions, a connaissance d'informations issues d'une instruction en cours (...) de révéler, directement ou indirectement, ces informations à des personnes susceptibles d'être impliquées (...) dans la commission de ces infractions, lorsque cette révélation est de nature à entraver le déroulement des investigations ou la manifestation de la vérité". Selon les informations reçues, de nombreuses critiques, notamment de la part des ordres professionnels et associations d'avocats, se sont élevées contre cette incarcération d'une avocate dans l'exercice de ses fonctions, et sur le fait que la personne mise en examen, présumée innocente, devrait rester libre et ne peut être placée en détention qu'à titre exceptionnel.

Communication reçue du Gouvernement

87. Le 3 août 2005, le Gouvernement a répondu à l'appel urgent envoyé le 25 avril 2005. Le Gouvernement a indiqué que dans le cadre d'une procédure suivie à l'encontre de plusieurs personnes du chef d'importation de stupéfiants, un avocat a été mis en examen du chef de révélation d'information issues d'une enquête au d'une information en cours à des personnes susceptibles d'être impliquées comme auteurs, complices, coauteurs ou receleurs dans la commission des infractions, sur le fondement de l'article 434-7-2 du code pénal. Aux termes de

la procédure pénale française, lorsqu'une personne est mise en examen, elle est informée des éléments constitutifs de l'infraction qui lui est reprochée. A l'issue de cette mise en examen par le juge d'instruction désigné, celui-ci a saisi, au moyen d'une ordonnance motivée en droit et en fait, le juge des libertés et de la détention qui a décidé, dans le cadre d'un débat contradictoire, au vu des pièces du dossier et de la comparution devant lui de cet avocat, de sa mise en détention provisoire, sur réquisitions conformes du parquet, par une ordonnance également dûment motivée le 18 avril 2005. Le Gouvernement a indiqué que l'avocat mis en cause a bénéficié, tout au long de cette procédure, de l'assistance d'un avocat conformément aux dispositions applicables en la matière et relatives aux droits de la défense. L'avocat mis en examen a ensuite été remis en liberté sous contrôle judiciaire environ un mois plus tard, soit le 12 mai 2005.

88. A la suite de cette affaires, l'attention du garde des Sceaux, ministre de la Justice, a été attirée par plusieurs organisations représentatives du barreau sur le risque de fragilisation que serait susceptible d'avoir entraîné pour leur profession la création de l'incrimination pénale précitée par la loi n°2004-204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité. En effet, les avocats estiment que le nouvel article 434-7-2 du code pénal risque de porter atteinte aux droits de la défense en méconnaissant la réalité des conditions d´exercice quotidiennes du métier d'avocat. Le Gouvernement a signalé que le 3 mai 2005, le ministre de la Justice a décidé la création d'un groupe de travail qui s'est réuni pour la première fois le 16 mai 2005 aux fins d'étudier les difficultés d'application de l'article 434-7-2- du code pénal précité. Préside par le directeur des affaires criminelles et des grâces du ministère de la Justice, ce groupe est composé de magistrats du siège et du parquet, de bâtonniers ou anciens bâtonniers de plusieurs conseils de l'ordre et du conseil national des barreaux, d'un avocat présidant la conférence des bâtonniers et d'un bâtonnier désigné de l'ordre des avocats de Paris. Il devra présenter des propositions d'amélioration concrètes des textes susvisés et/ou de leur application, au plus tard dans le courant de l'automne 2005.

Commentaires et observations du Rapporteur spécial

89. Le Rapporteur spécial remercie le Gouvernement français pour sa coopération et sa réponse détaillée du 3 août 2005. A la lumière de celle-ci, il souhaiterait recevoir du Gouvernement des informations précises et détaillées sur les dispositions prises à la suite des propositions d'amélioration concrètes qui devaient être présentées au plus tard dans le courant de l'automne 2005 par le groupe de travail établi aux fins d'étudier les difficultés d'application de l'article 434-7-2- du code pénal. Il invite le Government à lui faire parvenir ces informations au plus tôt et de préférence avant la clôture de la 62ème session de la Commission des droits de l'homme.

Guatemala

Comunicaciones enviadas al Gobierno por el Relator especial

90. El 14 de enero de 2005, el Relator especial, junto con la Representante especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente relativo a la situación de Armando Sánchez, abogado, quien habría recientemente recibido una amenaza de muerte. El 23 de diciembre 2004, un individuo no identificado habría llamado al teléfono móvil de Armando Sánchez y le habría dicho que lo matarían si no abandonaba el país

en cinco días. Tras haber denunciado esta amenaza de muerte, Armando Sánchez habría recibido protección policial las 24 horas del día. El 26 de diciembre a las dos de la mañana, tres hombres habrían llamado a la puerta de un vecino y preguntado cuál era la casa de Armando Sánchez. Los hombres no se habrían acercado de la casa, que estaba protegida por dos policías. La protección de 24 horas al día habría durado aproximadamente una semana, y desde entonces se habría reducido a tres horas cada noche, aproximadamente entre las nueve y las doce. Sin embargo, la policía no habría proporcionado protección la noche del 6 de enero, pese a que había acordado hacerlo. Se teme que las amenazas recibidas por Armando Sánchez estén relacionadas con su trabajo de abogado y defensor de los derechos humanos. Entre los clientes a los que Armando Sánchez representa se encuentran una organización local de derechos humanos que ha acusado a autoridades gubernamentales locales de complicidad en ayudar a escapar a un sospechoso de asesinato, una mujer cuyo esposo fue presuntamente asesinado por narcotraficantes, y agricultores que mantienen con sus empleadores conflictos laborales que incluyen despidos ilegales, incumplimiento de derechos laborales y desalojos de agricultores de dos fincas locales. Al mismo tiempo, en agosto de 2004 Armando Sánchez presentó una denuncia contra la policía local, a la que acusó de cerrar ilegalmente el derecho de paso en la localidad en la que vive y trabaja, Coatepeque, en el departamento de Quetzaltenango. Tras presentar la denuncia, el fiscal local lo acusó de coacción e incitación a delinquir. Se teme que estos cargos constituyan un intento de impedir al abogado realizar su trabajo.

91. El 21 de febrero de 2005, el Relator Especial envió una carta de alegación en relación con el asesinato del magistrado Julio Roberto Paredes Ruíz, acaecido el domingo 12 de septiembre en la ciudad de Guatemala. Según la información recibida, el asesinato habría sido cometido por un sicario. Un hombre joven habría subido al autobús donde el Sr. Roberto Paredes viajaba y se habría dirigido directamente al magistrado, disparándole en dos ocasiones, una de ellas en la cabeza. El magistrado Julio Roberto Paredes Ruíz trabajaba como magistrado en la Sala Decimocuarta del ramo penal con sede en Cobán, Alto Verapaz, y se había recientemente postulado como aspirante a la reelección como magistrado de la Corte de Apelaciones.

92. El 26 de octubre de 2005, el Relator Especial envió una carta de alegación en relación con la situación de José Antonio Cruz Hernández, José Víctor Bautista Orozco, Leonel Meza Reyes, Fabian Heriberto Molina Sosa, Enrique Gómez Romero, Julio César Barrios Mazariegos, Carlos Estuardo Marroquín Santos, Erick Moisés Gálvez Miss, José Antonio Meléndez Sandoval, Fritzman Dagoberto Grajeda Robles, Romeo Monterrosa Orellana, Harold Rafael Perez Gallardo, Edgar Rodolfo Brizuela del Aguilar, Giovani Adonai Campos Girón, Eric Leonel Gónzalez Urízar, Aura Patricia Aguilar de Meza. De acuerdo con las informaciones recibidas:

(a) El juez José Antonio Cruz Hernández, de 39 años de edad, fue asesinado el 21 de marzo del 2005 en un área residencial de la zona 7 de la ciudad de Guatemala, Guatemala. Según información recibida, el asesinato habría sido cometido por unos desconocidos que conducían en un picop de doble cabina. El juez José Antonio Cruz Hernández trabajaba como juez de paz en el municipio de San Pedro Ayampuc.

(b) El juez José Víctor Bautista Orozco, de 53 años de edad, fue asesinado el lunes 25 de abril del 2005 en San Pedro Sacatepéquez, departamento de San Marcos. De acuerdo con datos proporcionados, el juez Bautista Orozco habría sido atacado cuando salía de su

residencia por unos desconocidos con armas de fuego, disparándole en diez ocasiones en la espalda. El juez Bautista Orozco trabajaba como juez vocal del Tribunal de Sentencia de Alto Impacto con sede en Chiquimula.

(c) El juez presidente del Tribunal décimo de sentencia penal, Leonel Meza Reyes, fue atacado el 22 de agosto del 2005, en un sector de la ciudad de Guatemala, Guatemala. Según la información recibida el juez habría sido atacado por dos hombres desconocidos y armados, quienes habrían logrado golpearlo y despojarlo de sus objetos personales. Durante el ataque, el juez habría sido amenazado y golpeado con un arma de fuego. Los hombres se habrían dirigido a atacar al juez directamente y no a asaltar el comercio en el que se habría producido el hecho ni a las otras personas que se habrían encontrado allí.

(d) El juez de paz de Barrillas, Hueheutenango, Fabian Heriberto Molina Sosa, y el Oficial II del juzgado de paz de Barrillas, Huehuetenango, Enrique Gómez Romero fueron tomados como rehenes durantes unas horas. Según la información recibida el juez, el Oficial II y un traductor del juzgado de paz de Barillas habrían sido llamados para realizar diligencias en el marco de un conflicto entre particulares y la gente los habría tomado como rehenes para asegurarse de que garantizarían la adecuada resolución del conflicto. Ninguno de ellos sufrió agresiones físicas, y fueron finalmente liberados gracias a la intervención de autoridades locales de Barrillas, Huehuetenango.

(e) El oficial segundo del juzgado de paz del municipio de Villa Nueva, Julio César Barrios Mazariegos, fue asesinado el 20 de junio del 2005 en el asentamiento de Villalobos. Según la información recibida, el asesinato habría sido cometido cuando Julio César Barrios Mazariegos trataba de notificar a un acusado sobre un proceso que se lleva en su contra en el referido juzgado de paz.

(f) El auxiliar fiscal de la Fiscalía de Sección contra la Corrupción del Ministerio Público, Carlos Estuardo Marroquín Santos, fue asesinado el 04 de marzo del 2005. Según los datos recibidos, el asesinato habría sido cometido en el barrio “La Reformita” ubicado en la zona 12 de la ciudad de Guatemala, Guatemala.

(g) El fiscal Erick Moisés Gálvez Miss fue asesinado el lunes 16 de mayo del 2005 en Chiquimula. Según la información recibida, el asesinato habría sido cometido por dos individuos desde una camioneta cuando el fiscal caminaba junto con un auxiliar fiscal por el centro de la ciudad, frente al Hospital Nacional de Chiquimula. El fiscal Erick Moisés Gálvez Miss era fiscal de Chiquimula.

(h) El agente fiscal de Malacatán, municipio de San Marcos, José Antonio Meléndez Sandoval, el 27 de abril del 2005 fue baleado por desconocidos en el rostro. Afortunadamente logró sobrevivir al ataque armado.

(j) El defensor público Fritzman Dagoberto Grajeda Robles, fue asesinado el 03 de abril del año 2005 en una calle de la ciudad de Coatepeque, municipio del departamento de Quetzaltenango. Fritzman Dagoberto Grajeda Robles ocupaba el cargo de Subcoordinador municipal de Instituto de la Defensa Pública Penal.

(k) El abogado Romeo Monterrosa Orellana, representa a la ONG Grupo de apoyo Mutuo, como parte en los procedimientos iniciados por la fiscalía estatal, en la acusación contra el propietario de la hacienda El Corozo por el asesinato de ocho trabajadores durante las protestas del 24 de enero de 2005, y representa también a los trabajadores agrícolas que reclaman la propiedad de la hacienda Colonia La Catorze, en Puerto San José. Según la información recibida, Romeo Monterrosa y su familia habrían recibido una serie de amenazas de muerte y habrían sufrido intimidación. El 30 de septiembre de 2005, Romeo Monterrosa habría recibido un mensaje de texto en su móvil que decía "sabes que so sus hijo puta y que todo lo que has hecho en tu puta vida lo vas a pagar con lo que más quieres". Durante la noche del 8 de octubre habría habido un intento de robo en la oficina de Romero Monterrosa. El 16 de octubre, su mujer habría recibido 3 mensajes entre las 4 y las 5 de la tarde que parecían venir del teléfono móvil de Romeo Monterrosa, sin embargo, el Sr. Romeo Monterrrosa no le habría envidado ningún mensaje.

(l) El abogado Harold Rafael Pérez Gallardo fue asesinado el 2 de septiembre de 2005 en la jurisdicción de Mixco, municipio del departamento de Guatemala. Según la información recibida, unos desconocidos habrían matado al abogado a balazos. El abogado Harold Rafael Pérez Gallardo era asesor del programa legal de Casa Alianza en el tema de adopciones internacionales.

(m) Los abogados Edgar Rodolfo Brizuela del Aguilar, Giovanni Adonai Campos Girón, Eric Leonel Gónzalez Urízar habrían sido asesinados, pero no se pudo conseguir información sobre la fecha y el lugar de estos asesinatos.

(n) La abogada Aura Patricia Aguilar de Meza, de 42 años, fue atacada el 12 de julio del 2005. El ataque habría sido cometido por varios individuos en el camino a la aldea Altos de la Cruz, en el municipio de Amatitlán, departamento de Guatemala. La abogada está recuperando de sus heridas.

93. En la misma carta, el Relator Especial recibió también alegaciones de constantes amenazas y hostigamiento en la que se encontrarían los operadores de justicia de Villa Nueva. A la luz de estos hechos, el Relator especial expresó su preocupación por la frecuencia de los ataques contra los operadores de justicia en Guatemala y la situación de grave inseguridad a la que estos se ven sometidos. El Relator especial indicó también que estos ataques criminales se suma la aparente falta de investigación y persecución judicial de los mismos. Es sumamente preocupante el hecho de que en Guatemala no se garantice el derecho de los operadores de justicia de ejercer su profesión sin intimidaciones y sin poner en riesgo su vida. Finalmente, Relator especial indicó que es fundamental que el Estado guatemalteco pueda garantizar la seguridad de sus operadores de justicia así como permitir el funcionamiento del sistema judicial de manera independiente y sin intimidaciones. Si determinadas medidas no se llevan a cabo para remediar esta situación, el funcionamiento efectivo del sistema judicial en Guatemala así como su independencia se verán gravemente comprometidos.

Respuestas del Gobierno

94. Mediante comunicación del 20 de abril de 2005, el Gobierno de Guatemala proporcionó información con respecto a la carta de alegación enviada el 21 de febrero de 2005 en relación a Julio Roberbo Paredes Ruíz. El Gobierno informó que el proceso se encuentra a

cargo de la Fiscalía de Delitos Cometidos contra Operadores de Justicia, y que se han realizado una serie de diligencias investigativas. Entre ellas se entrevistó a sus familiares, a los magistrados que integraban la Sala de Apelaciones de Alta Verapaz, a trabajadores de la misma, y a personas que tuvieron relación de amistad o afectiva con él, quienes indicaron que el asesinato posiblemente surgió a consecuencia de casos que el mismo tramitaba. Se realizaron desplegados telefónicos de las líneas telefónicas por orden judicial y están actualmente en proceso de ser analizadas. El Gobierno también informó que en el caso se encontraba en la fase de investigación y en espera de poder incorporar elementos útiles para esclarecer el hecho e individualizar a los responsables para poder sujetarlos a un proceso penal.

95. Mediante comunicación del 26 de abril de 2005, el Gobierno de Guatemala proporcionó información con respecto a la carta de alegación enviada el 21 de febrero de 2005. El Gobierno informó que conforme al Acuerdo 8-2001 de la Corte Suprema de Justicia, por haber ocurrido el fallecimiento de Julio Roberto Paredes Ruiz, se le entregó a los beneficiarios del causante, Julio Roberto Paredes Arroyo y Migdalia Azucena del Carmen Paredes Arroyo, la cantidad de ciento cincuenta mil quetzales.

Comentarios y observaciones del Relator Especial

96. El Relator Especial agradece al Gobierno de Guatemala su grata cooperación y la información sustantiva que tuvo a bien transmitirle. Sin embargo es con seria preocupación que nota la serie de alegaciones sumamente preocupantes que recibió acerca de un número muy elevado de asesinatos de jueces, procuradores, abogados y otros operadores de justicia en el país, y que señala que el Gobierno no ha respondido a su carta de alegación del 26 de octubre pidiendo información al respeto. Asimismo, tampoco recibió aclaraciones acerca de las inquietudes señaladas sobre la situación de los operadores de justicia de Villa Nueva.

97. Finalmente, el Relator especial nota, a la luz de la información recibida, que no se ha producido ningún progreso substancial en la investigación de las amenazas sufridas por Armando Sánchez. En este sentido, el Relator Especial pide encarecidamente al Gobierno de Guatemala tenga a bien enviarle a la brevedad posible, y preferentemente antes de la clausura de la 62a sesión de la Comisión de derechos humanos, informaciones precisas y detalladas acerca de todas estas cuestiones.

Réponse du Gouvernement

98. Aucune

Commentaires et observations du Rapporteur spécial

99. Le Rapporteur spécial regrette l'absence de réponse officielle et invite le Gouvernement de Haiti à lui faire parvenir au plus tôt, et de préférence avant la fin de la 62ème session de la Commission des droits de l'homme, des informations précises et détaillées en réponse aux allégations rapportées dans son précédent rapport.

Haiti

Communication envoyée au Gouvernement par le Rapporteur spécial

100. Voir dans le document E/CN.4/2005/60-Add.1, para. 53, l'appel urgent conjoint du 1er juillet 2003 et l'appel urgent conjoint du 22 octobre 2004.

Indonesia

Communications sent to the Government by the Special Rapporteur

101. On 31 May 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the question of torture, regarding Mr. Sakak bin Jamak, a 50-year-old illiterate farmer from South Sulawesi, and two males known only as Mr. Sahran, aged 52 and Mr. Sabran, aged 45, who are reportedly at risk of imminent execution, according to an announcement from the Attorney General's office. According to the information received, the three men were sentenced to death in May 1995 after they were found guilty of the premeditated murder of a family of three. Fears were expressed that they were sentenced after trials that may have fallen short of international fair trial standards. During his interrogation at the police station, Sakak bin Jamak was tortured for several days in order to extract a confession from him. He did not have access to legal representation during the investigation as well as at the pre-trial stage. It was reported that the State provided him with legal representation only when the trial started. It was also alleged that he was not informed of his right to appeal the sentence, and there was concern that he may not have understood his right to do so. The Special Rapporteur requested to suspend the implementation of the death penalty of Sakak bin Jamak, to review the procedures followed in his case, and to ensure that his trial complied with all applicable international standards and principles.

102. On 23 November, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders concerning the investigation into the death of Mr. Munir, a human rights lawyer and co-founder of human rights group Imparsial and the National Commission for Disappeared Persons and Victims of Violence (Kontras), a group that have allegedly exposed the abduction by the military of several human rights activists in Jakarta. Mr. Munir died on 7 September 2004 aboard a Garuda flight from Jakarta to Amsterdam and was the subject of an urgent appeal of 3 December 2004, 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. The presidential fact-finding team (TPF), established in December 2004, ended its six month mandate on 23 June 2005 and produced a lengthy report with detailed findings and recommendations. The TPF suggested the involvement of high-ranking intelligence officials and senior employees of Garuda Airlines with Mr. Munir's death. According to the new information received, since the police had taken over the investigation, no progress had been made into investigating the involvement of high-ranking intelligence officials and senior employees of Garuda Airlines, apart from the prosecution of a low ranking Garuda pilot. The four month delay raised questions as to the Prosecution and the police investigation team's commitment to properly investigate this case and to ensure that there is no impunity for Mr. Munir's murder and that those who were responsible for his death are brought before a fair trial.

Communication from the Government

103. On 14 November 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 31 May 2005 concerning the case of Mr. Sakak bin Jamak, Mr. Sabran bin Jamak and Mr. Sahran bin Jamak. The Government stated that the due process of law was applied to the court case for them, and they received legal assistance during the trial and for their appeal. Their subsequent sentencing was within the boundaries for the legal norms of Indonesia's judicial process and did not fall contrary to international legal standards. The Government advised that it is within the norms of national law to determine whether the severity of their crimes carries with it the death penalty. The Government resented accusations that they were not provided with the necessary legal assistance or that the due process of law was not applied and their habeas corpus was denied or infringed. According to the Government, Indonesia has an independent judiciary that functions under its own auspices. The decision of the court, as is generally the case in most democratic countries. is not subject to outside intervention, including the Government. Their decision-making process is mandated under Law No. 14/1970 and completely independent of the Executive. Furthermore, this independence has been safeguarded since the outset of national reforms. Similarly, it is within the jurisdiction of the court to determine the appropriate laws that apply and the requisite sentencing to be handed down for each individual case. The Government stated that executions are not the inevitable consequence of a criminal sentence of this nature. They are rarely carried out and require the stringent application of various procedures before it can take place. It is a difficult process that is often long and fraught with various complexities requiring the facts of each case be meticulously scrutinized before the final verdict can be upheld. The Government advised that since 1945, there had been approximately 15 executions, as most for those convicted of the various crimes against the State received instead a commuted lighter sentence, either a fifteen-year sentence or a life imprisonment sentence. The Government reiterated that capital punishment is strictly imposed for the most serious crimes and only upheld after all the legal avenues have been exhausted.

104. On 22 December 2005, the Government replied to the Special Rapporteur's joint urgent appeal of 23 November 2005 concerning the case of Mr. Munir. The Government provided that the President had ordered a formal query be launched into the events that culminated in Mr. Munir's death, and that to this effect, Presidential Decree No.11 of December 2004 had been issued, which set in place the establishment of a government-sanctioned fact-finding team. The Indonesian police investigation team coordinated their efforts with the Dutch forensic institute (NFI), and had questioned a number of witnesses in connection with the case, principally passengers and crew members who were on board the Garuda flights which carried Mr. Munir from Jakarta to Singapore, and from Singapore to the Netherlands. Over 30 people including intelligence officials had been questioned. Meanwhile the Indonesian parliament had used its interpellation right to call for the setting up of a fact-finding team under the direct supervision of the President. A full criminal investigation had been launched, at the time this reply was sent, and a team from Indonesia had dispatched to The Hague. The subsequent autopsy reports as conducted and presented by the Dutch authorities concluded that abnormal levels of arsenic had been found in Mr. Munir's body. The Government of Indonesia had also begun its own investigations into the events, prior to this reply. A 13-strong independent fact-finding team (TPF) started their investigations at the end of the year 2004. They handed in their lengthy concluding report and recommendations to the President in June 2005. It was found that, although Mr. Munir had been attended by a doctor aboard the place at the time and been

given some drugs to ease his discomfort, the dosage of arsenic found in the drink that he consumed in-flight proved fatal, and that he died two hours before the landing in Amsterdam. The fact-finding team also found documents that showed plans and methods with which to kill Mr. Munir. The Government advised that there were six main suspects, and that one of the main suspects had been on trial at the Central Jakarta District Court since September 2005, after five days of interrogation by police, on premeditated murder charges, i.e., for violating Article 340 of the Criminal Code (KUHP), which carries a life imprisonment sentence, at the time this reply was sent. The prosecution demanded a life sentence for him, and the trial resumed on 12 December 2005 to hear the defense counsel's arguments. On 19 December 2005, the alleged perpetrator had been imposed a 14 year imprisonment sentence. The Government further stated that the Financial Transaction and Report Analysis Centre (PRATK) had been asked to examine the bank accounts of suspects in order to determine if there had been any suspicious transactions relating to the poisoning incident, and if there had been any financial incentives motivating the crime.

Special Rapporteur's comments and observations

105. The Special Rapporteur thanks the Indonesian Government for their cooperation and their substantive replies. With regard to Mr. Sakak bin Jamak, the Special Rapporteur takes note of the Government comments regarding the judicial proceedings. While noting that the Government does not provide specific details to assure him of the suspension of the execution of the death sentence imposed upon the person in question, he welcomes their comments regarding the rare carrying out of this sentence. He wishes to take this opportunity to reiterate his firm opposition to the death penalty and to urge the Indonesian Government to move towards removing this sentence from national legislation. He further wishes to ask the Government to kindly confirm whether the death penalty against Mr. Sakak bin Jamak was eventually commuted to a given prison term and, if so, what term. With regard to Mr. Munir, the Special Rapporteur notes with satisfaction the swift action taken by the Government and the Judiciary with a view to clarifying the circumstances of his death and to bring those responsible to court and sentence them.

Iran (Islamic Republic of)

Communications sent to the Government by the Special Rapporteur

106. See in document E/CN4/2005/60-Add.1, para. 58-59, two joint appeals of the Special Rapporteur dated 20 February and 11 March 2004.

107. On 12 January 2005, the Special Rapporteur sent a joint urgent appeal 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, concerning the situation of Hanif Mazroi, Massoud Ghoreishi, Arash Naderpour, and Fereshteh Ghazi, Mahbobeh Abasgholizadeh, Omid Memarian and Ruzbeh Mir Ebrahimi, who were the subject of an urgent appeal, dated 15 December 2004. It is reported that they had received death threats from judicial officials of the Prosecutor's Office and direct threats from Chief Prosecutor of Tehran that they would be subject to legal action, lengthy prison sentences and that their family members would be harmed. They had been threatened as a result of their testimony before a presidential commission on 25 December 2004 and 1 January 2005 where they testified about their torture

and mistreatment while they were detained, without charges, by secret squads operating under the authority of the judiciary. It was reported that the journalists' testimonies exposed the Chief Prosecutor's role in authorizing their torture to extract confessions and in compelling them to appear on television to deny their mistreatment while under detention. The Chief Prosecutor has denied these allegations. It was further reported that the Chief Prosecutor continues to issue numerous subpoenas for the journalists without specifying charges and that officials under his supervision harass journalists by phone on a daily basis. There was serious concern that the Chief Prosecutor was leading the current crackdown on the freedom of the press by closing down over 100 newspapers as well as arresting and prosecuting several journalists.

108. On 26 January 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, regarding the situation of Mr. Arash Sigarchi, a journalist publishing both in print media and on the internet, as well as editor-in-chief of the daily *Gylan Emroz*. Mr. Sigarchi was arrested on 17 January 2005, after responding to a summons from the Intelligence Ministry in Rashat. Since then he had been held in custody at Lakan Prison in Rashat. He was denied the right to see a lawyer and bail was set at 200 million rials. Mr. Sigarchi had been previously arrested on 27 August 2004 and jailed for several days, reportedly in connection with an article, illustrated with photographs, of a rally in Tehran by families of prisoners who were executed in 1989.

109. On 11 February 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences, to express their concern at reports of women, Azam Qara Shiran, Akram Gharivel, Tayebeh Hojati, Shahla Jahed, and Fatimeh Pajouh, who were sentenced to death and were awaiting execution in Evin Prison, Tehran, at the time this communication was sent. These women had not had a fair hearing; following their arrest they were not given prompt access to a lawyer; were forced to answer questions and participate in interrogations without their lawyer being present; evidence, such as confessions, was obtained through torture and ill-treatment.

110. On 14 February 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on violence against women, its causes and consequences, concerning the situation of Shadi Arab. She was arrested in June 2004 when she was visiting a friend’s house with her boyfriend. Islamic guards allegedly broke into the house and took the three of them to a detention centre. After 10 days they were released on bail. Ms. Arab was arrested for the second time in November 2004 and was detained in Evin Prison, Tehran, at the date this communication was sent. It was reported that she had not had access to a lawyer since her arrest, and that she had not been charged with an offence.

111. On 7 March 2005, the Special Rapporteur sent a joint urgent appeal 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, concerning Arash Cigarchi, an internet blogger and editor of the local daily *Gilan Emrooz*. On 17 January 2005, he was arrested by intelligence ministry agents after having given an interview to Radio *Farda*, an American radio station broadcasting in Iran. In December 2004, Arash Cigarshi had also posted detailed articles on the internet concerning the alleged detention and torture of various bloggers. On 2 February 2005, he was sentenced to 14 years’ imprisonment

for aiding and abetting hostile governments and opposition groups, endangering national security and openly criticizing the Government. The ruling of the revolutionary court in Gilan Province was only made public on 22 February 2005. According to information received, the trial of Arash Cigarchi was held behind closed doors and in the absence of his lawyer. Arash Cigarchi reportedly had no access to a lawyer since he was arrested.

112. On 26 April 2005, the Special Rapporteur sent a joint urgent appeal with the Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on violence against women, its causes and consequences, regarding the situation of Kobra Rahmanpour, who was the subject of a joint urgent appeal sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on violence against women, its causes and consequences, dated 30 April 2004. According to the information received, Ms. Kobra Rahmanpour remained on death row at the time this communication was sent. On 21 June 2004 the Head of the Judiciary referred her case to the Arbitration Council, which had reportedly scheduled two meetings between the victim and the victim's heirs. At the first meeting (24 October 2004), the victim's heirs did not appear and at the second meeting (5 March 2005), the victim's heirs not only refused to forego Ms. Rahmanpour's punishment, but insisted that she be executed without further delay. Although there had been reports that a third and final meeting would take place, it was not clear whether that meeting would indeed be scheduled. The information received alleged that the referral to the Arbitration Council had no basis in Iran's existing laws to decide such judicial issues, and that any solution arrived at by the Arbitration Council which succeeded in convincing the victim's heirs to forego the execution would not adequately address the harms that she had suffered during her years of detention. It was emphasized that the Head of the Judiciary was the only person with the legal authority to revoke the conviction based on errors of law and refer the case for a re-trial. However, the Head of the Judiciary had refused to undertake such action. She had been detained for 4 and half years, by the time this communication was sent, having been convicted of intentionally murdering her mother-in-law. She claimed that she acted in self defense. There was concern that the arrest and trial of Ms. Rahmanpour violated internationally recognized standards of due process and fair trial.

113. On 4 August 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, concerning Abdolfattah Soltani, lawyer at the Bar of Tehran and Shirin Ebadi, 2003 Nobel Peace Prize Lauriate and Secretary General of the Defenders of Human Rights Centre. Mr. Abdolfattah Soltani was the subject of an urgent appeal sent by the Special Rapporteur on the independence of judges and lawyers on 24 January 2001. According to the information received, on 30 July 2005, Mr. Soltani was arrested while taking part in a sit-in at the Bar of Tehran. He was reportedly protesting against a warrant for his arrest and a search warrant for his home which had been issued following a request made by the Tehran Prosecutor to the Revolution's Court of Tehran on 27 July 2005. Mr. Abdolfattah Soltani was detained at the Evin Prison in Tehran at the date this communication was sent. Concern was expressed that Mr. Abdolfattah Soltani's arrest is allegedly connected to his participation in a court case concerning the death of detainee that was allegedly a result of torture and ill-treatment. Mr. Abdolfattah Soltani put into question the independence and fairness of the trial at a hearing in

camera on 25 July 2005. Regarding Ms. Shirin Ebadi, she allegedly received a message twice on her answering machine, stating that 'We have Soltani, you are next', on 30 July 2005. It was reported that Ms. Shirin Ebadi had also been the subject to a campaign of defamation and intimidation in the press as a result of her human rights work for the Defenders of Human Rights Centre. Concern was expressed that the arrest and detention of Mr. Abdolfattah Soltani and subsequent threats to Ms. Shirin Ebadi constituted an attempt to intimidate these individuals and prevent them from carrying out their human right work.

Communications from the Government

114. On 9 May 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 26 April 2005 and advised that Ms. Kobra Rahmanpour was accused of the first degree murder of her mother-in-law. Following the exercise of due process of law in the competent court, with full access to the legal counsel of her choice, she was sentenced to execution by verdict No. 756, issued by General Court, Branch 1608. This verdict was upheld by verdict No. 189/7 of Branch 7 of the Supreme Court. Nevertheless, the sentence had not been carried out, at the time this reply was sent, based on the direct order of the Head of the Judiciary to allow for further considerations, including consultations between the accused and victim's heir. The Government provided that, as far as the legal proceedings are concerned, this case did not represent any instances of extra judiciousness or arbitrariness. The system of justice must protect the rights of the perpetrator, and also those of the victim, who, in this case, was deprived of her most essential right of all, that is her right to life. Paragraph 2 of the Resolution 1994/45 of the Commission on Human Rights entitled "Question of integration of the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women" endorses sub article c, articel4 of the Declaration of Elimination of Violence against Women which reads "… to punish acts of violence against women and to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State or by private persons…". According to Article 7 of "Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty", contained in ECOSOC resolution 1984/50, Ms. Rahmanpour has the right to seek pardon or commutation of sentence. She had done so and the Judiciary of Iran, according to Article 8 of the same guidelines, had refrained from carrying out the sentence, "pending appeal or other recourse or other proceeding relating to pardon or commutation of the sentence".

115. On 9 August 2005, the Government sent a letter advising that in order to promote fair legal procedures during the investigation and interrogation process, the Head of the Judiciary had issued a binding circular to all justice departments at the national level advising that all offices of the public prosecutor must be involved in all cases from the very beginning of legal proceedings.

116. On 22 August 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 4 August 2005 and advised that Mr. Abdolfattah Soltani had been detained based on the law suit filed by the Ministry of Intelligence. The Government stated that he had been charged with disclosing classified information and measures threatening international security of the State. The Government advised that Mr. Abdolfattah Soltani was in temporary detention pending due legal proceedings, at the date this reply was sent.

117. On 9 September 2005 the Government replied to the Special Rapporteurs' joint urgent appeals of 26 January and 7 March 2005 and advised that Mr. Arash Cigarchi had been charged with espionage and cooperation with a hostile state. The Government stated that Mr. Arash Cigarchi was free on bail.

118. On 19 September 2005, the Government sent a letter advising that following a process of reform in the administration of justice, the Head of the Judiciary had issued a directive to the justice departments at the national level, Code of Conduct for Articles 31 and 32 of the "Amendment Bill of the Law of Justice (1977)", in which the presence of legal counsel in all legal proceedings has been deemed compulsory.

119. On 22 September 2005, the Special Rapporteur received information from the Government regarding Ms. Mahboobeh Abbasgholozadeh and Ms. Fereshteh Ghazi, who were subject of the joint urgent appeal of 12 January 2005. The Government stated that both were free.

Special Rapporteur's comments and observations

120. The Special Rapporteur notes that in the course of 2005 no less than seven communications had to be addressed to the Government of Iran, and that only five of the communications referred to above were the subject of answers. He therefore wishes to thank the Government of Iran for its cooperation in that connection and at the same time to urge it to provide at the earliest possible date, and preferably before the end of the 62nd session of the Commission on Human Rights, detailed substantive answers to the grave allegations regarding which it did not yet provide answers.

121. The Special Rapporteur was informed by non-governmental sources that on 3 December 2005, a judicial decision was issued for Mr. Abdolfattah Soltani, the subject of the urgent appeal sent on 4 August 2005, for an additional period of three months in detention. He urges the Government of Iran to specify the legal basis and grounds for the continued detention, and the place and conditions of detention, and also to confirm that Mr. Soltani was eventually unconditionnally released at the end of the three months period.

122. On the other hand, the Special Rapporteur thanks the Government of Iran for providing information on measures taken to reform the Judiciary. He notes that directives were issued by the Head of the Judiciary regarding the involvement of the prosecutor's office during investigations and welcomes the amendement providing for the mandatory presence of legal counsel during proceedings. He would be very interested in receiving further information on the actual implementation and effectiveness of these directives.

Iraq

Communication sent to the Government by the Special Rapporteur

123. On 11 November 2005, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on the situation of human rights defenders, concerning Adel Mohamed Al-Zubaidi, a lawyer representing the former Iraqi Vice-President in the on-going trial of Saddam Hussein and other members of the previous regime, and Thamer

Hamood Al-Quaee, also a lawyer representing another defendant, Saadoun al Janabi, in the same trial. On 8 November 2005, as they were traveling to the Bar Association in Baghdad Adel Mohamed Al-Zubaidi and Thamer Hamood Al-Quaee were shot at by gunmen, who opened fire from a car with Kalashnikov rifles. It was reported that Al-Zubaidi was shot dead and Al-Quaee wounded and taken to the hospital. Concern was expressed that the killings of both men were related to their work as defense lawyers in the trial of Saddam Hussein and members of the previous regime. Concerns were heightened by the fact that these events came after Saadoun al Janabi, a lawyer representing another accused, Awad Hamed Bandar, was allegedly abducted from his office and killed on 20 October 2005.

124. In his report to the General Assembly (document A/60/32) the Special Rapporteur included observations analyzing and criticizing the Special Tribunal for Irak.

Communication from the Government

125. Le 16 novembre 2005, le Gouvernement irakien a réagi aux observations du Rapporteur spécial sur le tribunal irakien contenues dans son rapport à l'Assemblée Générale A/60/321. Le Gouvernement considère que ce qui a été évoqué sur le tribunal spécial irakien dans le rapport est très exagéré. En effet, les agences de presse des organismes internationaux des droits de l'homme de différents pays ont parlé positivement des procédures du tribunal, même s'il n'a été établi que récemment. Ce qui se passe dans le tribunal est diffusé publiquement par les médias, en particulier la télévision. Les juges du tribunal ont été choisis par une procédure précise et sont des personnes fiables, objectives et intègres. Les juges, les employés judicaires et le procureur général sont tous iraquiens. Les agents de sécurité irakiens ont pris toutes les mesures pour que les procédures de sécurité nécessaires soient appliquées afin de garantir la sécurité. Les sessions du tribunal se font de manière à ce que les accusés soient protégés et que le procès puisse se dérouler de manière équitable. Le tribunal n'a pas pris en considération les accusations qui lui ont été transmises à moins que l'avocat de l'accusé n'ait été présent. Enfin, dans les cas où il n'y avait pas d'avocat, le tribunal a nommé un avocat d'office payé par l'Etat pour assurer un procès équitable.

Special Rapporteur's comments and observations

126. The Special Rapporteur thanks the Iraqi Government for its cooperation and the observations provided in response to his report to the General Assembly in 2005. With regard to the Special Tribunal, he however wishes to reiterate his serious concern about its legal and material deficiencies and their impact on the proceedings. The fact that, on stated grounds of security, the identity of judges may not be revealed has not been able to prevent, in the context of violence prevailing in Iraq, the assassination of one of the judges and of five candidates to form part of the Tribunal and the assassination of two defense lawyers while another one was injured. For the Special Rapporteur, one of the key issues is the limited competence of the Tribunal since it cannot judge those responsible for war crimes committed by foreign armed forces neither during the first Gulf war (1990) not after 1 May 2003, when the second conflict started. The Tribunal's legitimacy also calls for reservations if one considers that it was set up in the context of an armed occupation which is mainly considered to be illegal, and that the sitting judges were selected at that time.

127. It may further be noted that the Statute of 10 December 2003 includes very sophisticated norms of international penal law which, in many instances, are not easily compatible with an Iraqi legislation which, even though it was not updated, is also being applied and, inter alia, forsees the death penalty – a penalty on which the Special Rapporteur has reiteratedly expressed firm opposition. For the Special Rapporteur, the international experience of setting special tribunals such as those for ex-Yugoslavia, Rwanda, Sierra Leone and Cambodia, and the setting-up of the International Criminal Court, provide valid instruments to judge those having committed gross human rights violations and abherent crimes which, until recently, tended to remain unpunished. There could simply be no peace and reconciliation without justice being imparted by tribunals that are both independent and impartial and are able to meet people's aspiration to reach the truth on past events. This is why the Special Rapporteur forms part of those who have for long advocated in favour of the internationalisation of the Iraqi Special Tribunal. Both for Iraq and internationally, a sentence for Saddam Hussein reached at the end of proceedings that meet international human rights standards would have tremendous symbolic impact in the context of the fight against impunity and would exemplify that it is possible to impart justice which is not the verdict of the winners over the loosers. In the current highly volatile context in Iraq and with the serious risk of violence turning into a civil war and propagating regionally, the Special Rapporteur is more than convinced that the Special Iraqi Tribunal hardly is in a position to achieve its stated objectives of justice. Finally, with regard to the specific allegations relayed to the Iraqi Government on 11 November 2004, the Special Rapporteur urges the Government to kindly provide at the earliest possible date and preferably before the end of the 62nd session of the Commission on Human Rights, detailed substantive answers and all relevant clarifications.

Israel

Communications sent to the Government by the Special Rapporteur

128. On 7 June 2005, the Special Rapporteur sent a joint urgent appeal, with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture, and the Special Representative of the Secretary-General on the situation of human rights defenders, concerning Ziyad Muhammad Shehadeh Hmeidan, a staff member of Al Haq. Al Haq is an affiliate organization of the International Commission of Jurists which conducts research and advocacy works on human rights. On 23 May 2005, Ziyad Muhammad Shehadeh Hmeidan was arrested while he was trying to cross through Qalandiya, a checkpoint between Ramallah and Jerusalem. It was reported that Israeli soldiers entered his ID number into their computer, pulled him aside and placed handcuffs on him. Mr. Hmeidan was originally due to appear before a military court of the Moscobiyya detention center, in Jerusalem, on 31 May, 2005. However, the hearing was brought forward by the Israeli authorities to 30 May 2005 and the judge ordered that he be held for another 18 days for investigation; he was sent back to the Moscobiyya detention center (also known as the Russian Compound), where he had been detained since May 27, 2005. No charges had been filed against him, but Israeli security officials reportedly indicated that there was a file on him. It has further been reported that on 30 May 2005 an order was issued prohibiting him from meeting with counsel for 8 days on the basis of Military Order 378 of 1970. On June 2, 2005, a lawyer tried to visit Mr. Hmeidan in Moscobiyya, but she was denied access.

129. On 1 July 2005, the Special Rapporteur sent a joint urgent appeal 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 Ziyad Muhammad Shehadeh Hmeidan, human rights defender and fieldworker for Al-Haq, a Palestinian NGO. He had already been the subject of an urgent appeal of 7 June 2005. On 16 June 2005, Ziyad Muhammad Shehadeh Hmeidan was placed in administrative detention for a period of six months by the Moscobiya Military Court in Jerusalem. Reportedly, no formal charges had been brought against him and no evidence supporting his detention had been made available to his lawyer, at the time this communication was sent. Concern was expressed that he might be held in administrative detention solely on account of his human rights work with the Palestinian NGO, Al-Haq. Ziyad Muhammad Shehadeh Hmeidan's original detention order of 18 days was issued on 30 May 2005 and due to expire on 16 June 2005, and thus concern was also expressed that this order may be subject to indefinite renewal.

Communication from the Government

130. On 11 July 2005, The Government replied to the Special Rapporteur's joint urgent appeals of 7 June 2005 and 1 July 2005. The Government advised that Mr. Ziyad Muhammad Shehadeh Hmeidan was arrested on suspicion of involvement in terrorist activities. His detention and subsequent appearance before the Israeli judicial system had been and would continue to be in conformity with the law. Furthermore, according to the Government, Mr. Hmeidan has had access to a lawyer since 5 June 2005.

Special Rapporteur's comments and observations

131. The Special Rapporteur thanks the Government of Israel for their cooperation and their prompt substantive replies to his communications. He would however appreciate receiving more information about the situation of Ziyad Muhammad Shehadeh Hmeidan and about the reasons for and conditions of his continued detention. Mr. Ziyad Muhammad Shehadeh Hmeidan's administrative detention was due to be completed on November 23, 2005. However, on November 14, 2005, the Israeli authorities allegedly informed him that they were renewing his administrative detention for another six months. On that basis, the detainee is due to be released in March 2006. At the time of finalizing this report, the Special Rapporteur hopes that this will effectively happen but, based on other previous cases, dares expressing his concern that the detention order may be subject to indefinite renewal. He wishes to underline that, as per international human rights standards, any arrested person is to be either formally charged and tried within a reasonable deadline and with all due process of law, or released without delay. He is quite concerned about the continued existence in Israel of legislation allowing the authorities to detain any person on mere suspicions of involvement in terrorist activities, without any formal charge or trial and without due enjoyment of international legal and human rights guarantees during detention.

Kazakhstan

Communication sent to the Government by the Special Rapporteur

132. On 14 November 2006, the Special Rapporteur sent a letter to the Governement requesting information on the actions taken to follow-up on the recommendations made in his mission report to Kazakhstan (E/CN.4/2004/60/Add.2), as well as other more general information on the progress made in the country in matters pertaining to his mandate.

Communication from the Government

133. On 6 February 2006, the Special Rapporteur received a letter from the Government of Kazakhstan tranmistting information from the Supreme Court of Kazakhstan on the implementation of the recommendations made by the Special Rapporteur in his mission report. The reply is currently being translated and could therefore not be included in the report, a circumstance which the Special Rapporteur regrets.

Special Rapporteur's comments and observations

134. The Special Rapporteur thanks the Government of Kazakhstan for the information provided on the follow-up to his mission's recommendations. He wishes to assure the Government that its contents will be studied as soon as the translation will be made available, and will be reflected in his next report.

Kuwait

Communication sent to the Government by the Special Rapporteur

135. On 22 February 2005, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Osama Ahmed Al-Munawer, lawyer and member of the Al-Karama Association for Defending Human Rights (KADHR): an organization which works to defend civil and political rights in Kuwait. On 31 January 2005, Osama Ahmed Al-Munawer was allegedly arrested at Koweit city airport as he returned from Cairo, where he had been meeting with several Egyptian human rights defenders. On 2 February 2005, Osama Ahmed Al-Munawer was allegedly charged and provisionally detained for having had telephone contacts with his client Khaled Douisri, another Kuwaiti human rights defender who was recently forced to flee the country after an attempt on his life. Concerns had been expressed that his arrest may be an attempt to curb his activities in defense of human rights. These concerns were heightened by the fact that Osama Ahmed Al-Munawer had, prior to this, been the target of restrictive actions in connection to his role in exposing cases of human rights violations. In particular, it was reported that he was summoned before the General Prosecutor on charges of violating his professional code of honour for sending details of a case to a local newspaper and suspended for one year on 29 December 2003. On 12 September 2004, he was arrested and charged with endangering the national interests of Kuwait for transmitting false information a day after placing a call to the President of KADHR. He was freed after paying the bail of 500 Kuwaiti dinar. His hearing was pending before the Criminal Court at the time this communication was sent.

Communication from the Government

136. On 18 May 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 22 February 2005. The Government advised that the Department of Public Prosecutions interviewed the accused, Mr. Osama Ahmed al Munawer, and then released him, pending the hearing of State security criminal case No. 2/2005. The Government stated that he had been charged with membership of a proscribed organization which seeks to destroy the basic apparatus of the State by unlawful means. Furthermore, the Government advised that the Department of Public Prosecutions instituted these procedures in its capacity as the judicial authority with competence for preliminary investigations and in accordance with the regulations and legal safeguards established with regard to the Kuwaiti judicial system. The case remained under investigation, at the time this reply was sent.

Special Rapporteur's comments and observations

137. The Special Rapporteur thanks the Government of Koweit for its cooperation and the information provided. It urges it kindly to convey at the earliest possible date and preferably before the end of the 62nd session of the Commission on Human Rights, an update about any new developments in the proceedings affecting Mr. Osama Ahmed al Munawer. He would particularly welcome clarifications as to whether a final sentence concerning Mr. Osama Ahmed al Munawer is still pending and as to whether he is enjoying full access to the lawyer of his own choosing. If a verdict was already issued, he would welcome details of the same, and of Mr. Osama Ahmed al Munawer's current weherabout.

Kyrgyzstan

Communication sent to the Government by the Special Rapporteur

138. On 30 December 2005, the Special Rapporteur sent a joint urgent appeal with the Chair-person Rappoteur of the Working Group on Arbitrary Detention, concerning Mr. Yakub Tashbayev, Mr. Rasul Pirmatov, Mr. Jahongir Maksudov and Mr. Odiljan Rahimov. According to the information received, these four persons are Uzbek citizens, recognized as refugees by UNHCR. They were detained in detention facility in Osh City, Kyrgyz Republic, at the time this communication was sent, and were under imminent risk of being deported back to Uzbekistan, where it was feared that they may be arrested and subject to torture or other forms of ill-treatments. It was reported that, on 26 December 2005, a first instance court upheld a negative refugee status decision concerning Mr. Yakub Tashbaev. Concerning the cases of Mr. Odiljan Rahimov and Mr. Jahongir Maksudov, the Bishkek City Court (second instance court) upheld the negative refugee status decisions, and the decision would reportedly come into force immediately in accordance with para.3 of Article 335 of the Civil Procedural Code of the Kyrgyz Republic, acts from appeals come into force from the moment of proclamation, despite the fact that lawyers filed a cassation appeal on 29 December 2005 to the Supreme Court. It was also alleged that on 29 December 2005, the first instance court consideration of the negative refugee status decision of Mr. Rasul Pirmatov was urgently conducted in the absence of representatives of the plaintiff and the court upheld the decision. It was alleged that the court hearing was conducted in violation of the norms of Article 156 of the Civil Procedural Code, on

the obligatory notification of the parties and Article 168 - postponement of court hearings in case of the absence of a party.

Press releases

139. On 23 September 2005, the Special Rapporteur, issued the following press release (see E.CN.4/2006/52/Add.3) concerning the outcome of his visit to Kyrgyzstan and his substantive recommendations:

> "UNITED NATIONS EXPERT HOPES STRENGTHENING OF JUDICIARY IN KYRGYZSTAN WILL BE AT CENTRE OF REFORM
>
> "The Special Rapporteur on the independence of judges and lawyers of the United Nations Commission on Human Rights, Leandro Despouy, issued the following statement today: "The Special Rapporteur on the independence of judges and lawyers of the United Nations Commission on Human Rights, Leandro Despouy, is presently visiting Kyrgyzstan at the invitation of the Government. "The Special Rapporteur thanked the Government of Kyrgyzstan for their warm welcome and for the opportunity to meet with various representatives of the government, parliament, and judiciary. He further thanked the United Nations Development Office in Kyrgyzstan, other international organisations and local non-governmental organisations with whom he met for the cooperation they extended to him. The information obtained will facilitate the work of the Special Rapporteur in the preparation of an objective report on the situation of the judicial system in the country."Acknowledging that the country is presently going through an important period of transition, the Special Rapporteur would like to make the following preliminary observations:
>
> 1) The Special Rapporteur welcomes the efforts already made in the process of the constitutional reform in the country. Most actors with whom he met strongly believe in the importance of furthering institutional reforms, in particular of the judiciary, in order to ensure the stable and progressive development of Kyrgyzstan.
>
> 2) The Special Rapporteur is concerned with the continuing lack of trust of the population in the judicial system, which is mainly a consequence of existing judicial procedures that insufficiently address the right of *habeas corpus* and guarantees of fair trial.
>
> 3) In this connection, numerous interlocutors brought to the attention of the Special Rapporteur significant problems related to the status and role of lawyers, in particular defence lawyers, in the country. This includes, among others, their dependent position with regard to the executive branch, the inferior situation in which lawyers constantly find themselves vis-à-vis the prosecutor during trials, and their inadequate professional qualifications.
>
> 4) The Special Rapporteur noted with concern that judges have not been able to fulfil their role to efficiently safeguard the rights of citizens. This is due

to various factors, including insufficient professional expertise, the lack of training, and their apparent unwillingness to assume their responsibility towards society. In this regard, the country also needs to develop a comprehensive strategy to fight corruption.

5) The Special Rapporteur strongly encourages Kyrgyzstan to adopt legislation governing juvenile justice.

6) Furthermore, the Special Rapporteur welcomes the support from the Kyrgyz Government for the resettlement of Uzbek refugees to third countries and the Government's compliance with the 1951 Geneva Convention and the Convention Against Torture and encourages the Government to continue this policy without exception.

7) The Special Rapporteur welcomes the willingness of the Government to cooperate with the international community to tackle existing problems and hopes that the necessary financial resources will be made available by international donors to support the reform programmes in the country.

”The Rapporteur would like to express his strong hope that judicial reform will be at the heart of the ongoing constitutional reform process in which, he expects, all parts of society will remain included. He is of the opinion that the present institutional reconstruction should enable the judiciary to play a crucial role in the protection of human rights in Kyrgyzstan. ”The Special Rapporteur will present his report to the Commission on Human Rights in the spring 2006 and he will also address the General Assembly next month”

140. On 18 October 2005, the Special Rapporteur issued the following press release:

“UNITED NATIONS INDEPENDENT EXPERT STRESSES URGENT NEED FOR RESETTLEMENT OF FOUR UZBEK CITIZENS

”The Special Rapporteur on the independence of judges and lawyers of the United Nations Commission on Human Rights issued the following statement today:
”The Special Rapporteur on the independence of judges and lawyers of the United Nations Commission on Human Rights, Leandro Despouy, recently visited Kyrgyzstan and Tajikistan.”During his mission to Kyrgyzstan, he was given the opportunity to meet with four Uzbek citizens being held in detention facilities in Osh, the main city in the south of Kyrgyzstan. The four fled the mid-May events in Andijan, Uzbekistan, which a report by the Office of the United Nations High Commissioner for Human Rights has concluded may have amounted to a mass killing. The four had been held at a camp in Kyrgyzstan together with 450 other Uzbeks. They were among 33 people arrested following extradition requests by the Prosecutor-General of Uzbekistan. Four other of those persons arrested were involuntarily returned to Uzbekistan in June under what are still unknown circumstances. Recently, 450 persons, including 25 of those arrested, have either been evacuated on humanitarian grounds or resettled in

third countries. The Special Rapporteur deeply appreciates the courageous decision taken by the Kyrgyz authorities to facilitate these operations. "The Special Rapporteur expresses grave concern with regard to the fate of the remaining four Uzbek citizens. He also notes that they have already been in Kyrgyz detention facilities since mid-June."The Special Rapporteur encourages the Kyrgyz authorities to facilitate a resettlement of the four Uzbeks to a third country. This is especially important in view of the involuntary return, without judicial review, of the four other Uzbek citizens in June. International treaties ratified by Kyrgyzstan contain the prohibition against the return of any person to another State where he or she may face a real risk of torture. Furthermore, the principle of *non-refoulement* is a part of customary law which cannot be derogated. The United Nations Human Rights Committee has pointed to reports of widespread use of torture and ill-treatment of detainees. The Special Rapporteur against Torture of the United Nations Commission on Human Rights has concluded that torture is systematic in Uzbekistan. In addition, the Special Rapporteur is concerned about the pressure on Kyrgyzstan and attempts by Uzbek agents on Kyrgyz territory to return the four to Uzbekistan."The Special Rapporteur calls upon the Member States of the United Nations to consider hosting the four persons.

Communications from the Government

141. By its letters of 16 February and 2 March 2006, the Government of Kyrgyzstan transmitted its comments on the draft report of the Special Rapporteur's visit to Kyrgyzstan and its request that the comments be circulated at the 62nd session the Commission on Human Rights.

Special Rapporteur 's comments and observations

142. The Special Rapporteur thanks the Government of Kyrgyzstan for its comments to his draft visit report and regrets that these comments could not be taken into account in finalizing his report, due to the fact that they where received after the deadline and when the report was already published. He however welcomes the fact that they will be circulated at the Commission on Human Rights and looks forward to an in-depth discussion of their contents with the Kyrgyz delegation to the Commission on Human Rights.

143. The Special Rapporteur urges the Government to provide answers to the concerns expressed in his press release of 18 October and to the specific allegations transmitted to it in his letter of 30 December 2005.

Lebanon

Communications envoyées au Gouvernement par le Rapporteur spécial

144. Le 29 avril 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur sur la question de la torture et le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, a envoyé un appel urgent concernant Nehmeh Naïm El Haj, résident du quartier Al Basatine à Ain Saadeh,

arrêté le 25 novembre 1998 à la frontière libano-syrienne par les services de renseignements syriens et condamné à mort par le tribunal libanais de Baabda. Selon les informations reçues, M. El Haj a été détenu en secret pendant plus d'un mois par les services de renseignements syriens dans un centre d'interrogatoires illégal situé à Anjar (au Liban). Accusé du meurtre de deux personnes au Liban, il y aurait régulièrement subi des tortures avant d'être remis aux autorités libanaises à Zahleh et transféré par la suite à Jounieh. N'ayant eu aucun contact avec l'extérieur, M. El Haj n'aurait pas pu bénéficier de l'assistance d'un avocat tout au long de son interrogatoire. Le 1er juillet 2004, le tribunal pénal libanais de Baabda aurait entériné les conclusions des services secrets syriens alors que ceux-ci n'étaient pas habilités à mener l'enquête et aurait condamné à mort M. El Haj. Il a été signalé aux Rapporteurs spéciaux que, pour ce faire, le tribunal de Baabda n'a aucunement tenu compte du fait que les familles des victimes avaient entretemps retiré leur plainte et a maintenu son jugement. Dans l'hypothèse où le pourvoi en cassation de M. El Haj serait rejeté, celui-ci pourrait être exécuté dans les jours à venir.

145. Le 7 décembre 2005, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, a envoyé un appel urgent concernant Me Muhamad Mugraby, avocat défenseur des droits de l'homme, âgé de 65 ans. Me Muhamad Mugraby avait déjà fait l'objet d'une lettre d'allégation envoyée par la Représentante spéciale du Secrétaire général concernant 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 le 4 mars 2005. Selon les informations reçues, Me Muhamad Mugraby a été appelé à comparaître devant une cour de justice militaire le 9 janvier 2006, pour avoir diffamé les militaires libanais. Les charges se rapportent au témoignage qu'il a donné devant une Délégation Interparlementaire, à l'invitation du Parlement européen, en novembre 2003. Son témoignage portait sur les droits de l'homme et le système judiciaire au Liban et dans les pays avoisinants. Un certain nombre d'autres procédures criminelles et disciplinaires sont en cours contre Me Mugraby. En novembre 2001, il a été accusé d'avoir diffamé l'Association du Barreau de Beyrouth (BAB) dans un communiqué de presse qu'il a publié avec un certain nombre d'autres avocats. Le 26 février 2002, Me Mugraby a intenté une action civile contre la BAB demandant que celle-ci ne prenne aucune décision concernant l'exercice de sa profession d'avocat jusqu'à ce qu'un jugement final ait été émis concernant les accusations de diffamation portées contre lui. Le 17 janvier 2003, le Conseil Disciplinaire de la BAB a pris la décision de rayer Me Mugraby du registre des avocats pour la période maximale de trois ans sur la base du fait qu'il n'avait pas demandé l'autorisation de la BAB pour intenter son action civile contre la BAB. Me Mugraby a fait appel de cette décision.

Communications reçues du Gouvernement

146. Aucune

Commentaires et observations du Rapporteur spécial

147. Le Rapporteur spécial est extrêmement préoccupé par l'absence de réponse officielle à ses demandes, notamment s'agissant du cas de M. El-Haj qui risquait de la peine capitale. Il invite le Gouvernement du Liban à lui transmettre au plus tôt, et de préférence avant la fin de la 62ème session de la Commission des droits de l'homme, des informations précises et détaillées

en réponse aux allégations ci-dessus. Le Rapporteur spécial souhaite tout spécialement savoir quelles décisions le tribunal a prises en cassation concernant le cas de M. El Haj et avoir des précisions sur le sort actuel de celui-ci. Il saisit cette occasion pour réiterer sa ferme opposition à l'application de la peine capitale et pour inviter le Gouvernement du Liban à prendre toutes les dispositions nécessaires pour parvenir à éliminer cette peine de sa législation. Enfin, il souhaiterait connaître les décisions prises par le tribunal compétent concernant l'appel interjeté par Me Mugraby et si celui-ci a pu d'ores et déjà reprendre sa pratique d'avocat.

Mauritania

Communication envoyée au Gouvernement par le Rapporteur spécial

148. Le 4 mai 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire et le Rapporteur spécial sur la torture, a envoyé un appel urgent sur la situation des personnes suivantes qui, le 25 avril 2005, auraient été arrêtées à Nouakchott par les forces de sécurité : Cheikh Mohamed El Hacen Ould Dedew, imam; El Moctar Ould Mohamed Moussa, leader du Parti National de la Convergence Démocratique; Mohamed Ahmed Ould El Hadj Sidi, avocat et professeur de droit; Cheikhani Ould Beïba, président de l'Association pour la sagesse, l'authenticité et le renouveau du patrimoine (Al-Hikma); Mohamed Lemine Ould Moustapha, imam; Habib Ould Houmdeïtt, conseiller du ministre de la culture; Abdallah Ould Eminou, imam; Al Hacene Ould Habibullah, imam; Mohamed Sidiya, professeur; Sidi Mohamed Ould Sidi, homme d'affaires ; Ahmed Ould Al Kowri, professeur; Mohamed Ould Abarrahmane, journaliste à Al Jazeera.net; Bounenna Ould Bebbah, professeur; Cheikh Ahmed Ould Mohamedine Vall; Khalid Ould Isselmou, imam; Abderahmane Ould Emine, imam; Mohamed Abdallahi Ould Bilil.. Il était allégué que tous étaient alors détenus sans accès à leurs familles et à des avocats, dans un endroit inconnu, à Nouakchott, et n'avaient pas été conduites devant un magistrat ni accusées officiellement d'aucun crime. Toutefois, un porte-parole de la police les aurait accusé d'avoir planifié des actes de terrorisme et d'être en contact avec un groupe lié à Al Qaeda. Ils auraient aussi été accusés d'avoir des liens avec le Groupe salafiste pour la prédication et le combat. Au vu des informations selon lesquelles elles étaient détenues incomunicado, les Rapporteurs spéciaux craignaient que ces personnes ne soient exposées à la torture ou d'autres traitements inhumains ou dégradants. Le Rapporteur spécial s'inquiétait de l'absence de procédures judiciaires et d'accès à un défenseur.

Communication reçue du Gouvernement

149. Le 20 juillet 2005, le Gouvernement a répondu à l'appel urgent conjointement envoyé le 4 mai 2005 par le Rapporteur spécial. Le Gouvernement a indiqué que les personnes mentionnées avaient été interpellées dans le cadre d'une affaire se rapportant à la sûreté intérieure de l'Etat. Elles étaient accusées d'appartenir à un Groupe d'extrémistes agissant en dehors de tout cadre légal, exhortant à la violence et utilisant les mosquées à des fins de propagande politique sectaire. Certaines d'entre elles avaient commis des actes ayant pour objet d'exposer les Mauritaniens à des représailles tandis que d'autres avaient organisé des associations de malfaiteurs dont le but avoué est le recrutement et l'entraînement à l'étranger de jeunes innocents pour la réalisation de leurs objectifs. Ces actes et faits constituent des infractions prévues et réprimées par les articles 3 et 8 de la loi 64-098 du 9 juillet 1964 relative aux associations modifiée par la loi 73-007 du 23 janvier 1973 et la loi 73-157 du 02 juillet

1973 et par les articles 3 et 20 de la loi 2003-031 du 24 janvier 2003 relative aux mosquées ainsi que les articles 77, 246 et 247 du Code pénal. L'article 56 du Code procédure pénal autorise l'officier de police judiciaire à garder à sa disposition, pour les nécessités de l'enquête, les personnes contre lesquelles existent des indices graves et concordants de nature à motiver leur inculpation. Le Gouvernement a signalé que dans ce cas précis l'interpellation a duré vingt jours, soit dix jours de moins que le délai légal accordé à l'Officier de police judiciaire. Le Gouvernement avait déclaré que les personnes en question avaient été relâchées pour insuffisance de charge (14) présentées devant le Procureur de la République (12) à l'issue de leur garde à vue (Art. 56-5 du Code de procédure pénale). Les prévenus avaient été alors informés des chefs d'accusation retenus contre eux et le Parquet avait requis du juge d'instruction l'ouverture d'une information judiciaire (Art. 102 du Code de procédure pénale). Le Gouvernement a signalé qu'elles avaient eu également la possibilité de faire appel à leurs avocats en vertu de l'article 103 du Code de procédure pénale. Selon le Gouvernement, ces personnes avaient été interpellées sur une base juridique claire et la procédure prévue avait été scrupuleusement respectée. Leur garde à vue avait été effectivement prolongée, pour nécessité d'enquête et conformément à la loi, mais leur intégrité physique et morale avait été pleinement respectée. L'instruction de cette affaire se poursuit et les prévenus étaient en contact permanent avec leurs avocats. Le Gouvernement assurait qu'ils bénéficieraient d'un procès juste et équitable avec le bénéfice de toutes les garanties nécessaires à leur défense.

Commentaires et observations du Rapporteur spécial

150. Le Rapporteur spécial remercie le Gouvernement de la Mauritanie pour sa coopération et les informations de fond qu'il a bien voulu lui fournir. Il note avec satisfaction que les personnes faisant l'objet de l'échange de communications ont été soumises à une procédure judiciaire et non pas détenues sans inculpation ni jugement. Il prie le Gouvernement mauritanien de bien vouloir l'informer au plus tôt, et de préférence d'ici la clôture de la 62ème session de la Commission des droits de l'homme, de l'état des procédures judiciaires et, le cas échéant, du jugement rendu à l'encontre de chacune des personnes en question.

Mexico

Comunicaciones enviadas al Gobierno por el Relator especial

151. El 16 de febrero de 2005, el Relator Especial, 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 Representante Especial del Secretario-General para los defensores de los derechos humano, envió un llamamiento urgente relativo a la situación de inseguridad y peligro en la que se encontraría Obtilia Eugenio Manuel, fundadora de la Organización del Pueblo Indígena Tlapaneco (OPIT) y defensora de los derechos humanos del pueblo indígena tlapaneco, en el municipio de Ayutla de los Libres, Guerrero. El 9 de diciembre del 2004, Obtilia Eugenio Manuel habría recibido en su domicilio un escrito anónimo en el que se le habría amenazado de muerte. La afectada y los miembros de la OPIT habrían decidido denunciar el hecho públicamente. El día 26 de diciembre del 2004, la hermana de la afectada habría observado en la calle dos sujetos desconocidos, los cuales habrían tomado apuntes en una libreta y hablado señalando hacia el domicilio de Obtilia Eugenio Manuel. Al observarla y reconocerla se habrían retirado del lugar caminando en sentido opuesto. Con posterioridad, los días 29 y 30 de

diciembre, los familiares de Obtilia Eugenio Manuel habrían observado a varios sujetos que les observaban y que se habrían retirado apresuradamente al ser reconocidos. Se denunciaba que esta situación de vigilancia y hostigamiento a la familia de Obtilia Eugenio y a los miembros de la OPIT habría permanecido durante todo el mes de enero. Frente a los hechos denunciados, el 14 de enero de 2005, la Comisión Interamericana de Derechos Humanos (CIDH) habría dispuesto que el gobierno de México tome medidas cautelares para la protección de Obtilia Eugenio Manuel y sus familiares. La fuente informaba que las amenazas y acoso continúan, temiéndose por la integridad física de Obtilia Eugenio y de los demás miembros de la OPIT. Se creia que estos actos estuviesen relacionados al trabajo que realizaba Obtilia Eugenio Manuel en defensa de Me Phaa Valentina Rosendo Cantú e Inés Fernández Ortega, dos indígenas que habrían denunciado haber sufrido actos de la violación y tortura supuestamente en manos de elementos militares. También, el abogado de la Sra. Obtilia Eugenio Manuel habría sido informado por las autoridades judiciales civiles que muy probablemente la denuncia de la Sra. Obtilia Eugenio Manuel sería trasferida a la jurisdicción militar. Esto hacía temer que la Sra. Obtilia Eugenio Manuel podría ser privada de un proceso jurídico que ofrezca todas las garantías posibles para asegurar un juicio justo respecto a los actos de hostigamiento mencionados.

152. El 11 de noviembre de 2005, el Relator Especial, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente relativo a la situación de de inseguridad y peligro en la que se encontraría el abogado Leonel Rivero Rodríguez y su familia. Se alegaba que el abogado Leonel Rivero había recibido amenazas de muerte en tres ocasiones y sido sujeto de persecuciones por las calles de la ciudad al salir de una reunión de trabajo acompañado de los agentes encargados de su protección. También, los agentes que lo protegían habrían sido asaltados, y además, su mujer habría sido víctima de un intento de atropello. Se señalaba que, en octubre de 2001 la Corte Interamericana de Derechos Humanos había ordenado al Gobierno mexicano, como consecuencia del asesinato de Digna Ochoa, la cual trabajaba conjuntamente en algunos casos con Leonel Rivero Rodríguez, implementar medidas para proteger la seguridad e integridad del abogado y su familia, incluyendo la investigación de los hechos mencionados, para identificar y sancionar a los responsables. La fuente indicaba que dichas medidas habían sido implementadas y la orden que les dio origen se encontraba vigente, incluso reiterada el 29 de junio de 2005 en una resolución emitida por la Corte. Señalaba que, el 22 de septiembre de 2005, el Gobierno mexicano había decidido sin motivo alguno retirar las medidas de protección al abogado Leonel Rivero Rodríguez, y no implementar las medidas a favor de su familia. Ante esta situación, el 7 de octubre de 2005, la Corte Interamericana de Derechos Humanos había solicitado al Gobierno a proseguir con las medidas de seguridad adoptadas a favor de Leonel Rivero. Se alegaba que había transcurrido más de un mes desde que la Corte había ordenado el restablecimiento de las medidas de protección a favor de Leonel Rivero, sin la correspondiente respuesta por parte del Gobierno. Paralelamente, en el momento de escribir al Gobierno, ninguno de los hechos sujetos en la investigación había sido aclarado por el Gobierno, ni se habían identificado ni sancionado a los responsables.

Comunicaciones del Gobierno

153. Mediante comunicación del 24 de febrero de 2005, el Gobierno proporcionó información en relación con el llamamiento urgente enviado el 16 de febrero de 2005. El

Gobierno informó que la Comisión Interamericana de Derechos Humanos (CIDH) solicitó adoptar medidas cautelares a favor de la Sra. Obtilia Eugenio Manuel y miembros de su familia. El 31 de enero de 2005, se celebró una reunión entre representantes del Gobierno y los beneficiarios en la cual el Gobierno mexicano se comprometió a practicar vigilancia policial dos veces por semana por miembros de la Polícia Federal Preventiva, a concertar una reunión con el Delegado de la Procuraduría General de la República en el Estado de Guerrero, para presentar la denuncia de hechos y a informar a las autoridades correspondientes que la Sra. Obtilia Eugenio Manuel y los miembros de su familia son beneficiarios de medidas cautelares otorgadas por la CIDH.

154. Mediante comunicación del 4 de julio de 2005, el Gobierno proporcionó información adicional en relación con el llamamiento urgente enviado el 16 de febrero de 2005. El Gobierno proporcionó información adicional sobre la situación de la Sra. Obtilia Eugenio Manuel, señalando que las medidas cautelares otorgadas por la CIDH a favor de la misma y su familia tenían una vigencia de seis meses y que informaba periódicamente a la CIDH sobre su nivel de cumplimiento. Después de dos reuniones entre las autoridades pertinentes (Procuraduría General de la República, Policía Federal Preventiva de la Secretaría de Seguridad Pública del Estado de Guerrero, Comisión Estatal de Derechos Humanos del Estado de Guerrero) y los representantes de los beneficiaros se lograron avances en la implementación de las medidas de protección. El Gobierno informó que había tomado una serie de medias cautelares como la implementación de vigilancia policial, además de instalar el día 30 de abril un equipo de vigilancia compuesto de luces sensoriales, timbre inalámbrico y cámara externa de visión nocturna en el domicilio de Obtilia Eugenio Manuel. En lo que se refiere a las gestiones necesarias para esclarecer judicialmente los hechos, el Gobierno de México facilitó la realización de una reunión con el Delegado de la Procuraduría General de la República en el Estado de Guerrero, a efecto de que los beneficiarios presentaran la denuncia de los hechos. La Procuraduría General de la Republica en el Estado de Guerrero abrió una averiguación previa pero a la fecha no hay resultados definitivos. Simultáneamente, el Gobierno ha solicitado los buenos oficios respectivos a la Secretaría de la Defensa Nacional, al Gobernador del Estado de Guerrero y al Presidente municipal de Ayutla de los Libres, Guerrero, para informar de la implementación de medidas cautelares a favor de Obtilia Eugenio Manuel y su familia.

155. Mediante comunicación del 22 de diciembre de 2005, el Gobierno de México respondió al llamamiento urgente enviado el 11 de noviembre de 2005 en el caso del Sr. Leonel Guadalupe Rivero Rodríguez. El Gobierno informó que las medidas de seguridad otorgadas a favor del Sr. Rivero Rodríguez no fueron retiradas pero modificadas. Desde noviembre de 2001, fecha en que la Corte Interamericana de Derechos Humanos otorgó medidas provisionales en su favor, se implementó un servicio de escolta integrado por cuatro miembros de Agencia Federal de Investigación de la Procuraduría General de la República que lo acompañaban de forma permanente. Durante cuatro años, se presentaron algunos incidentes menores, pero en ningún momento la vida del Sr. Rivero Rodríguez se vio afectada. En virtud de ello, el 23 de septiembre de 2005, el Estado mexicano decidió realizar una modificación a la modalidad de las medidas a través de rondines policíacos en el domicilio de los beneficiarios y números telefónicos de emergencia para dar respuesta inmediata ante cualquier anomalía o emergencia. El 7 de octubre de 2005, la Corte Interamericana de derechos humanos determinó solicitar al Gobierno de México la reinstalación de dichas medidas, y se estaban realizando acciones a efecto de cumplir con las medidas, que complementarían las existentes. Existían varias investigaciones con motivo de diversos incidentes en los que se ha visto involucrado el Sr.

Rivero Rodríguez: cuatro averiguaciones previas y une causa penal sobre un accidente de transito en el que resultó arrollada la mujer del Sr. Rivero Rodríguez: en esta causa, se identificó a un probable responsable sin que hasta la fecha se haya podido dar con su paradero.

Comentarios y observaciones del Relator especial

156. El Relator especial agradece al Gobierno de México su amable cooperación y las informaciones de fondo que tuvo a bien proporcionarle en respuesta a sus comunicaciones y solicita tenga a bien enviarle información actualizada acerca de ambos casos, preferentemente antes de terminar la 62ª de la Comisión de derechos humanos.

Morocco

Communication envoyée au Gouvernement par le Rapporteur spécial

157. Aucune.

Communication reçue du Gouvernement

158. Par lettre du 23 Janvier le Gouvernement du Maroc a fait parvenir au Rapporteur spécial la synthèse du rapport final de l'Instance Equité et Réconciliation concernant les violations des droits de l'homme au Maroc, et en particulier le règlement du dossier des disparitions forcés et des détentions arbitraires. Compte tenu des délais de réception de la lettre, celle-ci n'a cependant pas pu être reflétée dans le présent rapport, ce que le Rapporteur spécial regrette.

Commentaires et observations du Rapporteur spécial

159. Le Rapporteur spécial remercie le Gouvernement du Maroc pour sa coopération et souhaite l'assurer que l'information envoyée est à l'étude au moment de clore ce document et une analyse du Rapporteur spécial à ce sujet sera insérée dans son prochain rapport.

Myanmar

Communication sent to the Government by the Special Rapporteur

160. On 19 January 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the situation of human rights concerning Ko Sein Win, a resident of Nonechaung village, Magu village tract. In the morning of 1 December 2004, he was reportedly passing by the ward office of the Magu Village Tract Peace and Development Council, the local office of the ruling military council, at Kyonesein No. 2 Ward, when he was called inside by members of the Nonechaung village administrative committee and members of the People's Militia, a civilian paramilitary organization. Then, two police officers reportedly searched Mr. Win, found no documents but arrested him after finding a stub for playing an alleged illegal lottery. The next day, the Bogalay Township Court reportedly sentenced him to one and a half years' imprisonment for having the lottery ticket. Mr. Win was allegedly given no opportunity to defend himself or have a lawyer present. On 3 December 2004, Mr. Win was sent to the

Pyapon Prison. Concern was expressed about the lack of due process in the arrest, conviction and imprisonment of Mr. Ko Sein Win as it was believed that this arbitrary prosecution may be related to his membership in the opposition party National League for Democracy (NLD) and his human rights defence activities, in particular the organization of a petition he had signed by 60 farmers protesting the government's decision to make it compulsary for farmers to grow dry-season paddy crop.

Communication from the Government

161. On 7 March 2005, the Government advised that on 1 December 2004, Ko Sein Win, 42 years of age, son of U Aung Thein, residing at Lonechaung (Lonechaung) village, was indicted by Bogalay Township Police on two separate accounts in relation with drugs and involvement of illegal lottery. The Government stated that he was found guilty on those two accounts and the Bogalay Township Court, under a fair trial, handed down 6 months' imprisonment under Section (33) of Exercise Act and one year imprisonment under Section 16(a) of Gambling Act, separately. According to the Government, the prosecution against him was not related to his membership in the NLD.

Special Rapporteur's comments and observations

162. The Special Rapporteur thanks the Government of Myanmar for its cooperation and the response it provided. He takes note of the response while at the same time expressing reservations regarding various aspects of the case on which he intends to pursue contacts with the Government.

Nepal

Communications sent to the Government by the Special Rapporteur

163. See various communications sent in 2004, reflected in document E/CN.4/2005/60/Add.1, para. 93 to 97bb

164. Furthermore, on 26 September 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the question of torture, regarding Prem Bahadur Oli, Tek Bahadur Khatri, Man Bahadur Bista, Padam Sarki, Birman Sarki, Tapta Bahadur Giri, Bir Bahadur Karki, Padam Bahadur Budha, Gagan Singh Kunwar, Dhawal Singh Bohara and Ujal Singh Dhami, all from Jogbudha Village Development Committee in neighbouring Dadeldhura district. On 19 September 2005, these 11 men were allegedly rearrested by the security forces immediately after a court had ordered their release and taken to an undisclosed location. Prem Bahadur Oli, Tek Bahadur Khatri, Man Bahadur Bista, Padam Sarki, Birman Sarki, Tapta Bahadur Giri, Bir Bahadur Karki, Padam Bahadur Budha, Gagan Singh Kunwar, Dhawal Singh Bohara and Ujal Singh Dhami were first taken into custody on 17 August 2004, while attending a mass meeting held by the Communist Party of Nepal (CPN) (Maoist) in Kanchanpur district. Security forces broke up the meeting, arresting any participants who did not flee. The 11 men were initially held incommunicado at the Surya Dal army barracks in Bhagatpur, Kanchanpur district, and transferred to Kanchanpur prison in November 2004. In May 2005, representatives

of a non-governmental organization visited several of the detainees at Kanchanpur prison. The NGO representatives found that Birman Sarki had severe mental disabilities, apparently as a result of torture and ill treatment during his earlier detention at the Surya Dal army barracks. He was hardly able to speak, and the scar of a serious head wound was visible. The other detainees told the NGO representatives that Birman Sarki had been savagely beaten by soldiers at the barracks after expressing concerns about the safety of his wife and young children. On 12 May 2005, the Kanchanpur Appeal Court ordered the release of the detainees on the grounds that the government had not provided sufficient evidence to justify their preventive detention under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO). The security forces took the detainees back to Kanchanpur prison, where they ordered them to sign papers stating that they had been released. However, instead of freeing the men, the security forces transferred them to the Kanchanpur Regional Police Office and subsequently obtained authorization from the Chief District Officer to again hold them in preventive detention under the provisions of TADO. On 15 June 2005, the Appeal Court again ruled that the detention of the 11 men was illegal and that they should be released immediately. However, the police took the men back to Kanchanpur prison. Fearing that the men would be re-arrested, their lawyers followed them to the prison, accompanied by journalists and other human rights defenders. Despite lawyers' protests, the detainees were made to sign release papers and loaded into a vehicle parked outside. After security forces ordered the lawyers to leave the premises, the detainees were driven to the Kanchanpur Regional Police Office and later transferred back to the district jail. Lawyers from a non-governmental organization then brought the case before the Supreme Court. On 16 September 2005, the Supreme Court ruled that the group's detention was illegal and ordered their release in the presence of the Kanchanpur District Court. On 19 September 2005, police brought the detainees to the court house in three vehicles escorted by about 35 security forces personnel, waited while their release was recorded by the district court registrar, and then ordered the group to get back into the vehicles. The detainees were driven in the direction of the Kanchanpur Regional Police Office, where it was thought that they may be detained. However, the authorities have not confirmed the location of their current detention.

Communications from the Government

165. On 1 April 2005, the Government replied to various joint urgent appeals sent on different dates in 2004. On 14 September 2005, the Government replied to various joint urgent appeals sent on different dates in 2004, with further information.

166. In relation to the joint urgent appeal sent on 24 February 2004 (E/CN.4/2005/60/Add.1, para. 93), the Government advised that Bal Krishna Devakota was arrested by the Security forces on 21 February 2004. He was arrested by RNA for necessary investigations and was later, released after general inquiry, on 23 February 2004. He was not subjected to torture during the investigation. Secondly, the Government advised that Dhananjay Khanal was arrested by the Security forces on 21 February 2004 from Lalitpur for necessary investigations. After investigations, he was found to be innocent, and was released and handed over to his house owner on 27 February 2005. The Government advised that he had not been ill-treated or tortured by security forces while in custody. He had confirmed this in a written statement, the copy of which is available in the RNA HR cell.

167. In relation to the joint urgent appeal sent on 26 April 2004 (E/CN.4/2005/60/Add.1, para. 94), the Government advised that Girija Prasad Koirala was arrested on 1 February 2005,

together with about 300 demonstrators, for violating the order of District Administration Office banning political activities within the Ring Road at Kathmandu District. They were arrested when political leaders and their supporters gathered at Ratna Park area and were trying to organize a political demonstration. The police arrested them and released within three hours, after the situation turned normal. Secondly, the Government advised that Shyam Kumar Shrestha was arrested on 23 October 2003 by the security forces, and that no further information on the arrest of him was available. The Government also advised that Basu Dev Sigdel was arrested in Kathmandu on 22 January 2004 by the security forces. After necessary interrogation, he was found to be innocent and was released and handed over to his wife on 11 Mar 2004. He had not been tortured or ill treated while detention. He had also confirmed this in a written statement. Copy of his written statement is available in RNA HR cell. Additionally, the Government advised that Laxman Prasar Ayral was arrested on 29 Jan 2004 by the security forces for necessary investigation and was released and handed over to his friend in the presence of Madhav Mudvari and Police ASI Padam Kumar Shrestha on 9 June 2004. He had not been tortured while in custody and he had confirmed this in a written statement. The copy of his written statement is available in the RNA HR cell. The Government also provided that Krishna Silwal and Gopi Krishna Thapaliya were released on 11 March 2004 and on 14 November 2003 respectively.

168. In relation to the joint urgent appeal sent on 29 September 2004 (E/CN.4/2005/60/Add.1, para. 96), the Government advised that Govinda Damai was arrested from Rajhena, Banke on 19 July 2004 by security forces and that there was no further information on his arrest and detention.

169. In relation to the joint urgent appeal sent on 29 September 2004 (E/CN.4/2005/60/Add.1, para. 97), the Government advised that Jimdar Kewat was arrested on 15 April 2004 by security forces from Betani-5 Badhigaun, Banke for interrogation. After necessary interrogation, he was kept in Baanke Prison under PSA. Later he was released on 15 July 2005 and handed over to a neighbour. He was not tortured during the custody. Secondly, the Government advised that Keshu Ram Kewat was arrested on 15 April 2004 by security forces from Betani-5 Badhigaun, Banke for interrogation. After interrogation, he was kept in preventive detention from 10 May 2004. He was released on 15 July 2005 and handed over to his neighbour. He had not been tortured during RNA custody.

170. By letter dated 8 February 2006, the Government provided a reply to his urgent appeal of 26 September 2005 which, due to the fact that it was received with delay, could unfortunately not be included in this report, a circumstance which the Special Rapporteur regrets. This reply will be reflected in next year's report.

Press Releases

171. On 8 February 2005, the Special Rapporteur, jointly with the Special Rapporteur on Violence against Women, its causes and consequences, the Special Representative of the Secretary General on 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 question of torture, the Independent Expert to update the set of principles to combat impunity, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Chairman-Rapporteur of the Working Group on Enforced or Involuntary

Disappearances and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention issued the following press release:

> "UNITED NATIONS HUMAN RIGHTS EXPERTS EXPRESS SERIOUS CONCERN ABOUT SITUATION IN NEPAL
>
> "We are deeply concerned at the actions taken by King Gyanendra of Nepal to dissolve the constitutional Government of Prime Minister Sher Bahadur Deuba and to assume direct power; proclaim a nation-wide state of emergency and suspend constitutional guarantees and civil and political liberties. We express particular concern with regard to the wave of arrests and detentions following the Royal Proclamation on 1 February 2005 of the state of emergency and the King's takeover.
>
> It is reported that all members of the cabinet have been put under house arrest and troops deployed around the homes of leaders of political parties. Fundamental rights provisions contained in Articles 12 (2) (a), (b) and (c); Article 13 (1) and Articles 15, 16, 17, 22 and 23 of the Constitution of Nepal have been suspended, including those enshrining the freedoms of opinion, expression, association and assembly. The wave of arrests has spread from top political leadership to upper and middle-level cadres and student leaders who have been taken into custody at the Armed Police Force Headquarters in Kathmandu. Human rights defenders and potential critics of the new regime are also under threat and have, reportedly, either been arrested or gone into hiding to avoid arrest.
>
> According to recent reports, media offices are being occupied. Military censorship has been put into place in the written press and on the airwaves. FM radio stations have been instructed to play music only. News bulletins transmitted by other media are only allowed to contain information which originates from the national security agencies. Phone lines and email systems running through them have been cut.
>
> The wave of arrests and detentions and the actions against the media are a serious setback for the country. Consequently, we call upon the Government of Nepal to reaffirm the basic principles of the rule of law, democracy, and supremacy of the Constitution, as well as to guarantee basic human rights for all its citizens, including the right to life; to physical and psychological integrity; to liberty; to security, and to the freedoms of opinion, expression, association, assembly and movement. In particular in the current context, freedom from arbitrary detention and the right to petition the Supreme Court in *habeas corpus* proceedings should be scrupulously respected.
>
> We consider that steps should be taken to reinstall democratic institutions and to protect Nepalese citizens and their representatives; as well as human rights defenders; journalists; lawyers and political leaders. In addition, measures should be implemented to put an end to the climate of impunity prevailing in the country for serious human rights violations, crimes and abuses committed in the past."

Special Rapporteur's comments and observations

172. The Special Rapporteur welcomes the fact that the Government of Nepal provided some answers in reply to communications addressed to it in the course of 2004 and which are reflected in document E/CN.4/2005/60/Add.1, para. 93 to 97. He welcomes this cooperation, while regretting the long delays observed by the Government in forwarding their replies. The Special Rapporteur also thanks the Government for its reply of 8 February 2006 to his communication of 26 September 2005 and wishes to assure it that this information will be duly analysed and will further be reflected in his next report.

173. In the light of the information received, the Special Rapporteur is especially worried at the gravity of the human rights situation in Nepal and more especially the serious challenges faced by the Judiciary. He thus urges the Nepal Government to kindly provide at the earliest possible date and preferably before the end of the 62nd session of the Commission on Human Rights, detailed substantive answers in answer to the allegations that remained without response so far. He also invites the Government to consider the possibility of arranging for an early visit of the Special Rapporteur with a view to examining with the Government and all relevant organisations and persons ways in which to strengthen the Judiciary, its functioning and independence and respect of the authority of its decisions.

Peru

Comunicaciones enviadas al Gobierno por el Relator especial

174. Ver in documento E/CN4/2005/60-Add.1, para. 104 y 105, las comunicaciones de 22 de noviembre y 28 de diciembre de 2004.

175. El 28 de febrero de 2005, el Relator Especial, conjuntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente relativo la situación de la Sra. Cristina del Pilar Olazábal, Fiscal Especializada para Desapariciones Forzadas, Ejecuciones Extrajudiciales y Exhumaciones de Fosas Clandestinas, encargada de investigar las violaciones a los derechos humanos ocurridas en el Departamento de Ayacucho desde 1980 al 2000, y de la Sra.Gloria Cano, abogada miembro de la organización no gubernamental Asociación Pro Derechos Humanos (APRODEH), quienes habrían sido victimas de presiones y actos de hostigamiento. La Sra. Gloria Cano fue objeto también de un llamamiento urgente enviado el 22 de noviembre de 2004. De acuerdo con las informaciones recibidas, la fiscal Cristina del Pilar Olazábal habría sido encargada de investigar las denuncias de genocidio, asesinato y omisión impropia que involucrarían al dirigente del Partido Aprista Peruano (APRA), Sr. Alan García Pèrez, Ex Presidente de la República, y a 25 militares por su presunta responsabilidad en el caso de la masacre de Accomarca, Departamento de Ayacucho, ocurrida el 14 de agosto de 1985, y que dejó como resultado 62 campesinos muertos supuestamente por miembros del Ejército. La Sra. Gloria Cano sería la abogada promotora del caso. Estas dos juristas habrían recibido severas críticas por parte de representantes del Partido Aprista Peruano por su actuación en relación con este caso. En particular, un ex senador del Partido Aprista Peruano habría acusado a la fiscal y a la abogada de "utilizar la ley y el Estado de Derecho como una chaveta nocturna que utilizan los pandilleros" en una entrevista a Radio Melody, reproducida el 7 de febrero de 2005 por el diario Correo de Ayacucho. Además, con respecto a la Sra. Cristina del Pilar Olazábal, el mismo ex

senador habría indicado que "[los apristas] irían al Consejo de la Magistratura para que aplique la ley de manera más drástica e irían a quejarse al órgano de Control Interno del Poder Judicial porque el caso no podía estar en manos de gente desquiciada". Agregó que "esa mujer simplemente iba a tener que responder, porque tiene la mente perturbada y el alma enferma". También se informa que, después de estas declaraciones circularon rumores en el Ministerio Público de Huamanga según las cuales la fiscal Cristina del Pilar Olazábal sería separada de su cargo. A la luz de las informaciones mencionadas se expresa la preocupación que las intimidaciones e interferencias en sus actividades sufridas por la fiscal Cristina del Pilar Olazábal y la abogada Gloria Cano estarían relacionadas con su labor en defensa de los derechos humanos y su actuación con respecto a este caso.

Comunicaciones del Gobierno

176. Ninguna

Comentarios y observaciones del Relator especial

177. El Relator Especial está preocupado por no haber recibido respuesta alguna del Gobierno del Perú en cási un año y le pide encarecidamente tenga a bien enviarle a la brevedad posible, y preferentemente antes de la clausura de la 62a sesión de la Comisión de Derechos Humanos, informaciones precisas y detalladas acerca de las alegaciones arriba resumidas.

Philippines

Communication sent to the Government by the Special Rapporteur

178. On 22 February 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, 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 Bienvenido Salinas, a lawyer and head of the St. Thomas Law Center, a unit of the Urban Poor Associates (UPA), a non-governmental organization that works for the right to adequate housing of the urban poor, and Mr. Salinas' children. Mr. Salinas had been involved in litigation cases representing urban poor families who had allegedly been forcibly evicted or threatened with eviction. His work includes the filing of administrative cases at the Office of the Ombudsman on 31 January 2004 against personnel at the Metro Manila Development Authority (MMDA) and MMDA-assigned police officers, in connection with the alleged demolition on 21 January 2005 of the houses of seven poor families living under the bridge in Barangay Sta. Cruz, Quezon Avenue, Quezon City. On 8 and 9 February 2005, a man telephoned the St. Thomas Law Center and said that "Salinas' days are numbered, so are his children's". Allegedly, on 15 February 2005, a man telephoned the office of the UPA and gave a similar threat. It was reported that, on 17 February 2005, two vans with tinted windows were carefully observing the UPA office. There was a concern that the alleged death threats against Bienvenido Salinas and his children may represent an attempt to prevent his human rights defence activity and in particular his legal work advocating housing rights of the urban poor, including the filing of administrative cases at the Office of the Ombudsman on 31 January 2005 on behalf of seven families. The concern was heightened in light of reports that a number of human rights lawyers have been killed in the Philippines.

Communications from the Government

179. None

Special Rapporteur's comments and observations

180. The Special Rapporteur is concerned that after almost a year no answer was sent to him by the Government of the Phillipines. He thus urges the Government of the Phillipines to provide at the earliest possible date and preferably before the end of the 62nd session of the Commission on Human Rights, detailed substantive answers to the above allegations. He would especially appreciate receiving details of any measures taken with a view to protect the life of Bienvenido Salinas and his family and ensure their security.

Republic of Moldova

Communication sent to the Government by the Special Rapporteur

181. On 12 August 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, concerning Mikhail Kaldarar and Vasilii Kodrian, ethnic Romas, in custody in Chisinău. On or around 18 July 2005 Mikhail Kaldarar was detained by police in Yedintsy during a raid on the Romani community. Shortly after, he was transferred to a temporary detention facility under the authority of the Ministry of Interior (IVS) in Chisinău. On 25 July 2005 an appeal court in Beltsy ordered his release because of the lack of evidence against him, and on 27 July 2005 police informed relatives of Mr. Kaldarar that he had been released that day. However, on 3 August 2005 an official of the Ministry of the Interior confirmed to Mikhail Kaldarar's father that his son was still being detained, despite the court order, and that he would be released only if the real culprits of the murder were handed over by the Romani community. The authorities had not confirmed Mr. Kaldarar's whereabouts, and neither his lawyer nor his family had been allowed to see him, at the time this communication was sent. Vasilii Kodrian was detained by police in Yedintsy on 5 August 2005, on the grounds that his son was a suspect in the investigation into the murders in Chisinău. Vasilii Kodrian had not been charged with any offence.

Communication from the Government

182. On 20 September 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 12 August 2005, concerning Mikhail Kaldarar and Vasilii Kodrian. The Government advised that Mikhail Kaldarar was arrested on 20 July 2005 by the judicial authority of Edintsy district and was detained for 10 days for having committed an administrative offence under Article 174, paragraph 6 (Insulting a police officer), of the Code of Administrative Violations of the Republic of Moldova. On 21 July 2005, as a result of overcrowding at the temporary detention facility of the Edintsy district police commissariat, Mr. Kaldarar was transferred to the temporary detention facility of the general police commissariat of Chişinău municipality, where he was held until 26 July 2005. He was released four days early in accordance with a decision of the Beltsy court of appeal. The Government also provided that Vasilii Kodrian was arrested by the judicial authority of the Chişinău municipality

and detained for four days for having committed an administrative offence under Article 174, paragraph 174 (Resisting a police officer), of the Code of Administrative Violations of the Republic of Moldova. Mr. Kodrian was held in the temporary detention facility of the general police commissariat of Chişinău municipality and was released on 10 August 2005. No complaints were lodged by Mr. Kaldarar or Mr. Kodrian during their detention.

Special Rapporteur's comments and observations

183. The Special Rapporteur thanks the Government of Moldova for their cooperation and the above information they provided. Yet, he notes with concern that, according to information from a reliable source that was only very recently brought to his attention, Vasillii Kodrian was released on 15 August but re-arrested three days later together with his wife, Anna. She was reportedly released after three weeks. She and Mikhail Kaldarar were reportedly both released through the intervention of the parliamentary human rights advocates (ombudsmen), who put pressure on the authorities to release the detainees. The Special Rapporteur regrets the rearrest of Mr. Kodrian and the continuation of his detention on grounds and according to legal basis that have not been conveyed by the Government. He further regrets the arrest of Mr. Kodrian's wife while welcoming her reported release and that of Mr. M. Kaldarar. He would appreciate an official confirmation of such release. The Special Rapporteur urges the Moldovan Government to provide at the earliest possible date and preferably before the end of the 62nd session of the Commission on Human Rights, detailed substantive information on Mr. Kodrian's current situation, clarifying more especially whether he was released or is still being detained and, if so, the grounds for and legal basis for his continued detention together with information on his state of health and the conditions of his detention. The Special Rapporteur would also welcome information relating to prospects for Mr. Kodrian's release if he were still detained.

Russian Federation

Communications sent to the Government by the Special Rapporteur

184. See joint urgent appeals of 4 May 2004 (para. 108) and 3 November 2004 (para. 109) in E/CN.4/2005/60/Add.1.

185. Furthermore, on 26 January 2005, the Special Rapporteur sent a joint urgent appeal with the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the question of torture, and the Special Representative of the Secretary-General on the situation of human rights defenders,concerning Makhmut Dchaparovic Magomadov, a 51 year-old human rights lawyer in Grozny. He had been preparing cases of human rights abuses for submission to the European Court of Human Rights, as well as working as a legal expert for several other national and international human rights non-governmental organizations. According to the allegations received, Mr. Makhmut Magomadov was abducted by a group of at least 15 armed men, speaking in Chechen and dressed in camouflage military uniforms in Grozny on 20 January 2005, at approximately 18:30. At the time, he was with his family on the way to the home of a friend in the Staropromyslovsky district of Grozny, near the "Elektropribor" electronics factory. While driving to the Staropromyslovsky district in his car, a "VAZ 2107" (license plate 702 07/rus), Mr. Magomadov was persistently followed by a metallic color car, a "Zhiguli", 10th model, (VAZ-2110).Witnesses believe the perpetrators belong to the so-called "Kadyrovtsy", under the

command of the Chechen First Deputy Prime Minister, Ramzan Kadirov. The "Kadyrovtsy" have been reportedly involved in cases of disappearance, torture and ill-treatment and extra-judicial executions. Witnesses reported that the "Kadyrovtsy" came in several cars, among them was a steel-colour VAZ-2110 (part of the license number was 863), a white VAZ-2107 (part of the license number was 008, region code 95), a wine-red colour VAZ–21099, a "Niva" and a white GAZ-31029. Mr. Magomadov was reportedly taken in the white GAZ-31029, in the direction of the centre of Grozny. During these events, Mr. Magomadov's family was ill-treated, including his four year-old daughter. Despite inquiries with local authorities, no information on Mr. Magomadov's whereabouts could be obtained. An appeal was sent on 21 January 2005, to the Procurator of the Chechen Republic, Mr. Vladimir Krachenko, with copies to the General Procurator of the Russian Federation, Mr. Vladimir Ustinov, the Human Rights Ombudsman of the Russian Federation, Vladimir Lukin, and the Chair of the Presidential Human Rights Commission, Ella Pamfilova. It was reported that a criminal investigation was opened by the Ministry of Interior into his abduction. Until December 2004, Mr. Magomadov worked as an expert in the International Helsinki Foundation project, the Legal Protection of Individual Rights in the Russian Federation, aimed at training Russian lawyers and human rights activists in the use of international law. At the time of his abduction, Mr. Magomadov was working with NGOs on over 30 human rights cases, mainly concerning disappearance, torture and ill-treatment, and extra-judicial executions, allegedly committed by Russian security forces. Concern was expressed that he may have been targeted in connection with his legal work and human rights activities.

186. On 4 March 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and Special Rapporteur on violence against women, its causes and consequences, regarding Zara Murtazaliyeva, who was convicted for terrorist activities and sentenced on 17 January 2005 by the Moscow City Court to 9 years imprisonment. Zara Murtazaliyeva, part-time student of the Linguistic University of Pyatigorsk and resident of the Naurskiy district of the Chechen Republic, arrived in Moscow in September 2003 in search of work. In December 2003, she was stopped by the police for a routine document check and whilst at the police department she met an ethnic Chechen officer of the Moscow Directorate for Combating Organised Crime (UBOP) who helped her find lodging. Zara Murtazaliyeva accepted the offer and moved in with two Russian friends of hers. On 4 March 2004, Zara Murtazaliyeva was once again stopped for a document check by the police close to Kitai-gorod, a metro station, and taken to the Department of Internal Affairs (OVD) in Prospekt Vernadskogo. It was reported that while at the OVD a briquette with plastic explosives was planted in her bag, on the basis of which, she was arrested and criminal proceedings were instituted against her for storage and transportation of explosives. The briquette and plastic explosives were allegedly not examined for fingerprints, but were later destroyed. It was furthermore reported that no incriminating evidence was found at the place she was sharing with her two friends. Photos of the three friends at the Okhotny Kulikova shopping mall in Moscow, were used as evidence to show that the three women had planned to plant a bomb at the mall. Conversations, between the women in their room, recorded by the authorities, concerned general discussions about Chechnya, war and Islam. Her two friends were allegedly pressured by investigators to testify against Zara Murtazaliyeva to say that she recruited them and involved them in terrorist activities. They were reportedly told that if they refused they would be charged as her collaborators. During the first court session, they both retracted the pre-trial statements they had been pressured into making against Zara Murtazaliyeva. It was furthermore reported that her trial, which commenced on 22

December 2004, did not meet international human rights standards of a fair trial. A lack of impartiality was shown by the presiding Judge, including refusal to allow audio recording of the trial in violation of the criminal procedural code and also refusal to allow the defence to call additional witnesses to the trial, including the police officer who had helped Zara Murtazaliyeva find accommodation. Zara Murtazaliyeva's lawyer had launched an appeal against the decision of the first instance court, which was scheduled to commence on 10 March 2005. There was concern that Zara Murtazaliyeva's arrest, detention and trial were based solely on the fact that she is a woman of Chechen origin and that the case against her was based on fabricated charges.

187. On 10 October 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention regarding Mikhail Trepashkin, a Russian defence lawyer. He was representing two sisters whose mother was killed in the bombings of three apartment blocks in Moscow on 9 September 1999. Reports indicate that on 18 September 2005, Mikhail Trepashkin was arrested after his release from detention on 30 August 2005, having been arrested initially in October 2003. On 18 September 2005, it was reported that a group of twenty men detained Mikhail Trepashkin from his home. Allegedly the men did not identify themselves, nor did they provide a warrant for his arrest. Mikhail Trepashkin was reportedly imprisoned outside Moscow, and not in the region where he resided, as is consistent with Russian penal law. It was further reported that Mikhail Trepashkin was representing two sisters whose mother was killed in the bombings of three apartment blocks in Moscow on 9 September 1999. The first time he was arrested was four days before he was scheduled to appear in court to represent the two sisters. During his initial arrest, police officers stopped him on a motorway outside Moscow, where they searched his car and were said to have found a pistol in the trunk. Mikhail Trepashkin had denied having had a gun in the car and claimed that it was planted by the police. He was held in a 130-square foot cell with six other people and was allegedly denied medical attention for his severe asthma, during his imprisonment from 2003 to 2005. On 19 August 2005, he was granted parole at the request of his lawyers. The government was allowed 10 days to appeal but reportedly did not do so. Subsequently, Mikhail Trepashkin was released from prison on the 11th day after the granting of the parole. On the following day an appeals court granted the prosecutor's office an extension of the appeal deadline, and then overturned the grant of parole. There was concern that the re-detention of defense lawyer Mikhail Trepashkin was an attempt to prevent him from representing his clients in court and from presenting his material in court as he was to accuse the Government of complicity in the 1999 Moscow bombings.

188. On 21 November 2005, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Mr. Bill Bowring, a lawyer and professor of international Law and Human Rights at the University of London and academic coordinator of the European Human Rights Advocacy Centre (EHRAC) in London. On 15 November 2005, Bill Bowring, was refused entry to the Russian Federation after being questioned by the Federal Security Service for more than four hours and having his passport and his ticket confiscated. He was refused entry despite having a valid Russian visa and letters of accreditation from the Bar of England and Wales and from Front Line, the Irish based International Foundation for Human Rights Defenders. On 16 and 17 June, Bill Bowring had already traveled to Nizhnii Novgorod in order to write a report on "The situation concerning the actions of state bodies in relation to the Society for Russian-Chechen Friendship" on behalf of the Bar Human Rights Committee on

England and Wales (BHRC). Concern was expressed that the refusal to allow Bill Bowring to enter the country was connected to the fact that he was traveling to the Russian Federation in order to monitor the trial against Stanislav Dmitrivskii, the Director of Russian-Chechen Friendship Society (RCFS), an organization based in Nizhnii Novgorod that monitors human rights violations in Chechnya and other parts of the North Caucasus. Stanislav Dmitrivskii was facing charges under the art. 282.2 (b) of the Russian Criminal Code, at the time this communication was sent.

Communications from the Government

189. On 7 February 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 3 November 2004 E/CN.4/2005/60/Add.1, para. 109) and advised that the investigation section of the Essentuki city internal affairs office had opened criminal case No. 51360 against the two minors in connection with an offence under article 162, part 2 (a), of the Criminal Code of the Russian Federation (theft with violence, committed by prior conspiracy among a group of persons, or with the use of weapons or items used as weapons). On the day of the offence, one minor was arrested on suspicion of having committed the offence in accordance with article 122 of the Code of Criminal Procedure of the RSFSR (arrest of a person suspected of having committed an offence), and on 30 September 2000 he was released from the police custody. As a preventive measure he was required to sign an undertaking not to leave the area. Subsequently he was found to be absent from his home, and it was impossible to establish his whereabouts, so the investigation was halted. On 25 November 2000, two decisions were taken in respect of him: to bring charges against him, and, as a preventive measure, to place him in custody or initiate a search for him. On 25 November 2000, criminal case No. 51670 was initiated against him in connection with an offence under article 162, part 2 (a), of the Criminal Code of the Russian Federation, after this case had been separated from the initial case. On 27 November 2000 the preliminary investigation in this case was halted as the whereabouts of the accused could not be established. The criminal case against the other minor was sent to the Essentuki district court. On 23 January 2001 the court found him guilty of an offence under article 162, part 2 (a), of the Criminal Code and sentenced him to five years' deprivation of freedom in a young offenders' institution with an ordinary regime. On 30 October 2004 the Essentuki city internal affairs office received information that the first suspect, who had been sought by the law enforcement authorities since 2000 for the offence of theft with violence. On the same day personnel of the criminal investigation department of the Essentuki city internal affairs office arrested the first suspect and placed him in police custody in the Essentuki city internal affairs office. Furthermore, according to the Government, the Criminal case No. 51670 was reopened. He was questioned as an accused person in compliance with the requirements of article 425 of the Code of Criminal Procedure of the Russian Federation (Questioning of a suspect or accused person who is a minor) and article 426 (Participation in criminal proceedings by the legal representative of a suspect or accused person who is a minor), in the presence of his mother and a lawyer. The accused declined to give evidence, invoking the right guaranteed in article 51 of the Constitution of the Russian Federation. The Government advises that he confessed that, on the night of 29-30 October 2004, he had set fire to the entrance door of flat No. 4 in house No. 8, Vokzalnaya street in the city of Essentuki. On 5 November 2004, with the authorization of the Essentuki city deputy procurator, criminal case No. 41193 was initiated in connection with evidence of an offence under article 167, part 2, of the Criminal Code of the Russian Federation (Premeditated destruction of or damage to property). On 29 November 2004 criminal cases No. 51670 and

No. 41193 were merged into a single case. The first suspect was charged with offences under articles 162 and 167 of the Criminal Code of the Russian Federation. He was questioned as an accused person in the presence of his legal representative, an education expert and a lawyer. On 30 November the requirements of article 217 of the Code of Criminal Procedure of the Russian Federation (acquainting the accused and his or her representative with the contents of the case file) were met, the bill of indictment was confirmed and the case was forwarded to Essentuki city district court for consideration of the substance. It had been established that he does not possess foreign citizenship, that he had not previously been issued with a passport as a citizen of the Russian Federation or Ukraine, and that on 18 October 2004 the passport and visa service of the Essentuki city internal affairs office received documents and photographs of him for the purpose of preparing and issuing him with a passport as a citizen of the Russian Federation. No passport had been issued to the date of this reply. According to the Government, he was being held in remand in institution IZ-26/2 in the city of Pyatigorsk, at the time this reply was sent. During the preliminary investigation neither he nor his lawyer had complained about the preventive measure adopted. On 3 November 2004, the Essentuki city procurator's office received a statement from the mother of the accused, relating to criminal proceedings against unknown persons who had inflicted bodily harm on her son. In response, the Essentuki city procurator's office carried out checks in accordance with article 144 of the Code of Criminal Procedure of the Russian Federation (Procedure for consideration of information concerning crimes) and article 145 (Decisions to be taken following consideration of information concerning crimes), following which criminal case No. 40116 was initiated on 9 December 2004 into evidence of an offence under article 286, part 1, of the Criminal Code, in connection with the infliction of bodily harm on him by unidentified militia personnel.

190. On 19 July 2005, the Government replied to the Special Rapporteur's joint urgent appeal of 4 March 2005. The Government advised that Zara Murtazaliyeva was convicted by the Moscow city court of a combination of offences under article 30.1 (preparation and attempt to commit a crime), article 222.1 (illegal acquisition, transfer, sale, storage, transportation or carrying of weapons, munitions, explosive substances and explosive devices) and article 205.1 (terrorism) of the Criminal Code of the Russian Federation and was sentenced to nine years' deprivation of liberty in a common regime correctional colony. The Government advised that she travelled in September 2003 to Moscow, where in October 2003 she became acquainted with two Russians, whom she tried to persuade of the need to carry out and act of terrorism. She went more than once with them to the "Okhotny Ryad" shopping mall. During the period between 1 and 4 March 2004, Zara Murtazaliyeva acquired an explosive substance, and on 4 March she was detained by militia officers. The Government stateed that the testimony of witness confirmed the fact of the seizure from the detainee of two yellow-coloured objects wrapped in foil. Moreover, an expert examination determined the seized substance to be manufactured explosive "Plastit-4". The seizure of the items was conducted in the presence of official witnesses and after Zara Murtazaliyeva had been informed of all her procedural rights. The explosive substance was destroyed during the conduct of the expert examination. Furthermore, the Government stated that in court the two Russians confirmed the fact that Zara Murtazaliyeva had been drawing them into a conspiracy with a view to committing an act of terrorism. A search made at Zara Murtazaliyeva's place of residence led to the discovery not only of photographs showing the escalator at the Okhotny Ryan shopping mal, but also a note of an extremist nature. About the lack of objectiveness in the court proceeding, the court heard the opinions of all the parties and came to the conclusion that audio taping would hamper work. As is apparent from the record of the court session, all the petitions made by the defence were

considered under the legally established procedure. In accordance with the requirements of the criminal procedure legislation of the Russian Federation, the court was not entitled to disallow a party to question witnesses appearing at the party's initiative. The defence side did not present additional witnesses to the court and did not object to the ending of the judicial investigation. The Government stated that Murtazalieyeva's lawyers filed an application for the calling of another witness. After information was brought to the court's notice that the witness was absent on a long-term mission, the defence side gave its consent for the witness's testimony to be read out during the pre-trial investigation, and it was done observing article 281 of the Code of Criminal Procedure. The grounding of the conviction of Zara Murtazalieyeva was verified in a cassational procedure by the Supreme Court of the Russian Federation, which deemed that the trial of this case had been conducted in accordance with the principles of the equality of rights and adversariality of the parties and in observance of the norms of criminal procedure law. However, the Criminal Division of the Supreme Court of the Russian Federation changed the sentence on 17 March 2005. The actions of Zara Murtazalieyeva were reclassified from articles 30.1 and 205.1 of the Criminal Code of the Russian Federation, as worded in the Federal Act of 28 July 2004, to articles 30.1 and 205.1 of the Criminal Code as worded in the Federal Act dated 8 December 2003 and in force at the time of the commission of the offence. According to article 66.2 of the Criminal Code, the sentence imposed on the offender was reduced to eight years and six months of deprivation of liberty, with that term to be served in a common regime correctional colony. Zara Murtazalieyeva and her lawyers are entitled to file complaints under the supervisory procedure against the decisions taken.

191. On 23 December 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 10 October 2005. The Government advised that a verification made in connection with the case had established that Mr. Trepashkin was stopped by road patrol service officers on 22 October 2003. The road patrol officers discovered a pistol and seven cartridges under the car's backseat. The Dmitrovo City Court rendered a decision on 24 October 2004 for the suspicion of having committed an offence under article 222.1 of the Criminal Code of the Russian Federation (illegal acquisition, storage, carrying and transportation of firearms and ammunition), calling for him to be detained in custody as a preventive measure. The health regulations on space in pre-trial detention cells require four square metres per person in accordance with article 23 of the Federal Suspects and Accused Persons (Detention in Custody) Act, and the cell used for the detention of Mr. Trepashkin was 39.6 square metres. During his detention in investigative facilities Mr. Trepashkin was given the necessary medical assistance, and no deterioration of his health was noted. The claim that the arrest of Mr. Trepashkin in 2005 was related to the work that he performed as a lawyer in 1999 had not been found to have any objective confirmation. On the basis of a judgement of the Moscow district military court of 19 May 2004, Mr. Trepashkin was sentenced under article 283.1 (disclosure of a State secret) of the Criminal Code of the Russian Federation to four years' deprivation of liberty and was sent to serve his sentence at a colony settlement in Sverdlovsk oblast. He was released on parole by the Tagilstroy district court in the town of Nizhny Tagil in Sverdlovsk oblast on 19 August 2005. In connection with irregularities in the consideration of the application for his release on parole, following a cassation submission from the Sverdlovsk oblast procurator's office the criminal division of the Sverdlovsk oblast court (on 16 September 2005) overturned the decision of the Tagilstroy district court in Nizhny Tagil and the case materials were sent for reconsideration. With the overturning of the grant of parole Mr. Trepashkin reverted to his previous legal status (having to serve out the sentence handed down by the Moscow district military court on 19 May 2004) and he was detained in Moscow by officials of the main

directorate of Russia's federal penal corrections service for Sverdlovsk oblast on 18 September 2005 and transported under guard to further serve his punishment in a correctional facility in Sverdlovsk oblast.

Special Rapporteur 's comments and observations

192. The Special Rapporteur notes that in the course of 2005 four new communications had to be addressed to the Government of the Russian Federation. He thanks the Government for its cooperation and the substantive information it sent in reply to allegations relayed to it on 3 November 2004 and later on 4 March and 10 October 2005. He however regrets that his communications of 4 May 2004, 26 January and 21 November 2005 have remained so far unanswered and urges the Government to provide at the earliest possible date, and preferably before the end of the 62nd session of the Commission on Human Rights, detailed substantive answers to the allegations relayed in these communications. The Special Rapporteur takes note of the information provided by the Government regarding the two minors referred to in their communication of 7 February 2005 and would appreciate receiving an update about the outcome of the judicial proceedings regarding the first suspect together with details of both minors' wherabouts and the imprisonment regime applied to them. The Special Rapporteurfeels that special care should prevail with regard to minors so that they enjoy full judicial and human rights guarantees and the service of any sentence against them lead to full social reinsertion. On the other hand, the Special Rapporteur welcomes news that human rights lawyer Makhmut Dchaparovic Magomadov was released and requests the Government to kindly confirm the information and clarify whether the release is unconditional. The Special Rapporteur further takes note of the information provided by the Government regarding the case of Zara Murtazaliyeva and Mr. Trepashkin and wishes to pursue contact with the Government on the judicial proceedings against them.

Saudi Arabia

Communications sent to the Government by the Special Rapporteur

193. See joint urgent appeal of 17 November 2004 in E/CN4/60/Add.1, para. 113.

194. See also joint jurgent appeal sent on 30 November 2004 in E/CN.4/2005/60/Add.1 para. 114. The Special Rapporteur received from a reliable source information about the 13 Nigerian nationals referred in that appeal: Abbas Majood Akanni, Murtala Amao Oladele, Abbas Azeez Oladuni, Nurudeen Owoalade, Nurudeen Sani, Mohammed Abdulahi Yussuf, Wahid Elebyte, Ahmed Abbas Alabi, Suliamon Olyfemi, Mafiu Obadina, Samiu Hamud Zuberu, Kasim Afolabi Afolabi, and Abdullamim Shobayo. As per the new allegations, Suliamon Olyfemi was sentenced to death. On 16 May 2005 the other twelve were reportedly sentenced to five years' imprisonment and 500 lashes. The source alleged that the trial was unfair as the accused were denied legal representation and no interpretation or translation was provided for them and they were forced to sign statements (with their finger prints) to statements make in Arabic which they could not read.

195. Furthermore, on 26 January 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,

and the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Mohamed Al-Raouchan, editor-in-chief of the weekly Al-Mouhaid. He was arrested by security forces in Riyadh on 8 or 9 January 2005 and has been in detention since. He had not been allowed to have contact with a lawyer. Mr. Al-Raouchan reportedly is a member of a legal defense team for Saudi Arabian citizens detained by the United States at Guantanamo Bay. Moreover, prior to the arrest, he had written articles in the magazine Al-Mouhaid urging the Saudi authorities to work harder to secure the release of these detainees. There was a concern that that his arrest and detention may have been a result of his activity on behalf of Saudi citizens detained at Guantanamo. These concerns were heightened by the fact that the charges against him were still not known and he had been denied access to a lawyer, at the time this communication was sent.

196. On 30 May 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, concerning Ali al-Domaini, Dr. Abdullah al-Hamid and Dr. Matruk al-Falih, who had already been the subject of two urgent appeals : of 26 April 2004 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 the Special Representative of the Secretary-General on the situation of human rights defenders ; and of 19 March 2004 sent 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 15 May 2005, they were sentenced to nine, seven and six years of imprisonment respectively, for having circulated a petition calling for the establishment of a constitutional monarchy in Saudi Arabia, and for having announced their intentions to set up an independent human rights monitor after having expressed dissatisfaction with the composition of a new Government human rights organization. Ali al-Domaini, Dr. Abdullah al-Hamid and Dr. Matruk al-Falihhad had been under arrest since 16 March 2004, when, together with another 10 political reformists, they were charged with incitement to unrest, attempting to disturb the peace, rebelling against the ruler, speaking to foreign media and incitement against the Wahhabi school of Islam. The ten other reformists were released after having pledged to refrain from further criticism of the Government, a pledge Ali al-Domaini, Dr. Matruk al-Falih and Dr. Abdullah al-Hamid refused to sign. Moreover, following their first hearing on 10 August 2004, which was attended by international observers, family and supporters, the judges decided to hold the trial behind closed doors, claiming that the court was overcrowded. Finally, on 9 November 2004, one of the defence team lawyers Abdal-Rahman al-Lahim, was arrested for having criticized the closed-doors proceedings and was being detained at the al-Ha'ir prison in Riyad, at the date this communication was sent. Three other members of the defence team, Abdullah ak-Nasiri, Sulaiman al-Rashudi and Abd al-Aziz al-Wahaibi, were dismissed by the court without being given any reasons thereof. Family members of the accused and journalists had reportedly also been detained.

197. On 23 August 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on violence against women, its causes and consequences, concerning Mrs. S (reportedly known as Mrs. Samira), a married woman with children, reportedly at risk of imminent execution. According to the information received, she was arrested in 1999 in connection with a murder of

a man who had allegedly threatened to tell her husband that she had sexual intercourse with him when they were teenagers if she did not have sex with him; She denies having killed him. Concern had been expressed that Ms. Samira was convicted and sentenced to death by a Sharia Court after a trial that fell short of international fair trial standards. She was reportedly not given a public hearing and did not have access to legal representation. It is reported that Ms. Samira's only remaining option was to obtain a pardon from the victim's family following the payment of "blood money" and that the Crown Prince had intervened on her behalf with the family of the victim who has requested a few days to consider their decision.

198. On 29 November 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture, the Special Rapporteur on the right to education, and the Special Rapporteur on freedom of religion or belief, concerning Mr. Muhammad al-Harbi, a high school chemistry teacher in Qassim Province and Mr. Muhammad al-Sahimi, a former Arabic teacher at middle and high school. On 12 November 2005, a court in Bukairia permanently banned Mr. Al-Harbi from teaching and sentenced him to 40 months' imprisonment and to a public flogging of 750 lashes after he was found guilty of blasphemy (15 lashes per week at the public market in the town of Al-Bikeriya in Al-Qassim). The sentence against him was based on complaints from students and their parents, as well as a number of his colleagues who teach religious studies of the Muslim faith at his school. They claimed that Mr. Al-Harbi had mocked Islam and had attempted to sow doubt in the students' creed by sharing his opinion with them on various topics including Christianity, Judaism and the causes of terrorism. He had moreover encouraged his students to engage in critical thinking in resolving apparent differences of meaning between the Koran and the words and deeds of the prophet Muhammad. Mr. Al-Harbi was not allowed to attend the trial against him and his lawyer was not recognized by the Court. Mr. Al-Harbi was appealing the decision, at the time this communication was sent. In March 2004, Mr. Muhammad al-Sahimi was banned from teaching and sentenced to three years imprisonment and to 300 lashes for having expressed his views in class. The court had found him guilty of un-Islamic, sexual, social and religious practices. Charges against him had mainly been based on discussions he led on the varying concepts of love in poetry. Religion teachers at his schools had interpreted his words as constituting apostasy.

199. On 22 December 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture, concerning Puthan Veettil `Abd ul-Latif Noushad, an Indian citizen. According to the information received, the Greater Shari'a Court of Dammam sentenced him to have his right eye gouged out following his conviction for participating in a brawl in April 2003, in which a Saudi citizen was injured. The court allegedly refused to hear the evidence of an eye-witness because he was not a Saudi national. In addition, Puthan Veettil `Abd ul-Latif Noushad was not represented by a lawyer during the first instance trial proceedings, although he was represented by a lawyer during the appeal proceedings.

Communications from the Government

200. On 16 June 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 30 May 2005. The Government stated that the case had been dealt with by the Working Group on Arbitrary Detention, and requested the Special Rapporteur to obtain information from the Working Group, in order to avoid duplication in the procedures.

201. On 18 August 2005, the Government provided further information to the Special Rappoteurs' joint urgent appeal of 30 May 2005 and stated that Ali al-Domaini, Abdullah al-Hamid and Matruk al-Falih, who were convicted by the competent court and sentenced to various terms of imprisonment for violating the laws in force in the Kingdom and jeopardizing its security and stability (convictions and sentences which were subsequently upheld by a higher court), had been released pursuant to the provisions of a Royal Amnesty proclaimed on 8 August 2005.

202. On 28 December 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 22 December 2005, and provided that the judgment handed down by the court of first instance in this case had not been ratified by the Court of Cassation in the city of Riyadh, which decided to refer the case for review by the Higher Court in the Eastern Region. Endeavors were also being made, at the time of this reply, to reach an amicable settlement of this case between the offender and the victim. The Government stated that it would duly notify the Special Rapporteur as soon as a final judgment is handed down in this case. The Government also provided that reports on two similar sentences of eye-gouging handed down in the year of 2005, referred to in the joint urgent appeal, were unfounded.

203. In a communication of 30 January 2006, the Government of Saudi Arabia provided further information on the allegations referred to in the Special Rapporteur's letter of 22 December 2005. Due to the fact that it was received with delay, this reply could unfortunately not be included in this report, a circumstance which the Special Rapporteur regrets.

Special Rapporteur's comments and observations

204. The Special Rapporteur thanks the Government of Saudi Arabia for its cooperation and its substantive responses to the allegations relayed to it on 30 May and 22 December 2005. He wishes to assure the Government that their latest communication is under study and will duly be reflected in his next report. Yet, it cannot but note with concern that in the course of 2005 no less than six communications had to be addressed to the Government of Saudi Arabia. He regrets that his communications of 17 November 2004, of 26 January, 23 August and 29 November 2005 have remained so far unanswered and urges the Government of Saudi Arabia to provide at the earliest possible date and preferably before the end of the 62nd session of the Commission on Human Rights, detailed substantive answers to the allegations relayed in these three communications.

205. With regard to the case of the 13 Nigerian nationals who were the object of the joint urgent appeal of 30 November 2004 (E/CN.4/2005/60/Add.1 para. 114), he urges the Government to inform him whether Suliamon Olyfemi, who was allegedly sentenced to death, was executed or is he still awaiting execution or else was granted pardon. He wishes to take this opportunity to reiterate his firm opposition to the application of the death sentence and wishes to urge the Government of Saudi Arabia to move towards its removal from national legislation. As to the other twelve Nigerian nationals, who were reportedly sentenced to five years' imprisonment and 500 lashes following an allegedly unfair trial, he also requests the Government to kindly provide detailed reponses to the allegations as soon as possible and preferably before the end of the 62nd session of the Commission on Human Rights.

206. Finally, the Special Rapporteur has received from a reliable source information about Ali al-Domaini, Matruk al-Falih, and Abdullah al-Hamid stating that, further to being sentenced on 15 May 2005 to prison terms of between six and nine years, they were eventually pardoned by a royal decree on 8 August 2005, and released. On that basis, it is his understanding that no further action may be warranted from him in this case.

Spain

Comunicación enviada al Gobierno por el Relator especial

207. El 13 de mayo de 2005, el Relator Especial, junto con el Relator Especial sobre la tortura, envió un llamamiento urgente en relación con Iñaki Peña González, 25 años, Sonia Marín Vesga, 32 años, Arkaitz Ormaetxea Etxeberria, 29 años e Igor Zearreta Garay, 27 años. Se alegaba que, a lo largo de la madrugada y la mañana del lunes 9 de mayo del 2005, el cuerpo de la Guardia Civil, había llevado a cabo, por orden del Juzgado Central de Instrucción n° 5 de la Audiencia Nacional, la detención de los mismos en las localidades de Bilbao, Arrigorriaga y Amorebieta-Etxano. Se señalaba que los arrestos se efectuaron al amparo de la legislación vigente en la lucha contra el terrorismo y que los detenidos fueron trasladados a dependencias policiales en Madrid donde permanecen en régimen de incomunicación. En tales circunstancias cualquier dato referente a las personas detenidas, se alegaba, es negado por fuentes policiales y judiciales tanto a familiares como a abogados particulares. A la luz de estas alegaciones, los Relatores especiales expresaron temores por la integridad tanto física como mental de los detenidos.

Comunicaciones recibidas del Gobierno

208. Mediante comunicación de 13 de mayo de 2005, el Gobierno lamentó que los Relatores no aportaran ningún elemento sustantivo que justificara su inquietud sobre la integridad física y mental de Iñaki Peña González, Sonia Marín Vesga, Arkaitz Ormaetxea Etxeberria, e Igor Zearreta Garay. El Gobierno afirmó que el régimen de detención incomunicada decretado por las Autoridades judiciales españolas garantiza la asistencia médica y letrada en todo momento, y prevé todas las garantías prescritas por la legislación internacional de derechos humanos. El Gobierno invitó a los Relatores Especiales a tener en cuenta la información legislativa y judicial suministrada hasta la fecha por las Autoridades españolas para eventuales llamamientos urgentes, y se comprometió a facilitar más información sobre los casos citados una vez la Autoridad judicial competente lo estime oportuno.

209. Mediante comunicación de 26 de mayo de 2005, el Gobierno proporcionó información adicional, señalando que los cuatro ciudadanos españoles mencionados se encontraban en libertad bajo fianza desde el 13 de mayo, horas antes del envío del llamamiento urgente. Ellos fueron detenidos en la madrugada del 9 de mayo de 2005 en virtud de un auto judicial dictado por el magistrado del Juzgado de Instrucción n. 5 de la Audiencia Nacional: el magistrado mencionado supervisó y autorizó todas las actuaciones de la Guardia Civil. Durante los días de la detención incomunicada, la actuación de los cuerpos de seguridad del Estado se mantuvo en el más escrupuloso respeto del marco que dicta la legislación española. Los detenidos fueron informados en el momento de su detención de todos sus derechos, en presencia de la autoridad judicial. Recibieron las visitas diarias de un médico forense. El Gobierno reiteró que el régimen de incomunicación es una medida excepcional en España, y como tal está rodeada de las

máximas cautelas legales y judiciales que aseguran su adecuación a los estándares internacionales de derechos humanos. Finalmente, el Gobierno señalaba su inquietud por la utilización inadecuada de un mecanismo de extrema gravedad dirigido a prevenir una violación grave e inminente de los derechos humanos, y reiteraba su plena voluntad de colaboración con los mecanismos especiales.

Comentarios y observaciones del Relator especial

210. El Relator especial agradece la cooperación del Gobierno español asi como la información que le hizo llegar. El Relator especial apreciaría recibir a la brevedad, y preferentemente antes de que concluya la 62ª sesión de la Comisión de derechos humanos, una información actualizada acerca de la situación de las personas en cuestión, en particular acerca de su eventual proceso. Aprovecha asimismo la oportunidad para reiterar sus serias reservas acerca de toda legislación que autorize la detención de personas en estado de incomunicación por períodos prolongados.

South Africa

Communication sent to the Government by the Special Rapporteur

211. See E/CN.4/2005/60/Add.1, paragraph 118, the urgent appeal sent on 18 February 2004.

Recent developments affecting the Judiciary

212. The Southern Africa Litigation Centre (SALC) was opened in Johannesburg, South Africa, on 20 June 2005. It is said to be the first organisation in the region dedicated to the training and support of lawyers litigating human rights and rule-of-law issues, a joint project of the International Bar Association (IBA) and the Open Society Initiative for Southern Africa (OSISA). The Southern Africa Litigation Centre will provide ongoing expert support, resources and training to lawyers taking cases that advance human rights, the rule of law, public interest and constitutional issues in Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Zambia and Zimbabwe.

Special Rapporteur's comments and observations

213. With reference to the urgent appeal of18 February 2004, the Special Rapporteur was informed by a reliable source and notes with satisfaction that a clerck was appointed to assist Judge Graham Travers who, owing to the fact that he suffers from muscular dystrophy, was under threat to loose his position. He would however appreciate an official confirmation of this development.

214. The Special Rapporteur further welcomes the above-reported opening of the Southern Africa Litigation Centre (SALC) which represents a major hope and resource for increasing the human rights awareness of judges and lawyers and should thus help consolidating the rule of law in the southern African region.

Sudan

Communications sent to the Government by the Special Rapporteur

215. See the joint urgent appeals sent on 5 February, 1 and 15 April, 3 August and 1 December 2004 reflected, respectively, in E/CN.4/2005/60/Add.1, para.120, 122, 123, 124 and 125

Communication from the Government

216. On 20 October 2005 the Government replied to various joint urgent appeals sent in different dates in 2004. In relation to the joint urgent appeal sent on 5 February 2004 (E/CN.4/2005/60/Add.1, para.120), the Government advised that Salih Mohammed Osma was detained by the security forces in Wedmadani on 1/2/2004. According to the Government, he was involved in the incidents of Darfur. The investigation had proved his involvement in activities aiming to support the rebellion movement in Darfur. The Government stated that he was treated humanely. Medical treatment and visits by his family were guaranteed. He was released on 4 September 2004. In relation to the joint urgent appeal sent on 3 August 2004 (E/CN.4/2005/60/Add.1, para. 124), the Government advised that Abu Zar Abou Albashir was arrested on 31 July 2004 under the National Securita Act. According to the Government, he was involved in the incidents of Darfur. He was released after completion of investigation. The Government stated that during his detention he was treated humanely.

Press Releases

217. On 16 March 2005, the Special Rapporteur, jointly with the Independent Expert on the situation of human rights in the Sudan, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on the situation of human rights in the Occupied Palestinian Territory, the Special Rapporteur on violence against women, its causes and consequences, the Independent Expert on the protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on adequate housing, 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 Independent Expert to update the Set of Principles for the promotion and protection of human rights through action to combat impunity, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Chairperson of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the right to food and the Special Rapporteur on trafficking in persons, especially in women and children, issued the following press release:

> UNITED NATIONS HUMAN RIGHTS EXPERTS CALL FOR URGENT AND EFFECTIVE ACTION ON DARFUR, SUDAN
>
> "We are gravely concerned about the ongoing violations of human rights and humanitarian law in the Darfur region of Sudan, many of which constitute

serious crimes under international law, and we call upon the international community to take effective measures to end the violations on a basis of utmost urgency. The conflict in Darfur, which Secretary-General Kofi Annan has called 'little short of hell on earth,' has already taken an untold number of civilian lives and is estimated to have caused the forced internal displacement of 1.8 million persons, as well as forcing more than 200,000 persons to flee across the border to neighbouring Chad. Despite efforts by the international community to commit troops and assistance to the region, the violence continues virtually unabated in a context of wholesale impunity, and the threat of famine is looming.

The violations in Darfur have been staggering in scale and harrowing in nature. Extra-judicial executions, rape and other forms of sexual violence, torture, enforced disappearances, scorching of villages and forced displacement of civilians have taken place in a widespread and systematic manner and continue on a daily basis. Members of civil society who have sought to address the violence in Darfur have suffered arbitrary arrests, detention, torture and ill-treatment at the hands of the security forces, typically after publishing reports of human rights violations in Darfur. If the vow that the international community will 'Never Again' stand idly by while crimes against humanity are being perpetrated is to have any meaning, now is the time for decisive action.

Even with the deployment of African Union troops, in the past nine months the number of displaced has continued to rise and attacks on civilians have persisted. A robust international solution is urgently needed, as the Secretary-General affirmed when he called upon the Security Council on 16 February 2005 'to act urgently to stop further death and suffering in Darfur, and to do justice for those whom we are already too late to save'.

Aware that the issue of how best to stop the violence and bring justice to the citizens of Darfur is now being considered by the Security Council, we strongly endorse the conclusion of the International Commission of Inquiry, appointed pursuant to Security Council resolution 1564, that the crimes committed in Darfur are of utmost gravity and require urgent and effective action to end impunity. We also endorse the statements of support for this conclusion of 16 February 2005 by the Secretary-General and the United Nations High Commissioner for Human Rights. We urge the Security Council to act immediately to adopt concrete measures to end the violence; provide protection to civilians, assistance to those displaced internally or in refugee camps in Chad; and to ensure accountability for the serious violations of human rights and humanitarian law committed in Darfur.

We strongly endorse the conclusion of the International Commission of Inquiry that the International Criminal Court 'is the single best mechanism to allow justice to be made for the crimes committed in Darfur' and that 'prosecution by the ICC of persons allegedly responsible for the most serious crimes in Darfur would contribute to the restoration of peace in the region.' In view of the Court's potential to deter further violations, we hope that its jurisdiction can be activated without further delay. We recognize that the violations in Darfur entail an obligation not only to ensure punishment of perpetrators, but also to provide reparation, including compensation, for the harm suffered by victims.

Past Security Council resolutions on Darfur have been repeatedly violated without penalty. Strong, concrete and effective measures are urgently needed to

bring to a close what is widely acknowledged to be one of the worst humanitarian crises in the world today. It is past time to send a clear message that the international community has forged a unified commitment to bring an end to serious violations of human rights and humanitarian law in Darfur and to the impunity that has enabled them to continue".

Special Rapporteur's comments and observations

218. The Special Rapporteur thanks the Sudanese Government for its cooperation and the substantive information it provided regarding the cases that were the subject of, respectively, his communications of 5 February 2004 and 3 August 2004. He however notes that a number of other communications sent in 2004 have remained unanswered. He notes that further to the two releases mentioned above, no further action on his part appears to be warranted on these cases. On the other hand, he regrets that the Sudanese Government did not react to the above press release, indicating action taken to resolve the very serious issues described in it. He therefore urges them to provide such information at the earliest possible date and preferably by the end of the 62nd session of the UN Human Rights Commission.

Swaziland

Communications sent to the Government by the Special Rapporteur

219. See para. 130-131 in E/CN.4/2005/60-Add.1.

Communication from the Government

220. None

Special Rapporteur's comments and observations

221. The Special Rapporteur regrets the absence of official reply and urges the Government of Swaziland to provide substantive detailed information at the earliest possible date and preferably before the end of the 62nd session of the Commission on Human Rights.

Syrian Arab Republic

Communications sent to the Government by the Special Rapporteur

222. See the joint urgent appeal sent on 6 August 2004 and reflected in E/CN.4/2005/60Add.1 para. 134-135.

223. On 1 February 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture, concerning reports that the retrial of Amna al-'Allush scheduled to continue on 1 February 2005 before the Criminal Court of Raqqa. On this occasion, it was imperative that the court examine the allegations of torture against Amna al-'Allush that reportedly took place in front of two local police officers and a judge in order to extract a confession to a murder charge, including the questioning of the judge who is alleged to have been present during the interrogation. If the court makes a legal finding that a confession

was obtained by torture, it must not be admitted into evidence at this retrial. On 16 August 2004, the Court of Cassation ruled there were procedural flaws in the original trial and thus overturned the conviction and ordered a retrial. Amna al-'Allush was sentenced to 12 years' imprisonment on 13 April 2004 despite witnesses, including at least two policemen and a court clerk, giving evidence that they had seen Amna al-'Allush tortured (fitted into tyres and then repeatedly beaten with a triple cable wire) and forced to confess during an interrogation which took place in the presence of a judge and other public officials.

224. On 26 May 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders regarding the situation of Mohamed Ra'adoun, lawyer and the head of the Arab Organization for Human Rights in Syria. On 22 May 2005 at around 11 a.m., four officers of the Political Security forces arrested Mr. Raadoun in his office at Latakia. He was informed that his apprehension was taking place under the Emergency Law. However, he was neither informed of the charges against him, nor was he shown an arrest warrant or other document authorizing arrest. Mr. Raadoun was transported to Damascus, where he was held by the Central Political Security Section. On 23 May the Central Political Security Section handed him over to the Military Judiciary. The Military Judiciary, however, stated that there were no charges pending against Mr. Raadoun. In the morning of 24 May he was transferred again into the custody of the Central Political Security Section in Damascus, where he was still detained, at the date this communication was sent. Mr. Ra'adoun was denied access to a lawyer and all other contact with the outside world. Fears had been expressed that the detention of Mr. Ra'adoun may have been linked to his activities as a human rights defender in particular his role in defending detainees, his participation in demonstrations calling for the guarantee of general freedoms in Syria as well as his public statements pointing at the failure of the Syrian authorities to guarantee freedom in the country. There was concern that that he may be at risk of torture or other forms of ill-treatment.

225. On 1 July 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, regarding Mahmoud Simmak, a 65-year-old Syrian national who had been living in Yemen for over 20 years. It was reported that he was arrested on 9 April 2005 at Damascus Airport as he arrived from Sana'a, where he had been living for over 20 years. He was taken to the military security service detention centre in the city of Idleb. He was subsequently transferred to the Palestine Branch of the Military Intelligence detention centre in Damascus. Since his arrest at the Airport he had not had access to a lawyer. His only contact with his family had been a short visit from his brother. Mahmoud Simmak had not been charged with any offence to the date of this communication.

226. On 5 September 2005, the Special Rapporteur sent a joint urgent appeal with the Chariperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Riad Drar al-Hamood, an Arabic language teacher and an active member of the Committees for Revival of Civil Society a network of individuals engaging in the defense of human rights. On 4 June 2005, he was arrested after he

made a speech at the funeral of the prominent Islamic scholar Sheikh Muhammad Ma'shuq al-Khiznawi, who had been allegedly abducted and tortured to death. Two hours after his arrest, security officers raided his house and confiscated books and copies of his lectures. Riad Drar al-Hamood was being held incommunicado in solitary confinement at 'Adra prison, near the capital, Damascus, charged with "inciting sectarian strife", at the time this communication was sent. He was to be tried by the Supreme State Security Court (SSSC). He suffered from diabetes-related high blood pressure. He had received one visit after his arrest, but had since then been denied visits, including his doctor. Concern was expressed that the SSSC's procedures fell far short of international fair trial standards, in particular, defendants were reported to have no right to appeal and were restricted access to lawyers. Additionally, our information also indicate that under this jurisdiction, "confessions" allegedly extracted under torture, are admissible as evidence. The UN Human Rights Committee had stated that the SSSC's procedures were incompatible with the provisions of the International Covenant of Civil and Political Rights, to which Syria is a state party. Finally, concern was expressed that Riad Drar al-Hamood's arrest may be linked to his human rights work, in particular his involvement with the Committees for Revival of Civil Society.

227. On 23 December 2005, the Special Rapporteur sent a joint allegation with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, concerning a lawyer and well known Kurdish figure Mr. Mahmoud Jamil. According to the information received, he had been arrested on three separate occasions in connection with his activities advocating for the rights of Kurdish people living in Syria. On each of these occasions, he had been subject to torture or other forms of ill-treatment. In 1992, he was initially arrested by the state security forces on suspicion of posting banners on walls containing statements demanding rights for stateless Kurds. He was detained for 21 days and did not have access to a judge during that time. On 17 April 1996, he was arrested for the second time, and was sentenced to four years in prison on charges of being a member of the Yakidi party and promoting cessation and sectarianism in Syria. He was subsequently released. A number of advocates reportedly wanted to defend him on a pro bono basis, but were not allowed access to him. On 8 April 2004 he was arrested for the third time following a spontaneous demonstration at the bazaar in Ras El Ein following the March 2004 uprising in Qamishli. He was brought before different military courts on a number of occasions. On 30 March 2005, he was released as a result of a presidential amnesty.

Communications from the Government

228. On 26 May 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 1 February 2005 and advised that on 12 March 2003, the authorities received a report about a girl who had been found hanging at her family home in the village of Mughallah in Raqqa. After a forensic investigation had been carried out and witnesses had been questioned, suspicion fell on Amna al-Mohammed Bint Allush, the wife of the father of the deceased, who confessed to having strangled the girl because the latter had threatened her. According to the Government, Amna al-'Allush was taken into custody and subsequently sentenced to 12 years in prison with hard labour. Following her incarceration, Ms. Allush claimed that she was innocent of the crime and asked for a new investigation. The Government advised that the competent judicial authorities were still examining the case, at the time this reply was sent.

229. On 21 July 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 26 May 2005. The Government stated that Mohammed Hussein Ra`adoun was arrested on 22 May 2005 after accusing the Syrian security authorities, via the media, of causing the death of Ahmed Ali Musaliha, who had died as the result of a heart operation which he had undergone 40 days after being released from detention. Mr. Ra`adoun was arrested under articles 286 and 288 of the Criminal Code.

230. On 5 September 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 1 July 2005. The Government stated that Mr. Simmak is a native of Idlib who joined the Muslim Brotherhood, a proscribed organization in Syria, in 1975. In 1980, Mr. Simmak left for Yemen and worked there as a primary teacher, while continuing with his former activities. In 1982, he traveled to Jordan and on to Iraq to take part in weapons training in preparation for a sabotage operation in Syria (which he subsequently renounced). In 1996, he sent his wife and children to Syria and submitted a petition announcing his withdrawal from the organization. He was being held for questioning, at the time this communication was sent.

231. On 6 October 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 1 July 2005. To the Special Rapporteur's regret, the reply is still to be translated at the date this report is finalized and will be presented in the next report.

232. On 29 December 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 26 May 2005. The Government advised that Mr. Mohamed Ra'adoun was released pursuant to the amnesty issued by the President of the Republic in 2005.

Special Rapporteur's comments and observations

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233. The Special Rapporteur is concerned to have received no less than five series of grave allegations concerning the Syrian Arab Rep. He thanks the Government of the Syrian Arab Republic for its cooperation and its substantive responses to the allegations relayed to them on 1 February, 26 May and 1 July 2005. He regrets that his communications of 6 September and 23 December have so far remained unanswered, and urges the Syrian Government to also provide at the earliest possible date and preferably before the end of the 62nd session of the Commission on Human Rights, detailed substantive answers to the allegations relayed in these two communications

234. The Special Rapporteur welcomes the news that Raadoune Mohamed Ra'adoun was released from prison on 3 November 2005 further to the amnesty which the President of the Republic decided to grant to 190 political detainees, and infers from this that no further action may be warranted from him in this case.

235. The Special Rapporteur similarly welcomes the news that Aktham Naisse, Chairman of the Committees for the Defence of Democratic Liberties and Human Rights (see E/CN.4/2005/60Add.1 para. 134-135) was acquitted of all charges by the State Security Court and considers that no further action appears to be warranted in this case.

Tajikistan

Press release

236. On 30 September 2005, the Special Rapporteur issued the following press release (see E.CN.4/2006/52/Add.4):

> "SPECIAL RAPPORTEUR STRESSES NEED TO INTRODUCE BALANCE OF PARTIES IN JUDICIAL PROCESS IN TAJIKISTAN
>
> "The Special Rapporteur on the independence of judges and lawyers of the United Nations Commission on Human Rights, Leandro Despouy, issued the following statement today:
> "The Special Rapporteur on the independence of judges and lawyers of the United Nations Commission on Human Rights, Leandro Despouy, is presently visiting Tajikistan at the invitation of the Government. Following the visit, he will present his report to the Commission on Human Rights in March 2006 and also address the General Assembly next month.
> "The Special Rapporteur thanked the Government of Tajikistan for their warm welcome and for the opportunity to meet with representatives of the government, parliament, and judiciary at the highest level. He further thanked the United Nations Tajikistan Office for Peace-building, the Office of the United Nations Development Programme and various other agencies of the United Nations system in Tajikistan, other international organisations and local non-governmental organisations with whom he met for the cooperation they extended to him. The information obtained will facilitate the work of the Special Rapporteur in the preparation of an objective report on the situation of the judicial system in the country.
> "The Special Rapporteur noted the positive experience of cooperation between Tajikistan and the United Nations in the area of peace-making during and peace-building following the civil war and the overall openness of the Government toward the international community.
> "Following independence and, in particular, after the civil war, the country has undertaken a series of reforms, among them the introduction of a moratorium of the death penalty, the adoption of new civil and criminal codes and, most importantly, the ratification of all major international human rights treaties.
> "In order to continue to make progress in this direction, the country needs to undertake further reforms. In this light, the Special Rapporteur would like to make the following initial observations:
> The Special Rapporteur noted, that, as part of the historical legacy, the prosecutor remains in a superior situation in comparison to defence lawyers which contradicts the international standard of equality of arms in court proceedings. Furthermore, the role of the judge is being undermined by the dominant position of the prosecutor in the judicial system of the country. Cases have been brought to the attention of the Rapporteur where judges were not in a position to independently issue judgements for fear of possible repercussions of their action.
> The Special Rapporteur has identified the current material situation of judges as

one of the possible factors that undermines the independence of the judiciary. This includes low levels of salaries of judges. This might lead to distortions in the functioning of the judicial system and have a direct impact on court decisions. In this regard, the country needs to develop a comprehensive strategy to fight corruption. The government should also ensure that courts are, to the extent possible, better supported in terms of office equipment and relevant information materials.

In the judicial system it is the lawyers that find themselves in a most fragile situation, related to difficulties in exercising their profession, in particular to freely provide legal counsel to their clients.

Due to the rapid development of the body of national legislation and, in particular, as a consequence of the ratification of international treaties there is a real need to bring the level of expertise of judges, lawyers and prosecutors in line with requirements of a modern judicial system.

The Rapporteur did not observe the case of Mr. Iskandarov and taking into account that the trial is still ongoing, he cannot draw any conclusions. Nevertheless, he hopes that all guarantees of a fair trial will be observed.

The Special Rapporteur would like to make the following preliminary recommendations:

He strongly encourages the authorities to continue the judicial reform process. In this context, he hopes that the Parliament will adopt the civil procedural code and the criminal procedural code in compliance with international standards as a matter of priority.

The Rapporteur would suggest that a single, independent and self-governing body in charge of all issues concerning lawyers be established.

While welcoming the creation of the Council of Justice, he would like to encourage the Government to strengthen its independence through the inclusion of additional judges in its composition.

The Rapporteur believes that there is a need for further capacity building measures in the area of human rights through the continued training and education programmes for judges, lawyers and prosecutors with the assistance of the international community.

The Rapporteur hopes that the process of reforms will be accelerated and it will lead to a fully independent judiciary in the country. He calls upon the international community to support these reform efforts to ensure the sustainable and peaceful development of the country".

Communication from the Governement

237. None

Special Rapporteur's comments and observations

238. The Special Rapporteur earnestly hopes that the Government of Tajikistan will take all relevant action regarding the important issues addressed in the above press release, at the same time that he invites it kindly to forward information in that connection as soon as possible and preferably by the end of the 62nd session of the Commission on Human Rights.

239. Furthermore, the Special Rapporteur is concerned about the case of Mr. Mahmadruzi Iskandarov who was allegedly sentenced on 5 October 2005 to 23 years' imprisonment on grounds of corruption, terrorism, illegal possession of weapons and possession of non-authorized body guards. On 18 January 2006, the Supreme Court's Collegium on Criminal Cases reportedly upheld this decision in an appeal procedure. While the Special Rapporteur does not wish to make any value judgement about the adequacy of the sentence, he is nonetheless concerned about consistent and repeated allegations received from different sources that Mr. Iskandarov was illegally transferred from the Russian Federation to Tajikistan, that his lawyer was repeatedly denied access to him and was barred from meeting him in private and that evidence used during the trial was exerted by torture. He wishes to ask the Government to comment such allegations and provide all relevant clarifications at the earliest possible date and preferably before the end of the 62nd session of the Human Rights Commission.

Trinidad and Tobago

Communication sent to the Government by the Special Rapporteur

240. On 10 June 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the situation of Lester Pitman, aged 28, who was reportedly scheduled to be executed on 13 June 2005. Concerns had been expressed that, on 8 June 2005, a death warrant was issued for his execution to be carried out despite the fact that Mr. Pitman had not yet exhausted all legal remedies available to him. According to the information received, Lester Pitman was sentenced to death on 14 July 2004 for the murder of British national John Cropper, his mother-in-law, Maggie Lee and sister-in-law Lynette Lithgow Pearson on 11 December 2001. His co-defendant, Daniel Agard, who was Maggie Lee's great-grandson, was also sentenced to death but his conviction was reportedly overturned by the Court of Appeal in March 2005 and a new trial ordered. Reports indicated that Mr. Pitman's lawyers had filed a notice on 22 April 2005 with the Court of Appeal indicating that their client intended to appeal against his death sentence in a higher court.

Communication from the Government

241. None

Special Rapporteur's comments and observations

242. The Special Rapporteur is concerned about the absence of any official reply and urges the Government of Trinidad-and-Tobago kindly to provide at the earliest possible date and preferably before the end of the 62nd session of the UN Human Rights Commission, detailed substantive answers to the above allegations.

Tunisia

Communications envoyées au Gouvernement par le Rapporteur spécial

243. Voir appel urgent du 9 mai 2004 dans le document E/CN.2/2005/60-Add.1, para 142.

244. Le 25 janvier 2005, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Représentante spéciale du Secrétaire général sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant le Conseil national pour les libertés en Tunisie (CNLT) et un de ses membres, Me Raouf Ayadi, avocat et ancien secrétaire général du CNLT. Me Ayadi a été l'objet d'une lettre d'allégation envoyée par la Représentante Spéciale du Secrétaire Général 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 le 13 octobre 2003. Le 15 janvier 2005, Me Ayadi aurait été insulté et menacé par un délinquant, dans le cadre d'une affaire civile, en présence d'un commissaire de police qui aurait par la suite refusé de dresser un procès-verbal, malgré la demande expresse de Me Ayadi. Le 18 janvier 2005, Me Ayadi, aurait reçu un appel anonyme le menaçant de mort s'il ne se dessaisissait pas de l'affaire du Forum démocratique pour le travail et les libertés (FDLT, parti d'opposition), dans laquelle il défend M. Mustapha Ben Jaafar, secrétaire général du FDTL. Me Ayadi aurait déjà fait l'objet de menaces et d'actes de harcèlement répétés : ses déplacements et son cabinet seraient surveillés, et sa clientèle serait régulièrement soumise à des actes d'intimidation par les forces de l'ordre. En novembre 2003, il aurait fait constater cette surveillance permanente par le Conseil de l'ordre et porté plainte contre le Ministère de l'Intérieur pour entrave à ses activités professionnelles. Aucune suite n'aurait été donnée à cette action. En outre, début janvier, Me Ayadi aurait été informé, par courrier, de la résiliation sans préavis du contrat de location de son cabinet, sans que le motif de cette décision ne lui soit communiqué. A ce jour, Me Ayadi serait toujours menacé d'expulsion. Selon les informations reçues, le 16 janvier 2005, le siège du CNLT lui même, situé rue Abou Dhabi, à Tunis, aurait été encerclé par la police à l'occasion de son assemblée générale. Les forces de l'ordre auraient quadrillé le quartier et fait savoir aux militants qu'elles avaient reçues l'ordre d'interdire cette réunion par tous les moyens. L'assemblée générale du CNLT avait été reportée au 16 janvier à la suite de la dispersion violente de membres du CNLT par les forces de l'ordre le 11 décembre 2004 qui aurait empêché les membres de se réunir au siège de leur organisation. A cette occasion, M. Mongi Ben Salah, syndicaliste et vice président de la section Monastir de la Ligue tunisienne des droits de l'Homme (LTDH), aurait été traîné sur plusieurs dizaines de mètres, insulté et roué de coups au visage et au ventre. MM. Lofti Hidouri et Nourredine Ben Ticha, trésoriers du comité de liaison du CNLT, auraient été violemment frappés. Mme Sihem Bensedrine, porte-parole du CNLT, et M. Ahmed Kilani, membre, auraient été bousculés, alors qu'ils tentaient de s'interposer. Ces personnes auraient porté plainte devant le procureur de la République, sans qu'aucune suite n'ait été donnée à ce jour. Des craintes ont été exprimées que ces attaques ne visent à empêcher le CNLT et ses membres de poursuivre leur action en faveur de la défense des droits de l'homme. Ces craintes sont d'autant plus vives que le CNLT n'aurait toujours pas été reconnu par les autorités tunisiennes en dépit de ses nombreuses requêtes en ce sens.

245. Le 9 mars 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur 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 Représentante spéciale du Secrétaire général sur la situation des défenseurs des droits de l'homme, a envoyé un appel concernant Me Mohammed Abou, un avocat et défenseur des droits de l'homme. Selon les information reçues, Me Abou aurait été arrêté à Tunis, le 1er mars 2005, sur une décision du juge du tribunal de première instance de Tunis pour avoir publié sur le site Internet http://www.Tunisnews.com, en août 2004, un article traitant des tortures infligées en Tunisie aux prisonniers politiques et dénonçant les critiques tunisiennes à l'encontre des exactions des

soldats américains à Abou Ghraib en Irak et l'absence de critique à l'égard de la torture en Tunisie. Selon les informations reçues, Me Abou serait inculpé, en vertu du code de la presse et du code pénal, pour "publication et diffusion de fausses nouvelles de nature à troubler l'ordre public", "outrage à la magistrature", "incitation de la population à enfreindre les lois du pays" et "publication d'écrits de nature à troubler l'ordre public". Il serait détenu à la prison du "9 avril" de Tunis depuis le 2 mars et encourrait une peine de 10 ans de prison. Des craintes ont été exprimées que cette arrestation ne représente une forme de représailles pour les activités de défense des droits de l'homme de Me Abou, en particulier sa dénonciation de la torture en Tunisie.

246. Le 12 mai 2005, le Rapporteur Spécial, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Représentante spéciale du Secrétaire général sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant Me Mohammed Abbou, avocat et membre de l'Association internationale de soutien aux prisonniers politiques (AISSP) (sujet d'un appel urgent envoyé le 9 mars 2005 par la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, 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 sur la situation des défenseurs des droits de l'homme), Me Najib Hosni, Me Sonia Ben Amor, Me Ousama Thalja, Me Radhia Nasraoui , Me Ayachi Hammami et Me Raouf Ayadi (sujet d'un appel urgent envoyé le 25 janvier 2005 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 sur la situation des défenseurs des droits de l'homme), avocats défenseurs de Me Mohammed Abbou, ainsi que Me Faouzi Ben Mrad, avocat à la Cour de Cassation tunisienne. Selon les informations communiquées, le 29 avril 2005, suite à un procès qui n'aurait pas réuni toutes les garanties d'un procès juste et équitable, Me Mohammed Abbou aurait été condamné à 3 ans et demi de prison, pour avoir critiqué sur Internet les conditions de détention des prisonniers tunisiens et pour « violences à l'encontre d'une avocate ». Depuis le 3 mai 2005, Me Mohammed Abbou aurait entamé une grève de la faim pour protester contre les conditions inéquitables dans lesquelles se serait déroulé son procès. Le 29 avril 2005, Me Najib Hosni, Me Sonia Ben Amor et Me Ousama Thalja auraient fait l'objet d'entraves dans l'exercice de la défense de leur client, Me Mohammed Abbou, lors de leur visite à la prison de Kef. Me Najib Hosni n'aurait pas été autorisé à voir son client, Me Sonia Ben Amor aurait pu le voir seulement pendant quelques minutes, après quoi elle aurait été entraînée hors de la prison alors que le directeur de la prison lui donnait des coups de pied. Suite à ces évènements, elle se serait vue refuser le dépôt d'une plainte. Elle serait en outre poursuivie pour outrage à un fonctionnaire et destruction de biens publics suite à la présentation de deux plaintes par le directeur de la prison et un des gardiens, accusations pour lesquelles elle devrait se présenter le 12 mai 2005 devant le juge d'instruction de la première chambre d'instruction du Tribunal de Première Instance du Kef. Le 29 avril, Mme Abbou aurait été empêchée de voir son mari et de lui donner des provisions lors de sa visite hebdomadaire. Le 3 mai 2005, Me Faouzi Ben Mrad aurait été arrêté, condamné à 4 mois de prison ferme et incarcéré pour outrage à magistrat, alors que la semaine précédente il aurait pris la parole pour défendre son collègue Me Mohammed Abbou. En outre, le 5 mai 2005, Me Sonia Ben Amor, Me Radhia Nasraoui, Me Ayachi Hammami et Me Raouf Ayadi, avocats de Me Mohammed Abbou, auraient été informés de leur prochaine parution devant le conseil de discipline à la demande de l'Avocat général, Me Habib Ben Youssef. Ils risquent d'être radiés du Barreau. Le 6 mai 2005, les avocats faisant partie du

« Comité de soutien à Me Abbou» qui se seraient rassemblés devant le Palais de Justice, auraient été encerclés par la police et forcés de quitter les lieux de manière violente. Certains d'entre eux, y compris le Bâtonnier du Conseil de l'ordre des avocats tunisiens, seraient tombés par terre, leurs vêtements auraient été déchirés et leurs lunettes arrachées. Une vive préoccupation a été exprimée face à ces actes de violence et d'intimidation dont le but semble être d'empêcher les avocats tunisiens d'exercer leur travail de défense des droits de leurs clients et de restreindre leur liberté d'expression.

247. Le 16 juin 2005, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Représentante spéciale du Secrétaire général sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent sur la situation de Mohammed Abbou, avocat, dont la peine a été confirmée en appel le 10 juin 2005, après avoir été condamné, en première instance, à trois ans et six mois de prison le 29 avril 2005. Il a été reconnu coupable d'une agression physique sur l'une de ses consoeurs en 2002 et d'avoir diffusé de fausses informations sur Internet. M. Abbou a été le sujet d'un appel urgent envoyé par le Rapporteur spécial le 12 mai 2005 et d'un appel urgent envoyé par le Rapporteur spécial le 9 mars 2005. Selon les informations reçues, le procès d'appel n'aurait pas respecté les normes internationales les plus élémentaires concernant la tenue d'un procès équitable. Les débats n'auraient duré que quelques minutes. La presse, l'épouse de l'inculpé et de nombreux observateurs nationaux et internationaux auraient étés évacués avant le début de l'audience et n'auraient pas pu y assister. Seuls les avocats de la défense et ceux mandatés par les organisations non gouvernementales internationales auraient été présents, mais ils n'auraient pas pu prendre la parole pour assurer la défense de Mohammed Abbou. Mohammed Abbou lui-même n'aurait pas non plus pu assurer sa défense, car il n'aurait été autorisé à répondre que par oui ou par non aux deux questions posées par le juge, sans pouvoir fournir la moindre explication. Les Rapporteurs spéciaux et la Représentante spéciale expriment leur vive préoccupation face aux allégations de graves manquements aux normes relatives au procès équitable, notamment le droit de tout accusé de se défendre et d'être entendu et jugé par un tribunal indépendant. Ils craignent que la condamnation de Mohammed Abbou soit liée à la publication sur Internet d'articles sur la pratique de la torture en Tunisie, à l'invitation faite au premier ministre d'Israël Ariel Sharon d'assister au prochain sommet mondial sur la société de l'information SMSI ainsi qu'à la publication de considérations sur la famille du Président Ben Ali.

248. Le 19 août 2005, conjointement avec le Rapporteur spécial sur la torture, le Rapporteur a envoyé un appel urgent concernant Mohamed Hmidi, 19 ans, Chouaib Joumni, 21 ans, Fayçal Ellafi, 26 ans, Ghaith Makki, 26 ans, Ezzeddine Abdellaoui, 20 ans, Wajdi Marzouki, 23 ans, Bilal Marzouki, 25 ans, Nizar Hasni, 22 ans, Tahar Bouzidi, 23 ans, Mounir Chraiet, 23 ans, Zied Fakraoui, 29 ans, et Haythem Fakraoui, 23 ans (tous affaire N° 694), Nader Ferchichi 24 ans, Mahjoub Zayani 23 ans, Abdelbari Al Ayeb 25 ans (affaire N° 721), Anis Krifi, Borhan Dridi, Sami Gharbi, Salah Chalghoumi, Ahmed Chabbi, Okba Ennasri, Houcine Ennasri, Hassen Ennasri, Mohamed Ayachi, Tarak Hammami, Sabri Mejri, Ali Ben Salem, Mohamed Zine Eddine, Mohamed Hammami, Yassine Ferchochi, Ridha Yahyaoui et Nizar Mernissi (affaire N° 810), Karim Belrabi Messoussi, Chouayeb Al Wafi et Zied Ghodhbane (affaire N° 997), Sami Souissi, Rajeb Nefzi, Mohamed Borni, Salaheddine Habourya, Nabil Rotbi, Seif Errayes, Walid Ben Hassen, Hosni Nasri, Abdelhalim Aroua, Mahfoudh Ayari, Zoubeir Karoui, Maher Chamam, Ghayeth Ghazouani, Anis Rafrafi et Maher Beziouech (affaire N° 998). Selon les allégations reçues, ces 50 personnes seraient accusées sur la base des articles 12 (adhésion à

ou soutien d'une organisation terroriste), 14 (recrutement ou entraînement de personnes en vue de commettre un acte terroriste sur ou en dehors du territoire tunisien), 15 (infractions terroristes contre un autre Etat), 18 (assistance à des personnes dans le cadre d'infractions terroristes) et 19 (financement de personnes, organisations ou activités en rapport avec des infractions terroristes) de la loi anti-terroriste du 10 décembre 2003. Ces affaires auraient respectivement commencé les 30 avril, 5 mai, 12 mai et 23 juin, 1er juin et 2 juin 2005. Plusieurs d'entre eux auraient été soumis à des actes de torture dans les locaux de la sûreté de l'Etat à Tunis afin de leur faire signer des aveux sur leur appartenance à un groupe terroriste. Ainsi M. Salaheddine Habourya, 30 ans, aurait été détenu du 17 mai au 2 juin 2005 et aurait été suspendu nu à l'aide d'une grue. Il aurait reçu des coups sur les parties sensibles du corps. De même, M. Anis Krifi, 25 ans, aurait été détenu du 17 au 23 juin 2005 et aurait eu entre autres les côtes fracturées. M. Nader Ferchichi, 24 ans, aurait été arrêté à son domicile à Bizerte le 27 avril 2005 et détenu pendant dix jours. Il y aurait en outre été privé de sommeil et aurait subi l'aveuglement provoqué par quatre puissants projecteurs durant ses interrogatoires. M. Mahjoub Zayani, 23 ans, aurait été arrêté le 23 avril 2005 à Bizerte et détenu par la police politique, avant d'être transféré dans les locaux de la sûreté de l'Etat à Tunis. Il aurait subi durant les douze jours de sa détention l'assourdissement et la privation de sommeil au moyen d'une sonnerie ininterrompue. M. Abdelbari Al Ayeb, 25 ans, aurait été arrêté à Bizerte le 24 avril 2005 puis détenu pendant onze jours où il aurait été frappé, suspendu au plafond par les poignets et les chevilles. Les individus qui se sont relayés pour les torturer auraient utilisé les pseudonymes El Hadj, El Bacha, El Ghoul, Sharon. Les avocats des accusés auraient déclaré s'être vus refuser un accès direct aux dossiers de leurs clients, et n'être autorisés qu'à prendre connaissance des photocopies de certaines pièces. De surcroît, les procès-verbaux ne feraient pas état du lieu de l'arrestation, alors que certains inculpés auraient déclaré à leurs avocats qui ont pu leur rendre visite en prison qu'au moins dix d'entre eux auraient été livrés par l'Algérie le 16 juin 2005. En termes plus généraux, la loi antiterroriste, promulguée le 10 décembre 2003, en vigueur depuis le 15 décembre 2003, aurait institué une justice d'exception qui réduit les garanties des suspects et adopte le principe de la justice préventive. L'anonymat aurait été garanti aux agents la police politique. De plus, les droits de la défense auraient été limités davantage: désormais, se prévaloir du secret professionnel pour l'avocat pourrait être criminalisé dans les "affaires de terrorisme" (art. 22) et l'accès de la défense au dossier de leurs clients serait restreint.

249. Le 7 septembre 2005, le Rapporteur spécial, conjointement avec le Représentante spéciale du Secrétaire général sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent sur la situation de l'Association des magistrats tunisiens (AMT) et ses membres. Selon les informations reçues, le 29 août 2005, M. Ahmed Rahmouni, président de l'AMT, aurait été convoqué par le procureur auprès du tribunal de 1ère instance de Tunis, qui lui aurait donné l'ordre de lui remettre les clés du local de l'association, hébergée au palais de justice depuis 1946. Le lendemain, l'avocat général auprès la Cour d'appel de Tunis, mandaté par le ministère de la Justice, aurait convoqué les responsables de l'AMT pour leur demander oralement de lui remettre les clés du siège de l'AMT. Ces derniers auraient contesté la légalité de cette démarche, invoquant que seule une procédure judiciaire serait qualifiée pour retirer la jouissance de son local à un bureau démocratiquement élu, ou une décision administrative (susceptible d'être contestée devant le Tribunal administratif) émanant du ministère de l'Intérieur dont relèvent les associations. Le 31 août 2005, les membres de l'AMT se seraient vus dans l'impossibilité d'accéder à leur local dont les serrures avaient été changées, fait constaté par un huissier notaire. Des craintes ont été exprimées que ces événements ne visent à exercer des pressions sur les membres de l'AMT. Ces craintes sont d'autant plus vives que ces

faits interviennent dans un contexte de représailles à l'égard des magistrats tunisiens indépendants. En particulier le 4 août 2005 une nouvelle loi relative au système judiciaire, au Conseil supérieur de la Magistrature (CSM) et au statut des magistrats restreignant l'indépendance des magistrats, a été promulguée par le Président après son adoption par la Chambre des députés le 30 juillet. Selon les informations reçues, la nouvelle loi, qui amende celle du 14 juillet 1967, nie le droit des juges de contester les décisions de l'administration devant une instance judiciaire et leur droit à interjeter appel des sanctions disciplinaires auprès du Tribunal administratif, en restreignant ce droit à une requête adressée à une "commission des recours" issue du CSM. De même, la possibilité de contester les mesures de mutation des magistrats arrêtées par le CSM est dorénavant du ressort d'une autre structure dépendant du Conseil. Selon les informations reçues, le 1er août 2005, après l'adoption de cette loi, le ministère de la Justice aurait effectué une série de mutations disciplinaires prenant pour cible les membres les plus actifs de l'AMT. Une trentaine de membres de l'AMT auraient été affectés dans de nouvelles juridictions, parfois à plus de 400 kilomètres de leur résidence et de leur famille. En particulier, Mme Kalthoum Kennou, secrétaire générale de l'AMT, aurait été mutée à Kairouan (160 km de Tunis) et Mme Wassila Kaabi, membre du bureau, aurait été mutée à Gabès (420 km de Tunis). D'autre part, 15 membres de la commission administrative de l'association (sur un total de 38) auraient été affectés dans de nouvelles juridictions de façon à leur faire perdre leur qualité représentative au sein de l'association, et neuf magistrats membres de la même commission auraient été mutés dans des provinces éloignées de leur juridiction d'origine ou auraient été délestés de leurs attributions professionnelles. Des craintes ont été exprimées que ces actes ne constituent une forme de représailles à l'encontre des membres de l'AMT et leur action en la faveur d'une justice indépendante en Tunisie. Ils interviennent à la suite du vote d'une motion générale lors du 10ème congrès de l'association en décembre 2004, présentant des revendications institutionnelles visant à garantir l'indépendance de la justice et après que le 31 mai 2005, l'AMT ait souligné dans un mémorandum l'urgence de réformer profondément le CSM, notamment en établissant le principe du choix de la majorité de ses membres par voie d'élections.

Communications reçues du Gouvernement

250. Le 29 août 2005, le Gouvernement a répondu à l'appel urgent envoyé par le Rapporteur spécial le 9 mars 2005. Le Gouvernement a indiqué que Me Abbou a comparu le 2 mars 2005 devant le juge d'instruction près du Tribunal de première instance de Tunis. L'intéressé a fait l'objet d'une instruction ouverte par le Parquet de Tunis sur la base d'une plainte déposée à son encontre par l'une de ses consoeurs pour violences caractérisées ayant occasionné des préjudices corporels nécessitant l'admission de celle-ci aux urgences médicales et un arrêt de travail d'un mois. Selon le Gouvernement, il a été également mis en examen pour diffamation des autorités judiciaires et incitation de la population à enfreindre les lois. Le Gouvernement a indiqué qu'après avoir été traduit devant la Chambre correctionnelle près du Tribunal de première instance de Tunis le 28 avril 2005, il a été condamné à deux ans de prison ferme pour violences caractérisées sur sa consoeur ayant entraîné une incapacité permanente de 10% et à 18 mois de prison pour diffamation des autorités judiciaires et diffusion de fausses nouvelles de nature à perturber l'ordre public. La peine a été confirmée en appel le 10 juin 2005. Le Gouvernement a souligné que la procédure judiciaire, ayant abouti à la condamnation de Me Abbou, s'est déroulée conformément aux règles de procédures en vigueur et en respectant pleinement les garanties de défense. Le Gouvernement a signalé que l'intéressé bénéficie depuis son incarcération de toutes les garanties légales, dont notamment le droit à être

soumis à un examen médical, à s'entretenir régulièrement avec ses avocats et à recevoir la visite de ses proches.

251. Le 5 septembre 2005, le Gouvernement a répondu à l'appel urgent envoyé par le Rapporteur spécial le 16 juin 2005 concernant la situation de M. Mohamed Abbou. Le Gouvernement a indiqué que Me Abbou a comparu, le 2 mars 2005, en présence d'un nombre important d'avocats, devant le juge d'instruction près du Tribunal de première instance de Tunis qui a donné une suite favorable à la demande de report formulée par le prévenu à ses avocats de mieux préparer sa défense. Me Abbou a comparu à nouveau le 16 mars 2005 devant le juge d'instruction qui a autorisé à 17 de ses avocats s'assister à l'interrogatoire. Cette décision a été contestée par le prévenu qui avait refusé de se soumettre à l'interrogatoire sous prétexte que tous ses avocats n'étaient pas présents. Dans l'impossibilité matérielle d'accueillir tous les avocats de la défense, le juge d'instruction a dû rappeler au prévenu les dispositions de la loi qui l'autorisent à poursuivre la procédure sans tenir compte de son refus de répondre. Par ailleurs, un des avocats s'était opposé à la présence du Ministère public à l'interrogatoire, alors que l'article 73 du Code de Procédure Pénale le permet expressément. Le 23 avril, le juge d'instruction a décidé la clôture de l'instruction et le renvoi du prévenu devant la Chambre correctionnelle près du Tribunal de première instance de Tunis. Me Abbou a été traduit devant la dite Chambre le 28 avril 2005 et condamné à deux ans de prison ferme pour violences caractérisée sur une consœur et à 18 mois de prison pour diffusion de fausses nouvelles, diffamation des autorités judiciaires et incitation de la population à enfreindre les lois. L'intéressé a interjeté appel. Le 10 juin 2005, il a comparu devant la Cour d'appel de Tunis. Lors de l'examen de la première affaire, Me Abbou a refusé de répondre à la Cour. Un de ses avocats a plaidé à son profit. Les demandes formelles des avocats ayant été rejetées, le les avocats ont quitté la salle, deux d'entre eux et quelques observateurs ayant demeuré dans la salle. Passant à l'examen de la deuxième affaire, l'accusé a reconnu la diffusion de l'écrit objet des poursuites. Les deux avocats présents ont refusé de plaider. Le jour même, la Cour d'appel de Tunis a confirmé le jugement rendu par le Tribunal de première instance de Tunis, tant sur le plan civil que pénal. L'arrêt est devenu définitif en l'absence de pourvoi de la part du prévenu ou du Procureur général près la Cour d'appel de Tunis. Le Gouvernement a réitéré que la détention de M. Abbou n'est pas arbitraire puisque la procédure judiciaire ayant abouti à la condamnation de l'intéressé s'est déroulée conformément aux règles de procédures en vigueur et en respectant pleinement les garanties de défense. Par ailleurs, M. Abbou bénéficie depuis son incarcération de toutes les garanties légales, dont notamment le droit à être soumis à un examen médical, à s'entretenir régulièrement avec ses avocats et à recevoir la visite de se proches.

252. Le 14 novembre 2005, le Gouvernement a répondu à l'appel urgent envoyé par le Rapporteur spécial le 25 janvier 2005. Le Gouvernement a indiqué que la Tunisie a toujours autorisé l'existence de formations et d'organisations de défense des droits de l'homme à condition que leur action soit conforme aux dispositions légales en vigueur. Les associations tunisiennes, légalement établies, exercent leurs activités et tiennent leurs réunions dans des conditions tout à fait normales. Le « CNLT » n'a pas d'existence légale en Tunisie, dans la mesure où un arrêté du Ministre de l'Intérieur avait fait opposition à sa constitution, en raison du non-respect par ses fondateurs des conditions légales requises pour sa création. Un recours en annulation dudit arrêté a été introduit devant le Tribunal administratif et l'affaire suit son cours. Nonobstant le caractère illégal de cette formation, certains de ses membres ont essayé, le 11 décembre 2004, de tenir une réunion clandestine au domicile de d'un d'entre eux. Une

brigade mobile de la police a dû intervenir suite à la demande des voisins qui se sont plaints des nuisances provoquées par les participants à cette réunion, sachant que la mise à disposition d'un domicile pour des activités non déclarées est passible, en droit tunisien, de sanctions pénales. Pour ce qui est des plaintes déposées par certaines personnes, se disant membres du « CNLT », il est à souligner que Me Ayadi s'est effectivement présenté, le 15 janvier 2005, au Commissariat de police d'El Kram, en vue de déposer une plainte pour violation de domicile appartenant à l'un de ses clients, résident à l'étranger. Un procès verbal a été dressé à ce sujet le même jour. Cependant, et contrairement aux allégations qui vous sont parvenues, Me Ayadi n'a introduit aucune plainte auprès du dit Commissariat concernant des « insultes et menaces » qui auraient été proférées à son encontre par un « délinquant ». Il en est, d'ailleurs, de même concernant un « appel anonyme le menaçant de mort » et les allégations « de menaces et d'actes d'harcèlement répétés » qui n'ont jamais été signalés aux autorités compétentes. Pour ce qui est de la « résiliation sans préavis du contrat de location du cabinet de M. Ayali » par une compagnie d'assurance, cette question relève du ressort de la justice, seule habilitée à se prononcer sur ce litige d'ordre strictement privé. Le Gouvernement a souligné que Me Ayadi exerce sa profession d'avocat de façon normale, se déplace en toute liberté, plaide devant les différentes juridictions et reçoit sa clientèle sans aucune entrave aucune restriction.

253. S'agissant des allégations se rapportant à M. Mongi Ben Salah, il est à préciser que sa plainte a été enrôlée sous le N° 2005/7004628. L'intéressé a été ensuite reçu par le Procureur de la République près du Tribunal de première instance de Tunis qui a précédé, officiellement, à son audition. L'affaire suit son cours.

254. Le 16 novembre 2005, le Gouvernement a répondu à l'appel urgent envoyé par le Rapporteur spécial le 7 septembre 2005. Le Gouvernement a indiqué que l'Association des Magistrats Tunisiens est une association soumise à la loi du 7 novembre 1959. Elle a pour objectif, notamment, de défendre les intérêts professionnels et moraux des magistrats, d'une part, et de promouvoir la profession, par l'amélioration des conditions du travail et l'encouragement de la recherche scientifique (organisation de colloques, études, recherches…), d'autre part. L'Association, que siège au palais de justice de Tunis, est dirigée par un conseil national élu pour deux ans et composé d'un bureau exécutif et d'un comité administratif. Formé de représentants des différents tribunaux, le Conseil national est présidé par le président de l'association ou son suppléant. L'indépendance de l'Association a été, depuis sa création, toujours respectée, et c'est justement parce que cette indépendance a été, dernièrement, remise en cause par le bureau actuel, que les magistrats se son réunis en assemblée générale extraordinaire, sur demande de deux tiers des membres de l'association, et ont voté une motion de retrait de confiance au bureau exécutif et l'appel à la tenue d'un congrès exceptionnel. Cette décision a été prise par la majorité des magistrats présents. Un comité élu parmi les magistrats présents a alors été chargé de gérer provisoirement les questions en suspens de l'association et de préparer le congrès. Suite au refus injustifié du président de l'association de remettre les clefs du siège de l'association au comité provisoire ce dernier a déposé une demande au représentant de l'autorité judiciaire exécutée le 1er Septembre 2005. Pour ce qui est de la situation de certains magistrats membres du bureau exécutif, il convient de rappeler que cette mutation entre dans le cadre d'un mouvement judiciaire ordinaire décidé par le Conseil supérieur de la magistrature. Ce dernier est composé exclusivement de magistrats (hauts magistrats de l'ordre judiciaire, et magistrats appartenant aux différents grands élus par leurs pairs) et veille dans l'indépendance, au respect des garanties accordées aux magistrats en matière de nomination, d'avancement, de mutation et de discipline. La loi a consacré le principe

de l'immobilité, l'étendant, à la différence de certains pays aussi bien aux magistrats du siège qu'à ceux du parquet. Cependant, et suite à une grande demande de mutation pour les tribunaux de la capitale, le Conseil supérieur de la magistrature a décidé, lors du dernier mouvement ordinaire, de muter un nombre assez élevé de magistrats travaillant depuis assez longtemps à Tunis vers d'autres tribunaux, dont quelques magistrats faisant partie du bureau exécutif de l'association. Par ailleurs, il est important de rappeler que l'indépendance de la magistrature est garantie par l'article 65 de la Constitution et concrétisée au niveau de la désignation des membres du Conseil supérieur de la magistrature. Elle est concrétisée, également, par le pouvoir décisionnel reconnu au Conseil supérieur de la magistrature, dans la mesure où il n'est pas appelé à émettre de simples avis, mais à prendre des décisions exécutoires, notamment en matière de nomination, d'avancement, de mutation et de discipline.

Communiqué de Presse

255. Le 16 novembre 2005, le Rapporteur spécial, conjointement avec la Représentante spéciale sur la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la liberté d'opinion et d'expression, a émis le communiqué de presse suivant :

> "DES EXPERTS PRÉOCCUPÉS PAR LA SITUATION EN TUNISIE S'AGISSANT DE LA LIBERTÉ D'EXPRESSION ET DE RÉUNION ET DE L'INDÉPENDANCE DE LA JUSTICE
>
> "La Représentante spéciale sur la situation des défenseurs des droits de l'homme, Hina Jilani; le Rapporteur spécial sur la liberté d'opinion et d'expression, Ambeyi Ligabo, et le Rapporteur spécial sur l'indépendance des juges et des avocats, Leandro Despouy, expriment leur profonde préoccupation, à l'ouverture de la phase finale du Sommet mondial sur la société de l'information, devant la détérioration de la situation de la liberté d'expression, de réunion et d'association et de l'indépendance des juges et des avocats en Tunisie."Dans ce contexte, ils soulignent qu'ils ont reçu de nombreuses informations faisant état d'attaques répétées contre des organisations de défense des droits de l'homme et leurs membres y compris des associations de magistrats, ainsi que contre des journalistes et certains avocats. Les Rapporteurs spéciaux et la Représentante spéciale expriment leur vive inquiétude devant les nombreux cas de mise à l'amende, mutations forcées, atteintes à l'intégrité physique, arrestation, condamnation et emprisonnement d'acteurs de la société civile et de juges pour avoir soulevé publiquement des questions de droits de l'homme et exprimé leur opinion. "Ils expriment également leur inquiétude au regard des informations leur parvenant faisant état d'entraves à la liberté d'association et de réunion, notamment quant à la reconnaissance légale de l'existence de nombreuses organisations non gouvernementales et de syndicats qui se voient contraints d'opérer dans l'illégalité, les difficultés rencontrées par certaines ONG de défense des droits de l'homme pour accéder aux fonds étrangers destinés à leurs activités et l'interdiction systématique faite aux défenseurs des droits de l'homme, journalistes, juges et avocats de tenir leurs réunions, assemblées générales, congrès annuels ou séminaires. À cet égard, les experts ont reçu de nombreux rapports faisant état de l'encerclement des bureaux des ONG par les forces de l'ordre, voire du bouclage de quartiers entiers pour interdire l'accès aux dites

réunions, ainsi que de la fermeture d'associations de magistrats. Ils expriment également leur plus profonde inquiétude à l'égard des informations reçues concernant les violences physiques perpétrées par les forces de l'ordre contre certains défenseurs des droits de l'homme, avocats et journalistes. "Les Rapporteurs spéciaux et la Représentante spéciale demandent instamment au Gouvernement tunisien de prendre immédiatement toutes les mesures nécessaires au respect des libertés fondamentales, en particulier des normes fondamentales concernant la liberté d'opinion et d'expression, d'association et de réunion, ainsi qu'au respect de l'indépendance des juges et des avocats. Ils lancent un appel afin que la tenue du Sommet mondial de la société d'information constitue une occasion de réitérer l'importance de la liberté d'opinion et d'expression dans le monde en particulier pour la promotion et protection des droits de l'homme ainsi qu'une opportunité de renforcer la liberté d'opinion et d'expression en Tunisie afin que les défenseurs des droits de l'homme, les juges, les avocats et les journalistes puissent y mener à bien leur activité dans un climat sûr, libre et constructif."

Réponse du Gouvernement au communiqué de presse

256. Le 29 novembre 2005, le Gouvernement a répondu au communiqué de presse du 16 novembre 2005. Concernant l'indépendance des juges en Tunisie, le Gouvernement a indiqué que les magistrats, à tous les niveaux, exercent leurs fonctions en toute indépendance et ne sont soumis qu'à leur conscience et à l'autorité de la loi. Le droit des magistrats à la liberté d'expression et d'association est garanti et nombre d'entre eux sont adhérents à l'Association des Magistrats Tunisiens et choisissent librement leurs représentants. Par ailleurs, les avocats tunisiens exercent, comme tous les citoyens, leur droit à la liberté d'opinion et d'expression dans les conditions définies par la loi. Ils ne peuvent être poursuivis que s'ils commettent des actes répréhensibles rentrant sous le coup de la loi pénale.

Commentaires et observations du Rapporteur

257. Le Rapporteur spécial est inquiet de constater que ce ne sont pas moins de six séries de graves allégations qui lui sont parvenues concernant la Tunisie durant l'année. Il remercie le Gouvernement de la Tunisie pour sa coopération et les informations qu'il a bien voulu lui transmettre en réponse à ses communications du 25 janvier, 9 mars, 16 juin et 7 septembre. Il regrette que ses communications du 9 mai 2004, 12 mai et 19 août 2005 soient par contre demeurées sans réponse à ce jour et invite instamment le Gouvernement de la Tunisie à lui faire parvenir au plus tôt, et de préférence d'ici la clôture de la 62eme session de la Commission des droits de l'homme, des informations précises et détaillées en réponse aux allégations relayées dans ces deux communications. Eu égard aux informations reçues, elles appellent des commentaires approfondis qui dépassent les limitations techniques du présent rapport ainsi que des compléments d'information sur plusieurs points. D'une manière générale, le Rapporteur spécial est fortement préoccupé par les actes de violence et d'intimidation à l'encontre des avocats et magistrats tunisiens, dont le but semble être de les empêcher d'exercer leur travail de façon libre et indépendante. A la lumière de ces faits, il rappelle que les demandes de visite adressées au Gouvernement tunisien successivement les 4 décembre 1997, 15 avril 2002 et 20 janvier 2004 sont restées sans réponse. Il réitère sa proposition de mener au plus tôt une visite en Tunisie pour être à même de vérifier sur place si les allégations d'atteinte à l'indépendance

du Pouvoir judiciaire et d'atteinte à l'intégrité des avocats et des magistrats sont véritablement fondées et en général pour examiner avec le Gouvernement et les organisations et personnes intéressées les dispositions souhaitables pour renforcer l'efficacité et l'indépendance du Pouvoir Judiciaire. Il espère que le Gouvernement accèdera à sa demande et pourra l'en informer d'ici la clotûre de la 62ème session de la Commission des droits de l'homme.

Turkey

Communications sent to the Government by the Special Rapporteur

258. See in E/CN.4/2005/60-Add.1, the Special Rapporteur's communications of 2004 : 20 January (para. 145), 9 and 12 February (para. 146 and 148), 6 and 14 August (para. 144 and 147) and 3 September (para. 149).

259. On 17 February 2005, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on the situation of human rights defenders, concerning Hüseyin Aygün, a lawyer and former head of the local Bar Association of Lawyers in Tünceli province, south eastern Turkey who had worked with victims of alleged human rights violations including torture and "disappearances" and was working on behalf of the families of seven people who allegedly "disappeared" from Midrik village in Tünceli, while Turkish army commanders were operating in the area in September 1994. It was reported that, on 3 February 2005, the Commander of Gendarmie forces, in Tünceli province visited the workplace of a relative of Mr. Aygün and told them that Mr. Aygün was "a traitor to the country", "an enemy of the state" and stated that "soon you'll see that we have discredited him". On 7 February 2005, in a meeting with Mr. Aygün, the Gendarmerie commander reportedly threatened him to stop "going against us in every incident. OK, you are doing your job but don't do it any more – just leave it to others". Further, on 11 February 2005, three members of the gendarmerie wearing plain clothes visited Mr. Aygün and told him that the Gendarmerie Commander wished to meet him again. When Mr. Aygün telephoned the Gendarmerie Commander he allegedly stated: "I have in my hands some solid evidence, this time there's no saving you. However, I'm hesitant as to whether or not I should transfer these files to the Prosecutor… perhaps if you listen to us we can come to some agreement with you." There was concern that the reported harassment and threats to Mr. Hüseyin Aygün and one of his relatives may have represented attempts to prevent Mr. Aygün from carrying out human rights defence activities and in particular his work on behalf of the families of seven people who allegedly "disappeared" from Midrik village in Tünceli in September 1994.

260. On 31 August 2005, the Special Rapporteur sent a joint allegation letter with the Special Representative of the Secretary-General on the situation of human rights defenders, concerning the *Tunceli Bar Association*, who had worked with victims of alleged human rights violations including torture and "disappearances". The former head of the Tunceli Bar Association, Hüseyin Aygün, was the subject of an urgent appeal sent by the Special Rapporteur on the independence of judges and lawyers and Special Representative of the Secretary-General on the situation of human rights defenders on the 17 February 2005. On 24 June 2005, a taxi hit a land mine on the Batman Village road near Tunceli. The scene of the accident was investigated by members of the security forces who left notices on the wreckage of the taxi, some of which read: "Human rights defenders, have you seen this car? Tunceli Bar Association, why are you so silent? …will they make a statement about this? We are waiting

with interest". It is reported that the Tunceli Bar Association lodged a complaint regarding these notices with the State Prosecutor, who ordered their removal from the site. There is concern that these notices threaten the legitimacy of the role of human rights defenders in Tunceli, and could lead others to question the role of human rights defenders which may result in threats and attacks aimed at people engaged in human rights activities.

Communications from the Government

261. On 30 March 2005, the Government replied to the joint urgent appeal of 17 February 2005. The Government advised that on behalf of the Board of Governors of the Tunceli Bar Association, an attorney at law applied to the Tunceli Public Prosecutor's Office on 14 February and informed that Mr. Hüseyin Aygün, member of the said Association, was threatened by the Commander of the Gendarmerie Forces in Tunceli. According to the Government, upon this denunciation, Mr. Aygün, as the complainant, was invited to the Tunceli Public Prosecutor's Office where he was interviewed about the incident and asked to produce evidences to his denunciation. After this step, the Office had filed an investigation with the registry no: 2005/163. The Government advised that the investigation still underway at the date the reply was sent.

262. On 22 December 2005, the Government replied to the Special Rapporteurs' joint allegation letter of 31 August 2005. The Government advised that the Chief Public Prosecutor's Office in Tunceli conducted an investigation on the incident where a taxi was hit by a landmine, and the police officers found the notices on the wrecked vehicle. Some of the notices read "Let's condemn terrorism if you are brave enough. Human rights defenders have you seen this car? Why are you silent Tunceli Bar Association?" Following this incident, the Provisional Security Directorate immediately informed the Office of the Chief Public Prosecutor of this situation to conduct an inquiry. The Tunceli Bar Association also filed a complaint regarding the display of these notices as well as alleging that the police officers had neglected their official duty by condoning those acts. Both the application of the Provincial Security Directorate and the complaint by the Tunceli Bar Association were merged into a same file by the Chief Public Prosecutor, pursuant to Article 9 of the Criminal Procedures Act No 5271. The Office of the Chief Public Prosecutor submitted a request to the Governor's Office for the identification of the police officers who were on duty at the time of the incident, as well as to conduct a preliminary inquiry along with the request for permission to initiate an investigation in accordance with the Law on the Prosecution of Public Officials Act No.4483. The Governor's Office initiated a preliminary inquiry, and concluded that the notices had already been displayed when the four police officers on duty arrived at the scene, and thus there were no neglect on their part. The Governor accordingly informed the Office of the Chief Public Prosecutor of its decision not to proceed with the investigation. On 11 August 2005, the Chief Public Prosecutor decided that there was no legal cause for initiating an investigation against the four suspected police officers, as the Governor did not give permission for investigation. This decision was notified to the concerned parties, and became final as it was not challenged at the High Penal Court of Erzincan by the parties within 15 days following its notification. As regards to the complaint by the Tunceli Bar Association against the officers at the Gendarmerie Command in Tunceli, the Office of the Chief Public Prosecutor submitted a request to the Governor's Office for the conduct of a preliminary inquiry into the allegations as well as permission for investigation. The preliminary inquiry initiated by the Governor's Office was still underway at the time this reply was sent.

263. By letter dated 11 January 2006, the Government of Turkey provided further information on the allegation letter sent on 31 August 2005. However, due to the fact that it was received with delay, such reply could unfortunately not be included in this report, a circumstance which the Special Rapporteur regrets.

Special Rapporteur's comments and observations

264. The Special Rapporteur thanks the Government of Turkey for its cooperation and the substantive information provided in both cases brought to its attention. He further wishes to assure the Government of Turkey that the reply received in its letter of 11 January 2006 is under study at the time of finalizing this document and will be referred to in the next report. The Special Rapporteur further wishes to urge the Turkish Government to kindly send him information in connection with the allegations relayed to it in 2004, which have remained unanswered. He would appreciate receiving such information at the earliest possible date and preferably before the end of the 62nd session of the Human Rights Commission.

United Kingdom of Great Britain and Northern Ireland

Communication sent to the Government by the Special Rapporteur

265. See joint allegation letter of 23 September 2004 in E/CN.4/2005/60/Add.1, para. 149.

Communication from the Government

266. On 4 February 2005, the Government advised that on 23 September 2004 the Secretary of State for Northern Ireland announced that the Government had concluded that steps should be taken to enable the establishment of an inquiry into the death of Patrick Finucane. The Government was determined that where there are allegations of collusion the truth should emerge, and the inquiry into the death of Patrick Finucane would be given all the powers necessary to uncover the full facts of what happened. In order that the inquiry could take place speedily and effectively and in a way that takes into account the public interest, including the requirements of national security, new legislation was required. The Government expressed its belief that the Inquiries Bill, which was introduced to the House of Lords on 25 September and was in its Grand Committee stage, at the time this reply was sent, would provide a suitable framework for the inquiry to take place.

Special Rapporteur's comments and observations

267. The Special Rapporteur thanks the Government of the United Kingdom for its cooperation and the substantive information conveyed. He would appreciate being informed at the earliest possible date and preferably before the end of the 62nd session of the Commission on Human Rights whether the Inquiries Bill was adopted and is already being implemented, and, if so, to learn about its concrete and precise incidence on the case in question.

United States of America

Communications sent to the Government by the Special Rapporteur

268. On 31 August 2005, the Special Rapporteur sent an allegation letter concerning the situation of Antonio Guerrero Rodriguez, Fernando González Llort (Rubén Campa), Gerardo Hernández Nordelo (Manuel Viramontes), Ramón Labanino Salazar (Luis Medina), and René González Sehwerert, five Cuban exiles who were arrested and convicted of spying. On 5 August 2005, a United States appeals court ruled that the original trial concerning these five defendants was unfair because it was not possible to receive a fair trial in Miami 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. It is reported that they were arrested in September 1998 in Florida. In June 2001, they were tried 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. Antonio Guerrero Rodriguez was sentenced to life imprisonment plus 10 years. Fernando González Llort was sentenced to 19 years' imprisonment. Gerardo Hernández Nordele was condemned to two life sentences plus 15 years. Ramón Labanino Salazar was sentenced to life imprisonment plus 18 years and René González Sehwerert to 15 years' imprisonment. The appeal took place in March 2004, and a decision to order a retrial was finally announced on 5 August 2005 by the US Appeals Court. In addition, it has been alleged that the five defendants were denied access to a lawyer during the first two days following their arrest. Subsequently, they were kept in solitary confinement during the 17 months preceding the trial. It is alleged that before and during the trial, all the evidence in the case file was kept in a room under the court's control, and that the defence lawyers could access this room only after going through a bureaucratic procedure. The defence lawyers were also prohibited from making copies of the documents in evidence and from taking notes in order to analyze them.

269. It may be noted that, by a letter of 29 September 2005 regarding the trial of the five Cubans in question, the Government of Cuba forwarded a letter of the wifes of two of the detainees. The letter referred to the decision of 27 May 2005 of the Working Group on Arbitrary Detention stating that the detention of the five men was arbitrary, including because the trial did not take place in the required climate of impartiality, decision that the Working Group transmitted to the Government on 2 June 2005..

Communications from the Government

270. None

Press Release regarding the situation of detainees in Guantánamo Bay

271. On 23 June 2005, the Special Rapporteur, jointly with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the question of torture and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, issued the following press release:

"UN EXPERTS ADDRESS CONCERNS REGARDING GUANTANAMO BAY DETAINEES

"The following statement was issued today by four independent experts of the United Nations Commission on Human Rights with the endorsement of all participants at the twelfth Annual Meeting of the Special Rapporteurs/representatives, independent experts and chairpersons of the working groups of the Special Procedures of the Commission on Human Rights:

"On the first anniversary of the request made by all Independent Experts at their eleventh Annual Meeting, we deeply regret that the Government of the United States has still not invited us to visit those persons arrested, detained or tried on grounds of alleged terrorism or other violations in Iraq, Afghanistan, or the Guantanamo Bay naval base.

"The request for a visit was made following the negative response to the request by the Working Group on Arbitrary Detention in January 2002 to visit Guantanamo Bay and the United States and the lack of a response to the joint request made by the Special Rapporteurs on torture and health in January 2004 to visit Guantanamo Bay. Such requests were based on information, from reliable sources, of serious allegations of torture, cruel, inhuman and degrading treatment of detainees, arbitrary detention, violations of their right to health and their due process rights. Many of these allegations have come to light through declassified Government documents.

"The purpose of the visit would be to examine objectively the allegations first-hand and ascertain whether international human rights standards that are applicable in these particular circumstances are being upheld with respect to those detained persons.

"The Independent Experts have given ample time to the Government to consider their request and have made themselves available for any needed consultations. In this regard, they note with appreciation the high-level meeting organized during the sixty-first session of the Commission on Human Rights to discuss the purpose and terms of reference for the visit. Nevertheless, the lack of a definitive answer despite repeated requests suggests that the United States is not willing to cooperate with the United Nations human rights machinery on this issue. This is particularly surprising in the light of one of the recommendations made by the Government of United States in a recent position paper entitled, "Enhancing and Strengthening the Effectiveness of the Special Procedures of the Commission on Human Rights", which says that, "States should consider [country visits] requests seriously and in the spirit of cooperation with Special Procedures, and should respond in a timely manner".

"It is our conviction that no Member State of the United Nations is above international human rights law. Due to the seriousness of the allegations, the lack of cooperation and given the responsibilities to our respective mandates, we will jointly conduct an investigation based on all credible sources regarding the situation of the detainees in Guantanamo Bay. In the meantime, should the Government of the United States extend a visit to Guantanamo Bay we would welcome this development and would incorporate the findings from our mission into our other investigations".

272. On 31 October 2005, the Special Rapporteur, jointly with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the question of torture and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, issued the following press release:

> "GUANTANAMO BAY DETAINEES: UN human rights experts respond to US invitation
>
> "We welcome the letters of invitation extended to three special procedures on 27 October 2005 by the United States Department of Defense to visit the Department's detention facilities at Guantanamo Bay Naval Station, Cuba. This invitation is the first tangible result of almost four years of dialogue between the special procedures of the United Nations Commission on Human Rights and the US Government.
> While we appreciate the willingness of the US Government to invite three of us, Asma Jahangir, Manfred Nowak and Leila Zerrougui, we deeply regret that similar invitations were not extended to Leandro Despouy and Paul Hunt, that the visit to Guantanamo Bay Naval Station is limited to one day and that private interviews or visits with detainees are explicitly excluded.
> We have carefully considered the invitation and decided to accept it on the following basis. In a spirit of cooperation we accept the short duration of the visit and the fact that only three of us will be permitted to visit the facilities. However, we cannot accept the exclusion of private interviews with detainees as this would not only contravene the Terms of Reference for Fact-finding missions by Special Procedures but also undermine the purpose of an objective and fair assessment of the situation of detainees held at the Guantanamo Bay.
> We are confident that the US Government, which attaches great importance to the principles of independent and objective fact finding, will understand our position. We have decided that Asma Jahangir, Manfred Nowak and Leila Zerrougui will visit Guantanamo Bay provided that they will have free access to all detainees and the opportunity to carry out private interviews with them. The date envisaged for the visit is 6 December 2005.
>
> <u>Chronology of Requests for Visits regarding detainees at Guantanamo Bay and other locations</u>
> - Since November 2001, a number of special procedures mandate holders have been engaged in a dialogue with the United States Government regarding the situation of detainees held in Guantanamo Bay. In June 2004, we joined our efforts and decided to continue the dialogue with the US Government as a group because the situation under consideration falls under the scope of more than one mandate. Accordingly, on 25 June 2004, we sent a letter requesting to visit "those persons arrested, detained or tried on grounds of alleged terrorism or other violations, in Iraq, Afghanistan, the Guantanamo Bay military base and elsewhere". Subsequent reminders focusing on a visit to Guantanamo Bay were sent on 22 November 2004, 21 April 2005 and 31 May 2005 respectively.
> - By letters dated 9 November 2004 and 20 May 2005 and in a briefing with the US delegation to the Commission on Human Rights, held on 4 April

2005 in Geneva, the United States of America responded by saying that the request "continued to be the subject of intense review and consideration" and that it "has received serious attention and is being discussed at the highest levels of the U.S. Government".

- On 23 June 2005, we announced publicly at a joint press conference that, in the absence of a reply, we will join our efforts to undertake, within our capacities of our respective mandates, a study to determine the situation of detainees in Guantanamo Bay. We have subsequently embarked on a study on the applicability of international human rights law to detention in Guantanamo and on the legal aspects related to this situation. We have also begun gathering factual information by various means and we will be carrying out interviews with former detainees currently residing in a number of countries. By letter dated 21 October 2005, we received a detailed response from the US Government to the questionnaire that was submitted by us on 8 August 2005.
- On 26 and 28 October, we had further meetings in New York City with US officials from the Defense and State Departments. At the second meeting, we were provided with the three letters of invitation and assurances that the US Government will continue its cooperation with the five independent experts involved in the joint study.

Chronology of Requests for Visits regarding detainees at Guantanamo Bay and other locations

- 22 January 2002: The Working Group on Arbitrary Detention (WGAD) sent a letter (and a reminder letter on 25 October) requesting a visit to the United States and the military base at Guantanamo Bay in order to examine in situ the legal aspects of the persons concerned. On 17 December 2002, the US Government declined the request, considering that the WGAD lacked the competence to address what it considered law of armed conflict issues and not international human rights matters.
- 30 January 2004: Special Rapporteurs (SRs) on torture and health sent a joint allegation letter to the US regarding continued accounts in relation to the physical and mental integrity of persons held in Guantanamo Bay and reiterated the request to visit to gather first-hand information, evaluate the situation and make appropriate recommendations in the context of their mandates regarding the detainees.

25 June 2004: the Independent Experts at the eleventh session of the Annual Meeting of Special Procedures made a joint press release (and sent statement to the US) expressing alarm at the status, conditions of detention and treatment of prisoners and requested that four experts (SRs on the Independence of judges and lawyers (IJL), torture, health and WGAD) visit at the earliest possible date detainees at Guantanamo (and Iraq and Afghanistan). On 9 November 2004 the Government replied that it was willing to provide a briefing in Washington, DC. By letter dated 22 November 2004, SRs responded that they welcomed a briefing in Geneva in the context of preparation for a visit.

- 4 April 2005: the SRs on IJL, Torture and WGAD had a meeting with US officials at PM of US to discuss outstanding request to visit. The US said the request was being considered at highest levels, wanted to know the SR's terms for visit regarding their objective, access to detainees, etc.

21 April 2005: in follow up to the meeting, the four experts sent a joint letter to the US with requested details: Terms of Reference (TOR) for mission, relevant resolutions, length of visit (5 days) and requested activities (visit privately with detainees, officials, observe detention related proceedings) and asked for reply by 20 May 2005. The Government responded on 20 May indicating visit request still under serious consideration.

31 May 2005: the 4 experts on IJL, Torture, Health and WGAD sent a joint letter asking the US to provide a response to the visit by 15 June as the 1st year anniversary of the joint request approaches.

Chronology of Communications regarding detainees at Guantanamo Bay and other locations

- 16 November 2001: the Special Rapporteur (SR) on independence of judges and lawyers (IJL) issued a press release concerning the Presidential Military Order and impact on the rule of law, i.e. setting up of military tribunals; absence of a guarantee of the right to legal representation while in detention; an executive review process to replace the right to appeal to a higher tribunal; and the exclusion of jurisdiction of any other courts and international tribunals.
- 16 January 2002: the SR on torture sent an urgent appeal expressing concerns regarding the conditions of detention, inhuman treatment, restricted access to lawyers, human rights monitors and medical treatment at Guantanamo Bay. The Government responded on 3 April 2002.
- 18 September 2002: the SRs on torture, IJL and migrants sent joint allegation letter regarding cases of detention of many individuals, particularly non-US nationals, since 11 September 2001. The Government responded on 1 April 2003.

- 12 March 2003: the SR on IJL issued a press release expressing concern regarding the establishment and operation at Guantanamo Bay. The US will be seen as systematically evading the application of domestic and international law so as to deny these suspects their legal rights. Detention without trial offends the first principle of the rule of law.
- 8 May 2003: the Working Group on Arbitrary Detention (WGAD) rendered Opinion No. 5/2003 concerning the US and considered the detention to be contrary to article 9 of both the Universal Declaration and ICCPR.
- 7 July 2003: the SR on IJL issued a press release expressing concern about military commissions and suspension of due process. US is seen to be defying UN resolutions, including GA resolution 57/219 of 18 December 2002 and SC resolution 1456 of 20 January 2003. These resolutions affirm that States must ensure that any measures taken to combat terrorism must be in accordance with international law, including international human rights, refugee and humanitarian law.
- 22 October 2003: the SR on Torture sent an allegation letter to US regarding the conditions and treatment of detainees at Guantanamo Bay. The Government responded on 3 March 2004.
- 8 December 2003: the SR on torture sent an allegation letter concerning return of detainees from Guantanamo and risk of refoulement. The Government responded on 3 March 2004.

- 3 May 2004: the SR on torture issued a press release on allegations of abuse of Iraqi prisoners by coalition forces.
- 5 May 2004: the WGAD issued a press release calling on coalition authorities to allow Iraqi detainees to challenge lawfulness of detentions.
- 27 May 2004: the SRs on torture and summary executions sent a joint urgent appeal to the US regarding 22 ethnic Uighurs of Chinese nationality being held at Guantanamo Bay who had been reportedly been subject to inhumane treatment during interrogation and facing possible forcible return and execution in China.
- 2 July 2004: the SRs on IJL, torture and health sent a joint allegation letter to the US regarding the condition of six foreign nations detained in solitary confinement at Guantanamo who may be tried before a military commission without access to all due process rights guaranteed under international law.
- 4 Feb 2005: 6 experts (Working Group on Enforced or Involuntary Disappearances (WGEID), WGAD, torture, health, IJL and the Independent Expert on Afghanistan) issued a joint press release regarding continued concern re: incommunicado detention, denial of legal assistance and conditions of detention that continue at Guantanamo Bay.

Special Rapporteur's comments and observations

273. With regard to the case of Antonio Guerrero Rodriguez, Fernando González Llort (Rubén Campa), Gerardo Hernández Nordelo (Manuel Viramontes), Ramón Labanino Salazar (Luis Medina), and René González Sehwerert, the Special Rapporteur regrets that, since August 2005, no answer was provided by the US Government in reply to the request for information addressed to it and he would thus appreciate receiving all necessary and updated information at the earliest possible date, preferably before the end of the 62nd session of the Commission Human Rights.

274. With regard to the situation of those persons being detained in Guantánamo Bay, the Special Rapporteur wishes to refer to the report E/CN.4/2006/120 issued by him jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 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 freedom of religion or belief, which is submitted to the Commission on Human Rights at its 62nd session.

Uzbekistan

Communications sent to the Government by the Special Rapporteur

275. On 7 February, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on the situation of human rights defenders, concerning Rukhiddin Komilov, a lawyer based in Tashkent who had represented a number of defendants charged with terrorism, anti-constitutional activity, possession of illegal religious materials and membership in illegal religious organizations. In addition, Mr. Komilov is head legal counsel for Ezgulik, a registered, national human rights organization, connected with Birlik, an unregistered, opposition political party. Mr. Komilov had acted on a couple of specific cases

which received the attention of the international observers, the press and the NGO community. In July 2004 Mr. Komilov brought a case before the Supreme Court on behalf of Birlik, after the party was denied the registration necessary for taking part in elections. He asked the court to reverse the Ministry of Justice's decision to reject Birlik's registration application. The Supreme Court decided that it was not within its jurisdiction to rule on the Ministry of Justice's decision. From 7 September to 7 October 2004, Mr. Komilov represented Mastura Latipova, a woman tried on terrorism charges with 14 other defendants. At the trial, Komilov presented the court with written complaints – originally submitted before the trial to the prosecutor's office – saying that his client was tortured in custody. He said that his client was struck, suffocated with a gas mask, threatened and kept incommunicado during her first week in detention. His client was sentenced to nine years in prison, which was reduced to seven years on appeal. Six days after the court sentenced Ms.Latipova, the police arrested her husband, Murod Latipov and her son in-law, Umid Astanov. Mr. Komilov immediately completed the necessary documents to represent them and went to the detention centre but was denied access to them. He was denied access on several occasions and was told that he lacked essential documents. On each occasion he wrote an official complaint to the prosecutor's office, in accordance with the procedure, explaining that he was prohibited from seeing his clients. On 22 November Mr. Komilov received a letter from the head of the Prosecutor General's Crime Investigation that Mr. Komilov received an inducement of $100 USD by an NGO to have Ms. Latipova make a false claim about being tortured during the investigation stage and that Mr. Komilov should face possible disbarment. An investigation was launched and a professional review board was to reach a decision on 20 December 2004 as to whether Mr. Komilov's law licence should be revoked. The decision of the board was still pending, at the time this communication was sent. There was concern that this investigation was an attempt to remove Mr. Komilov from this case and to prevent him from continuing his defence work in general.

276. On 16 February 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture, concerning Farid Nasibullin who had been prevented from requesting access to his defense lawyer by the Head of the Tashkent prison who demands that a person sentenced to death write to him personally through a relative in order to be able to exercise that right. Making access dependent on such a contingent factor amounts to a violation of internationally accepted standards guaranteeing the right to adequate legal assistance at all stages of criminal proceedings. In an attempt to overcome this unlawful restriction to access counsel, a defence lawyer from the organization which had been involved in Mr. Nasibullin's case had tried to review his file but, to the date of this communication, he had been denied access to the criminal case. It was reported that the date of execution of Mr. Nasibullin was being kept secret. This lack of transparency denies the human dignity of the person sentenced as well as the rights of family members to know the fate of their relative.

277. On 12 May 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the question of torture, regarding the situation of Nazirzhan Azizov, aged 33, Khurshidbek Salaidinov, aged 21, and Bakhtiorzhan Tuichiev, aged 31, all detained in Andizhan prison. They were at imminent risk of execution after having been allegedly tortured in pre-trial detention. They were convicted of two murders by Andizhan Regional Court and sentenced to death in October 2004. Reports indicated that Nazirzhan Azizov, Khurshidbek Salaidinov and Bakhtiorzhan Tuichiev were tortured to extort a confession to the murders they were

subsequently convicted of. In particular, the families of Bakhtiorzhan Tuichiev and Khurshidbek Salaidinov claimed that they had been beaten so badly in custody that they were unable to move for several weeks. During the trial the three men alleged in court that they had been tortured to make them sign confessions to the murders, but the court failed to investigate their claims. Moreover, they were not allowed to meet with lawyers hired by their families, and were only able to meet with a state-appointed lawyer after they had been in custody for a month. All three men appealed against their convictions and sentences and/or requested a re-trial. Their requests were rejected by the Andizhan Regional Court in December and again in February.

278. On 29 June 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the question of torture, concerning the situation of Yuldash Kasymov, aged 19, and Alisher Khatamov, aged 27, who appeared to be at risk of imminent execution. Reportedly, their conviction was based on confessions extorted under torture or other forms of ill-treatment. According to the information received, Yuldash Kasymov was found guilty of the murder of his parents and sentenced to death by the Tashkent City Court on 3 March 2005. The sentence was confirmed by the Supreme Court on 10 June 2005. Reportedly, both Yuldash Kasymov and his brother Mansur were beaten during interrogations in order to force either one of them to plead guilty to the murder. As a result of the pressure, Yuldash ultimately signed the confession statement. A video presented in Court showed that when the investigators took him to the crime scene, his face was covered with bruises. His girlfriend was also reportedly beaten to punish her for insisting that he was innocent, and he was allegedly threatened that she would be raped in front of him if he did not "confess". The lawyer who was hired by his family was only able to have access to him ten or more days after his arrest, when he had already signed the statement. Yuldash Kasymov immediately retracted his "confession" in a letter to the relevant procurator and insisted on his innocence. In a separate case, Alisher Khatamov was found guilty of the murder of two persons and sentenced to death by the Tashkent Regional Court on 16 March 2005. His sentence was confirmed by the Supreme Court on 14 June 2005. Reports indicated that officers of the Bukinsky district police and the regional police of Tashkent beat him and all the members of his family. Moreover, both he and his father were told that his mother and his sister would be raped unless Alisher confessed to having committed the crime. Reports indicated that Alisher Khatamov's lawyer only got access to him two weeks after he was arrested. During the trial the family complained about the beatings, but this was allegedly ignored by the court.

279. On 26 August 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture, concerning Dilshadbek Khajiev, Tavakkalbek Khajiev, Hasan Shakirov and Muhammad Kadirov. They had been subject of an urgent appeal of 17 June 2005, to which the Government had replied on 8 August 2005. According to further information received, the four individuals still did not have an access to lawyers, family members and/or international organizations at the time this communication was sent. Concern was expressed at the disparity in the date of the extradition from Kyrgyzstan (reportedly on 9 June 2005) and the date of the voluntary arrival indicated in the reply from the Government (26 June 2005).

280. On 6 September 2005, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary General on the situation of human rights defenders, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture, concerning Elena Urlaeva, a member of the opposition party "Ozod Dehkonlar", human rights defender, formerly a member of the Human Rights Society of Uzbekistan and associate member of the International Helsinki Federation for Human Rights (IHF), who was arrested in Tashkent on 28 August 2005, for disseminating leaflets containing cartoons of the state emblem of Uzbekistan. According to the information received, Ms. Urlaeva was detained in a psychiatric clinic at the time this communication was sent. Her lawyer had not been able to see her and reported that a doctor of the department where Ms. Urlaeva had been placed had stated that she was on compulsory treatment according to a court decision. It was also reported that Ms. Urlaeva had undergone continuous interrogation and did not have access to food or water after her arrest. She had also not had any access to her lawyer since her arrest and was reportedly being coerced to sign a document in which she admits that she tried to overthrow the political system of Uzbekistan. Concern was expressed that Ms. Elena Urlaeva is being targeted for her human rights work. Ms. Elena Urlaeva had allegedly been targeted on previous occasions for her human rights activities. She was reportedly placed under house arrest on 17 May 2005 in order to prevent her participation in anti-government demonstrations following the events in Andijan on the 13 May 2005. On 13 July 2005, police officers allegedly broke into Ms. Elena Urlaeva's apartment and threatened her with a gun. It was reported that in April 2001 she was placed in a psychiatric hospital by the police in relation to her participation in a demonstration she had organized against forced evictions by the municipal authorities. Furthermore, the authorities ordered her to be placed in psychiatric detention in June 2002.

281. On 20 September 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, concerning *Internews*, an international media development organization working in fifty countries towards improving access to information by fostering independent media and promoting open communications policies worldwide, and IREX, the International Research and Exchange Board, a grassroot organization working towards the improvement of education, facilitating student exchanging, expanding internet access and supporting community development initiatives. According to information received, on 9 September 2005, a court in Tashkent ordered *Internews* to close down its offices in Uzbekistan and liquidate its network on the basis of convictions of illegally publishing information, producing unlicensed TV programmes and using the *Internews* logo without registering it first with the Ministry of Justice; such permission was not reportedly required by national law. It was reported that *Internews* was given one day's notice about the court hearing against them and that the court proceedings were carried out in an expedited manner. Moreover, the Judge refused *Internews* their request to call witnesses, denied all their petitions and appeared to be biased. *Internews* was planning to appeal the verdict, at the time this communication was sent. Moreover, on 4 August 2005 Mrs. Khalida Anarbayeva, senior advisor and former managing director of the representative officer of *Internews* Network, and Mrs. Olga Narmuradova, an accountant for *Internews* network, were found guilty of violating article 190(2)b of the Uzbek Criminal Code, that is of publishing information and producing videos without a licence. They were both immediately granted amnesty by the Presiding Judge who denied efforts by the prosecutor in

the case to close down the *Internews* office on the grounds that civil and not criminal courts had jurisdiction over this case. The trial was closed to outside observers. In August 2004, *Internews* bank accounts were frozen by the authorities and forced to suspend all its programs. On 14 September 2004, the civil court of Tashkent ordered the US based IREX to suspend its activities in Uzbekistan for six months. IREX was being charged with numerous violations including not having complied with its Charter and for having misused its logo, at the time of this communication. IREX was planning to appeal this decision. There was concern that action taken against *Internews* and IREX was unfounded and aimed at silencing and bringing an end to their news reporting and activities.

282. On 21 October 2005, the Special Rapporteur sent joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on Human Rights and counter terrorism, and the Special Rapporteur on the question of torture, concerning the on-going trial of 15 men, including 3 Kyrgyz citizens, accused of being the main organizers of the "Andijan events" of May 2005, before the criminal chamber of the Supreme Court of Uzbekistan in Tashkent. There was concern over the conduct of the executive in preparing the trials, and also in respect of certain elements of the legislative framework. According to the information received, 106 people were still in detention and were expected to face trial on similar charges, at the time this communication was sent. Report indicated that the trial against 15 persons was based on charges of premeditated murder and terrorism, punishable by the death penalty. It was a source of concern to us that the crime of terrorism may not be defined in national law in a manner compatible with the requirements that follow from articles 6 and 15 of the International Covenant on Civil and Political Rights in relation to crimes that carry the death penalty. Furthermore, reports indicated that, on the first day of the trial, all 15 defendants confessed their guilt and did so in terms which tracked the prosecution statement practically word by word. In addition, rather than seeking to defend their clients' interests, the defendants' attorneys instead posed questions which were not significant in terms of the charges or were formulated in such a way as to assist the prosecution case. These allegations gave weight to suggestions that the defendants had been intimidated into confessing and that the defence procedures were inadequate to ensure a fair trial. Since, apart from the confessions, little evidence had been presented during the trial and since the defendants were not cross-examined by any independent lawyers to verify their testimonies, concern was expressed that their confessions may have been obtained by means of torture.

283. On 3 November 2005, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the question of torture regarding Sanjar Umarov, leader of the opposition political movement "Sunshine Coalition", which has close ties with the Ozod Dekhkon ("Free Peasants") opposition party. On 22 October 2005, he was arrested. On 24 October 2005 his lawyer found him in his cell, at Tashkent City Police Department's detention facility, naked and incoherent covering his face with his hands and rocking back and forth; He did not react when his attorney called him. Since this visit, his attorney had not been able to talk to his client or to the investigator on his case. Concern was expressed for Mr. Umarov's mental health, particularly since the authorities had failed to act on his attorney's requests for an urgent independent psychiatric evaluation. Concern was furthermore expressed that Mr. Umarov's arrest was politically motivated in view of his activities with Sunshine Coalition, particularly because of its public criticism of what it termed as corrupt government bureaucracies in

Uzbekistan. Moreover, it was shortly after Mr. Umarov's return to Uzbekistan from a visit to the United States and Russia, where he publicly discussed the Coalition's ideas for economic reform based on their action plan to implement liberal, free-market economic reforms. Finally, on 17 October 2005, Mr. Umarov wrote an open letter to the Russian Foreign Minister Sergei Lavrov, in which he called for economic reforms in Uzbekistan and closer economic cooperation with Russia.

Communications from the Government

284. On 31 May 2005 the Government responded to the Special Rapporteur's urgent appeal of 7 February 2005. The Government provided information about the legal foundations for the practice of law, independence and inviolability of lawyers, lawyer's right and obligations, and the activities of the Bar Association of Uzbekistan. The Government advised that on 30 March 2004, the head of the non-governmental organization (NGO) Ezgulik (Good Deed) and a member of that organization sent an application to the Supreme Court of Uzbekistan requesting it to declare unlawful the decision of the Ministry of Justice to refuse to register the so-called Birlik (Unity) People's Movement Party. The application also contained the request that the Supreme Court order the Ministry of Justice to issue a certificate registering the Birlik Party. Furthermore, the according to the Government, in the course of the examination of the application, it was found that the Ministry of Justice had not taken a decision either to register or to refuse to register Birlik. The application was not followed up owing to a number of violations of the requirements of legislation in force (complete information was attached). Since this matter did not fall within the competence of the Supreme Court, on 7 May 2004 the civil division of the Supreme Court took a decision to refuse the application submitted by Mr. Komilov and the head of the organization. The action taken by the Supreme Court does not violate the provisions of Uzbek legislation in force. The Government advised that Mr. Komilov, who is a lawyer of the second legal consultation office of Hamza district in Tashkent, was defence counsel for a person, who was convicted by the Tashkent city criminal court on 7 October 2004 for the commission of offences covered under article 28-97, paragraph 2 (a), (d), (e), (o) and (p) (intentional homicide), and article 155, paragraph 3 (a) and (b) (terrorism). She was sentenced to nine years' deprivation of liberty. During the pretrial investigation and the trial, she was allowed to exercise fully her right to the services of a lawyer. Mr. Komilov's claims that he and his client were subjected to pressure by representatives of investigative and judicial bodies are not in accordance with the facts. Her husband submitted a complaint to the procuratorial authorities concerning the actions of the lawyer Rukhiddin Komilov. He asserted that, even before the judicial proceedings, Mr. Komilov had received monetary remuneration and had promised to prove the defendant's innocence in court. Moreover, it was found that Mr. Komilov forced her to sign a false statement claiming that she had been subjected to pressure by representatives of investigative bodies. According to the Government, the Office of the Procurator-General of Uzbekistan issued a recommendation to the Tashkent justice department concerning Mr. Komilov's violation of article 53 of the Code of Criminal Procedure (rights and duties of defence lawyers). Based on the outcome of the judicial investigation, the Tashkent justice department took a decision to reprimand Mr. Komilov and to warn him not to repeat the unlawful acts. The Government stated that the procuratorial and the judicial bodies did not exert any unlawful pressure on Mr. Komilov. On the contrary, the Government provided, that the judicial bodies took a milder stance, in spite of the lawyer's violation of the basic principles of the legal profession. The Government also provided information on the constituent documents of the Birlik Popular Movement Party.

285. On 10 June 2005 the Government replied to the Special Rapporteurs' joint urgent appeal of 12 May 2005. The Government advised that in accordance with the decision of a judicial panel of the Supreme Court of the Republic of Uzbekistan on criminal cases dated 8 February 2005, amended decision of the Court of Appeal of the Andijan regional court dated 14 December 2004 and the verdict of the court dated 27 October 2004, Mr. Baktiorzhan Tuichiev was sentenced to death sentence pursuant to the subparagraphs (in Uzbek) part 2, of the Article 97, subparagraphs (in uzbek), part 2 of the Article 25 , 97, subparagraph "B", part 4, of the Article 164, subparagraph "B", part 4, of the Article 25, 164 and subparagraph "B", part 4, of the Article 169 and the Article 276, part 1, of the Criminal Code of the Republic of Uzbekistan. The Government stated that Mr. Nazirzhan Azizov was sentenced to death sentence pursuant to subparagraphs (in Uzbek), part. 2, of the Article 97, subparagraphs (in Uzbek), part 2, of the Article 25, 97, subparagraphs (in Uzbek), part 2 of the Article 25 , 97, subparagraph "B", part 4, of the Article 164, subparagraph "B", part 4, of the Article 25, 164 and subparagraph "B", part 4, of the Article 169 and the Article 276, part 1, of the Criminal Code of the Republic of Uzbekistan. Mr. Khurshid Salaydinov was sentenced to death sentence pursuant to subparagraphs (in Uzbek), part. 2, of the Article 97, subparagraphs (in Uzbek), part 2, of the Article 25, 97, subparagraphs (in Uzbek), part 2 of the Article 25, 97, subparagraph "B", part 4, of the Article 164, subparagraph "B", part 4, of the Article 25, 164 and subparagraph "B", part 4, of the Article 169 and the Article 276, part 1, of the Criminal Code of the Republic of Uzbekistan. Furthermore, according to the court verdict, they were found guilty of committing the following crimes: having been imprisoned twice before B. Tuichiev gathered people, including N. Azizov and K. Salaidinov, who were being on wanted list as a criminal group to illegally possess the property of other people by robbery and committing premeditated murders and other grave and very grave crime. The Government provided that, in February 2004, B. Tuichiev and N. Azizov allegedly killed a person premeditatedly and under aggravated circumstances in order to seize her property by robbery. The group took her away by car and killed her premeditatedly. Other two members of the group, including K. Salaidinov, participated in committing the crime as a "back-up". The Government further provided that the group planned to possess by robbery and attempting to kill the property of other people on the same day. In March 2004, and on 7 April 2004, members of the group were involved in killing and robbery. Law enforcement officers, in accordance with the provisions of the Criminal Procedure Code arrested B. Tuichiev, K. Salaydinova and N. Aziziov on 2 May 2004 by confirmed material evidences and in the presence of witnesses. The Government stated that all allegations of Bakhodir Tuichiev and N. Salaydinova in their communication to the UN Human Rights Committee were groundless and unsubstantiated. In particular, the allegations of course of court hearings, proof and planting of evidences and absence of access to a lawyer did not correspond to the real situation. Besides the frank confession of guilt in the court by B. Tuichiiev, N. Azizov and Kh. Salaydinov, their guilt in committing the crimes were confirmed by the following: - confessions and evidences provided by M. Umarov and T. Kuchkarov, who were also convicted, and by victims and eye-witnesses. According to the Government, all convicted persons were granted with full access to lawyers and all investigation actions had been accomplished with participation of lawyers from the time of their arrest on 2 May 2004. Lawyers had defended the aforementioned convicted persons at all stages of preliminary investigation and court hearings. The convicted persons were not subjected to physical or psychological pressure, including torture or any form of ill-treatment, which was confirmed by case materials. The convicted persons confirmed that interrogations during preliminary investigation had been held with participation of lawyers, they had given their confessions

under their own wish and there had been no pressure exerted against them. Preliminary investigation and judicial processes had been implemented in conformity with provisions of the Criminal Procedure Code of the Republic of Uzbekistan, and the conclusions on the guilt of convicted persons had been substantiated. The court properly identified punishment measures against B. Tuichiev, N. Azizov and Kh. Salaydinov as death penalty which revealed the following crimes: B. Tuichiev leading an organized criminal group, at aggravated circumstances participated in killing 3 persons and attempts to kill 3 persons through crimes of robbery and thefts; N. Azizov actively participating in the organized criminal group, at aggravated circumstances participated in killing two persons and attempts to kill 3 persons through crimes of robbery; Kh. Salaydinov actively participating in the organized criminal group, at aggravated circumstances participated in killing 2 persons and attempts to kill 3 persons through crimes of robbery. The sentences had been taken in view of absolute danger of these persons to the society and absence of effect and possibility for reformatory or correction work with regard to them. Following the request of the UN Human Rights Committee in accordance with rule 92 of the Rules of Procedures the State party had taken interim measures to suspend the sentences against them. The convicted persons were being held in the penitentiary institution of the Main Directorate on Execution of Punishment of the Ministry of Internal Affairs of the Republic of Uzbekistan, at the time this communication was sent. Health conditions of B. Tuichiev, N. Azizov and Kh. Salaydinov were registered as satisfactory level.

286. On 1 July 2005 the Government replied to the Special Rapporteurs' joint urgent appeal of 29 June 2005. The Government provided that Alisher Khatamov was convicted on 16 March 2005 by Tashkent Regional Court, under articles 25-97 paragraphs 2 (a), (c), (g) and (i) (premeditated murder), article 164 paragraph 4 (a) (robbery with violence), article 169 paragraph 4 (a) (theft), article 227 paragraph 4 (a) (acquisition, destruction, damage to or concealment of documents, stamps, seals or blank forms), article 247 paragraph 1 (unlawful acquisition of firearms, ammunition, explosive substances or devices), article 276 paragraph 1 (unlawful possession, production, purchase, storage and other activities with narcotic and psychotropic substances without the purpose of resale), and article 59 (determination of penalties for commission of multiple crimes) of the Criminal Code of Uzbekistan. The Government further provided that, on 9-10 October 2003, Alisher Khatamov unlawfully entered a house in the town of Buka, and stole some property, and on 27 April 2004, he committed armed robbery. In September 2004, Alisher Khatamov stole a shotgun and ammunition, and on 6-7 October 2005, he killed his uncle and aunt. The Government stated that Mr. Khatamov's claims that:

(a) during the investigation, he was subjected to physical and psychological pressure by militia officers and all the admissions he made were extracted by torture without a lawyer present;

(b) defence witnesses were put under pressure during the trial, and many witnesses were not questioned as a result of unmotivated refusals by the judge;

(c) the court paid no attention to these violations, and sentenced Alisher Khatamov to death without justification;

287. The Government indicated that the arguments adduced in Mr Khatamov's complaint were unfounded and shown to be so by the evidence in the case file. The Government also

provided the details of Mr. Khatamov's statement at his trial and of the evidence for the case. The Government assured that from the moment Alisher Khatamov was taken into custody, all interrogations, investigations and court hearings in relation to his case were conducted with lawyers present, and that no violations of the Code of Criminal Procedure had been established and Mr. Khatamov's conviction was recognized as being correct.

288. On 28 October 2005, the Government responded to the Special Rapporteurs' joint urgent appeal of 21 October 2005. The Government regarded as inadmissible the statements of the Special Rapporteurs, which according to the Government were not taking into account a real situation in connection with the acts of terrorism in Andijan and outcome of the investigation. Therewith, the Government advised that not waiting for outcome of court proceeding, the Special Rapporteurs doubted the competence of investigative and judicial bodies of the sovereign state. According to the Government, the statement of the Special Rapporteurs contained explicit speculations causing perplexity of the Uzbek side, in particular the reference made to an alleged demand of a prosecutor to pass death penalty against defendants. The Government advised that during the trial process such demands had not been tabled. Moreover, the prosecutor in view of gravity of crimes, had demanded to sentence the accused persons to imprisonment from 15 to 20 years. The Government provided information about the measures taken by the Government of the Republic of Uzbekistan in the protection and promotion of Human Rights, in criminal and penitentiary legislation, and in the abolition of death penalty. According to the Government, on May 12 and 13, 2005 the several groups of the armed persons carried out the number of terrorist acts in the city of Andijan, which resulted in the death of 187 people and 289 people suffered bodily injuries. After the tragic events, the Government had declared about its commitment to undertake the transparent and objective investigation of them. The independent parliamentary commission and international task force on monitoring the investigation form among the diplomatic corps, accredited and Tashkent had been established. The Government stated that since September 20, 2005 the court had been openly hearing the case of those 15, who had actively engaged in the terrorist acts. The representatives of the diplomatic corps and international organizations including the UN, OSCE/ODIHR, UNHRC, and SCO were observing the court proceedings and they had free access to the courtroom. Furthermore, according to the Government, the outcomes of the investigation and ongoing court hearings witness that the terrorist acts were revealed to have thoroughly been planned and organized on the part of outside destructive forces, aimed at changing the constitutional regime in Uzbekistan. The unleashing of the broad information and propaganda activity against Uzbekistan with involving to it of the international human rights organizations became as one of the general strategy elements of perpetrators of the terrorist acts. The Government advised that the Andijan events were exclusively internal affair of the sovereign Uzbekistan, which did not pose any threats to regional and international peace and security. The acts on the part of the Government of Uzbekistan corresponded the international – legal norms, and in particular, the UN Chapter. Moreover, the Government stated that Uzbekistan had provided undeniable materials concerning the connection of 15 Uzbek citizens to the terrorist attacks in Andijan, which were kept in Osh's prison, 11 of them were evacuated in contravention of the international law norms. Besides Uzbekistan was claiming for returning only those who had taken an immediate part in commitment of terrorist attacks in Andijan. According to the Government, Uzbek citizens moved to Kyrgyzstan had not needed any international protection. Actions taken concerning them had led to over-politicization of human rights situation in Uzbekistan with later discussing it in the framework of the European Union, the UN and its Human rights agencies.

289. On 17 November 2005, the Government sent information relating to the Andijan events and the outcome of the trial process. These materials enclosed the Statement by the Press Service of the Supreme Court of the Republic of Uzbekistan, the Statement of the Press-Service of the Office of the Prosecutor-General of the Republic of Uzbekistan, and about the results of the trial on 15 active participants of terrorist attacks in Andijan in May 2005.

290. On 28 November 2005, the Government replied to the Special Rapporteurs'joint urgent appeal of 26 August 2005. The Government provided that Dilshadbek Khajiev, Tavakkalbek Khajiev, Hasan Shakirov and Muhammad Kadirov were detained at penal facility 64/IZ-1 in Tashkent, and the preliminary investigation of their cases were being conducted by the Criminal Investigation Department of the Office of the Procurator-General, at the date this reply was sent. The Government also assured that the entire criminal investigation was being overseen directly at the highest level of the Office of the Procurator-General. According to the information provided by the Government, on 31 May 2005, charges were brought against Dilshadbek Khajiev in absentia, under various articles of the Uzbek Criminal Code, namely article 155, paragraphs 3 (a) and (b) (Terrorism resulting in fatalities or other serious consequences), article 159, paragraph 3 (b) (Crimes against the constitutional order of the Republic, committed by an organized group or in the interests of such a group), article 161 (Sabotage), article 242, paragraph 2 (Formation, leadership or membership of an armed group), article 244 (Mass unrest), article 247, paragraph 3 (a) and (c) (Aggravated taking of a firearm, ammunition or explosives) and article 97, paragraph 2 (a) and (f) (Murder of two or more persons during mass unrest). On 29 May 2005, Tavakkalbek Khajiev was charged in absentia in case No. 24/05-2134 under various articles of the Uzbek Criminal Code, namely article 155, paragraph 3 (a) and (b); article 159, paragraph 3 (b); article 161; article 242, paragraph 2; article 244; article 247, paragraph 3 (a) and (c); and article 97, paragraph 2 (a) and (f). The preventive measure of remand in custody was specified and a search warrant was issued. On 3 June 2005 Hasan Shakirov was charged in absentia in case No. 24/05-2134 under various articles of the Uzbek Criminal Code, namely article 155, paragraph 3 (a) and (b); article 159, paragraph 3 (b); article 161; article 242, paragraph 2; article 244; article 247, paragraph 3 (a) and (c); and article 97, paragraph 2 (a) and (f). The preventive measure of remand in custody was specified and a search warrant was issued. On 18 May 2005 Muhammad Kadirov was charged in absentia in criminal case No. 24/05-2134 under article 155, paragraph 3 (a) and (b), of the Criminal Code. The Government further provided that preventive measure of remand in custody was specified and a search warrant was issued for each individual, and as a result of the measures taken, they were located in Kyrgyzstan. The Office of the Procurator-General of Uzbekistan transmitted an application to the Procurator-General of Kyrgyzstan on 6 June 2005, requesting their extradition to the Uzbek investigative agencies. According to the Government, they all returned to Uzbekistan on their will on 26 June 2005.

291. On 29 November 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 6 September 2005. The Government provided that, on 27 August 2005, the law enforcement authorities in Tashkent arrested Ms. Elena Urlaeva for distributing material which desecrated and defiled a State symbol of the Republic of Uzbekistan. Such acts come under article 215 of Uzbekistan's Criminal Code (Disrespect towards State symbols of the Republic of Uzbekistan) and are punishable offences. That same day, the Tashkent procurator initiated a criminal investigation. The Government further provided that the investigating authorities decided, on the basis of articles 567 and 568 of the Code of Criminal Procedure of

the Republic of Uzbekistan, to conduct a psychiatric examination as to her mental state at the time of the commission of the offence. On 28 August 2005, the examination concluded that Ms. Urlaeva was not of sound mind, and accordingly, the investigating authorities decided, pursuant to articles 265 and 266 of the Code of Criminal Procedure, to place Ms. Urlaeva in a mental institution. Following the investigation, the case was brought before the courts on 16 October 2005 together with the procurator's decision to apply coercive measures of a medical nature. In the decision of the court of 27 October 2005, Ms. Urlaeva was absolved from criminal responsibility on the basis of the medical diagnosis. Instead, the court ordered her to undergo a course of treatment as an outpatient in a mental hospital.

292. On 29 November 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 21 October 2005 and advised that the criminal division of the Uzbek Supreme Court had held open hearings in part of the criminal proceedings against 15 persons in connection with crimes committed on 12 and 13 May 2005 in Andijan. The 15 persons were accused of committing offences under article 97 (aggravated homicide), article 155 (terrorism), article 159 (crime against the constitutional order of the Republic of Uzbekistan), article 242, paragraph 1 (preparation or dissemination of materials that threatens public order and security), article 244, paragraph 2 (formation, leadership or membership of religious extremist, fundamentalist or other prohibited organizations), article 247 (unlawful taking of firearms, ammunition or explosive or explosive devices), article 132 (destruction of, or damage to, historical or cultural monuments) and other articles of the Uzbekistan Criminal Code. The court found the accused guilty and sentenced them to 14 to 20 years imprisonment. According to the Government, there was no restriction placed by the court on observing the trial, and both defence and prosecution were provided with equal conditions and opportunities for conducting impartial adversarial proceedings. The Government also advised that the confession of the accused was very similar to the indictment because, in accordance with Uzbek legislation on criminal procedure, the indictment was drawn up based on the evidence, including the statements made by the accused. During the pretrial investigation and the judicial examination, the accused and their defence lawyers did not submit any complaints concerning their subjection to physical, psychological or any other form of coercion. Medical examinations of the accused during the investigation did not reveal any traces of physical coercion either. During the trial, the presiding judge asked the defendants whether they had been subjected to illegal methods or physical or psychological coercion, to which the defendants answered in the negative. The Government assured that all substantiated evidence was carefully, thoroughly, comprehensively and objectively studied, and denied the allegation that the Uzbek authorities may have been using the charge of terrorism as a tool to punish the defendants for the religious or political beliefs and convictions they held. The lawyers representing the defendants were chosen by defendants themselves, and there was no restrictions placed on lawyers' meetings with defendants, and no interference had been reported. Lastly, the Government also provided the relevant text of the Uzbek Criminal Code.

293. On 29 November 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 3 November 2005. The Government provided that the Economic Crimes and Corruption Department of the General Procurator's Office was investigating in connection with the criminal proceedings against Sanjar Umarov and his brother at the time this reply was sent. The investigation was with regard to suspected economic crimes over a long period of time. Search of the office was carried out as part of the criminal investigation, and Mr. Umarov was arrested by the law enforcement officials. The Government assured that Mr. Umanov was

informed of his rights and obligations as set out in the national legislation on criminal procedure, and that, on 25 October 2005, a lawyer stated to the investigating authorities that he had been Mr. Umarov's lawyer for the past year and a half. However, according to the Government, that Mr. Umarov stated that he did not know the lawyer, and asked lawyers not to be invited without his request. On the same day, a specialist of the Office of Forensic Medicine of the Tashkent Central Department of Health examined Mr. Umanov in the presence of official witnesses, and he was found not to have any physical injury. On 2 November 2005, Mr. Umarov's family agreed to the two lawyers introduced to them to defend Mr. Umarov's interest, and on the following day they were introduced to Mr. Umarov and he gave consent to their participation in the criminal proceedings to defend his interests. The Government also provided that upon application of the lawyers, a psychiatric examination was conducted by specialists from a psychiatric clinic. On 7 November 2005, the examination concluded that Mr. Umarov was not suffering from mental illness. The same day, a medical examination was conducted which concluded that Mr. Umarov was physically healthy. He was placed under arrest.

294. On 29 November 2005, the Government also replied to the Special Rapporteur's joint urgent appeal of 20 September 2005. The reply unfortunately could not be translated in time to be included in this year's report.

Press releases

295. On 26 October, the Special Rapporteur, jointly with other Special Rapporteurs, issued the following press release:

> "UN human rights experts concerned about trial of alleged organizers of Andijan events
>
> "The following statement was issued today Philip Alston, the Special Rapporteur on extrajudicial, summary or arbitrary executions; Martin Scheinin, the Independent Expert on the protection of human rights and fundamental freedoms while countering terrorism; Leandro Despouy, the Special Rapporteur on the independence of judges and lawyers; and Manfred Nowak, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment:"The Special Rapporteurs on extrajudicial, summary or arbitrary executions; on human rights and counter-terrorism; on the independence of judges and lawyers, and on the question of torture express their concern regarding the conduct of the executive and prosecutorial authorities and the legislative framework in relation to the ongoing trial of 15 men before the criminal Chamber of the Supreme Court of Uzbekistan in Tashkent in connection with events in the Uzbek city of Andijan last May.
> "The defendants are accused of being the main organizers of the Andijan events. A report of the Office of the High Commissioner for Human Rights of July 2005 found that consistent, credible eyewitness testimony strongly suggested the military and security forces committed grave human rights violations while curbing demonstrations. The crimes with which the accused have been charged include premeditated murder and terrorism, which are punishable by death. Over 100 others are still in detention in connection with the Andijan events and are

expected to face trial on similar charges.

”The Special Rapporteurs are concerned about allegations of irregularities in preparation of the trial and of defence procedures that are inadequate to ensure a fair trial. They also fear that the crime of terrorism is not defined in national law in a manner compatible with the requirements of articles 6 and 15 of the International Covenant on Civil and Political Rights in relation to crimes subject to capital punishment.

”Moreover, as little evidence has been presented during the trial, apart from confessions; since the defendants admitted their guilt on the first day of the trial reciting the prosecutors' accusatory text and asking for the death penalty; and in light of the fact that they were not cross-examined by independent lawyers, the Special Rapporteurs express concern that the defendants' confessions may have been obtained by means of torture. The previous Special Rapporteur on torture, in his report on a visit to Uzbekistan (document E/CN.4/2003/68/Add.2) wrote that, "torture or similar ill-treatment is systematic as defined by the Committee against Torture [and that] torture and other forms of ill-treatment appear to be used indiscriminately against persons charged for activities qualified as serious crimes such as acts against State interests, as well as petty criminals and others."

”The Special Rapporteurs emphasize that General Assembly Resolution 59/191 stresses that, "States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law". They also underline that, in line with the jurisprudence of the Human Rights Committee, Article 14 of the International Covenant on Civil and Political Rights, on the obligations of States parties to observe rigorously all the guarantees for a fair trial in capital punishment cases, admits no exceptions”.

Government response to press releases

296. On 21 October 2005, the Government responded as follows to the Special Rapporteurs’ Statement from 18 October 2005 relating to 4 Uzbek citizens (see the press release under Kyrgyzstan):

“We express our bewilderment in connection with the Statement of Mr. Leandro Despouy, Special Rapporteur on the Independence of Judges and Lawyers, on 18 October 2005 relating to Uzbekistan. The mandate of the Special Rapporteur of the UN Commission on Human Rights on visit to Kyrgyzstan involves questions of independence of judges and lawyers in this country, but not interference into internal and bilateral affairs of sovereign states. Without visiting Uzbekistan and not studying duly the real situation with regard to terrorist acts and bandit attacks in Andijan, the Special Rapporteur made the tendentious statement and assessment of the situation relating to the full-fledged Member State of the United Nations by using incorrect and unreliable information. The Uzbek side has already commented on the report of the Office of UN High Commissioner for Human Rights (OHCHR) on its mission to Kyrgyzstan in June this year. In particular, we have drawn the attention of the OHCHR to groundless assessment and distorted facts contained in the report. Raising the question of return of the Uzbek citizens from Kyrgyzstan the Government of Uzbekistan has precisely

indicated that the subject matter relates to those persons who had escaped from detention facilities or had committed crimes to be punished under criminal law. These crimes recognized worldwide as acts punishable under criminal law include murder, terrorism, illegal possession of weapons and ammunitions, undermining the constitutional order, taking hostages, participation in activity of banned organizations. By addressing him to UN Member States with the request to receive four criminals who are kept in custody in Kyrgyzstan, Mr. Despouy actually ignores the international legal norms enshrined in the Charter of the United Nations, the 1951 Convention on the status of refugees, UN Security Council Resolutions 1269 (1999), 1373 (2001) and 1624 (2005). Request of Uzbekistan to the Kyrgyz authorities are base on provisions of the UN Charter, the Uzbek-Kyrgyz agreements, correspond to norms of the 1951 Convention on the status of refugees and other instruments of the international law. The Statement of Mr. Despouy contains no argument for the benefit of establishing of non-refoulement principle concerning the Uzbek citizens. The allegation of Mr. Despouy on so-called <<involuntary return>> of four Uzbek citizens in June this year in absolutely groundless. These persons voluntarily returned to Uzbekistan and informed about their participation in the terrorist acts on 13 May 2005 in Andijan. Acknowledgement of the Office of Prosecutor-General of Kyrgyzstan also testifies to voluntary return of these persons. "Concern" of Mr. Despouy with regard to so-called <<pressure on Kyrgyzstan>> causes perplexity. We once again state that Uzbekistan has not exerted and is not exerting any pressure on the authorities of Kyrgyzstan. Moreover, officials of the Kyrgyz Republic deny any allegations on pressure allegedly exerted by the Uzbek side. On the contrary, by their groundless conclusions, including the Statement of Mr. Despouy, representatives of some states and international structures have exerted and continue to exert unprecedented pressure on the authorities of Kyrgyzstan. We consider that the Statement of Mr. Despouy is politically biased and it clearly manifests yet another attempt to discredit Uzbekistan through abuse of power and mandate of the Special Rapporteur. We urge the Special Rapporteur to refrain from such practice inflicting damage on the credibility of the United Nations Commission on Human Rights and its special procedures."

Special Rapporteur's comments and observations

297. The Special Rapporteur wishes to express his thanks to the Government of Uzbekistan for its cooperation and the information provided in response to all his communication but one (16 February) and his press release. He notes that in the course of 2005 no less than nine communications had to be addressed to the Government of Uzbekistan. He is quite worried by the frequence and gravity of the allegations he has received troughout the year regarding situations in Uzbekistan and can only but reiterate his serious concern about the generally deteriorating human rights situation in the country. He is especially concerned regarding the conduct of the executive and prosecutorial authorities and the legislative framework in relation to the conduct of trials. This is particularly exemplified in the ongoing trial of 15 men before the criminal Chamber of the Supreme Court of Uzbekistan in Tashkent in connection with events in the Uzbek city of Andijan last May. The Special Rapporteur trusts that Uzbekistan needs to proceed to in-depth reforms of its Judiciary if it is to be in a position to impart fair justice as per democratic and United Nations standards and, to that end, the country could greatly benefit

from technical assistance ranging from legal education to structural reforms affecting, more especially, the role of the prosecutor and of judges and lawyers. Finally, he wishes to assure the Government that its letter of 29 November 2005 is under study at the time of finalizing this report and will be included in the next report.

Venezuela (Bolivarian Republic of)

Comunicaciones enviadas al Gobierno por el Relator especial

298. Ver informe E/CN.4/2005/60/Add.1, para. 164 : caso de Danilo Anderson.

299. El 3 de mayo de 2005, el Relator Especial, junto con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con el abogado Carlos Ayala Corao, Presidente de la Comisión Andina de Juristas (CAJ) y ex-Presidente de la Comisión Interamericana de Derechos Humanos (CIDH) de la Organización de Estados Americanos (1998/1999). De acuerdo con la información recibida, el 5 de abril de 2005 el abogado Carlos Ayala Corao fue citado a declarar en el marco de una investigación que lleva a cabo la Fiscalía Sexta con Competencia Nacional del Ministerio Público. Se afirma que en el documento de citación no se habrían especificado los hechos por los que se le investiga. El Sr. Ayala se presentó a declarar, pero no fue imputado y se fijó para el 14 de abril la siguiente audiencia del caso. El 14 de abril de 2005, la Fiscal Luisa Ortega Díaz imputó al abogado Carlos Ayala Corao la presunta comisión del delito de "conspiración" (tipificado en el artículo 144/2 del Código Penal), en relación a su supuesta participación en la redacción del decreto de 12 de abril de 2002 con el que Pedro Carmona pretendió ilegítimamente disolver los poderes públicos en un golpe de estado. El Sr. Ayala Corao negó con firmeza dicha imputación. Afirmó que, por el contrario, durante los sucesos de abril de 2002, su principal actividad fue proteger los derechos del Congresista Tarek William Saab, detenido por los servicios de seguridad. Durante dicho período, el Sr. Ayala Corao emitió serios cuestionamientos al referido decreto N° 1 del Gobierno de facto de Pedro Carmona Estanga. Se ha expresado preocupación de que las imputaciones contra el abogado Ayala Corao constituyan un intento de impedirle realizar su trabajo en defensa de los derechos humanos, tanto en Venezuela como en foros internacionales. Esta preocupación es mayor, a la luz del hecho que el Sr. Ayala Corao es un abogado y jurista reconocido, tanto nacional cuanto internacionalmente, que ha ocupado la carga prestigiosa de Presidente de la Comisión Interamericana de Derechos Humanos (CIDH) de la Organización de Estados Americanos de 1998 a 1999 y que se ha destacado por su intensa labor para la defensa de los derechos humanos a los más altos niveles. Resulta también muy preocupante que el hecho de ser peticionario en diversos casos sometidos a los órganos del Sistema Interamericano de protección de los derechos humanos habría ocasionado el Sr. Ayala Corao ser víctima de diversas amenazas.

Comunicaciones del Gobierno

300. Mediante comunicación del 31 de marzo de 2005, el Gobierno proporcionó información en relación con la reestructuración del poder judicial en Venezuela. En particular, el Gobierno resaltó lo referente a la promoción del proceso de formación y selección de jueces idóneos, quienes se incorporarán al poder judicial a través de la Escuela Nacional de la Magistratura, creada en agosto 2004. Asimismo, destacó que el Tribunal Supremo de Justicia es

un ejemplo en virtud del aumento de la productividad en todos los tribunales de las diferentes jurisdicciones del país, y que además se ha incrementado el número de tribunales, como una medida para resolver el problema del retraso procesal. Por otra parte, el Gobierno informa de la iniciativa del Tribunal Supremo de Justicia en la elaboración de un Proyecto de Código de Ética del Juez, el cual ha sido presentado a la consideración de la Asamblea Nacional para su discusión. Finalmente, detalla el procedimiento público de nombramiento y remoción de los jueces, según los lineamientos de la Constitución Nacional de 1999. En especial, destaca el proceso para la escogencia de los magistrados del Tribunal Supremo de Justicia, en el cual participan el poder legislativo, el poder ciudadano y la sociedad civil. Además, los concursos de oposición para el nombramiento de jueces de carrera serán reanudados con la mayor brevedad posible una vez se ponga en funcionamiento la Escuela Nacional de la Magistratura.

301. Mediante comunicación del 28 de septiembre de 2005, el Gobierno proporcionó información en relación al llamamiento urgente enviado el 3 de mayo de 2005. El Gobierno informó que los abogados del Sr. Carlos Ayala Corao tuvieron desde el 14 de abril de 2005 hasta el 26 de julio acceso en 47 ocasiones a piezas y videos del expediente del caso. Los abogados José Tadeo Sain Silveira, Rafael José Chavero Gazdik y Pedro Berrizbeitia Maldonado, en representación de Ayala Corao, han revisado las piezas desde el número 1 hasta la 23, y en cuatro ocasiones han solicitado ver los videos del caso. Dichos abogados acudieron a la Fiscalía 6° Nacional 10 veces en abril, 18 veces en mayo, 12 veces en junio y 7 veces en julio. Paralelamente, el Gobierno afirmó que el 14 de abril el Sr.Ayala Corao en la citación hecha por el Ministerio Público tuvo conocimiento de los elementos de convicción que tiene el Ministerio Público sobre su presunta responsabilidad penal, imputándole la presunta comisión del delito de conspiración, fue en este momento en el que adquirió los derechos en lo que respecta al acceso de las actas y la promoción de pruebas y experticias, consagrados en los artículos 125,130 y 131 del Código Orgánico Procesal Penal. El Gobierno negó que Ayala Corao se haya visto imposibilitado de conocer sus cargos y de presentar pruebas. Asimismo, el Gobierno declaró que era falso que al ciudadano Ayala Corao se la haya negado la posibilidad de declarar, dado que en el momento de requerírsele su testimonio como imputado, este se acogió al artículo 49, ordinal 5°, de la Constitución de la República Bolivariana. El Gobierno también afirmó que el Ministerio Público no cederá a presiones de institución alguno, nacional o internacional, en lo que respecta a su facultad de ejercer la persecución penal en representación del Estado, lo que siempre ha efectuado con imparcialidad y respeto a las garantías procesales. Además, el Gobierno advirtió que esta organización no tiene competencia para exigir la finalización de una causa y, en consecuencia, inmiscuirse en las atribuciones que como institución autónoma e independiente le corresponden al Ministerio Público.

302. Mediante comunicación del 28 de octubre de 2005, el Gobierno proporcionó información adicional en relación al llamamiento urgente enviado el 3 de mayo de 2005. El Gobierno afirmó en relación con la denuncia de supuesto acoso y persecución hacia el abogado Carlos Ayala, que la Dirección de Protección de Derechos Humanos del Ministerio Público informó que la Fiscal Sexta de ese Ministerio Público, abogada Luisa Ortega, quien lleva la causa abierta contra el señor Ayala Corao, desconoce la existencia de algún tipo de denuncia introducida por el implicado o alguno de sus representantes legales, por lo que no se ha solicitado al órgano jurisdiccional competente, medida cautelar alguna. Paralelamente, el Gobierno anunció que el Ministerio Público reiteró que el pasado 14 de abril del presente año, el señor Carlos Ayala Corao fue imputado por la comisión del delito de conspiración para

cambiar violentamente la Constitución de la República Bolivariana de Venezuela, lo cual está previsto y sancionado en el artículo 144, numeral 2° del Código Penal.

Comentarios y observaciones del Relator especial

303. El Relator Especial agradece al Gobierno de Venezuela su grata cooperación y la información proporcionada. En relación con la reestructuración del poder judicial en Venezuela, el Relator Especial nota con preocupación la suspensión, desde hace varios años, de los concursos de oposición para el nombramiento de jueces de carrera en Venezuela. Tomando nota de que la Escuela Nacional de la Magistratura fue creada en agosto 2004, el Relator Especial invita el Gobierno a reanudarlos urgentemente y a proporcionarle la información correspondiente al respeto. En relación a las alegaciones señaladas al inicio de este capítulo, el Relator Especial nota con satisfacción la información recibida según la cual el Sr. Carlos Ayala no fue incluido en las acusaciones por conspiración formuladas por el Ministerio Público contra tres personas por su supuesta responsabilidad en la redacción del llamado Decreto Carmona, el 21 de octubre de 2005. Por otro lado, el Relator nota la información recibida de fuentes no-gubernamentales en relación con el asesinato del Sr. Danilo Anderson, (E/CN.4/2005/60/Add.1, para. 164) según la cual la Fiscalía General de Venezuela habría intentado censurar los medios de comunicación para que no informen sobre las actuaciones procesales. El Relator especial pide encarecidamente al Gobierno de Venezuela aclare este tema a la brevedad posible y preferentemente antes de que concluya la 62ª sesión de la Comisión de derechos humanos.

Yemen

Communications sent to the Government by the Special Rapporteur

304. See the Special Rapporteur’s communications of 28 May and 23 December 2004 in E/CN.4/2005/60-Add.1, para. 168 and 169.

305. On 9 March 2005, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, concerning Abdulkareem Al-Khaiwani, editor of the opposition weekly Al-Shoura who had already baen subject to another urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 8 September 2004, in response to Mr. Al-Khaiwani’s sentence of one year’s hard labour for articles he wrote which were reportedly critical of the Government. During the trial it was alleged that he was not permitted to respond to the charges brought against him and was not permitted access to a lawyer. Concern was expressed that the trial of Mr. Al-Khaiwani did not meet international human rights standards in line with your Government's obligations, in particular those emanating from the International Covenant on Civil and Political Rights, as ratified by Yemen. According to the information received, on 1 March 2005 there was an appeal hearing of Mr. Al-Khaiwani’s conviction and during this hearing his defence lawyers Mohammad Naji Allow and Jamal al-Ju'bi were reportedly beaten by security forces after being forcibly removed from the courtroom after a disagreement with the presiding judge. The appeal hearing was postponed to 22 March 2005. The Special Rapporteur requested that an investigation be conducted into the alleged beatings of Mohammad Naji Allow and Jamal al-Ju'bi and that the Government ensure that the lawyers could safely perform their defence duties without intimidation or violence.

306. On 27 October, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on freedom of religion or belief, 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 incommunicado detention of and imposition of the death sentence against Mr. Yahya Al-Daylami. On 9 September 2004, Mr. Yahya Al-Daylami, a religious leader of the Shiite Zaydi minority, was taken into custody in Sa'da by agents of the Political Security Force. As this arrest was carried out by force, covertly, and without an arrest warrant, it had been described as abduction rather than arrest. Since then, he had been held incommunicado at the intelligence detention centre in Sana'a. On 29 May 2005, a special criminal court sentenced Mr. Al-Daylami to death. He was awaiting execution, at the time this communication was sent, as the death sentence requires the approval of the President of Yemen. Mr. Al-Daylami's trial fell short both of international human rights standards and of the standards set forth in Yemen's Constitution. He was detained for more than eight months without access to a lawyer or anybody else. The special court which tried him was not competent under Yemeni law and lacks independence, as it was properly described as part of the executive power and not of the judiciary. Mr. Al-Daylami's lawyers were not only denied access to their client, but also to the relevant documents, including evidence that the court relied on. On 30 January 2005, Mr. Al-Daylami's lawyers withdrew from the case having reached the conclusion that the court was unwilling to respect minimum fair trial guarantees. As set out in the court's decision of 29 May 2005, Mr. Al-Daylami was accused and convicted of two offences: "First, he and another person conducted intelligence connections with, and worked for the interest of, a foreign state which will harm the political and diplomatic position of the Republic. Secondly, he in association with others, planned to attack the constitutional authority in order to change and restrict it from exercising its powers and then to change the regime; he established an organization called 'Youth of Sana'a' to achieve this end…." The decision further stated: "Such acts are criminal offences according to Articles 21, 128(1) and 129 of the Presidential Decree No. 12 of 1994 relating to Crimes and Penalties." The charges against Mr. Al-Daylami were not further specified. It was alleged that the actual reason for the charges against him were his efforts to motivate the public to peacefully protest against detention campaigns that targeted opposition activists. Mr. Al-Daylami had also delivered speeches during public gatherings where he criticized certain policies of the Government such as the failure to respect the law and to combat corruption.

Communications from the Government

307. On 27 April 2005, the Government replied to the Special Rapporteurs' joint allegation letter of 9 March 2005. The Government stated that H.E Ali Abdullah Saleh, President of the Republic of Yemen, issued a decision related to the presidential amnesty granted for the journalist. He left the prison on 24 March 2005. The Government advised that this decision came as a result of the appeal of the Secretariat of the Capital, in its meeting on 22 March 2005, and its approval of the verdict issued in by the Court of first instance in September 2004. Furthermore, according to the Government, this procedure represented the realization of the constitutional right of the President of the Republic to grant amnesty and a true translation of the presidential political recommendations to promote and respect the right to freedom of opinion and expression and to overcome obstacles that hinder the achievement of such goals and objectives. The Government advised that this amnesty was a translation of the presidential

guidance for both the parliament and the government to abolish the imprisonment sentence for journalists and to examine the possibility to amend related laws in order to achieve this goal.

308. On 14 December 2005, the Government replied to the Special Rapporteurs' joint urgent appeal of 27 October 2005. The Government assured that all the procedures of arrest of Mr. Yahya Al-Daylami and his colleague had been carried out in legal way and under the supervision of the Attorney General. On 28 December 2005, the Government provided more detailed reply. The Government advised that Mr. Al-Daylami was arrested in the capital Sana'a on 13 October 2004, pursuant to arrest warrant issued by the Department of Public Prosecutions in accordance with article 189 of the Yemeni Code of Criminal Proceedings No.13 of 1994. Mr. Al-Daylami's home was searched pursuant to search warrant No.2004/34, issued by the Department of the Public Prosecutions in accordance with article 132 of the Yemeni Code of Criminal Proceedings. He was allowed to meet with his family and relatives, and his lawyer was granted permission to see the case file, the evidence and the other substantiating documentation pursuant to an order issued by the judge of the competent criminal court. The court which the case was referred to was the criminal court, which, in accordance with a decision of the Higher Judicial Council, is an integral part of the judicial authority, established in accordance with the Judicial Authority Act and the Constitution. The Government denied the allegation that the lawyers for Mr. Al-Daylami were forced to withdraw from the case. According to the Government, Mr. Al-Daylami confessed to the crime of maintaining intelligence contact with a foreign power, which is a crime against State security for which the legally prescribed penalty, as laid down in article 127 of the Yemeni Code of Criminal Proceedings No.12 of 1994, is capital punishment. The Government further provides that he established a hostile, secret and illegal society in violation of the Yemeni Political Parties and Political Organizations Act No.66 of 1991. According to article 128, paragraph 1, of the Criminal and Penal Code No. 12 of 1992. The court convicted him at a public session held on 21 Rabi` II A.H. 1426, corresponding to 29 May A.D. 2005. A sentence of death was pronounced upon him, and he was afforded the right to appeal within 15 days. After the verdict by the court of first instance, the case was referred to the criminal appeals division of the Central Appeal Court, which held several sessions, the last of which took place on 3 December 2005. The Appeal Court ruling confirmed the criminal court's initial verdict and ordered the judgement to be referred to the Yemeni Supreme Court. With regard to the capital punishment, the Government explained that according to Islamic jurisprudence, capital punishment is an essential part of the Islamic penal system. The Government provided extensive explanation on the procedures to protect the human right to life from any arbitrary act. The Government also affirmed that his physical and mental integrity was protected during all stages of proceedings.

Special Rapporteur's comments and observations

309. The Special Rapporteur thanks the Government of Yemen for its cooperation and the information it provided, while regretting that allegations relayed to it in 2004 have so far remained unanswered. He takes note with satisfaction that Mr. Abdulkareem Al-Khaiwani was granted amnesty and sees no reason for pursuing this particular case. As to Mr. Al-Daylami, he infers from the Government communication that he was eventually executed. While noting the explanation that capital punishement is provided for in the Islamic penal system, the Special Rapporteur wishes to reiterate his firm opposition to the application of the death penalty. In this connection, he wishes to reiterate his request to the Yemen Government that, both as a State party to the International Covenant on Civil and Political Rights and as part of the Islamic

tradition of compassion, they consider the possibility of removing this sentence from their legislation. He wishes to make the same request in the light of the allegations he has received from a non-governmental source in relation to Mr. Fuad Ali Mohsen al-Shahari, (urgent appeal sent on 28 May 2004, see E.CN.4/2005/60/Add.1, para.168) stating that he was executed on 29 November 2005, after being sentenced to death on 12 November 1996 in a trial that reportedly fell short of minimum international standards for fairness. After he was arrested he was reportedly held incommunicado for a month, during which he was allegedly tortured and forced to confess to the murder of a captain in the Political Security Department. He was said to have been sentenced to death on the basis of this "confession". Among other defects in the trial proceedings, defence witnesses reportedly did not testify. It was said that the presence of armed men in court may have intimidated them. The Court of Appeal and the Supreme Court upheld the death sentence in May 1999 and March 2004 respectively. The Special Rapporteur is alarmed by the reiterated allegations he received regarding the application of incommunicado detention for long periods of time and torture in Yemen. He reiterates his opposition as a matter of principle to incommunicado detention for prolonged periods of time and urges the Government of Yemen to look into the matter with a view to reforming its legislation on that point. He further wishes to mention that the explanations provided by the Government regarding the trial of Mr. Al-Daylami have in no way permitted him to remain assured that the accused enjoyed full and due guarantees of defense. In addition, the reiteration of serious allegations regarding the unsatisfactory conduct of judicial proceedings tends to show that there exist difficulties in Yemen in that connection. On that basis, he suggests that it could be relevant and useful to conduct a mission in Yemen so as to examine with the Government the judicial system, and in general to examine with judges and lawyers as well as any human rights organisations the best ways to redress and improve the situation.

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