



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/2006/55/Add.1  
27 March 2006

ENGLISH/FRENCH/SPANISH

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COMMISSION ON HUMAN RIGHTS  
Sixty-second session  
Item 11 (c) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF  
FREEDOM OF EXPRESSION**

**The right to freedom of opinion and expression**

**Report of the Special Rapporteur, Ambeyi Ligabo**

**Addendum**

**Summary of cases transmitted to Governments  
and replies received\***

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\* 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.

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## Introduction

1. At its sixty-first session, the Commission on Human Rights, in its resolution 2005/38 entitled 'The right to freedom of opinion and expression', appealed to all States to cooperate fully with and assist the Special Rapporteur in the performance of his tasks, and to provide him with all necessary information requested by him.
2. The present report contains, on a country-by-country basis, summaries of general and individual allegations, as well as urgent appeals transmitted to Governments between 1 January and 31 December 2005, as well as replies received during the same period. Observations made by the Special Rapporteur have also been included where applicable. During the period under review, the Special Rapporteur transmitted 490 communications on behalf of 1328 people to the Governments of 96 countries: Afghanistan, Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Belarus, Bolivia, Brazil, Burundi, Cambodia, Cameroon, Chad, Chile, the People's Republic of China, Colombia, Croatia, Cuba, Democratic Republic of Congo, Djibouti, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, Gabon, Georgia, Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, India, Indonesia, Iraq, Islamic Republic of Iran, Israel, Italy, Ivory Coast, Kazakhstan, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Libya, Madagascar, Malaysia, Maldives, Mali, Mauritania, Mexico, Mongolia, Morocco, Myanmar, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panamá, Paraguay, Perú, Phillipines, Poland, Republic of Korea, Russian Federation, Rwanda, Russian Federation, Saudi Arabia, Serbia and Montenegro, Sierra Leone, Singapore, Slovakia, Somalia, South Africa, Sri Lanka, Sudan, Syria, Tajikistan, Thailand, Togo, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe and UNMIK (Kosovo).
3. Replies to communications received after 31 December 2005 will be included in the Special Rapporteur's next communication report. Moreover, government replies concerning which translations were not completed by 31 January 2005 will also be included in the Special Rapporteur's next communication report.
4. Owing to restrictions on the length of documents, the Special Rapporteur has been obliged to reduce considerably details of communications sent and received. Replies from Governments could not be published in their entirety either.
5. The Special Rapporteur has used initials for those victims, including victims of sexual violence, inter alia, he deems could be in a potentially particularly sensitive situation, in order to respect their privacy and to prevent the possibility of further victimization. With a view to preserve the presumption of innocence, the same procedure has been adopted by the Special Rapporteur with regard to the alleged perpetrators.
6. The Special Rapporteur wishes to emphasize that the omission of a particular country or territory should not be interpreted as indicating that there are no problems or concerns regarding the right to freedom of opinion and expression in that country or territory.

## SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED

### Afghanistan

7. On 6 October 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Ali Mohaqiq Nasab**, aged 50, editor of the monthly news magazine *Haqooq-i-Zan* (Women's Rights). According to information received, an Islamic cleric in Kabul filed a complaint to the police against the magazine *Haqooq-i-Zan* three months before this communication was sent, alleging that it published material "against Islamic teachings". The complaint referred specifically to two articles published in *Haqooq-i-Zan*: one criticised the severity of the punishment of 100 lashes for those found guilty of adultery. The other argued that abandonment of Islam could not be considered a crime. On 1 October 2005 Ali Mohaqiq Nasab was arrested upon the orders of the Kabul public prosecutor's office. The Kabul public prosecutor's office was reportedly acting on instructions of the President of the Supreme Court of Afghanistan. Ali Mohaqiq Nasab was initially detained at a police station, but was then transferred to Kabul's main prison, where he was being detained, at the time this communication was sent. Ali Mohaqiq Nasab applied for bail and the Afghan Independent Journalists Association offered to act as guarantor. It appeared, however, that, at the time this communication was sent, no action was taken on this application because the office of the Attorney General (Saranwali) referred the matter to a civil court, but the civil court denied its competence to decide, arguing that the Saranwali was competent to grant or deny bail. Moreover, the arrest and detention reportedly violated the law on media which establishes a procedural requirement for any alleged press offence to be referred first to the Media Evaluation Commission. The Media Evaluation Commission, however, had not, at the time this communication was sent, considered the matter yet.

### Observations

8. The Special Rapporteur regrets that no reply to his communication was received at the date this report was finalised. Pending a reply to this communication and without making any determination on the facts of the case, the Special Rapporteur remains concerned about the situation of **Ali Mohaqiq Nasab**, particularly in light of further information received indicating that Ali Mohaqiq Nasab was convicted and sentenced to two years imprisonment on 22 October 2005, and was being held at Kabul Province Jail at the time the information was received. In this context, the Special Rapporteur deems it appropriate to make reference to the principle enunciated, inter alia, by the Commission on Human Rights in its Resolution 2005/38, that the authorities should not resort to criminal laws and punishment for media related offences as these are deemed disproportionate to the gravity of the offence and are incompatible with international human rights law.

### Algeria

9. Le 1 mars 2005, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur l'indépendance des juges et des avocats, et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de **Brahim Ladada**, **Abdelkrim Khide** et **Rachid Mesli**, avocats

algérien. Selon les informations reçues, Rachid Mesli, ayant défendu dans le cadre de son travail de nombreuses personnes accusées de « crimes et délits d'atteinte à 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 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 faisait 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. De plus, 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 les 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 Khider auraient été acquittés par le tribunal d'Alger alors que Me Mesli aurait été condamné par contumace à 20 ans de réclusion criminelle pour « l'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, ne visaient à faire entrave à son action en la faveur des droits de l'homme.

10. Le 19 mai 2005, le Rapporteur spécial a envoyé un appel urgent concernant la situation de **Fouad Boughanem**, directeur du quotidien "*Le Soir d'Algérie*", et **Hakim Laâlam**, chroniqueur du même journal. Selon les informations reçues, ils ont été condamnés, le 17 mai 2005, à deux mois de prison ferme par le tribunal de Sidi M'hamed (Alger) pour outrage et offense au Chef de l'Etat. Les deux journalistes et leur publication ont en outre été condamnés à payer chacun une amende de 250 000 dinars (environ 2,700 euros). L'affaire avait été jugée le 22 mars. Il est reproché à Hakim Laâlam une chronique publiée le 31 décembre 2003 jugée offensante pour le Président Abdelaziz Bouteflika. Comme il est de coutume dans ce genre d'affaires, ni le Président de la République ni la présidence n'ont porté plainte contre les journalistes incriminés. C'est le Parquet qui s'est autosaisi de l'affaire. Les journalistes du "*Soir d'Algérie*" ont été condamnés au titre de l'article 144 du code pénal, amendé en juin 2001, qui prévoit des peines de prison et des amendes pour les délits de diffamation.

11. Le 17 juin 2005, le Rapporteur spécial a envoyé un appel urgent concernant la situation de M. **Ali Dilem**, caricaturiste du quotidien "*Liberté*", qui a été condamné, le 14 juin 2005, à six mois de prison ferme et à une amende de 250 000 dinars suite à une plainte pour diffamation du ministère de la Défense nationale. Les faits remontent au 29 novembre 2001 lors de la parution d'un dessin de Dilem au sujet de l'armée et ses généraux. M. Dilem avait déjà fait

l'objet d'une lettre d'allégation du Rapporteur spécial le 14 juillet 2004. **M. Abrous Outoudert**, directeur du journal à l'époque des faits, a également été condamné à deux mois de prison ferme et à une amende identique tandis que le quotidien a été condamné à verser une amende de 1 million de dinars. Le même jour **M. Kamal Amarni**, journaliste au "*Le Soir d'Algérie*" et son directeur **M. Fouad Boughanem**, ont été condamnés respectivement à six mois de prison ferme et 250 000 dinars d'amende, et à deux mois de prison ferme et 250 000 dinars d'amende pour offense au chef de l'Etat. Pour la même affaire, "*Le Soir d'Algérie*" a été condamné à une amende de 2,5 millions de dinars. Le 17 mai 2005, M. Boughanem avait déjà été condamné à une peine de 2 mois de prison ferme pour une affaire mettant en cause un écrit de M. Hakim Laalam, chroniqueur de "*Le Soir d'Algérie*". M. Boughanem avait déjà aussi fait l'objet d'un appel urgent du Rapporteur spécial du 19 mai 2005.

12. Le 23 septembre 2005, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la torture et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant le harcèlement de **M. Bellatrèche**, président des familles de disparu(e)s constantinoises, **Mme Saker**, membre de familles disparu(e)s constantinoises, **M. Arab**, 75 ans, père d'un disparu et membre de SOS Disparus à Alger, **Mme Yous**, la présidente de SOS Disparus, bureau à Alger, **Mme Ferhati**, membre du bureau de SOS Disparus à Alger, **Mme Nekrouf**, la secrétaire du bureau SOS Disparu à Oran et des **familles de disparu(e)s constantinoises**. Selon les informations reçues le 22 septembre 2005, les familles des disparu(e)s constantinoises se sont rendues au stade Ramdane Ben Abdelmalek, où le Président Bouteflika tenait une manifestation publique, concernant le projet de Charte sur la paix et la réconciliation nationale, avec l'intention de demander audience au Président au sujet de la situation de leurs proches disparus. Les familles auraient été insultées et agressées par des agents des forces de l'ordre, en uniforme et en civil, qui leur auraient donné des coups de pied et de poing. Parmi elles, M. Bellatrèche, ainsi que Mme Saker et cinq autres mères de disparus auraient été embarquées par la police et emmenées au commissariat central afin d'être auditionnées. Au moment où cette communication a été envoyée, elles se trouvaient toujours détenues à l'intérieur du commissariat. De plus, le 14 septembre 2005, M. Arab, membre de SOS Disparus, bureau d'Alger, aurait été embarqué par quatre policiers lors du rassemblement qui se tient tous les mercredis devant la Commission Nationale Consultative pour la Promotion et la Protection des droits de l'Homme, à Alger. Après avoir passé trois heures en garde à vue, le 15 septembre il aurait été inculpé d'une violation de l'article 96 du code pénal pour avoir distribué « des tracts de nature à nuire à l'intérêt national ». Par ailleurs Mme Yous, la présidente de SOS Disparus, bureau d'Alger, aurait reçu des appels anonymes lui conseillant de quitter immédiatement le territoire algérien, si elle souhaitait protéger son personnel et sa famille. Mme Ferhati, membre du bureau de SOS Disparus à Alger, aurait été également harcelée sans arrêt depuis jeudi 15 septembre par des SMS envoyés à son téléphone. Mme Nekrouf, la secrétaire du bureau SOS Disparu d'Oran et fille d'un disparu, aurait été contactée par téléphone par quelqu'un, qui lui aurait affirmé qu'elle allait disparaître comme son père. Le 17 et 18 septembre, trois policiers en civils auraient fouillé le bureau d'Oran sans présenter ni mandat de perquisition ni carte. Ils auraient interrogé Mme Nekrouf pendant 30 minutes.

13. Le 28 septembre 2005 la Mission Permanente a répondu au Rapporteur spécial en relation avec la communication de 23 septembre 2005. La Mission Permanente a informé le Rapporteur spécial que sa communication a été transmise au Gouvernement algérien pour examen et que la réponse lui sera communiquée en temps utile.



14. Le 18 octobre 2005, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de **Mohamed Benchicou**, directeur du quotidien "*Le Matin*" emprisonné depuis juin 2004 et dont l'état de santé se dégradait de jour en jour. M. Benchicou avait déjà fait l'objet d'un appel urgent envoyé le 27 mai 2004 par 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. Selon les informations reçues, M. Benchicou souffrirait d'une grave forme d'arthrose cervicale et la partie droite de son corps serait presque totalement paralysée. Par conséquent, il ne pourrait utiliser que sa main gauche. Le journaliste passerait une grande partie de son temps allongé et éprouverait de grandes difficultés à se déplacer et également à effectuer des gestes simples. Sa femme et ses avocats auraient sollicité, à plusieurs reprises, les autorités pénitentiaires de la prison d'El-Harrach, afin qu'elles lui permettent de suivre un traitement adapté, sans recevoir de réponse. Mohamed Benchicou a fait l'objet de multiples plaintes en diffamation et purge, depuis le 14 juin 2004, une peine de deux ans de prison ferme. En février 2004 il avait publié un livre contre l'actuel président algérien et lors de l'élection présidentielle d'avril 2004, "*Le Matin*", journal duquel Benchicou était directeur, avait fait campagne contre sa candidature. Le quotidien a été par ailleurs suspendu depuis le 23 juillet 2004.

15. Le 9 décembre 2005 le gouvernement a répondu à la communication de 18 octobre 2005. Le gouvernement informe le Rapporteur spécial que selon le rapport médical de l'établissement pénitentiaire, avant son incarcération, **M. Mohamed Benchicou** souffrait d'une pathologie rhumatismale cervicale. Pour cette pathologie, Mohamed Benchicou est régulièrement suivi par le médecin généraliste et un médecin spécialiste qui lui ont prescrit un traitement médical antalgique et anti-inflammatoire ainsi qu'un bilan radiologique exécuté le 6 juin 2005 au centre hospitalo-universitaire de Ben Aknoun. Ainsi, Mohamed Benchicou bénéficie d'une couverture médicale permanente depuis sa détention. Il a subi toutes les analyses médicales requises et est examiné régulièrement par son médecin traitant en plus des consultations spécialisées. Les rapports médicaux du concerné attestent qu'actuellement son état de santé général est bon. Il y a lieu de préciser, enfin, que l'établissement de rééducation et de réadaptation d'El Harrach dispose d'un corps médical permanent constitué de médecins, chirurgiens dentistes, psychologues, d'une infirmerie, d'un service de radiologie, d'un laboratoire d'analyses et d'ambulances. Des permanences sont par ailleurs assurées de jour comme de nuit au sein de l'établissement avec le concours des médecins des secteurs sanitaires.

### Observations

16. Le Rapporteur spécial regrette de ne pas avoir reçu une réponse à sa communication du 1 mars 2005. Dans l'attente de cette réponse, mais sans préjuger les faits examinés, le Rapporteur spécial souhaiterait attirer l'attention du Gouvernement à la Résolution 2005 /38 de la Commission de Droits de l'Homme qui s'est déclarée toujours préoccupée par le fait que ... a) Des violations de la liberté d'opinion et d'expression continuent de se produire, souvent dans l'impunité, notamment des détentions arbitraires, des actes de torture, d'intimidation, de persécution et de harcèlement, des menaces et des actes de violence, visant, entre autres, les défenseurs des droits de l'homme. De plus, la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société visant à promouvoir et à protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 9

para. 3 alinéa c) qui établit que chacun a le droit, individuellement ou en association avec d'autres, d'offrir et prêter une assistance juridique professionnelle qualifiée ou tout autre conseil et appui pertinents pour la défense des droits de l'homme et des libertés fondamentales.

17. Le Rapporteur spécial regrette de ne pas avoir reçu de réponse à ses communications de 19 mai et 17 juin 2005. Dans l'attente de ces réponses, mais sans préjuger sur les faits examinés, le Rapporteur spécial reste inquiet et souhaiterait rappeler à l'attention du Gouvernement le principe de proportionnalité de la peine. A cet égard, des sanctions pénales, en particulier l'emprisonnement pour diffamation, ne semblent pas proportionnelles à un exercice effectif du droit à la liberté d'opinion et d'expression. Ce principe est réitéré par la Résolution 2005 /38 de la Commission de Droits de l'Homme qui a invité tous les Etats a ... j) ne pas recourir, pour des infractions concernant des médias, à des peines d'emprisonnement ou à des amendes qui sont sans commune mesure avec la gravité de ces infractions et qui violent le droit international relatif aux droits de l'homme.

18. Le Rapporteur spécial regrette de ne pas avoir reçu une réponse à sa communication du 23 septembre 2005. Dans l'attente de cette réponse, mais sans préjuger sur les faits examinés, le Rapporteur spécial souhaiterait attirer l'attention du Gouvernement sur la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société essayant de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 12 para. 2 et 3 qui stipule que l'État prend toutes les mesures nécessaires pour assurer que les autorités compétentes protègent toute personne, individuellement ou en association avec d'autres, de toute violence, menace, représailles, discrimination de facto ou de jure, pression ou autre action arbitraire dans le cadre de l'exercice légitime des droits visés dans la Déclaration. À cet égard, chacun a le droit, individuellement ou en association avec d'autres, d'être efficacement protégé par la législation nationale quand il réagit par des moyens pacifiques contre des activités et actes, y compris ceux résultant d'omissions, imputables à l'État et ayant entraîné des violations des droits de l'homme et des libertés fondamentales, ainsi que contre des actes de violence perpétrés par des groupes ou individus qui entravent l'exercice des droits de l'homme et des libertés fondamentales.

19. Le Rapporteur spécial, en remerciant le Gouvernement pour sa réponse du 18 octobre 2005 concernant les soins dont a bénéficié **Mohamed Benchicou**, souhaiterait saisir cette opportunité pour réitérer le principe 22 (2) de l'Ensemble de règles a minima pour le traitement des détenus, qui souligne que ... pour les malades qui ont besoin de soins spéciaux, il faut prévoir le transfert vers des établissements pénitentiaires spécialisés ou vers des hôpitaux civils. Lorsque le traitement hospitalier est organisé dans l'établissement, celui-ci doit être pourvu d'un matériel, d'un outillage et des produits pharmaceutiques permettant de donner les soins et les traitements convenables aux détenus malades, et le personnel doit avoir une formation professionnelle suffisante.

### **Argentina**

20. El 16 de noviembre 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 el **Servicio de Paz y Justicia (Serpaj)**, una organización no-gubernamental que trabaja para la promoción de los derechos humanos y la cultura de la paz en América Latina. Según la información recibida, en la madrugada

del 9 de noviembre de 2005, la sede del Serpaj, ubicada en la Capital Federal, habría sido desvalijada por desconocidos. Además de destrozarse varias puertas y muebles de la Asociación, éstos se habrían llevado seis ordenadores que contenían información sobre la organización, el fax, una impresora y documentación importante relativa a la Cumbre de los Pueblos que tuvo lugar en Mar del Plata entre el 1 y el 5 de Noviembre de 2005. El Serpaj habría denunciado el robo a la policía. El Relator Especial expresó su temor de que el robo pudiera estar relacionado con el trabajo que lleva a cabo la organización por los derechos humanos, y en particular por su participación en los preparativos y desarrollo de la Tercera Cumbre de los Pueblos, en la que se congregaron más de diez mil personas.

21. Por carta con fecha del 6 de diciembre de 2005, el Gobierno transmitió la siguiente información en respuesta a la comunicación del 16 de noviembre de 2005 en relación con el **Servicio Paz y Justicia (SERPAJ)**. A conocimiento de la Secretaría de Derechos humanos del Ministerio de Justicia y Derechos humanos, las alegaciones descritas en la comunicación coincidirían con los hechos verificables en el lugar. Se dio parte a la policía, la que intervino en el caso y llevó a cabo un peritaje. Al tener conocimiento de los hechos, el Secretario de Derechos Humanos emitió inmediatamente un comunicado de prensa repudiando lo acontecido y solidarizándose con el SERPAJ. Un miembro del gabinete de asesores del subsecretario de Promoción y Protección de los Derechos humanos se reunió con el Sr. Pérez Esquivel, actual presidente y uno de los fundadores del SERPAJ, para reiterar su solidaridad.

#### **Seguimiento de comunicaciones transmitidas previamente**

22. Por carta con fecha 4 de agosto de 2005, el Gobierno de Argentina transmitió la siguiente información en respuesta a la comunicación del 12 de agosto de 2004 relativa a la muerte del **Sr. Martín Cisneros**. El Gobierno informó al Relator Especial que el 26 de junio de 2004 se inició la investigación a cargo de la División de Homicidios de la Policía Federal Argentina. Se abrió una causa judicial (N°3716), por delito de homicidio agravado contra dos personas ante el Juzgado Nacional en lo Criminal de Menores N°6. Uno de los imputados era mayor de edad y el hecho de cometer el crimen en compañía de un menor de dieciocho años de edad, se añadió como agravante a su crimen, de conformidad con el código penal. El 26 de abril de 2005, las investigaciones judiciales fueron giradas al Tribunal Oral de Menores N°3 y se encuentran en pleno trámite.

#### **Observaciones**

23. El Relator Especial agradece al Gobierno de Argentina sus respuestas a las comunicaciones enviadas con fecha del 16 de Noviembre de 2005 y del 12 de Agosto de 2004.

24. En lo relativo a su comunicación con fecha de 16 de Noviembre de 2005 el Relator Especial acorge con satisfacción las medidas tomadas por el gobierno. El Relator Especial apreciaría que se le mantuviese informado sobre cualquier avance o desarrollo en esta investigación.

#### **Azerbaijan**

25. On 4 March 2005, the Special Rapporteur sent a letter of allegation concerning **Elmar Huseynov**, publisher and editor-in-chief of the Baku-based independent magazine

*Monitor*. According to information received, Mr. Huseynov was shot dead by an unidentified individual on 2 March 2005 as he was leaving his home. His killing followed the filing of civil and criminal libel law suits against him by the head of the Baku Representative Office of the Nakhchivan Autonomous Republic in response to an article he wrote on corruption in Azerbaijan. Mr. Huseynov was facing \$20,000 in damages from the civil law suit and 6 months in jail as well as a \$500 fine on criminal charges. The Court hearing was scheduled for 4 March 2005. It was reported that since 2000 Mr. Huseynov had been under pressure from the authorities and had faced several law suits against him in connection with his work. The General prosecutor had announced that a thorough investigation into the murder would be carried out. Concern was expressed that Mr. Huseynov was killed because of his work as a journalist, particularly as a result of *The Monitor* being critical of Government policies and senior officials, including the President.

26. On 17 October 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent a letter of allegation concerning fourteen journalists who were reportedly beaten up by police during a demonstration of approximately 700 people in Baku held by the Azadlig opposition group. According to information received, **Ramiz Nadjafli**, editor-in-chief of the weekly *Boz Gurd*, was beaten unconscious and taken to hospital with head injuries, and **Idrak Abbasov**, correspondent of the daily *Ayna-Zerkalo*, was hit on the head with a baseball bat by a group of police officers in civilian clothes. Policemen allegedly did not allow anybody to help the journalist who was left unconscious on the ground for several minutes and finally brought to the hospital. Twelve other journalists were attacked during the demonstration: **Elbrus Seyfullayev** of the "Azer-Press" news agency; **Mahabbat Orudjev**, **Tofik Yagublu**, **Afghan Mukhtarov** and **Mustafa Hajili** of the daily *Yeni Musavat*; **Rasul Mirhashimli** of the *Uch Nogta* news agency, **Orkhan Aslanov** of *ANS TV*, **Anar Shukurov** of *Leader TV*, **Elman Maliyev** of the daily *Express* and member of the press monitoring council, **Sarvan Rizvanov** of the *Turan* news agency and member of the press monitoring council, **Ibrahim Mamedov**, head of the press monitoring council, and **Nabi Alishev**, correspondent of *Baki Khabar* daily.

27. On 28 October 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning the violent dispersal of different opposition rallies, and the arrest of numerous opposition activists, journalists, civil society activists, as well as **Ali Insanov**, Minister for Health, and **Farhad Aliev**, the Minister on Economic Development. According to information received, on 23 October 2005 in Baku, police used force to disperse an unauthorized opposition rally of several hundred demonstrators calling for the 6 November 2005 Parliamentary elections to be free and fair. According to police officials around 15 protesters had been detained. According to opposition leaders the number was closer to 100, with many having been injured. Furthermore, on 16 and 17 October 2005, 200 opposition activists, including several registered parliamentary candidates, as well as activists of the Azerbaijan Democratic Party were reportedly detained on suspicions of planning a forcible seizure of power in connection with the announced return to Baku of the exiled Chairman of the Azerbaijan Democratic Party and registered candidate for the November elections, **Rasul Guliyev**. The Minister for Health, Ali Insanov and the Minister on Economic Development, Farhad Aliev, were both arrested on 19 and 21 October 2005 respectively on the same grounds. Reports indicate that, on 17 October 2005, Mr. Guliyev was briefly detained in Ukraine on the basis of an extradition

request by Azerbaijan claiming that he had been involved in the embezzlements of funds. On 20 October 2005, the Ukrainian authorities found that the continued detention of Rasul Guliyev could not be justified on the basis of the extradition material presented. All persons were released, apart from Ali Insanov, Minister for Health and Farhad Aliev, Minister of Economic Development, who were still in detention at the time this communication was sent. Concern was expressed at the negative impact these actions were having on the desired participation of a free and objective media, of opposition political candidates and of a vibrant civil society in the then nearing election campaign.

28. On 11 November 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning Mr. **Eldar Salayev**, a 72 years old professor and full member of the Academy of Science of the Azerbaijan Republic, and **Natif Efendiyev**, former head of the police department of Gyandja and current deputy chairman of the opposition Democratic Party. According to information received, Mr Salayev was arrested on 27 October 2005 and was being held in the prison of the Ministry of National Security at the time this communication was sent, which the United Nations Committee against Torture had, in 2003, recommended be closed or transferred to the authority of the Ministry of Justice. It was not known whether Mr. Efendiyev had been formally charged with any offence and, if so, which offence. It appeared, however, that his detention was linked to his political activity and that he was accused of preparing for the return to Azerbaijan of Mr. Rasul Guliyev. Mr. Guliyev had been living in the United States for several years and declared that he would return to Azerbaijan to run for the presidential elections. Prior to that, on 17 October 2005, Mr. Efendiyev had been arrested on charges of having plotted a coup d'état and detained at the organised crime unit of the Interior Ministry. Mr. Efendiyev is a political associate of Mr. Rasul Guliyev as well. While in detention, he was reportedly beaten and electrocuted. Reports indicated that he could hardly stand or speak when visited by his wife. He was in hospital in Baku for treatment, at the time this communication was sent, and remained under arrest. Concern was expressed that the arrests of Mr. Salayev and Mr. Efendiyev might have been aimed at preventing them from carrying out their political activities in support of Mr. Guliyev.

29. On 14 November 2005, the Special Rapporteur sent a letter of allegation concerning the harassment of **eight journalists** while covering the legislative elections of 6 November 2005. According to information received, **Mahabbat Orujev**, a journalist for the leading opposition daily *Yeni Musavat* was beaten and briefly detained by police in the 17th electoral district of the Sabunchi region. **Azer Ayhan** and **Rey Kerimoglu**, also working for *Yeni Musavat*, were insulted and thrown out of polling stations in the 5th district of the Sabunchi region by police officers in plainclothes. In the 44th district of Garadag, **Anar Orujev**, a correspondent for the opposition weekly *Paytaht*, was removed from a polling station. In a polling station in the town of Ali-Bayramli, **Shakir Izziatoglu**, a journalist for the opposition weekly *Gyrhchirag*, was reportedly beaten up as he tried to cover polling in that town. Reports indicated that **Nabi Alishev**, **Habiba Abdulla** and **Ruslan Bashirli** all working for the daily *Baki Khabar*, were also beaten and insulted in the 36th district of the Hatai region, in the 26th district of the Sabunchi region and in the 20th district of the Narimov region respectively.

30. On 2 December 2005, the Special Rapporteur sent a letter of allegation concerning at least twelve journalists working for various news media, some of them wearing the special jacket provided by the Press Council, who were allegedly attacked by the police while covering a

demonstration organized by the opposition group *Azadlig* in the capital Baku. According to information received, *Azadlig* and its supporters intended to denounce electoral fraud and to demand new elections since they considered the then recent elections marred by grave irregularities. The gathering was dispersed by force and approximately ten persons were seriously wounded and brought to hospital. Police reportedly also arrested around thirty persons. The Special Rapporteur had also received reports concerning journalists and reporters allegedly attacked by the police: **Elbrus Seyfullayev** of the news agency *Azerpress*; **Shahin Aydin** of the weekly *Bizim Yol*; **Shaida Tulagayeva**, a cameraman working for the BBC; **Shirin Safarov** of the daily *Baki Khabar*; **Zaur Rasulov**, a correspondent for the Russian-language daily *Novoe Vremia*; **Anar Bayramoglu**, a correspondent for the newspaper *Sharg*; **Samir Neymanoglu** of the news agency Turan; **Mustafa Hacili**, deputy editor of the daily *Yeni Musavat*; **Sarvan Rizvanov** of the news agency Turan; **Elman Mailov**, a correspondent for the daily *Express*; **Aga Safarov**, a correspondent for the Turkish daily *Hurriyet*; and **Zohrab Ismail** of the daily *Azadlig*, also a member of the Press Council.

### Observations

31. The Special Rapporteur regrets that no replies to his communications were received at the time this report was finalized.

32. Pending these replies and without making any determination on the facts of the case, the Special Rapporteur remains gravely concerned about the alleged harassment and attacks that tend to fall within a reported pattern of violence and intimidation against the press, journalists and members of opposition parties, in an attempt to silence their criticism of the Government. The Special Rapporteur urges the Government to carry out thorough investigations into the cases referred to in his communications, and to inform him of the outcome of such investigations and of any prosecutions in this regard. In this context, the Special Rapporteur deems it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights, which stated that it is deeply concerned that violations of the right to freedom of opinion and expression continue to occur, including arbitrary detention, intimidation, persecution and harassment, threats and acts of violence, directed against persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers. He strongly encourages the authorities to take all necessary measures to ensure that journalists are allowed to work freely and independently.

### Bahrain

33. On 15 March 2005, the Special Rapporteur sent an urgent appeal concerning **Ali Abdel Imam**, an internet writer and founder and editor of *www.bahrainonline.com*, **Hussain Yousif** and **Mohamed Al Mousawi**, two technicians who worked with Ali Abdel Imam. It was reported that all the three men were charged, at the time this communication was sent, with violating the press, communications and penal codes in connection with their critical writings and comments of Government performance, policies and reforms on their internet forum which features news and discussion forums on Bahrain. *Www.bahrainonline.com*, which was blocked by the authorities in 2002, had, since then, been accessed through proxies. The authorities claimed that Ali Abdel Imam had facilitated the publication of defamatory material on his website's discussion forum. According to information received, on 27 February 2005, Ali Abdel Imam, Hussain Yousif and Mohamed Al Mousawi were detained by Bahraini authorities and were

remanded in custody for 15 days while pending investigations against them for charges punishable with up to 10 years in prison. Ali Abdel Imam was, at the time this communication was sent, scheduled to appear before the Public Prosecutor on 14 March 2005.

34. On 8 April 2005 the Government of Bahrain replied to the communication of 15 March 2005. At the time this report was finalized, this reply was still in the process of being translated.

35. On 13 June 2005, the Special Rapporteur, jointly with the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **G.Y.J.**, 38, living in Muharraq, a leading women's rights activist, President of the Women's Petition Committee and President also of the Bahrain Social Partnership for Combating Violence Against Women. According to information received, **G.Y.J.**, as the head of the Women's Petition Committee, which is a network of activists demanding reform of Bahrain's family laws and family courts, reportedly organized, during four years, protests, vigils and a hunger strike in an effort to draw attention to how the existing family court system allegedly discriminates against women. She also presented numerous complaints to the Ministry of Justice and the Office of the King reporting the mishandling of cases by certain judges. According to information received, defamation charges were brought against her in three separate cases for having publicly criticized family court judges. If convicted, she faced up to fifteen years imprisonment. The first court hearing took place on 9 June 2005. The second sitting was, at the time this communication was sent, scheduled for 19 June 2005. Moreover, according to information received, there are two separate family courts in Bahrain hearing personal status cases, including those of marriage, divorce, custody of children and inheritance - one for Sunni Muslims and another for Shia Muslims. Since there are reportedly no written personal status laws in Bahrain, judges hearing these cases have the authority to take decisions according to their own reading of Islamic jurisprudence. On many occasions, cases are reportedly decided arbitrarily to the detriment of women's rights and dignity. For example, according to information received several judges denied women custody of their children because they worked or were pursuing higher education. On the basis of this information, the Special Rapporteur had expressed concern that the above-mentioned family courts might not be in compliance with international laws and standards on women's human rights.

36. By letter dated 8 July 2005, the Government responded to the communication of 13 June 2005, concerning **G.Y.J.** The Government explained that several judges of Sharia courts had lodged complaints against Ms. **G.Y.J.**, which led the Department of Public Prosecutions to launch an inquiry into the matter. They summoned Ms. **G.Y.J.** twice for questioning but did not arrest her. Ms. **G.Y.J.** was then charged on three counts of 1. Publicly insulting the Shariah courts of the Kingdom of Bahrain, an offence for which the penalty is up to three years' imprisonment or a fine of up to 500 dinars; (2) Using abusive language in a telephone conversation, against a Shariah judge, an offence for which the penalty is up to six months' imprisonment or a fine of up to 50 dinars; and (3) Insulting a Shariah judge, an offence for which the penalty is up to six months imprisonment or a fine of up to 50 dinars. The criminal court delivered its judgment on 19 June 2005, dismissing the first charge on procedural grounds and referring the second and third charges to the lower courts. The Government explained that the criminal case brought against Ms. **G.Y.J.** was not related to her activities as a human rights and women's rights activist. The Government also explained that the Shariah

courts in Bahrain are fair, impartial and transparent. Bahrain's Shariah courts are subdivided into the Sunni courts and the Ja`fari courts, which apply Islamic law according to the school of law to which the person before it adheres or which he or she chooses upon marriage. The Shariah courts are governed by the Code of Shariah Procedures, which regulates both schools of law and establishes two levels of courts. In addition, the Judicial Authority Act defines the subject matter jurisdiction of the Shariah courts and regulates all matters relating to the discharge of their functions. The Government also highlighted safeguards in place to protect women and children's rights with regard to Shariah courts, such as regular and unannounced inspections and numerous guidelines issued for litigants in proceedings before Shariah courts. The Higher Council of the Judiciary and the Shariah courts are working together on the elaboration of a personal status code to codify and develop the Islamic Shariah, taking account of the Kingdom's concern for the protection of women and children's rights. The Government also highlighted the role of the Higher Council for Women in promoting and protecting women's rights.

37. On 25 July 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning the disproportionate use of force by the Bahraini security forces against demonstrators. According to information received, on 15 July 2005, **a group of demonstrators** including **Nabeel Rajab** and **Abdulhali Alhawaja** gathered in Manama to protest against the national budget passed by the Bahraini Parliament and the Shura Council, in particular the absence of provisions for a social welfare fund for the unemployed and low earners. The demonstration had been called by the Committee of the Unemployed with participation from members of the National Committee for Martyrs and Victims of Torture and the Bahrain Centre for Human Rights. Several protesters were allegedly beaten by the Bahraini police forces and some 30 demonstrators had to be taken to hospitals for treatment, some of them suffering from several fractures and other serious wounds. Nabeel Rajab was said to have sustained a fractured arm, a head injury and a broken finger. Reportedly, the Bahraini Parliament backed the police action, and condemned the rally as a threat to democracy and an insult to all Bahraini citizens. On 17 July 2005 a new gathering was held peacefully to denounce the beating of protesters by police on 15 July. According to the information received, on 19 June 2005, during a similar demonstration in front of the Royal Court in Rifa'a, the anti-riot police violently dispersed a demonstration of 50 unemployed Bahrainis and arrested around 30 of them who were released on the same day.

38. On 8 November 2005, the Government of Bahrain replied to the communication of 25 July 2005 concerning complaints about ill-treatment of demonstrators by members of the security forces in Manama on 19 June and 15 July 2005. The Government stated that it understands the importance of promoting and protecting human rights and the necessity of protecting citizens' civil and political rights, as demonstrated by the democratic changes embodied in the Kingdom's Constitution of 2002, which reaffirms the protection of human rights and public duties. Article 23 of the Constitution affirms the right to freedom of opinion and expression, while articles 27 and 28 assert the right to form associations and to hold public meetings, parades and gatherings, in accordance with the law. The Government stressed, however, that this right must be exercised within the framework established by law and without prejudice to the rights or reputation of others or to national security or public order. These restrictions are referred to in articles 19 and 21 of the International Covenant on Civil and Political Rights. The Government assured the Special Rapporteur that Parliament would take necessary measures to accede to the Covenant, and to the International Covenant on Economic,



Social and Cultural rights. The Government also pointed out that there had been 450 sit-ins, demonstrations and protests in the Kingdom of Bahrain in the previous 14 months to when the communication was sent, and none of the participants had made any allegations about being subjected to violence or the use of excessive force. These sit-ins were, at the time this reply was received, still being staged and were permitted by law and the Constitution. The Government also commented that most of the participants in the two events also took part in similar sit-ins and demonstrations in the days that followed but had not made any allegations about violence. The law, in the Government's view, is compatible with the Bahraini Constitution, and international treaties and resolutions which the Kingdom had either ratified, or approved, as well as the general principles on the exercise of the right to freedom of expression, and is implemented in a manner that does not impair or undermine the exercise of this right. Regarding the incident involving a gathering and a riot outside the National Assembly on 15 July 2005, the Government provided that on 13 July 2005, the Ministry of the Interior had received a letter from an organization called the Founding Committee of the Public Committee of the Unemployed, which had yet to be issued with a permit, announcing its decision to hold a non-peaceful march on the National Assembly (the legislative authority of Bahrain) on Friday 15 July 2005. The letter said that the participants intended to bombard the National Assembly with eggs and rotten vegetables, in a protest against the Assembly's failure to discuss a number of unemployment-related issues. The Ministry of the Interior issued an order banning the march as unconstitutional and an infringement of Decree-Law No. 18 of 1973, concerning public meetings, parades and gatherings, since the march was considered to be an attack upon the National Assembly. Such attacks are regarded as criminal offences under article 216 of the Decree-Law No. 15 of 1976. The matter was also widely reported in the local press. In defiance of the ban order, the demonstrators congregated in the vicinity of the National Assembly. The police ordered them to disperse, following the banning order, because the demonstration was not intended to be peaceful. The demonstrators did not follow the orders to disperse and began throwing stones at the police and attacking them. They also held up the traffic on the public highway and damaged a police car and a traffic signal. Some policemen were injured in the process, and the demonstrators took flight. The Government stated that 30 of the demonstrators, including Mr. Nabeel Rajab, were injured. None of them, however, filed a report with a police station or the prosecution service providing evidence of their injuries at the time this reply was sent. The Ministry of the Interior submitted a report to the prosecution service, with a view to bringing a prosecution against the demonstrators for attacking officers of the law. No one had been arrested or detained following the attack at the time of this reply. With regard to the Bahraini Parliament's support for the police, the Government replied that there is a complete separation of powers in Bahrain, as guaranteed by the Constitution, and that the legal measures taken by the police to disperse the demonstrators were in conformity with the law and the Constitution. Concerning the incident involving a gathering and a riot outside the Royal Court on 19 June 2005, the Government provided that on 19 June 2005, a group of more than 50 individuals gathered in front of the Royal Court. Given the security implications of the location, the police asked the demonstrators to move elsewhere. However, the demonstrators began to throw stones at the police and attacked them with sticks. As a result, a police captain and another police officer were injured. A number of people in the crowd were arrested and escorted to the southern Governorate's Security Directorate so that proper police reports could be filed, and they could be referred to the prosecution service. They refused to give their addresses and while they were in the waiting area at the Directorate, they, and others who had come in from outside, attacked the police officers at the Directorate injuring several men. The police

report on the incident was prepared and transmitted to the public prosecutor's office for processing. The Government provided that the police did not assault the demonstrators who were arrested in front of the Royal Court, but that the demonstrators assaulted and injured the police, who took precautionary measures to protect themselves from a direct attack, leading to injuries on both sides. As for the allegations that the demonstrators who had been arrested for breaking the law outside the Royal Court were attacked at the police directorate, the Government provided that it was the demonstrators and others who had come in from outside, who attacked and injured the police. The banning orders which the Ministry of the Interior issued to the demonstrators in both of the incidents mentioned in the letter were in conformity with articles 4 and 13 of Decree-Law No. 18 of 1973 on public meetings, parades and gatherings. The articles in question permit the banning and dispersal of demonstrations that prejudice public security or public order, as in the case of these two events.

39. On 14 December 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Abdulhadi Alkhawaja**, President of the Bahrain Center for Human Rights, **AbdulRaof Alshayeb**, (National Committee of Martyrs and Victims of Torture), **Hassan Abdulnabi**, (Unemployed Committee), **Mohsin AlSalman**, (Unemployed Committee), **Sazzed Sharaf Elsitri**, (Bahrain Youth Society For Human Rights), **Hassan AlHaddad**, **AbdulRedha Abdulla**, **Nader Ibrahim** and **Layla Dashti**, human rights defenders, and **Mousa Abdali**, (Unemployed Committee). Mr. Abdulhadi Alkhawaja was already the subject of an urgent appeal sent by the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 1 October 2004, and of an allegation letter sent by the Special Rapporteur jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 25 July 2005. According to new information received, on 14 December 2005, Mr. Abdulhadi Alkhawaja, who had been on hunger strike since 30 November 2005, received an anonymous call from a person who warned him that if a planned sit-in, which was due to commence on 15 December 2005, took place he would be charged with treason and all participants would be hurt. The sit-in had been planned outside the United Nations (UN) building in Manama, Bahrain, to call for protection measures for human rights defenders in Bahrain due to increased numbers of attacks on these defenders. According to the information received, two of such cases included: Mr. Mousa Abdali, who was abducted from his home by hooded armed men in cars on 22 November 2005. He was reportedly taken to an isolated place and subjected to physical and sexual assault. His colleague, Mr. Hassan Abdulnabi, was also subjected to physical assault and both were threatened by the perpetrators and ordered to stop demonstrations in front of the Royal Court. No investigation had, at the time this communication was sent, initiated into these cases. Concern was expressed that the threats against Mr. Abdulhadi Alkhawaja, Mr. Mousa Abdali and Mr. Hassan Abdulnabi constituted an attempt to prevent them from carrying out their human rights work.

40. On 27 December 2005, the Kingdom of Bahrain responded to the communication dated 14 December 2005, concerning the situations of Mr. **Abdulhadi Al-Khawaja**, who had reportedly received threatening phone calls, and Mr. **Mousa Abdali**, who claimed that he had been assaulted and injured by individuals claiming to be from "an authority dealing with governmental security" during a peaceful demonstration held on 28 November 2005. The Government informed the Special Rapporteur that the information provided to him was distorted

and it denied any governmental involvement in any of these incidents. The Government informed the Special Rapporteur that a commission of investigation (whose membership reportedly includes two representatives from non-governmental human rights groups) had been established under the auspices of the Ministry of the Interior to investigate Mr. Abdali's allegations, and that a similar independent inquiry had been established to investigate Mr. Al-Khawaja's allegations.

## **Observations**

41. The Special Rapporteur thanks the Government for its replies to all of his communications.
42. The Special Rapporteur thanks the Government for its reply to his communication of 13 June 2005. The Government takes note of the Government's explanation concerning the administrative and judicial proceedings carried in this respect. Moreover, the Special Rapporteur would appreciate receiving further information concerning the grounds on which the charges referred to were brought against Ms. G.Y.J. and how these grounds are compatible with her rights and freedoms, particularly those concerning the right to freedom of opinion and expression. In this context, the Special Rapporteur deems it appropriate to make reference to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.
43. The Special Rapporteur thanks the Government for its detailed reply to his communication of 25 July 2005. Whilst condemning all forms of non-peaceful manifestations of expression, the Special Rapporteur deems it appropriate to make reference to Commission on Human Rights Resolution 2005/38, which calls upon States to refrain from imposing restrictions to the right to freedom of expression which are not consistent with Article 19, paragraph 3 of the International Covenant on Civil and Political Rights, including on discussion of government policies and political debate, and on peaceful demonstrations and political activities.
44. The Special Rapporteur thanks the Government for its reply to his communication of 14 December 2005. The Special Rapporteur would appreciate being informed of the outcome of the investigations concerned. The Special Rapporteur remains concerned about reported attacks and threats against individuals working to protect human rights, and deems it appropriate in this context to make reference to the principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular in article 12 paragraphs 2 and 3, that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

## Bangladesh

45. On 3 February 2005, the Special Rapporteur sent a letter of allegation concerning Mr. **Shah Abu Mohammad Shamsul Kibria** and five other persons, who were killed in a fatal bomb attack on 27 January 2005, at a political rally of the Awami League in Bangladesh. Mr. Kibria, former Executive Secretary of the United Nations Economic and Social Commission for Asia and the Pacific from 1981 to 1992, was a Member of Parliament. In the same attack, dozens of other people attending the rally were reportedly injured. According to the information received by the Special Rapporteur, police used force to disperse demonstrators who rallied in several parts of the country to protest the killing of Mr. Kibria and the other five persons. Journalists covering the protest were also targeted by the police and a number of them were reportedly injured in the clashes. In August 2004, the Awami League's leader Ms. Sheikh Hasina, survived a grenade attack on a rally in the capital Dhaka. In the same incident, the leader of the Awami League women's wing, Ms. Ivy Rahman, and other 22 people lost their lives.

46. On 2 April 2005 the Government replied to the communication of 3 February 2005. According to the Government, the incident of 27 January 2005 was the commission of a crime resulting in killings perpetrated by local criminals. The Prime Minister strongly condemned the acts and requested that an immediate and full investigation of the incident was to be carried out in order for the perpetrators to be brought to justice. The Government took all the legal steps necessary. A five-member probe committee headed by the Deputy Inspector General of Police was set up immediately and a senior police officer was put in charge of the investigations. Ten persons were as a result charge-sheeted, eight of whom had already been apprehended and brought before a court. Two of them remained at large at the time this reply was received. The Government assured the Special Rapporteur that it was fully committed to bringing the perpetrators to justice. FBI agents were also involved in the investigation in close cooperation with the authorities. The Government also stated that following the incident of 27 January 2005, people took to the streets in protest of the killings concerned and that the police had not used excessive force in trying to bring the situation under control.

47. On 10 February 2005, the Special Rapporteur sent a letter of allegation concerning **Sheikh Belaluddin**, a staff reporter of *Dainik Sangram* and president of the Metropolitan Journalist Union. On 5 February 2005, he was reportedly critically injured in a bomb blast outside the Khulna Press Club, in the town of Khulna. The explosion injured three other journalists: **Sheikh Abu Hassan**, the President of the Club and a Prothom Alo reporter, **Zahid Hossain**, a photojournalist with *Jugantor*, and *News Today* reporter **Rasul Islam Tutul**. The bombing of the press club appeared to be one in a series of attacks, including the murder of two journalists in 2004, against the Press in the area. According to the information received, owing to previous attacks, police had offered special protection to the Khulna Press Club and its members, in the neighbourhood of the club, since July 2004.

48. On 15 February 2005 the Permanent Mission replied to the communication of 10 February 2005 concerning the bomb explosion on 27 January 2005 which took place outside the Khulna Press Club, injuring four journalists. The Permanent Mission stated that the contents of the communications had been forwarded to the concerned authorities in Bangladesh for necessary inquiry and action.

49. On 10 March 2005, the Special Rapporteur, jointly with the Special Rapporteur on freedom of religion or belief sent an urgent appeal concerning the leaders of Islamist groups who had reportedly threatened to attack the members of the **Ahmadiyya Muslim Jamaat religious community**, on Friday 11 March 2005, in the city of Bogra. Concern was expressed that this attack could have been an attempt by the Islamist groups to pressure the Government to declare Bangladesh's Ahmadis "non-Muslims". Concern was further expressed that this planned attack followed a pattern of similar attacks on Ahmadi places of worship in the districts of Chittagong, Patuakhali, Narayangonj, Brahmabaria, Nakhhalpara and Dhaka over the year. Communications on this issue were sent on 15 March 2004, as well as on 27 August and 10 November 2004, to which the Government had responded by letters dated 24 May and 16 November 2004.

50. On 15 March 2005, the Special Rapporteur sent an urgent appeal concerning **Samaresh Baidya**, journalist for the daily newspaper *Bhorerkagoj*, **Zubair Siddiqui**, journalist for the weekly magazine *Ajker Surjodov*, and **Sumi Khan**, writer for the magazine *Shaptahik 2000*, concerning whom an urgent appeal was sent on 5 May 2004 by the Special Rapporteur jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Representative of the Secretary-General on the situation of human rights defenders. According to the information received, Samaresh Baidya, Zubair Siddiqui and Sumi Khan had, between the 10 and 12 March inclusive, in the south-eastern city of Chittagong, received serious death threats directly connected with their writings. They all filed reports with the police. Sumi Khan had already been victim of an attack on 27 April 2004, when she was stabbed and seriously injured on her way to delivering an article to her editor. It was reported that, at the time this communication was sent, nobody had been charged in connection with these this attack, at the time this communication was sent.

51. On 26 May 2005 the Special Rapporteur sent a letter of allegation concerning **Waliur Rahman Raju** and **Gauranga Nandi**, correspondents for the daily newspaper *Dainik Bogra*, **Shamsuzzaman Bachchu**, the President of the local press club and editor-in-chief for the local weekly *Jugo Darpan*, and **Abdul Hai**, a journalist for the daily *Alor Jagat*. According to the information received, in the Dhaka suburb of Keraniganj, Abdul Hai had been receiving death threats reportedly in connection with an article had written. Mr. Hai requested police protection as he feared for his life. Reports also indicated that, on 7 May 2005, in the northern district of Lalmonirhat, Waliur Rahman Raju was physically assaulted by three men. It was reported that the attack took place in the presence of an official of the local district administration office, who intervened on Mr. Raju's behalf. The same three men were reported to have already attacked Mr. Raju and robbed him of 15,000 taka (approximately US \$270) the previous day at the Lalmonirhat bus station. It was reported that this attack was directly linked to his reports about local prostitution. Reports further indicated that, on 7 May 2005 in Bhairab, southeast of Dhaka, Shamsuzzaman Bachchu was assaulted by three persons, one of whom was handed over to the police; the others managed to escape. Reports also indicated that, on 10 May 2005, in the southern city of Khulna, Gauranga Nandi received death threats by an individual who identified himself as a secretary for one of the leaders of the Bangladesh Nationalist Party (BNP). Gauranga Nandi had also requested police protection, particularly due to his history of being targeted by underground groups.

52. On 7 July 2005 the Permanent Mission replied to the communication of 26 May 2005 concerning the assault and death threats to **Waliur Rahman Raju, Gauranga Nandi, Shamsuzzaman Bachchu, and Abdul Hai**. The Permanent Mission stated that the contents of the communications had been forwarded to the concerned authorities in Bangladesh for necessary inquiry and action.

53. On 7 June 2005, the Special Rapporteur sent a letter of allegation concerning **Nawroz Faisal Biduyt**, a reporter for the daily *Ajker Kagoj*, **Arifur Rahman**, a senior reporter for the national daily *Prothom Alo*, **Wahid Hassan Raja**, a photographer for the daily *Bhorer Kagoj*, **Nayeem Parvez**, a photographer for the daily *Amar Desh*; **Shamin Mansur**, a photographer for the daily *Jugantor*; **Kajol Hazra**, a photographer for the daily *Samakal*, **Tarikul Islam Pintu**, a cameraman for ATN Bangla TV, **Abdur Rab**, a cameraman for Channel I TV, as well as another unidentified photographer who worked for the daily *The Independent*, and **Manunur Rashid Rabi**, a correspondent for the daily *Nayadiganto*. According to the information received:

(a) On 30 May 2005, in the north-eastern city of Rajshahi, one of the BNP leaders invited Nawroz Faisal Biduyt to his office to discuss the reporter's article which was critical of him. It is reported that upon his arrival, Nawroz Faisal Biduyt was assaulted and verbally abused.

(b) On 28 May 2005, in the town of Narsingdi, near Dhaka, as Arifur Rahman tried entering the BNP office to report on the activities taking place that day, a police officer barred his way. Upon protesting, several other police officers joined and they proceeded to beating Arifur Rahman with batons. Arifur Rahman was later provided with medical care as a result of back pain he suffered following the assault on him.

(c) On 27 May 2005 at the Dhaka University campus, Wahid Hassan Raja, Nayeem Parvez, Kajol, Hazra, Tarikul Islam Pintu, and Abdur Rab, who were covering clashes between the protestors and police during a protests related to the traffic-related deaths of a student, the police attacked them, despite the fact that they were all wearing press cards which publicly identified them as journalists.

(d) On 26 May 2005 in the eastern town of Gangni, Manunur Rashid Rabi was attacked by a group of unidentified persons who hit him in the head with a stick, leaving him in a critical condition. The attack against him appeared to be related to his articles concerning drug-related activities.

54. On 14 June 2005 the Permanent Mission replied to the communication of 7 June 2005 concerning abuses, assault and death threats to media personnel **Nawroz Faisal Biduyt, Arifur Rahman, Wahid Hassan Raja, Nayeem Parvez, Shamin Mansur, Kajol Hazra, Tarikul Islam Pintu, Abdur Rab and Mamunur Rashid Rabi**. The Permanent Mission stated that the contents of the communications had been forwarded to the concerned authorities in Bangladesh for necessary inquiry and action.

55. On 13 July 2005, the Special Rapporteur sent a letter of allegation concerning **Mir Ahmed Miru, Anisur Rahman, Hasanuzzaman Tarun, Enamul Kabir, and Sheikh Mamun**, photographers for *Janakantha*, **Wahid Hassan Raja**, a photographer for the *Daily Star*; **A.K.M. Musa**, a photographer for *Bhorer Kagoj*, **Masud Parvez Milon**, a

photographer for the *Financial Express*, and **Mohammad Sharif**, a photographer for *Naya Dogonto*. According to information received, on 7 July in Dhaka, intelligence agents beat them up for having taken photographs of graffiti found on the National Security Intelligence (NSI) building. The graffiti reportedly denounced government corruption. It is further reported that police officers, who arrived while the photographers were being beaten, did not intervene on their behalf. Mir Ahmed Miru and Wahid Hassan Raja were hospitalized for their injuries.

56. On 20 July 2005 the Permanent Mission of Bangladesh replied to the communication of 13 July 2005 concerning assaults/beatings of some photographers. The Permanent Mission stated that the contents of the communications had been forwarded to the concerned authorities in Bangladesh for necessary inquiry and action.

57. On 7 September 2005, the Special Rapporteur sent an urgent appeal concerning **Hasanul Qaiyun**, a journalist for the daily newspaper *Manabzamin*, **Ahad Haider**, a journalist for the daily *Prothom Alo*; **Rob Molla**, a journalist for the regional daily newspaper *Dainik Janmabhumi*, **Babul Sarder**, a journalist for the daily *Dainik Janakantha*, **Nihar Saha**, a journalist for the *News Network of Bangladesh*, **Zakaria Mahmud**, a journalist for the daily *Amar Desh* and **Azadul Huq**, a journalist for the daily *Sangbad*. According to information received, on 24 August 2005, these journalists received identical letters threatening them that their hands and legs would be broken if they continued to criticize a Parliamentary representative of the ruling National Party. The letters stated moreover that members of a radical Islamist group would be used to carry out the threats. Bagerhat press club had filed a complaint with the police and requested police protection. The police had started an investigation into the threats. **Rifat Bin Taha**, a journalist for *Dainik Janakantha*, also received a death threat for having published a report on militants in Norail, southwest Bangladesh. The threat was directed against him and his family reportedly by a relative of a prominent member of parliament on 28 August 2005. The letter reportedly threatened to kill Mr. Bin Taha and his family if he did not retract the article concerned.

58. On 29 September 2005, the Special Rapporteur sent a letter of allegation concerning attacks against various journalists. According to information received, on 31 August 2005 in Baufal, Shahidul Alam Talukder, a Member of Parliament from a political party incited hatred against the press during a public speech he made. Following this, in Jamalpur on 17 September 2005, members of the party seized and viciously beat **Anwar Hossain** for two hours. The daily *Dainik Khobor Patra*, for which Mr. Hossain works, had just published an article on a corruption case concerning the political party. Four days later on 21 September 2005 in the capital, **Mahbub Matin**, a reporter working for Channel 1, was reportedly clubbed by a police officer while covering a demonstration by opposition party women and suffered a knee injury. Mr. Matin had clearly identified himself as a journalist. On 11 September 2005, in the Jhenidah region, members of a local criminal gang attacked **M. Mahfuz**, a correspondent for the regional newspaper *Dainkin Gramer Kagoj*, leaving him with a broken right hand and 17 stitches to his head. He was at the Kushtia hospital, at the time of the communication, recovering from an operation he underwent in an attempt to restore the use of his hand. Mr. Mahfuz had written an article about criminal activities of the group.

59. On 11 October 2005 the Permanent Mission replied to the communication of 29 September 2005, concerning attacks against various journalists in Bangladesh. The Permanent Mission assured the Special Rapporteur that the contents of the communications had been duly noted and forwarded to the concerned authorities for necessary inquiry and action.

60. On 2 November 2005, the Special Rapporteur sent a letter of allegation concerning **attacks on the press** by a political party and militant organizations. According to information received, on 18 October 2005, following the publication of a report by the paper *Dainik Jugantor*, leaders of the political party held a protest rally and set fire to Dainik Jugantor's offices in Ullahpara, Shirajganj. They accused the paper of publishing false information without searching for the truth, and denounced the report as yellow journalism. No complaint had been filed with police at the time of this communication. Reports further indicated that, on 18 October 2005, following the publishing of a report concerning the reported illegal appointment of a lecturer at the Tofal Bari School and College, a member of the same political party, publicly threatened to kill **Asaduzzaman Milon**, president of *Soron Khola Press Club* in Bagerhat and correspondent for *Dainik Ittefaq*, *NNB (News Network of Bangladesh)* and *Dainik Rannar* at Sorokhola; He also threatened to blow up the Press Club. No police complaint had been filed at the time this communication was sent.

61. On 11 November 2005, the Permanent Mission replied to the communication of 2 November 2005 on attacks against the press and alleged threats to kill **Asaduzzaman Milon**. The Permanent Mission stated that the contents of the communications had been forwarded to the concerned authorities in Bangladesh for necessary inquiry and action.

62. On 15 November 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the question of torture, sent a letter of allegation concerning journalists who promote human rights through their reporting including: **Tipu Sultan**, a correspondent with the news agency *United News of Bangladesh*, **Manik Chandra Saha**, a journalist based in Khulna, **Hiramon Mondol**, a journalist from Batiaghata Thana working with the daily *Prabartan* and **Shahriar Kabir**, a prominent writer, as well as other human rights defenders. The Special Rapporteur on torture had, prior to this communication, sent a letter of allegation concerning Mr. Mondol on 9 August 2004. According to information received, in January 2001, Mr. Sultan was brutally attacked, and had his arms and legs broken, by a crowd in Feni after he published an article criticizing a local politician. As a result of the attack he had to undergo numerous operations to regain the use of his limbs. Mr. Sultan and his family had since received numerous threats that they would be killed if Mr. Sultan would not withdraw the charges against the accused concerned. Out of fear for their lives, Mr. Sultan and his family fled to Dhaka. Moreover, following charges of illegal extortion being brought against Mr. Mondol, he was reportedly detained until 2 September 2003 when the Court finally dismissed the charges against him for lack of evidence. No investigations were initiated against the persons who allegedly tortured Mr. Mondol, at the time this communication was sent. In November 2003, Mr. Mondol filed a civil suit before the Khulna Sessions Court demanding compensation for the maltreatment he suffered while in detention, as a result of which he was treated in hospital, where it was found that he was not able to walk on his bare feet, had deteriorating eyesight, was unable to hold a pen in his right hand and that he had severe pain in several parts of his body. The two persons who had seen him being tortured while in custody, were allegedly threatened not to provide testimony in court. Finally, Shahriar Kabir, was released in January 2003, after having been detained



since 8 December 2002 for having given interviews to journalists about the human rights situation in Bangladesh, together with **Munatsir Mamun**, a university professor and human rights defender. No charges had been brought against them at the time this communication was sent. Upon being released, Mr. Mamun gave details of how he had been detained incommunicado and subjected to torture and other forms of ill-treatment while in custody. Concern was expressed that human rights defenders and journalists working on issues concerning human rights were targeted, intimidated and harassed in direct connection with their work.

63. On 24 November 2005, the Special Rapporteur sent a letter of allegation concerning **Gautam Das**, a reporter for the Dhaka-based daily newspaper *Samakal*. According to information received, on 17 November 2005, in Fardipur, he was found strangled in his office with fractures to his legs and hands. Mr. Das had written articles concerning the activities of Islamic militant groups.

64. On 6 December 2005, the Permanent Mission replied to the communication of 24 November 2005 concerning **Gautam Das**. The Permanent Mission stated that the contents of the communications had been forwarded to the concerned authorities in Bangladesh for necessary inquiry and action.

### **Observations**

65. The Special Rapporteur thanks the Government for its response to his communication dated 3 February.

66. The Special Rapporteur regrets that no replies to his other communications were received.

67. With respect to the cases of **Shar Abu Mohammad Shamsul Kibria** and five other persons, concerning whom the Special Rapporteur sent a letter of allegation on 3 February 2005, the Special Rapporteur welcomes the steps taken to investigate the incidents concerned with a view to bringing the perpetrators to justice. He also welcomes the Government's assurance that excessive force had not been used in trying to bring order to the demonstrations following the incident. The Special Rapporteur would appreciate receiving updated information on the developments and outcome of the investigations, including any possible prosecutions and punishments against the alleged perpetrators.

68. With respect to the communication of 10 March, the Special Rapporteur remains concerned and, pending a reply from the Government and without making any judgements on the facts of the case, the Special Rapporteur deems it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which refers to the right to freedom of thought, conscience or religion as an intrinsically linked right to freedom of opinion and expression, and in this context, calls on States to take all necessary measures to put an end to violations of these rights and to create conditions to prevent such violations.

69. With regard to the communications of 15 March 2005, the Special Rapporteur has received further information indicating the persons concerned continued receiving death threats. **Sameresh Baidya** was moreover, at the time reportedly facing two month imprisonment and a

fine on account of a contempt of court case against him, which at the time this report was finalized, was still pending. Mr Baidya, appealed to the Supreme Court, but no hearing was yet scheduled. Furthermore, defamation cases were still reportedly pending against him. Without reference to this communication and to those sent on 26 May, 7 June, 13 July, 7 and 29 September, 2 November without making any determination as to the facts of the cases and pending the Government's replies, the Special Rapporteur deems it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights, which expressed its concern that violations of the right to freedom of opinion and expression continue to occur, including attacks directed against journalists and media workers, and stressed the need to ensure greater protection for all media professionals and for journalistic sources. The Special Rapporteur looks forward to receiving information on the developments and outcome of any investigations, including any possible prosecutions and punishments against the alleged perpetrators.

70. Finally, the Special Rapporteur remains gravely concerned about what appears to be a series of attacks against the press, journalists and human rights defenders in Bangladesh. In light of the numerous threats, violent attacks and even deaths of journalists and human rights defenders in Bangladesh, he urges the Government to carry out thorough investigations into the cases referred to in his communications, and strongly encourages the authorities to take all necessary measures to ensure that journalists and human rights defenders are provided with a secure environment in which they are allowed to work freely and independently.

### Belarus

71. On 28 February 2005, the Special Rapporteur sent an urgent appeal concerning '*Pressbol*', the national sports daily and one of the few remaining independent newspapers in Belarus having a circulation of approximately 25,000 copies. According to information received, on 10 February 2005, the Minsk Municipal Court sentenced *Pressbol* to pay a fine of 16,000 Euros in libel damages to the Finance Minister, which fine would reportedly force *Pressbol* to close down. Moreover, on 16 February 2005, the Supreme Court upheld a warning of the Information Ministry directed at the newspaper. The warning allowed the authorities to order the closure of the newspaper within three months. The warning was directed at the fact that the newspaper failed to obtain judicial authorization before publishing the statement of the Finance Minister who had explained why he was suing *Pressbol*. Concern was expressed that the sanctions directed at *Pressbol* were excessive.

72. On 2 May 2005, the Special Rapporteur sent a letter of allegation concerning two Russian journalists, **Alexei Ametov**, a journalist for *Russian Newsweek* and **Mikhail Romanov**, a reporter for *Moskovsky Komsomolets*. According to information received, on 27 April 2005, both journalists were sentenced to ten days and eight days of imprisonment respectively. Alexei Ametov was found guilty by the Lenin district court in Minsk of violating article 167 of the Administrative Code (infringements of legislation on the staging of religious, sports, mass cultural or other spectator events, as well as gatherings, mass meetings, street processions, demonstrations and pickets). The Tsentralny district court charged Mikhail Romanov with taking part in an unauthorized rally. On 26 April 2005, both journalists were covering a rally in Minsk, marking the 19th anniversary of the Chernobyl nuclear meltdown. The rally was organised to protest the decision of President Alexander Lukashenko to repopulate the region.

It was attended by over 400 people including activists from Russia, Ukraine and Belarus youth organisations. Most of the protestors were arrested, tried in different courts and sentenced to 15 days imprisonment.

73. On 8 July 2005, the Government replied to the communication of 2 May 2005. The Government stated that, on 26 April 2005, in violation of Decision No. 03/1 03 204 of the Minsk City Executive Committee dated 21 April 2005, an unauthorized rally and demonstration involving about 90 people took place on F. Skorina Avenue and Engels Street in Minsk. The main leaders of the unauthorized event were arrested and taken to the Lenin and Central district internal affairs offices in Minsk. In total 33 people were arrested. Of these, 14 were citizens of the Russian Federation, 5 were Ukrainian citizens and 14 were Belarusian citizens. 29 individuals were booked under article 167 1, paragraph 1, of the Code of Administrative Offences, two under article 167 1, paragraph 2, and two under article 162, paragraph 1. Among the Russian Federation citizens arrested were: **Alexei Ametov**, a correspondent for *Newsweek* magazine, booked under Article 167 1, paragraph 1, of the Code of Administrative Offences for active participation in unauthorized events. He was sentenced on 27 April 2005 by the Lenin district court to 10 days' administrative detention, **Mikhail Romanov**, a correspondent for the *Moskovsky komsomolets* newspaper, booked under Article 167 1, paragraph 1, of the Code of Administrative Offences for active participation in unauthorized events. He was sentenced on 27 April 2005 by the Central district court to eight days' administrative detention. Mr. Ametov and Mr. Romanov were found guilty of participating in an unauthorized demonstration in Minsk on 26 April 2005. This demonstration violated the Mass Events Act of 30 December 1997, as amended and supplemented. The Government provided that, when taking part in the unauthorized events, Mr. Ametov and Mr. Romanov were not identified as representatives of the mass media or accredited as correspondents in the Republic of Belarus in accordance with article 42 of the Press and Other Mass Media Act. The Government stated that the law enables citizens to exercise their constitutional rights to express their social and political views on issues of concern to them, but at the same time it is designed to ensure public security and order during mass events, and therefore the observance of correct procedure when organizing such events is a guarantee of people's safety. The chief officer of the local executive and administrative body had not given permission for the event to be held, and the demonstration was thus justifiably deemed unauthorized. This information was conveyed to the demonstrators on 26 April 2005 through the proper channels. Their participation in the unauthorized demonstration was corroborated by the reports of militia officers and, in the case of Mr. Ametov, by photographs of the event. On 30 April 2005 the Minsk City Procurator lodged an appeal against the judgements in respect of Mr. Ametov and Mr. Romanov. That the acts committed by Mr. Ametov and Mr. Romanov had been correctly assessed as unlawful was not in the issue; the issue was whether the judgements should have been amended as it was the first time that either individual had been booked for an administrative offence in Belarus, and also in view of the submission of a petition from the Ambassador of the Russian Federation to the Republic of Belarus requesting mitigation of the administrative penalty. The protests were considered and upheld by the presiding officer of the Minsk city court on 30 April 2005. The judgements in respect of Mr. Ametov and Mr. Romanov were amended by reducing the term of administrative detention to the time actually served. The administrative case files in respect of the two journalists were being examined, at the time this reply was sent, by the Supreme Court of the Republic of Belarus. Mr. Ametov and Mr. Romanov had not appealed against the judgements handed down in their respective cases.

74. On 17 August 2005, the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights in Belarus, sent a letter of allegation concerning several journalists. According to information received, on 6 August 2005 in the western city of Grodno, Belarus, **Adam Tuchlinski**, a Polish photojournalist for the weekly news magazine *Przekroj*, was expelled from Belarus and banned from returning to the country for five years, on the grounds that he lacked proper accreditation to work in Belarus as a journalist. He was in possession of a tourist visa. On the same day, **Marcin Smialowski**, another Polish journalist, was also refused entry into Belarus, despite the fact that she had proper accreditation and a valid visa. On 1 August 2005 in Schuchin, **Andrzej Pisalnik**, the editor-in-chief of *Glos znad Niemna*, a Polish minority newspaper based in Belarus, a contributor to the Polish newspaper *Rzeczpospolita*, and who also serves as a spokesperson for the Union of Poles in Belarus (SPB), was arrested by the police. On 4 August, he was sentenced to ten days imprisonment for "participating in an illegal gathering," in connection with a concert he organized for SPB in Belarus on 3 July in Shchuchin. **Several other SPB members** were also sentenced to terms of an average two weeks imprisonment. Furthermore, on 6 July 2005, several other staff members of *Glos znad Niemna*, as well as **Andrzej Poczobut**, the editor-in-chief of *Magazyn Polski*, and **Ivan Roman**, a reporter for the *Solidarnost* newspaper, were arrested by the police in Grodno, while they were protesting in the city centre against harassment of their newspapers by the authorities, particularly the takeover of the Polish minority weekly *Glos znad Niemna*. Andrzej Poczobut was sentenced to fifteen days imprisonment on 27 July 2005. Three Polish journalists who attended his trial were also arrested on the same day. Furthermore, on 27 July, special police officers and plainclothes policemen entered the SPB headquarters and detained many of the journalists present, including Andrzej Pisalnik, **Inesa Todryk**, a reporter for *Glos znad Niemna*, **Waclaw Radziwinowicz** and **Robert Kowalewski**, journalists for *Gazeta Wyborcza*, **Pavel Mazheika**, the head of the Grodno office of the BAJ, and **Siarhey Hryts**, a photographer for the Associated Press (AP). They were detained for two hours.

75. On 10 October 2005, the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights in Belarus, sent a joint urgent appeal concerning *Narodnaya Volya*, an independent newspaper in Belarus. According to information received, on 28 September 2005, *Narodnaya Volya* received notifications from the state newspaper distributors *Belsoyzechat* and *Mingorsoyzechat*, as well as from the publishing house *Krasnaya Zvezda*, informing that they were cancelling their contracts with it, without any explanations. This decision would have forced the newspaper to close down. However on 3 October 2005, *Smolensk* printers agreed to publish *Narodnaya Volya* three times a week. It appeared that other Belarusian newspaper, including *BDG*, *Delovaya Gazeta*, *Salidarnasc*, *Tovarisch* and *Mestnaya Gazeta* also had to turn to *Smolensk* printers. On 20 September 2005, *Narodnaya Volya* was made to pay a fine of 100,000,000 Belarusian roubles (approximately 38,000 Euros) in a libel suit brought against it by a local politician, despite an appeal pending before the Supreme Court. Furthermore, a Leninsky district court in Minsk ordered the seizure of the weekly's assets and blocked its bank accounts to enable payments of this fine, 70% of which the newspaper had already paid. On 25 July 2005, the newspaper was also fined 47,000 Euros following a defamation suit against it. Concern was expressed that the legal actions taken against *Narodnaya Volya* and other newspapers, as well as the cancellation of contracts by the distribution companies would have a negative impact on independent and pluralistic media in Belarus, particularly fundamental in the then run up to the presidential elections in 2006.

76. On 24 October 2005, the Special Rapporteur, jointly with the Special Rapporteur on situation of human rights in Belarus, sent a letter of allegation concerning the death of **Vasil Hrodnikau**, a Belarusian journalist. According to information received, a free-lance correspondent of the newspaper *Narodnaya Volya*, Vasil Hrodnikau, was found dead by his brother on 18 October 2005 in his house in Zaslau, a town in Minsk district. Apparently, Vasil Hrodnikau died of a traumatic brain injury. It was still to be determined whether Hrodnikau had been murdered in retaliation for his professional activities, at the time this communication was sent. Based on the information received, authorities had consistently harassed *Narodnaya Volya* in 2005 because of its criticism to President Aleksandr Lukashenko. State-run kiosks were reportedly not permitted to sell the newspaper and authorities ended its printing contract, forcing it to use a printer in a neighbouring Russian city. An autopsy at the Minsk Regional Clinical Hospital concluded that the cause of Vasil Hrodnikau's death was head trauma. A medical report was being sent to the Minsk regional prosecutor's office, which was investigating the death, at the time this communication was sent. Another Belarusian journalist **Veronika Cherkasova** was also murdered a year ago while working for the Minsk-based newspaper *Solidarnost*. Her murder remains unsolved at the time of this communication.

77. On 16 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers, 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, sent an urgent appeal concerning Mrs. **Vera Stremkovskaya**, a lawyer and human rights activist. According to information received, 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. Concerns were expressed 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. According to the information received, Mrs. Stremkovskaya had been prevented from travelling to international conferences on a number of occasions prior to the occasion referred to in the communication.

78. On 7 December 2005, the Special Rapporteur, jointly with 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, sent an urgent appeal concerning the adoption by the Chamber of Representatives of the Belarusian Parliament on 2 December 2005 of **amendments to the Criminal Code and the Code of Criminal Procedure of the Republic of Belarus**. These amendments would have been adopted if, on 16 December 2005, the Upper Chamber of Representatives of the Belarusian Parliament approved them at their second reading. Concern was expressed that the adoption of many of the provisions included within the draft text would lead to violations of the Declaration on the Right to the Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms – otherwise known as the Declaration on Human Rights Defenders – as well as other international human rights standards. Of particular concern were proposed amendments to introduce criminal sentences for the illegal organization of activities by an association or a foundation, or participation in their actions (Article 1931); the criminalization of funding for, and the training of any other type of educational activity, including the participation in "mass activities" (Article 293); and the criminalization of funding and training of "group activities which seriously violate public order (Article 342); the criminalization of providing

“false information” to a foreign State or international organization, concerning the political, economic, military or international situation of the Republic of Belarus, as well as on the judicial situation of Belarusian citizens; the criminalization of providing information to foreign States or international organizations, when such information is detrimental to the internal security, sovereignty or territorial integrity of Belarus, with harsher prison sentences if such information is distributed through the mass media. In view of the fact that the terms ‘mass activity’ and ‘group activity’ were not defined, concern was expressed that these articles could potentially lead to their arbitrary and unjust interpretation, to the detriment, particularly, of members of independent organizations. The new provisions also stipulated that “people suspected of terrorism or vandalism may be detained for ten days before being charged” without providing definitions of what amounted to ‘terrorism’ or ‘vandalism’.

### **Follow-up to previously transmitted communications**

79. On 27 January 2005, the Government replied to the communication of 4 November 2004 concerning the murder of **V.A. Cherkasova**, a correspondent of the newspaper *Solidarnost*. On 20 October 2004, Ms. Cherkasova was found dead in her apartment in the city of Minsk. The body, showed signs of a violent death. A forensic medical examination established the cause of Ms. Cherkasova’s death as acute haemorrhaging as a result of injuries to the left lung, pulmonary artery and aorta (17 penetrating and 34 incised-stab wounds with a knife). According to the records of the psychoneurological clinic, she had undergone treatment several times. Investigations of this crime was performed by an investigative task force consisting of staff members of the Ministry of Internal Affairs and established by order of the First Deputy Minister of Internal Affairs of the Republic of Belarus, together with an investigative group of the Minsk Procurator’s Office, supervised by the Procurator’s Office of the Republic of Belarus. The regional Ministry of Internal Affairs agencies of the Republic of Belarus had focused on the circumstances of the crime, but no witnesses to the crime had been identified at the date this reply was sent. Operational search measures and investigative actions with a view to identifying and convicting the guilty party, were ongoing at the time this reply was sent.

### **Observations**

80. The Special Rapporteur thanks the Government for its responses to his communications dated 30 September 2004, 2 May and 24 October 2005.

81. The Special Rapporteur regrets that no replies to his communications dated 28 February, 17 August, 10 and 24 October 16 November and 7 December were received at the date this report was finalized.

82. With reference to the Special Rapporteur’s communication of 28 February 2005, the Special Rapporteur deems it appropriate to make reference to the principle enunciated in the report E/CN.4/2000/63, that sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; penal sanctions, in particular imprisonment, should never be applied and damage awards should be strictly proportionate to the actual harm caused.

83. With reference to the Special Rapporteur's communication of 2 May 2005, the Special Rapporteur would appreciate being informed of the final outcome of the proceedings against the persons concerned.

84. Regarding the communication of 30 September 2004 concerning **Yury Bandazhevsky**, the Special Rapporteur received further reports indicating that he was released in August 2005 with restrictions for five years. The Special Rapporteur welcomes his release. Nevertheless, the Special Rapporteur remains concerned about the ongoing restrictions against him. These restrictions would include: having to report regularly to the police, restrictions on travel and being barred from holding senior functions, including managerial and political ones.

85. Regarding the communication of 24 October 2005, the Special Rapporteur, pending a reply to this communication and without making any determination on the facts of this case, deems it appropriate to make reference to the Resolution 2005/38 of the Commission on Human Rights which expressed its concern that violations of the right to freedom of opinion and expression continue to occur, including attacks directed against journalists and media workers, and stressed the need to ensure greater protection for all media professionals and for journalistic sources. The Special Rapporteur looks forward to receiving information on the developments and outcome of any investigations, including any possible prosecutions and punishments against the alleged perpetrators. The Special Rapporteur would appreciate being informed of the outcome of the investigations being carried out and of any prosecutions in this regard.

86. Regarding the communication dated 7 December 2005, concerning **amendments to the Criminal Code and the Code of Criminal Procedure of the Republic of Belarus**, without making the determination as to the facts, and pending the Government's reply, the Special Rapporteur remain gravely concerned that, in addition to the new "Law on Public Association" adopted in August 2005, such amendments may further reduce the possibility for independent human rights organizations and the media to work in a free and democratic environment.

### **Bolivia**

87. El 19 de enero 2005, el Relator Especial, juntamente con el Relator Especial sobre la independencia de magistrados y abogados, 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 humanos, envió un llamamiento urgente en relación con **miembros del Centro de Estudios Jurídicos e Investigación Social (CEJIS)**, en particular, el abogado y miembro **Cliver Rocha**, cuyo caso habría sido ya objeto de dos llamamientos urgentes enviados el 2 de abril y el 7 de mayo de 2003 respectivamente. Según la información recibida, el 5 de enero de 2005, la entrada de la oficina del CEJIS en la localidad de Riberalta, departamento de Beni, habría sido forzada 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. De acuerdo con las informaciones recibidas, el 8 de enero, por medio de un 'Manifiesto Público', la ASAGRI habría justificado el ataque contra el CEJIS, al cual 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 si no se marchaban

antes de finales de enero del 2005. La ASAGRI habría también amenazado con expulsar por la fuerza a los indígenas tacanas de la zona de Miraflores si se negaban a irse de las tierras comunales que les habían sido oficialmente concedidas en 2002. Hasta la fecha los amenazados no habrían recibido medidas cautelares por parte de las autoridades. Solo se les habría recomendado que las oficinas del CEJIS se cerrasen hasta el 13 de enero cuando una comisión nacional llegaría a la zona para intentar resolver los problemas de tierras.

88. Por carta con fecha 6 de abril de 2005, el gobierno 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). El Viceministerio de Justicia a través del Proyecto Pueblos Indígenas y Empoderamiento informó que el de enero de 2005, la fiscalía de Riberalta fue solicitada para la investigación y sanción a los responsables de los supuestos allanamientos y destrozos. El 19 de enero, una comisión constituida por representantes del Ministerio de Asuntos Indígenas, el Gobierno y el Viceministerio de Justicia, se encontró con la encargada de la investigación preliminar, para que se acelerase el proceso contra los presuntos responsables del vandalismo. Ese mismo día la Fiscal admitió la demanda presentada por CEJIS. Un Fiscal Especial fue designado para hacerse cargo de las investigaciones, adoptar las medidas necesarias para proteger a las víctimas e 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 ante toda amenaza a la vida e integridad física y moral en contra de los miembros de las comunidades, autoridades naturales y sus asesores en el ejercicio de las funciones de saneamiento agrario y de defensa de los recursos naturales, y apoyar al Ministerio Público en todo proceso que involucrase a comunidades indígenas. El 23 de febrero, la Comisión de Derechos Humanos de la Alta Cámara de Diputados envió una comisión (con un miembro designado por el Viceministerio de Justicia) para participar en la audiencia de reconstrucción del asalto de la oficina del CEJIS por parte de miembros de ASAGRI. La Comisión también se reunió con miembros de la Central Indígena de la Región Amazónica de Bolivia quienes denunciaron la negligencia de las autoridades con respecto a este caso. Finalmente se reunieron con miembros de ASAGRI quienes se presentaron como víctimas de una mala aplicación de la ley y denunciaron a las ONGs de la zona como responsables de enfrentamientos entre indígenas y campesinos. La comisión les exhortó a evitar acciones de hecho y recurrir a las instancias oficiales que existen para hacer prevalecer sus derechos en caso de conflicto. El 21 de marzo, el Viceministerio de Justicia se enteró a través de los medios de comunicación, pero no de manera oficial, que la Comisión Interamericana de Derechos Humanos había solicitado al estado boliviano medidas cautelares para proteger la comunidad indígena de Miraflores y los miembros del CEJIS, garantizar al ejercicio libre de su labor como defensores de derechos humanos y llevar adelante una investigación exhaustiva de los hechos denunciados. La Comisión Interamericana solicitó la presentación de un informe en un plazo de 15 días.

89. El 10 de mayo de 2005, el Relator Especial envió una comunicación en relación con **José Luís Conde**, camarógrafo del canal Bolivisión. Según la información recibida, el 19 de abril de 2005, mientras el Sr. Luís Conde cubría una ceremonia en el Colegio Militar de La Paz, habría sido agredido por un policía militar. El policía militar le habría detenido y ordenado que dejara de grabar, afirmando que estaba tomando imágenes prohibidas. El camarógrafo habría respondido que solamente estaba haciendo su trabajo y que estaba grabando



lo mismo que otros periodistas presentes. A partir de entonces, según los informes, un teniente habría aparecido y amenazado a Luís Conde, diciendo “Especie de mierda, ¿sabes quienes somos?”. El camarógrafo habría sido conducido a un dormitorio donde le habrían retirado la cinta de la cámara y roto todo. Después, el teniente le habría pegado en la cara varias veces. El 27 de abril, el Sr. Luís Conde habría denunciado el caso ante el mando general de las Fuerzas Armadas.

90. Por carta con fecha 29 de agosto de 2005, el gobierno transmitió la siguiente información en respuesta a la comunicación del 10 de Mayo de 2005 sobre el caso del Sr. **José Luís Conde**, camarógrafo del canal Bolivisión. El 13 de Mayo de 2005, el asesor jurídico del Comando general del ejército emitió el dictamen N° 22 que contiene el sumario informativo instaurado con el objeto de esclarecer y determinar responsabilidades sobre el incidente ocurrido el 19 de abril de 2005 durante una ceremonia en el Colegio Militar de La Paz entre un teniente del ejército y el Sr. **José Luís Conde**. El dictamen estableció que el teniente asistió a la ceremonia con el fin de proporcionar seguridad física, control de tránsito y protección a personalidades importantes. Los medios de comunicación fueron invitados al evento y se delimitó para ellos un palco denominado PRENSA. En el recorrido de la parada militar se encontraban pintadas las franjas que delimitaban hasta donde podían acceder las personas que asistían al Acto. El mismo recorrido se encontraba acordonado con policías militares. Supuestamente, el Sr. José Luís Conde, de forma arbitraria y contraviniendo las normas éticas que debía cumplir como invitado a una ceremonia oficial, sobrepasó la demarcación, abandonando el palco reservado a la prensa, y profiriendo insultos a los policías militares cuando estos le invitaron a ocupar su lugar. Un policía dio parte a un oficial de rango superior quien intervino para invitar nuevamente al Sr. José Luís Conde a ocupar el lugar destinado a la prensa. Ante su actitud de marcada hostilidad e insultos el oficial en cumplimiento de la Orden de operaciones N°05/05, subpárrafo “H” procedió a aislarlo para posteriormente entregarlo a la patrulla de servicio quien luego procedió a su liberación. El dictamen consideró que el hecho fue magnificado por el camarógrafo, poniendo en entredicho la honorabilidad de la Institución y alegando malos tratos y daños en su filmadora. Como consecuencia se pidió al fiscal del distrito que emitiera la orden para que el médico forense de turno practicase el examen correspondiente, el cual concluyó que “solo se evidenciaba ligero dolor en ambos hombros, y no se observaban signos externos contusos”. También se realizó el peritaje de la filmadora en presencia del gerente técnico del Canal 5 “Bolivisión” concluyendo que la filmadora no había sido dañada durante la ceremonia. Con base a lo expuesto, se decidió emitir un auto final de Sanción disciplinario en contra del teniente por haber incurrido en las faltas graves previstas por el Art. 10 Incs 2) y 35) del Reglamento de Faltas Disciplinarias y sus Castigos y se solicitó al Gerente General del Canal 5 “Bolivisión” para que de acuerdo a sus reglamentos internos, se analizase la conducta del camarógrafo quien no respetó las reglas del Acto Oficial como invitado y no estaba debidamente identificado como camarógrafo del canal televisivo que representaba. El 12 de Julio de 2005, el Comando General del ejército transmitió un memorando al teniente sancionándole con 72 Horas de arresto en la Prevención de guardia de su unidad y con un aviso que futuras faltas de esta naturaleza serán sancionadas con mayor severidad.

91. El 25 de mayo de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con **Silvestre Saisari Cruz**, Presidente del **Movimiento Sin Tierra de Santa Cruz** (MST-SC), una organización que representa a unas 400 familias sin tierra quienes vendrían ocupando terrenos en la provincia de Obispo Santiestevan, Departamento de

Santa Cruz, desde agosto del 2004, formando una comunidad de campesinos a la que han llamado “Pueblos Unidos”. Según la información recibida, el 9 de mayo de 2005, en la plaza principal de Santa Cruz, Silvestre Saisari Cruz habría sido atacado por un grupo de personas, quienes le golpearon gravemente. El ataque habría ocurrido a la salida de una conferencia de prensa donde Silvestre Saisari Cruz habría puesto en conocimiento la realización de un ataque de elementos vinculados a un terrateniente en contra de la comunidad “Pueblos Unidos”, que habrían ocurrido el 7 de mayo 2005. Según se informó, la Policía Nacional habría intervenido para protegerle y la agresión habría sido fotografiada por reporteros. Los atacantes habrían sustraído el bolso de Saisari Cruz, el cual contendría documentación sobre las denuncias y su teléfono celular, desde el cual habrían hecho llamadas intimidatorias a otros asesores y dirigentes del MST. Se informó también que algunos de dichos documentos, sustraídos de su bolso, habrían sido mostrados al día siguiente en televisión, durante una entrevista con un hacendado local en el canal nacional de televisión Red 1 de Bolivia.

### Observaciones

92. El Relator Especial agradece al Gobierno sus respuestas a las comunicaciones con fecha del 19 de Enero y el 10 de Mayo del 2005, si bien espera respuesta a la comunicación con fecha del 25 de Mayo 2005.

93. El Relator Especial acorge con satisfacción las medidas tomadas por el gobierno en el caso del **Centro de Estudios Jurídicos e Investigación Social (CEJIS)**. El Relator Especial apreciaría que se le mantuviese informado sobre cualquier avance o desarrollo en esta investigación.

94. Con respecto al caso de **Silvestre Saisari Cruz**, el Relator Especial, a la espera de una respuesta del Gobierno, y sin pronunciarse sobre los hechos del caso, expresa su preocupación de que este incidente pudiese estar relacionado con el trabajo del Sr. Saisari Cruz en defensa de los derechos humanos de las familias campesinas. El Relator Especial, aprovecha para reiterar los principios establecidos, entre otros, por la Comisión de Derechos Humanos en su Resolución **2005/38** y apela al Gobierno a garantizar “que las víctimas de violaciones de los derechos humanos puedan interponer recursos eficaces para investigar efectivamente las amenazas y actos de violencia...y llevar ante la justicia a los responsables de esos actos, para luchar contra la impunidad”.

### Brazil

95. On 11 March 2005, the Special Rapporteur sent a letter of allegation concerning **Radio Antena 1 Station** located in Amapá state. According to information received, on 7 March 2005, the Brazilian High Court, in affirming a 1996 decision of a local court in Amapá, ordered *Radio Antena 1 Station* to pay \$7,500 for calumny and defamation to a Senator who felt insulted by a soap opera character, presented as a thief and a hypocrite, created by the radio. The Senator claimed that there were major similarities between the character and himself. *Radio Antena 1 Station* denied that there was any connection between the entirely artistic and fictional character and the Senator. The Judge of the Brazilian High Court allegedly refused the request of *Radio Antena 1 Station* to reduce the amount of the fine, despite the current law in Brazil which provides that the maximum allowed fine for publishing false information is \$1,900.

96. On 16 March 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders, sent a joint letter of allegation concerning the **Landless Workers' Movement** (*Movimento dos Trabalhadores Sem Terra*, MST), an organization working for the protection of the economic and social rights of landless rural workers. According to the allegations received, on 8 November 2004 in the morning, approximately 100 members of the MST gathered on the Paulo Freire encampment, in the municipality of Jandaia, in the interior of Goiás. They began an organized and non-violent protest against the alleged sale of land in the encampment to people who failed to meet the criteria for selection as set by the *National Institute for Settlement and Agrarian Reform* (*Instituto Nacional de Colonização e Reforma Agrária*, INCRA). Shortly afterwards, the Military Police of Goiás confronted the protestors and ordered a search for weapons. No weapons were found. During this incident several protestors were severely ill-treated by officials operating under the leadership of a Lieutenant (whose name is known to the Special Rapporteurs). 90 MST members were subsequently imprisoned. They were detained in cramped and over-crowded conditions and several were subjected to further ill-treatment, as later attested to in court by the doctor on duty that night. On 9 November 2004 in the morning, lawyers were prevented from meeting with the detainees, photographing their injuries, and documenting the evidence of ill-treatment. The majority was later released the same day, but nine remained in custody for a further 25 days, on charges of unlawful possession (*esbulho possessório*) and damages (*dano qualificado*). The arrest order was subsequently upheld by the local judge, and bail denied by the County judge. A habeas corpus appeal to the Goiás State High Court was filed on their behalf, but before the Second Criminal Chamber of the High Court could hear the case, the County Judge released the remaining detainees on bail. The charges had also been subsequently changed by the local judge in the Court of Jandaia to crimes punishable with detention after police were unable to prove unlawful possession. It appeared that a report detailing the aforementioned human rights violations has been submitted and investigations (*Sindicância* 011/04) carried out by the military police was concluded at the time this communication was sent.

97. On 6 April 2005, the Special Rapporteur sent a letter of allegation concerning a journalist **Ricardo Gonzalves Rocha**. According to information received, on 31 March 2005 in the city of São Vicente, State of São Paulo, the journalist and owner of the newspaper *Jornal Vicentino* was assassinated. Ricardo Gonzalves Rocha was shot dead by an unknown individual on a motorcycle. While the exact reasons for this murder were unknown, the assassination of Gonzalves Rocha could have been linked to his professional and political activities.

98. On 17 May 2005, the Special Rapporteur sent an urgent appeal concerning **Fernando Moraes's non-fiction book 'Na Toca dos Leões'**. According to information received, on 4 May 2005, in the 7th Civil District of Goiânia, the capital of the central state of Goiás, Judge Jeová Sardinha de Moraes granted an injunction, on behalf of the federal parliamentary deputy, prohibiting the circulation of approximately 50,000 copies of *Na Toca dos Leões* in Brazil. The decision also prohibited both author and publisher from making statements about the book to any media outlets, a violation of which would incur a fine of 5,000 Reals (approximately US \$2000). It was ordered that the withdrawal of all copies of *Na Toca dos Leões* was to take place within 20 days of the injunction. The parliamentary deputy filed civil and criminal

defamation complaints Fernando Morais, and a civil complaint against the book's publisher *Editora Planeta do Barsil. Na Toca dos Leões* described the history of the advertising agency, *W/Brazil*, and contained interviews with the agency's main business partners, including one with the parliamentary deputy in 1989, where he stated that sterilizing women could solve the problem of overpopulation in the northeast of Brazil. The parliamentary deputy denied having made this statement.

99. On 20 July 2005 the Government replied to the communication of 17 May 2005 concerning **Fernando Morais's non-fiction book 'Na Toca dos Leões'**. The Government stated that on 13 April 2005 the Judge of the 7<sup>th</sup> civil district of Goiana granted an injunction on behalf of the parliamentary deputy. The decision established that all copies of the book should be withdrawn and prohibited both the author of the book and its publishers from making any statements on the book, in violation of which they would have to pay a fine of R\$5,000.00. The sentence also determined the payment by the parliamentary deputy of a real pledge of R\$50,000.00 in order to guarantee the compensation for any possible damage caused to the publishers and to the author as a result of the judicial injunction. The sentence, as a precautionary lawsuit, had a transitory effect and aimed at the protection of a material right to be discussed at an appropriate forum. The judicial decision did not preclude any final judgment concerning the fundamental rights of the right to freedom of expression as granted by the Constitution or the inviolability of the honour and the image of a person and the right to compensation for moral damages granted by the Constitution. Following this decision, the publisher of the book appealed to the Court of Justice of the State of Goias in order to suspend the injunction. On 13 May 2004 the Judge of the Court of Justice decided to maintain the injunction based on the provisions of the Brazilian Code of Civil Proceedings, as he deemed that there were no relevant grounds to suspend the injunction and that due to the circumstances the injunction was not causing any grave damage to the publishers and to the author that could not be redressed. The Government assured the Special Rapporteur that, during the whole judicial process, the principles of contestation and full defence, as enshrined in the Brazilian Constitution of 1988, were strictly respected. The decisions of the courts were not subject to any interference. The merits of the cases were still to be decided by a separate decision at the time this reply was sent.

100. On 24 May 2005, the Special Rapporteur sent a letter of allegation concerning a Brazilian sports commentator, **Jorge Reis de Costa** (a.k.a. **Jorge Kajuru**). According to information received, in June 2003, the 12th Criminal District of Goiânia found him guilty of criminal defamation. His appeals before the Goiás State Court of Justice and the Superior Court of Justice were unsuccessful. In March 2005, the Goiás State Court of Justice ordered that for 18 months beginning 28 May 2005, he must spend every night from 8 p.m. to 6 a.m. at a prison dormitory in Goiânia, the capital of the central Goiás state, and would not be allowed to leave Goiânia at any time without the judge's prior approval. His lawyers were requesting that Jorge Reis de Costa be allowed to serve his sentence in São Paulo, where he was normally based, and where he worked for the television network SBT. The defamation law suit against him stemmed from comments he had made in January 2001 on the Goiânia-based *Radio K*, which he owned at the time, claiming that the television network *Rede Globo* in Goiás had obtained the right to broadcast the Goiás state soccer championships due to its close relationship with the Government.

101. On 9 June 2005, the Special Rapporteur sent a letter of allegation concerning **Pablo Hernandez**, a columnist and provincial editor of the tabloid *Bulgar (Expose)*. According to information received, on 18 May 2005 in Valenzuela city, a suburb of the capital city Manila, he exchanged gunfire with unidentified assailants when he realised that they had been following him and started aiming a gun at his car. Pablo Hernandez was legally authorised to carry a gun with him for protection since he had already been the victim of four attempted murders. He believed that the attack against him was related to his work, especially since he had been receiving threatening phone calls and messages ever since he started writing for *Bulgar*. Information was also received concerning the case of **Sandra Miranda**, a journalist and editor for the independent newspaper *Primeira Pagina*. According to information received, on 17 May 2005 in Palma, the capital of Tocantins State, unidentified persons set fire to her house. Investigations were underway at the time this communication was sent; initial conclusions indicated that the action was intentional. Sandra Miranda requested the police to provide her and her two children with protection; none had been provided at the time this communication was sent. Sandra Miranda believed that the attack against her might have been connected to her reporting on politicians in her town, on cases of nepotism and on corruption of local military and police officers. She had stopped publishing *Primeira Pagina*.

102. On 24 June 2005, the Special Rapporteur sent a letter of allegation concerning **19 university students**, including **Marcelo Verger, Flora Muller and André Moro Hierro**, members of *Movimento Passe Livre*, an organization calling for free public transportation for students; as well as **another 16 students**, mainly from the Journalism Faculty. According to information received, on 30 May 2005 in Florianópolis, the capital of the state of Santa Catarina, Marcelo Verger, Flora Muller and André Moro Hierro were arrested and detained by the police after having participated in a protest against the increase of public transportation fares. The students were charged with *formación de grupos, atentado a los servicios públicos esenciales y incitación al crime*. They were released in the morning the following day. Moreover, on 2 June, 16 other students, who had covered and reported on the demonstration of 30 May 2005, were arrested, detained for 24 hours without a detention order, and taken to the prison of Santa Catarina. They were reportedly made to undress and kneel on the ground for more than an hour, during which time they were beaten on their heads. The prison guards told other prisoners that the students were to blame for the lack of family visits during the week and incited the prisoners to sexually abuse them. They were charged with *atentado a los servicios públicos esenciales, incitación al crimen y actos de vandalismo*. All 19 students were released after having each paid 1500 Reales bail (approximately US\$ 500).

103. On 13 September 2005, the Special Rapporteur sent a letter of allegation concerning the daily newspaper *Diário de Marília*, and two radio stations *Diário FM* and *Dirceu AM* in Marília, in Sao Paulo. According to information received, on 8 September 2005, hooded armed men set fire to the headquarters of the *Central Marília Noticias* media group, which owned the newspaper and the two radio stations.

104. On 10 October 2005, the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a joint urgent appeal concerning **Antonio Fernandez Saenz**, a lawyer; **Manuel Fernando Fernandez Saenz**, an evangelical minister; **José Fernandez Saenz**, an evangelical minister; and **Dirce Ramiro de Andrade**, a journalist working for the evangelical church. Antonio Fernandez Saenz was 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. He also provided voluntary legal support to the human rights chapter of the Pentecostal and Apostolic Church of the Mission of Jesus in São Paulo, which was run by his two brothers, who like him have dual Spanish and Brazilian citizenship. Journalist Dirce de Andrade worked at the same church as the two brothers. According to the information received, on 3 September 2005, after midnight, several military police officers forced their way into Antonio Fernandez Saenz's office in São Bernardo do Campo. The officers presented no search warrant and allegedly 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. They were 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.

105. On 28 November 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning **Pedro Laurindo da Silva**, a member of the *Federação dos Trabalhadores na Agricultura* (FETAGRI), one of the Directors of the *Sindicato dos Trabalhadores Rurais* (STR) in Marabá, in the southeast of Pará state, and a co-ordinator of the "Zumbi dos Palmares II" camp, a community working for the appropriation of the "Cabo de Aço" Hacienda. According to the information received, on 17 of November 2005, at approximately 19:30, on one of the principal streets of Marabá, Pedro Laurindo da Silva was killed by a man who was later detained by the police. Pedro Laurindo da Silva had been participating in a seminar on violence and human rights, in Marabá, which had been organised by the *Sociedade Paraense de Defesa dos Direitos Humanos*. At the end of the day he had gone to the headquarters of the STR. Following a meal he left to make a phone call and upon his return to the headquarters with some of the other leaders, he was confronted by the gunman and shot twice in the head, approximately 200 metres from the STR. The gunman had been minding cows and had been seen on a number of occasions at the "Cabo de Aço" Hacienda. Grave concern was expressed that the killing of Pedro Laurindo da Silva was related to his human rights activities. In particular, during the seminar on violence and human rights, he had denounced the police violence used during the eviction of families from the Hacienda. He had lodged a complaint to the National Programme for Human Rights Defenders over death threats he had received in relation to his human rights work but had not received any protection.

## Observations

106. The Special Rapporteur thanks the Government for its reply to his communication dated 17 May 2005.

107. The Special Rapporteur regrets that no replies to his communications dated 11 March, 16 March, 6 April, 24 May, 9 June, 24 June, 13 September, 10 October and 28 November 2005 were received at the date this report was finalized.

108. Regarding the communication of 11 March 2005, the Special Rapporteur, pending a reply from the Government and without making any determination on the facts of this case, deems it appropriate to make reference to the principle enunciated in the report E/CN.4/2000/63, that sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; penal sanctions, in particular imprisonment, should never be applied and damage awards should be strictly proportionate to the actual harm caused.

109. Regarding the communication dated 16 March 2005, concerning the *Landless Workers' Movement* (*Movimento dos Trabalhadores Sem Terra*, MST), the Special Rapporteur would appreciate being informed of the outcome of the investigations into the reported human rights violations. Moreover, pending a reply to this communication and without making any determination on the facts of this case, the Special Rapporteur deems it appropriate to reiterate the concerns, as raised in Resolution 2005/38 of the Commission on Human Rights, that violations of the right to freedom of opinion and expression continue to occur, often with impunity, including arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence against persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers, Internet users and human rights defenders.

110. With regard to the communication of 6 April 2005, the Special Rapporteur, pending a reply from the Government and without making any determination on the facts of the case, deems it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which calls upon states to investigate effectively threats and acts of violence, against journalists and to bring to justice those responsible to combat impunity.

111. With regard to the communication dated 17 May 2005 concerning the case of **Fernando Morais's non-fiction book 'Na Toca dos Leões'**, the Special Rapporteur would appreciate being informed of the outcome of the court proceedings concerned.

112. Regarding the communications dated 24 May 2005, concerning **Jorge Reis de Costa** (a.k.a. **Jorge Kajuru**), without making the determination of the facts, and pending the Government's reply, the Special Rapporteur deems it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which provides that the authorities should not resort to criminal laws and punishment for media related offences as these are deemed disproportionate to the gravity of the offence and violate international human rights law.

113. With regard to the communications dated 6 April, 9 June, 13 September and 28 November 2005, concerning **Ricardo Gonzalves Rocha, Pablo Hernandez** and **Sandra Miranda, Diário de Marília, Diário FM** and **Dirceu AM**, and **Pedro Laurindo da Silva** respectively, without making a determination of the facts, and pending the Government's replies, the Special Rapporteur deems it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights, which states that, apart from the right to freedom of opinion and expression being an important indicator of the level of protection of other human rights and

freedoms, it is deeply concerned that violations of the right to freedom of opinion and expression continue to occur, including increased attacks directed against, and killings of, journalists and media workers, and stressed the need to ensure greater protection for all media professionals and for journalistic sources. The Special Rapporteur urges the authorities to take all necessary measures to ensure that journalists are provided the necessary protection in order to be allowed to work freely and independently.

114. With regard to the communications dated 10 October and 28 November 2005, without making a determination of the facts of the cases and pending the Government's replies, the Special Rapporteur deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

### **Burundi**

115. Le 16 juin 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel urgent concernant la situation d'**Etienne Ndikuriyo**, de la radio *Bonesha FM* et de l'agence *Zoom-Net*, convoqué puis détenu par les services secrets depuis le 14 juin 2005, après la publication d'un article sur le chef de l'Etat. Selon les informations reçues, Etienne Ndikuriyo aurait été convoqué au siège des services secrets au sujet d'un article paru dans *Zoom-Net* évoquant l'état dépressif dans lequel le Président Burundais Domitien Ndayizeye serait tombé après la défaite de son parti aux élections communales du 3 juin 2005. Les services secrets, qui dépendent directement de la présidence, auraient interrogé Ndikuriyo sur les « propos outrageants envers le chef de l'Etat » contenus dans l'article et sur ses sources d'information.

### **Observations**

116. Le Rapporteur spécial regrette de ne pas avoir reçu de réponse à sa communication du 16 juin 2005. Le Rapporteur spécial a été informé par d'autres sources qu'**Etienne Ndikuriyo** aurait été relâché le 23 juin 2005 et qu'en attendant le déroulement du processus légal contre lui, il devait se présenter à un juge une fois par semaine. Dans l'attente d'une réponse du gouvernement, mais sans préjuger des faits examinés, le Rapporteur spécial reste inquiet et souhaiterait attirer l'attention du Gouvernement sur le principe de proportionnalité de la peine. A cet égard, des sanctions pénales, en particulier l'emprisonnement pour diffamation, ne semblent pas proportionnelles à un exercice effectif du droit à la liberté d'opinion et d'expression. Le Rapporteur spécial souhaiterait être informé sur la situation de M. Ndikuriyo depuis 14 juin 2005.



## Cambodia

117. On 6 September 2005, the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers sent a letter of allegation concerning **Cheam Channy**, a Member of Parliament for the opposition party Sam Rainsy Party (SRP) and **Khom Piseth**, a SRP-member in exile. According to information received, 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 defence 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 time this communication was sent, despite the fact that he is 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.

118. Le 14 octobre 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel urgent concernant la situation de M. **Mam Sonando**, directeur et propriétaire de la radio *Abeil FM (Sombok Khmum)*. Selon les informations reçues, le 10 octobre 2005, M. Mam Sonando aurait été arrêté suite à une plainte pour diffamation concernant la transmission d'une interview avec une organisation non gouvernementale qui critiquait la cession des îles Phu Quoc et Krachak au Vietnam. Selon les informations reçues, M. Sonando aurait été mis en examen par le tribunal de la capitale pour diffamation après que le Premier Ministre Hu Sen aurait affirmé être prêt à poursuivre en justice tous ceux qui auraient contesté la décision de céder les îles Phu Quoc et Krachak au Vietnam. M. Sonando, ancien membre de l'opposition déjà emprisonné en 2003 pour délits d'opinion, pouvait être incarcéré pour six mois en détention préventive et risquait une peine d'un an de prison ferme.

119. On 28 October 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Rong Chhun**, the President of the Cambodia Independent Teachers' Association (CITA). According to information received, on 15 October 2005, Mr. Rong Chhun was arrested at Poi Pet Checkpoint, Banteay Meanchey Province at 3 pm, brought to Phnom Penh Municipal Court and charged with defamation and "incitement of others to commit a criminal offence without the offence being committed," following a statement he made criticizing the government's border policy. The charges against him were allegedly based on a statement made by him and three others on 11 October 2005, pertaining to the signature of a border agreement concluded between the Prime Minister and Vietnam's Prime Minister during the Prime Minister's visit to Vietnam from 10 to 12 October 2005. Defamation under article 63 of the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period --commonly known as the UNTAC Law --carries a maximum one-year prison sentence, while incitement to commit an offence under article 60 could lead to up to five years of

imprisonment. Mr. Chhun was detained in Prey Sor Prison at the time this communication was sent. It was also alleged that arrest warrants were issued on the same grounds against Mr. **Chea Mony**, the President of the Free Trade Union of the Workers of the Kingdom of Cambodia (FTUWKC), Mr. **Man Nath**, the President of the Cambodian Independent Civil Servant Association, and Mr. **Ear Channa**, the Deputy Secretary General of the Student Movement for Democracy. They were reportedly in hiding at the time this communication was sent. Mr. Rong Chhun, Mr. Chea Mony, Mr. Man Nath, and Mr. Ear Channa, are all members of the “Cambodia Watchdog Council” that monitors government activities.

### Observations

120. The Special Rapporteur regrets that no replies to his communications were received at the date this report was finalized.

121. Without making any determination as to the facts of the case, and pending the Government’s replies, the Special Rapporteur remains gravely concerned that charges against **Cheam Channy** and **Khom Piseth** might have been politically motivated.

122. Finally, with regards to the communications of 14 and 28 October 2005, the Special Rapporteur deems it appropriate to make reference to the principle enunciated, inter alia, by the Commission on Human Rights in its Resolution 2005/38, providing that the authorities should not resort to criminal laws and punishment for media related offences as these are deemed disproportionate to the gravity of the offence and are incompatible with international human rights law. Moreover, that the right of everyone to hold opinions without interference, as well as the right to freedom of expression, includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice, and the intrinsically linked rights to take part in the conduct of public affairs.

### Cameroon

123. Le 3 Mai 2005, le Rapporteur spécial a envoyé une lettre d’allégation concernant deux journalistes camerounais de l’hebdomadaire *L’Oeil du Sahel*, **Guibaï Gatama**, directeur de publication et son collaborateur **Abdoulaye Oumaté**, qui ont été condamnés à cinq mois de prison ferme et à une amende de cinq millions de francs CFA (7,620 euros) par le tribunal de Maroua, le 26 avril 2005, pour diffamation. Guibaï Gatama et Abdoulaye Oumaté ne se sont pas présentés au tribunal. L’un d’eux aurait fui le pays par peur d’être arrêté. Selon les informations reçues, les deux journalistes auraient dénoncé, dans un article publié en janvier 2005, les exactions perpétrées par les gendarmes de la brigade de la ville de Fotokol sur la population civile. Après la publication de cet article, une plainte a été déposée par le commandant de la brigade en question.

124. Le 11 juillet 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel urgent concernant la situation de M. **Joseph Bessala Ahanda**, rédacteur en chef du journal "*Le Front*". Selon les informations reçues, M. Joseph Bessala Ahanda aurait été interpellé le 6 juillet par des agents du commissariat du 7e arrondissement de Yaoundé, puis présenté au procureur et ensuite amené à la prison centrale de Kodengui. Au moment où cette communication a été envoyée, il était toujours

incarcéré en attente pour sa comparution devant le magistrat, dont la date n'a pas été encore fixée. Une information judiciaire aurait été ouverte à son égard. Des craintes ont été exprimées par des sources fiables que M. Ahanda pourrait passer plusieurs mois en prison avant de comparaître devant un magistrat. M. Ahanda avait publié des articles concernant le détournement de 300 millions de Francs CFA (environ 546 000\$ US ; 457 000 euros) par un haut fonctionnaire de Campost, le service postal camerounais, qui avait été ensuite limogé, et par le patron d'un groupe de presse privé. En mai dernier, M. Ahanda aurait été interpellé et passé à tabac par des hommes liés à cette affaire. Ses blessures avaient été constatées par un médecin, mais la plainte déposée était restée sans suite.

125. Le 7 septembre 2005 le gouvernement a répondu à la communication de 11 juillet 2005. Le gouvernement a informé le Rapporteur spécial qu'en ce qui concerne **Joseph Bessala Ahanda**, les recherches effectuées auprès de la Commission de délivrance de la carte de presse, organe mixte d'autorégulation professionnelle chargé de l'identification des journalistes au Cameroun, n'ont pas permis d'attester de la qualité de journaliste du susnommé, au sens où l'entendent les dispositions légales et réglementaires en vigueur, notamment la loi no. 90/052 du 19 décembre 1990 relative à la liberté de communication sociale et le décret no. 2002/2170/PM du 9 décembre 2002 fixant les modalités de délivrance de la carte de presse. En revanche, les documents en possession du gouvernement établissent formellement que M. Bessala Ahanda est engagé depuis le 23 février 2005 en qualité d'agent temporaire, pour un période d'un an à la Mairie de Yaoundé VI (Kondengui), tels que l'indiquent la décision no. 00025/D05/CUA/Y6/SG/SA du 4 mars 2005 et le communiqué de mise au point du Président de la section camerounaise de l'Union Internationale de la Presse Francophone (UPF) publié en date du 11 juillet 2005. M. Bessala Ahanda a effectivement signé un article dans le journal « La Nouvelle Presse » paraissant à Yaoundé (et non pas dans le journal dénommé « Le Front » paraissant à Douala, dont il serait le Rédacteur en Chef), dans lequel il accuse le Directeur Général de la société nationale d'exploitation des services postaux dénommée « Cameroon Postal Services (CAMPOST) », d'être l'auteur d'importants détournements de fonds, réalisés avec la complicité du patron du Group de presse privée « L'Anecdote » basé à Yaoundé. Par la suite, pour des raisons que le gouvernement ignore, M. Bessala Ahanda se serait rendu au siège du Group de presse « L'Anecdote ». Il aurait alors insisté, en se faisant menaçant, au point qu'une vive altercation d'abord orale, puis physique s'en serait suivie avec les agents de sécurité de l'entreprise. Au terme de cet échange émaillé de violences physiques, certains vigiles qui tentaient d'extraire M. Bessala Ahanda de l'enceinte du bâtiment, furent l'objet de coups et blessures de la part de ce dernier qui, une fois expulsé, s'en serait alors pris au bâtiment lui-même, en y lançant des projectiles, provoquant ainsi d'importants dégâts matériels sur la façade principale. Les investigations que le gouvernement a menées auprès des officiers de police judiciaire et des juridictions de Yaoundé indiquent que la seule plainte enregistrée à ce jour dans le cadre de cette affaire est le fait de M. Amougou Belinga, qui a attiré à M. Bessala Ahanda devant le Tribunal de Grande Instance de Yaoundé - Administratif par voie de citation au parquet, pour violation de domicile, destruction de biens et blessures simples. Par contre, nous n'avons eu connaissance d'aucune plainte déposée par M. Bessala Ahanda. En ce qui concerne la procédure subséquente à la plainte de M. Amougou Belinga, la compagnie de gendarmerie de Yaoundé - Efoulan, agissant sur ordre du Procureur de la République près le Tribunal de Grande Instance de Yaoundé - Administratif, a convoqué M. Bessala Ahanda par deux fois pour se faire entendre, sans que le mis en cause n'ait jugé nécessaire de déférer à ces convocations. C'est alors que, conformément à la réglementation en vigueur et en vertu d'un

mandat d'amener délivré par le Procureur, l'intéressé a été interpellé, puis entendu sur procès verbal, dans le cadre de l'enquête préliminaire diligentée par les éléments de la compagnie de gendarmerie de Yaoundé - Efoulan, avant d'être déféré au Parquet d'instance de Yaoundé - Administratif. En raison de la gravité des faits qui lui étaient reprochés, et particulièrement la situation de flagrant délit constituée par l'infraction de destruction de biens, ainsi qu'en absence d'une garantie de représentation suffisante de la part du mis en cause, le Procureur de la République, ouvrant une information judiciaire à cet effet, a mis l'intéressé en examen pour violation de domicile, destruction de biens et blessures simples, l'a placé en détention préventive à la prison centrale de Yaoundé – Kodengui, après avoir délivré un mandat de dépôt à son encontre, conformément au code de procédure pénale en vigueur. Usant de son droit à la défense et s'appuyant sur le bénéfice de la présomption d'innocence, M. Bessala Ahanda a demandé et obtenu une mise en liberté provisoire ordonnée par le Procureur Général près la Cour d'Appel du Centre dont dépend le Tribunal de Grande Instance de Yaoundé – Administratif. L'intéressé était, au moment où cette réponse a été reçue, libre. Mais même mis en examen, il continuait d'être poursuivi, dans la mesure où la partie civile ne s'est pas désistée. Au vu des investigations que le gouvernement a menées, il a été possible d'affirmer ce qui suit : Le gouvernement n'a trouvé aucune trace d'une quelconque plainte déposée par M. Bessala Ahanda Joseph. Des recherches sur les suites à donner à une telle plainte étaient donc sans objet. En revanche, M. Bessala Ahanda était poursuivi en justice par une personne privée, qui a estimé que ses droits avaient été violés, ses biens détruits et que des personnes travaillant pour son compte avaient subi des dommages corporels attestés par des certificats médicaux. La procédure mise en œuvre pour diligenter le dossier d'accusation ne semble pas avoir fait preuve d'une quelconque irrégularité au regard des règles en vigueur au Cameroun. Le gouvernement ne saurait non plus parler de détention, ni de privation arbitraires de liberté dont aurait été victime (?) Les appréhensions liées à la durée de la détention préventive ainsi qu'à la garantie d'un procès équitable sont battues en brèche par le fait qu'usant de son droit à la défense, le prévenu, qui continuait à bénéficier de la présomption d'innocence, a saisi le Parquet Général d'une demande motivée de mise en liberté provisoire et obtenu gain de cause, moins de quinze (15) jours seulement après son incarcération. L'affaire qui oppose M. Bessala Ahanda à son adversaire ne concerne en rien la liberté d'opinion ou la liberté d'expression. En tout état de cause et eu égard au sacro-saint principe de la séparation des pouvoirs, il n'est pas concevable pour un Gouvernement qui dans un Etat de droit, relève du Pouvoir Exécutif, d'interférer sur le domaine du Pouvoir Judiciaire, dont l'indépendance est garantie par la Constitution, à moins que la partie civile ne décide de se désister de l'action qu'elle aura elle-même introduite en justice et qu'il faille ordonner au Parquet d'éteindre l'action publique.

126. Le 7 septembre 2005, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de M. **Alhadji Mey Ali**, président de l'association des droits de l'Homme Organe de la Société civile ("OS\_Civile") et **Alhadji Mamat**. Selon les informations reçues, le 29 juillet 2005, M. Alhadji Mey Ali aurait saisi le Commandant de la légion de gendarmerie de la province de l'extrême nord à Maroua afin de dénoncer les "actes de tortures et traitements cruels" qu'aurait commis le maréchal des logis sur les habitants du quartier Sao à Afadé. Il est rapporté que le 25 juillet 2005, le Collectif des habitants du quartier Sao à Afadé, Kousseri, au nord-est du Cameroun aurait adressé une plainte au Commandant de compagnie de gendarmerie de Makary, contre le maréchal des logis pour torture et complicité de torture sur les habitants du quartier. Il nous a été rapporté que

le 11 août 2005, supposément à la demande du même Maréchal des logis, M. Alhadji Mey Ali et M. Alhadji Mamat, le chef de quartier ayant déposé la plainte mentionnée, auraient été cités à comparaître devant le tribunal de première instance de Kousseri le 25 août 2005, pour « dénonciation calomnieuse et diffamation », selon les articles 74 (responsabilité pénale), 304 (dénonciation calomnieuse) et 305 (diffamation) du code pénal camerounais. D'après les informations qui nous sont parvenues, MM. Mey Ali et Mamat pourraient être condamnés à une peine de prison de six mois à cinq ans, et à une amende de 10.000 à 1.000.000 de francs pour l'accusation de dénonciation calomnieuse, et à une peine de prison de six jours à six mois et à une amende de cinq mille à deux millions de francs, ou à l'une de ces deux peines seulement, pour l'accusation de diffamation. Le 25 août 2005, leur procès a été renvoyé au 1er septembre 2005. Selon les informations reçues, l'audience qui devait se tenir le 1er septembre 2005 n'aurait pas figuré au rôle ( ? ) et le Président du Tribunal aurait informé les membres du MDDHL que l'audience serait prévue le 22 septembre 2005.

127. Le 28 décembre 2005 le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de M. **Adama Mal-Sali** représentant du Mouvement pour la défense des droits de l'Homme et des libertés (MDDHL) à Balaza-Lawane. Selon les informations reçues, le 30 novembre 2005, M. Adama Mal-Sali aurait aidé au dépôt d'une plainte contre le chef de canton (lawan) de Balaza-Lawane, pour « abus de pouvoir » et « escroquerie ». Le 15 décembre 2005, le Procureur de la République du tribunal de première et grande instance de Maroua l'aurait convoqué à son cabinet et l'aurait ensuite menacé, lui recommandant de « ne plus jamais écrire car la prochaine fois qu'il verra son écrit quelque part, il le fera jeter en prison ». Selon les informations reçues, M. Adama Mal-Sali aurait déjà fait l'objet d'attaques similaires par le passé, le même chef de canton aurait déjà déposé plainte contre lui pour « diffamation et dénonciations calomnieuses » au printemps 2005. Le 4 mai 2005, Adama Mal-Sali aurait comparu devant le tribunal de première instance de Maroua mais l'affaire avait été renvoyée au 1er juin 2005 en raison de l'absence du plaignant, et de nouveau au 3 août puis au 12 octobre 2005. Le 23 novembre 2005, l'avocat du plaignant se serait présenté pour la première fois, et, ne connaissant pas le fond du dossier, aurait demandé un renvoi de l'affaire au 28 décembre 2005. Par ailleurs selon les informations reçues, en janvier 2005, le procureur de la République de Maroua aurait adressé aux officiers de police judiciaire une lettre-circulaire, leur demandant spécifiquement d'interpeller et de déférer à son Parquet les militant des droits de l'homme se trouvant sur le territoire de sa circonscription en alléguant que des faussaires agissaient sous couvert de la défense des droits de l'homme. Le texte critiqué par les organisations de défense des droits de l'homme aurait été remplacé par une nouvelle lettre-circulaire en date du 3 novembre 2003, dans laquelle le procureur affirmait que « les activités des associations de défense des droits de l'homme ne sauraient souffrir d'une quelconque entrave, lorsqu'elles agissent dans le cadre des missions définies dans leurs statuts respectifs » mais confirmant les mesures de la première circulaire, précisant qu'elles restaient « applicables à tout individu susceptible d'être poursuivi pour des faits d'escroquerie ».

## Observations

128. Le Rapporteur spécial regrette de ne pas avoir reçu de réponse à ses communications du 3 mai 2005. Dans l'attente de ces réponses mais sans préjuger des faits examinés, le Rapporteur spécial reste inquiet et souhaiterait attirer l'attention du Gouvernement sur le principe de proportionnalité de la peine. A cet égard, des sanctions pénales, en particulier

l'emprisonnement pour diffamation, ne semble pas proportionnel à un exercice effectif du droit à la liberté d'opinion et d'expression. Ce principe est réitéré par la Résolution 2005 /38 de la Commission des Droits de l'Homme qui a invité tous les Etats à ... j) ne pas recourir, pour des infractions concernant les médias, à des peines d'emprisonnement ou à des amendes qui sont sans commune mesure avec la gravité de ces infractions et qui violent le droit international relatif aux droits de l'homme.

129. Le Rapporteur spécial remercie le Gouvernement pour sa réponse du 11 juillet 2005.

130. Le Rapporteur spécial regrette de ne pas avoir reçu une réponse à sa communication du 7 septembre 2005. Dans l'attente de cette réponse mais sans préjuger des faits examinés, le Rapporteur spécial reste inquiet et souhaiterait attirer l'attention du Gouvernement sur les principes fondamentaux énoncés dans la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 1 et 2 qui stipulent que chacun a le droit, individuellement ou en association avec d'autres, de promouvoir la protection et la réalisation des droits de l'homme et des libertés fondamentales aux niveaux national et international.

131. Dans l'attente d'une réponse à la communication du 28 décembre 2005, le Rapporteur spécial souhaiterait attirer l'attention du Gouvernement à la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 12 para. 2 et 3 qui stipule que l'État prend toutes les mesures nécessaires pour assurer que les autorités compétentes protègent toute personne, individuellement ou en association avec d'autres, de toute violence, menace, représaille, discrimination de facto ou de jure, pression ou autre action arbitraire dans le cadre de l'exercice légitime des droits visés dans la présente Déclaration. À cet égard, chacun a le droit, individuellement ou en association avec d'autres, d'être efficacement protégé par la législation nationale quand il réagit par des moyens pacifiques contre des activités et actes, y compris ceux résultant d'omissions, imputables à l'État et ayant entraîné des violations des droits de l'homme et des libertés fondamentales, ainsi que contre des actes de violence perpétrés par des groupes ou individus qui entravent l'exercice des droits de l'homme et des libertés fondamentales.

### Chad

132. Le 9 juin 2005, le Rapporteur spécial a envoyé une lettre d'allégation concernant **Samory Ngaradoumbé**, journaliste de l'hebdomadaire *L'Observateur*, qui a été interpellé à la rédaction du journal le 4 juin 2005, par le service de contre-espionnage tchadien (ANS), et placé en garde à vue le même jour. La raison de cette arrestation aurait été la publication, le 1er juin, d'une lettre ouverte de la communauté Kreda au président Idriss Deby. Selon les informations reçues, cette lettre dénonçait l'arrestation de plusieurs membres de la communauté et demandait leur libération immédiate. Les agents de l'ANS auraient expliqué à la directrice de publication de l'hebdomadaire qu'ils exigeaient que leur soit livré le nom de l'auteur de la lettre, faute de quoi le journaliste serait maintenu en détention et inculpé. Samory Ngaradoumbé a été libéré le 6 juin après l'intervention du ministre de la Sécurité publique et de l'Immigration qui n'aurait toutefois pas exclu des poursuites judiciaires ultérieures contre *l'Observateur* et ses collaborateurs.

133. Le 27 juin 2005, le Rapporteur spécial a envoyé un appel urgent concernant la situation de Messieurs **Samory Ngaradoumbé** (éditeur de l'hebdomadaire *L'Observateur*), **Garondé Djarma** (journaliste de l'hebdomadaire *L'Observateur*) et **Michael Didama** (directeur de l'hebdomadaire *Le Temps*). Selon les informations reçues, le 22 juin 2005, la police judiciaire aurait arrêté et placé sous mandat de dépôt à la maison d'arrêt de N'Djaména Samory Ngaradoumbé, Garondé Djarma et Michael Didama. Alors que les raisons de l'arrestation de M. Ngaradoumbé n'étaient pas claires, M. Djarma aurait été inculpé pour un article concernant un amendement constitutionnel qui devrait permettre au Président Idriss Deby de se présenter aux prochaines élections pour un troisième mandat. Le même jour, Michael Didama aurait été arrêté pour avoir publié, en mai, un reportage sur un mouvement de rébellion actif au Soudan et dans l'est du pays. Samory Ngaradoumbé avait déjà été arrêté le 4 juin. Interpellé par l'Agence nationale de sécurité, il avait été placé en garde à vue, après la publication par son journal d'une lettre ouverte de la communauté Kreda au Président Deby. M. Ngaradoumbé avait été libéré le 6 juin, mais le ministre de la Sécurité avait évoqué la possibilité de poursuites ultérieures.

134. Le 6 juillet 2005, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de plusieurs défenseurs des droits de l'Homme dans la localité de Krim Krim, dans la région du Logone Occidental, en particulier **Kagmbaye Mapideh**, président du Collectif des Associations des droits de l'Homme (ADH), et M. **Gedeon Nekarmbaye**, responsable local de l'association tchadienne pour la non violence (ATNV) de Krim Krim. Selon les informations reçues, M. Kagmbaye Mapideh, et M. Gedeon Nekarmbaye, auraient fait l'objet de harcèlements répétés de la part du chef de canton de leur localité en relation avec leur dénonciation du prélèvement illégal par ce dernier de 10% des compensations individuelles versées aux populations par les compagnies pétrolières. En particulier, le 3 février 2005, M. Gedeon Nekarmbaye aurait été détenu pendant 48 heures par la gendarmerie sur ordre du chef de canton et libéré après avoir payé une forte amende. Le 11 mars 2005, MM. Kagmbaye Mapideh et Gedeon Nekarmbaye aurait reçu une lettre de menace de la part du chef de canton dans laquelle ce dernier affirmait qu'il n'avait pas de leçons à recevoir de l'ADH et qu'il avait droit de vie et de mort sur ses administrés. Le 14 mars 2005, M. Nekarmbaye, ainsi que M. **Gabriel Banyo**, M. **Denis Diongoussou** et M. **Christian Djeratar**, trois autres militants de l'ADH, aurait été arrêtés par la gendarmerie de Krim Krim sur instructions du chef de canton puis libérés le 15 mars 2005. Le 4 juin 2005, M. **Patrice Mbaihoudou**, président des Unions locales d'ATNV et vice-président de la section d'ATNV à Krim Krim, aurait été passé à tabac au centre de paiement des compensations individuelles par le chef de canton pour s'être opposé au prélèvement de 10%. M. Mbaihoudou aurait déposé plainte auprès de la sous-préfecture de Krim Krim. L'affaire, qui aurait dû être jugée le 23 juin 2005, aurait été reportée au 11 juillet 2005 en raison de l'absence du sous-préfet, représentant du juge de paix de Krim Krim.

135. Le 16 août 2005, le Rapporteur spécial a envoyé un appel urgent concernant **Sy Koumbo Singa Gali**, directrice de publication du journal *L'Observateur* qui, le 15 août 2005, aurait été condamné à douze mois de prison ferme et au paiement de 100,000 CFA d'amendes (environ 152 euros) par le Tribunal de première instance de N'Djaména. Koumbo aurait été immédiatement incarcérée à la maison d'arrêt de la capitale. Le procureur de la République lui aurait reproché la publication, dans l'édition du 13 juillet de "L'Observateur", d'une interview du journaliste Garondé Djarma, emprisonné pour trois ans, dans laquelle le journaliste affirmait que son procès avait été manœuvré par le Conseil démocratique révolutionnaire, parti politique

d'ethnie arabe. Le Rapporteur spécial avait exprimé son inquiétude sur le fait que Sy Koumbo Singa Gali était la quatrième journaliste à avoir été condamnée, en espace d'un mois, à des peines de prison ferme.

### Observations

136. Le Rapporteur spécial regrette de ne pas avoir reçu de réponse à ses communications du 9 juin et 27 juin 2005. Dans l'attente de ces réponses mais sans préjuger sur les faits examinés, le Rapporteur spécial souhaiterait attirer l'attention du Gouvernement sur la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 6 alinéas b) et c) qui stipule que chacun a le droit, individuellement ou en association avec d'autres, conformément aux instruments internationaux relatifs aux droits de l'homme et autres instruments internationaux applicables, de publier, communiquer à autrui ou diffuser librement des idées, informations et connaissances sur tous les droits de l'homme et toutes les libertés fondamentales; d'étudier, discuter, apprécier et évaluer le respect, tant en droit qu'en pratique, de tous les droits de l'homme et de toutes les libertés fondamentales et, par ces moyens et autres moyens appropriés, d'attirer l'attention du public sur la question.

137. Concernant les communications du 9 et 27 juin, le Rapporteur spécial a été informé par d'autres sources que **M. Samory** aurait été condamné à trois mois de prison et à une amende de 100.000 FCFA (environ 176 dollars US), alors que **M. Djarma** aurait été condamné à trois ans de prison et une amende d'un million de FCFA (environ 1.764 dollars US). De plus **Michaël Didama**, aurait été condamné à six mois de prison ferme pour diffamation. Le 26 septembre 2005, un tribunal d'appel de N'Djamena a décidé de relâcher les trois journalistes après avoir trouvé des irrégularités procédurales. M. Didama a été reconnu coupable pour diffamation et incitation à la haine, mais il a été relâché étant donné qu'il avait déjà passé un mois et demi en prison. Le tribunal aurait de plus acquitté Ngaradoumbé Samory, toujours sur la base des irrégularités procédurales.

138. Le Rapporteur spécial regrette de ne pas avoir reçu une réponse à sa communication du 6 juillet 2005. Dans l'attente de cette réponse mais sans préjuger sur les faits examinés, le Rapporteur spécial souhaiterait attirer l'attention du Gouvernement sur la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 12 para. 2 et 3 qui stipule que l'État prend toutes les mesures nécessaires pour assurer que les autorités compétentes protègent toute personne, individuellement ou en association avec d'autres, de toute violence, menace, représailles, discrimination de facto ou de jure, pression ou autre action arbitraire dans le cadre de l'exercice légitime des droits visés dans la présente Déclaration.

139. Le Rapporteur spécial regrette de ne pas avoir reçu de réponse à sa communication du 16 août 2005. Dans l'attente de cette réponse mais sans préjuger sur les faits examinés, le Rapporteur spécial reste inquiet et souhaiterait attirer l'attention du Gouvernement sur le principe de proportionnalité de la peine. A cet égard, des sanctions pénales, en particulier l'emprisonnement pour diffamation, ne semblent pas proportionnelles à un exercice effectif du droit à la liberté d'opinion et d'expression. Ce principe est réitéré par la Résolution 2005 /38 de



la Commission de Droits de l'Homme qui a invité tous les Etats à ... j) ne pas recourir, pour des infractions concernant les médias, à des peines d'emprisonnement ou à des amendes qui sont sans commune mesure avec la gravité de ces infractions et qui violent le droit international relatif aux droits de l'homme.

### Chile

140. El 22 de marzo de 2005, el Relator Especial envió un llamamiento urgente en relación con el **proyecto de ley 212-374**. Según la información recibida, en septiembre de 2002, el Presidente de la Republica habría presentado al Congreso el proyecto de ley 212-374, que tiene por objeto anular las disposiciones penales que sancionan el insulto o la ofensa a las autoridades de gobierno, miembros del Congreso, jueces superiores y miembros de las fuerzas armadas. El proyecto propondría eliminar el artículo 263 del Código Penal y modificar tanto los artículos 264 y 265 del Código Penal como los artículos 276, 284, 416 y 417 del Código de Justicia Militar. Dicho proyecto habría sido debatido en enero de 2005 en el seno de la Comisión de Constitución, Legislación, Justicia y Reglamento del Senado. El plazo para presentar indicaciones adicionales por parte de los senadores se extendería hasta el 15 marzo de 2005. En su fase posterior, el proyecto habría de ser sometido al pleno del Senado para su aprobación.

141. El 9 de junio de 2005, el Relator Especial, juntamente con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, envió un llamamiento urgente en relación con el reciente detención del Sr. **Pedro César Cayuqueo Millaqueo**. Según las informaciones recibidas, el Sr. Cayuqueo Millaqueo, estudiante de Periodismo de la Universidad de La Frontera, director del sitio web de noticias mapuche Kolectivo Lientur y del periódico Azkintuwe, de circulación en la zona sur de Chile y Argentina, habría sido detenido el pasado 2 de junio en cumplimiento de una orden de arresto emanada del Juzgado Mixto de Traiguén, Provincia de Malleco en la IX Región. Se informó que la orden de arresto se habría producido al considerarse que el Sr. Cayuqueo Millaqueo no habría cumplido con el pago de una multa impuesta tras habersele declarado culpable, en el año 2003, de participar en un acto de protesta ocurrido en el año 1999 para la recuperación de unas tierras que el detenido y los grupos mapuches de la región consideran tierras tradicionales de la comunidad mapuche. Los cargos que se le imputaron entonces se enmarcarían, según se informa, en una investigación iniciada en 1999 a raíz de unas ocupaciones de tierras en el Fundo Santa Rosa de Colpi, de la Forestal Mininco, por los cuales fue condenado. La pena impuesta entonces habría sido remitida, con la obligación de firmar durante un año en el registro de reos y pagar una multa de 900 mil pesos.

142. El 16 de diciembre de 2005, el Relator Especial, juntamente 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. **Diego Carrasco**, abogado y parte interesada a nombre de entidades de la Sociedad Civil regional en el proceso de extradición contra el ex presidente del Perú, el Sr. **Cesar Madani** y la Sra. **July Palomino**, ambos refugiados políticos peruanos en Chile y activistas que han liderado manifestaciones a favor de la extradición del ex presidente del Perú. Según la información recibida, el 30 de noviembre del 2005, unos individuos que parecían organizados habrían seguido al Sr. Diego Carrasco, y detenido y registrado su vehículo, además de dañarlo. El Sr. Diego Carrasco habría sido amenazado con un arma de fuego y sus asaltantes le habrían robado su ordenador personal, documentos, teléfono celular, agenda de actividades y

direcciones. Los hechos habrían ocurrido en la zona centro de la ciudad de Santiago. Días antes habría presentado una carta dirigida al Presidente Ricardo Lagos, a nombre de varias redes internacionales, en la cual se solicitaba la extradición del ex presidente al Perú por los delitos cometidos en ese país durante su período presidencial. El 20 de noviembre del 2005, el Sr. Cesar Madani habría organizado un seminario sobre refugiados y exiliados en Chile. Los días que precedieron a este seminario, habría recibido varias llamadas telefónicas anónimas en las que la persona que llamó no habría dicho nada. Además, un auto Mercedes Benz color plomo le habría estado siguiendo. El 22 de noviembre del 2005, la Sra. July Palomino habría sido víctima de un robo en el centro de la ciudad de Santiago. Le habrían sustraído su teléfono móvil y su agenda de actividades. Desde entonces habría recibido constantemente llamadas anónimas amenazantes, y unos individuos la habrían seguido por la calle.

El 30 de noviembre del 2005, aproximadamente a las 07:15, su domicilio habría sido allanado y registrado. Según los informes, dos hombres y una mujer, identificándose como miembros de la Policía Internacional, sin mostrar el registro exigido por la ley, habrían entrado en su vivienda, revisado papeles que encontraron en las habitaciones y filmado todos los libros y documentos. Los hijos de la Sra. Palomino, de 9 y 2 años, se encontraban en la vivienda durante el allanamiento. Se expresaron temores que estos incidentes pudieran constituir intentos de obstruir el trabajo de promoción y protección de los derechos humanos que realizan los Sres. Diego Carrasco y Cesar Mamani, y la Sra. July Palomino. También se expresaron temores por su seguridad y la de sus familias.

143. El 29 de diciembre de 2005, el Relator Especial, juntamente con el Relator Especial sobre formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia, y la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la Sra. **Juana Calfunao Paillalef** y la **comunidad indígena Mapuche "de Juan Paillalef"** del municipio de Cunco, IX región. Juana Calfunao, tercera generación en su familia de mujeres activistas en la defensa de los derechos de la comunidad Mapuche, es *lonko* (autoridad tradicional) de su comunidad, miembro fundador de la organización no-gubernamental Comisión Ética contra la Tortura y de la Red Comunitaria de Defensores de los Derechos Humanos de los Indígenas y miembro de la Red de Alternativas a la Impunidad y la Globalización del Mercado. Su situación había sido objeto de comunicaciones con fechas de 23 de agosto de 2004, 22 de octubre de 2004 y 2 de septiembre de 2005, remitidas al Gobierno de Su Excelencia por titulares de distintos mecanismos especiales de la Comisión de Derechos Humanos y a las que el Gobierno había respondido por cartas con fechas de 27 de diciembre de 2004 y 6 de octubre de 2005. En un encuentro de mujeres defensoras de los derechos humanos que tuvo lugar en Colombo, Sri Lanka, a principios de diciembre de 2005, la Representante Especial sobre la situación de los derechos humanos tuvo el honor de entrevistarse con la Sra. Juana Calfunao Paillalef, la cual la informó detalladamente sobre la situación en la que se encontrarían ella misma y su comunidad. De acuerdo con nueva información llevada a nuestra atención recientemente, el miércoles 21 de diciembre por la tarde un contingente policial integrado por fuerzas especiales de Temuco y Los Laureles habría disparado bombas lacrimógenas contra un grupo de personas de la comunidad Juan Paillalef que protestaban pacíficamente contra la construcción supuestamente ilegal de una carretera privada cuyo trazado pasaría por el centro de su comunidad rural y sus tierras. Juana Calfunao habría sido fuertemente golpeada junto a otros miembros de su comunidad mientras la policía habría disparado contra el caballo que montaba. Se alega que el 23 de diciembre, se habría producido en la comunidad otro allanamiento policial en el que las

fuerzas de seguridad habrían hecho nuevamente uso excesivo de la fuerza. La policía no habría presentado a la autoridad Mapuche la orden de allanamiento que requiere la ley. En esta ocasión, además de atacar la población con bombas lacrimógenas y balines, los agentes habrían destrozado viviendas, generadores eléctricos y de agua y enseres personales, y habrían esparcido alimentos. También se habrían llevado todos los materiales de trabajo agrícola y de comunicación. Un taller que se estaba reconstruyendo, después de un incendio supuestamente intencional ocurrido en julio de 2005, también habría sido arrasado. Los agentes de policía habrían confiscado todos los teléfonos móviles, dejando incomunicada a la comunidad. Juana Calfunao, que todavía estaba herida, habría sido golpeada en presencia de sus hijos y otros niños de la comunidad y detenida junto a su hermana **Ana Luisa**. Ambas habrían sido conducidas a la Tercera Comisaría de Padre Las Casas y no habrían sido puestas en libertad hasta el día siguiente. De acuerdo con la información recibida, habrían sido sometidas a tratos crueles, inhumanos y degradantes durante su detención. La jueza del Tribunal de Garantía de Temuco, que ordenó su liberación habría tenido en cuenta las lesiones que las dos hermanas presentaban en el rostro y extremidades y habría determinado que el procedimiento en que fueron detenidas ambas mujeres fue realizado de manera ilegal e irracional por parte de la fuerza pública a cargo del desalojo. Por otra parte, según las informaciones recibidas, existiría un orden del Ministerio Público de Temuco, en el sentido de que los carabineros de Los Laureles tendrían la responsabilidad de cuidar de manera personal a la Lonko Calfunao. Las hermanas Calfunao habrían sido citadas para la audiencia de control de la detención en la cual la fiscalía intentó formalizar los cargos contra ellas por "desórdenes públicos" y "amenaza a Carabineros". Este procedimiento quedaría postergado hasta el 13 de febrero del 2006. Como muestran las comunicaciones enviadas previamente por mecanismos especiales de la Comisión de Derechos Humanos al Gobierno de Su Excelencia en relación con Juana Calfunao, esta no sería la primera vez que la líder indígena y su comunidad habrían sido objeto de ataques y hostigamientos. Se expresó temor que estos nuevos ataques contra Juana Calfunao y su comunidad pudieran estar nuevamente relacionados con su labor a favor de los derechos de las comunidades indígenas y constituyesen un intento de intimidar a los integrantes de esta comunidad para que cesaran sus reivindicaciones.

### **Seguimiento de comunicaciones transmitidas previamente**

144. Por carta con fecha 10 de febrero de 2005, el Gobierno de Chile transmitió la siguiente información en respuesta a la comunicación del 20 de agosto de 2004 relativa a la renuncia del director del diario "La Nación", el Sr. **Alberto Luengo Danon**. La empresa periodística de La Nación, es una sociedad anónima cerrada en la cual el Gobierno de Chile tiene participación a través de acciones, pero de la cual no es dueño. La empresa está constituida por un directorio y un Presidente, el cual tiene la facultad de nombrar al Director y solicitar su renuncia al cargo. En este contexto, la renuncia del Sr. Alberto Luengo Danon, fue solicitada por el Presidente de la empresa, previa consulta con su Directorio. Esta renuncia, según lo informado, fue solicitada sólo y exclusivamente por razones de mejor funcionamiento de la empresa.

### **Observaciones**

145. El Relator Especial agradece al Gobierno su respuesta a la comunicación del 20 de Agosto de 2004, aunque lamenta no haber recibido respuesta a ninguna de sus comunicaciones con fechas 22 de marzo de 2005, 9 de junio de 2005, y 16 y diciembre de 2005.

146. En lo concerniente al caso del **proyecto de ley 212-374**, el Relator Especial, a la espera de una respuesta del Gobierno, y sin pronunciarse sobre los hechos, expresa su preocupación ante la demora del Senado en aprobar dicho proyecto. Constituye igualmente motivo de preocupación el hecho de que los senadores hayan supuestamente modificado el artículo 264 de tal forma que este podría invocarse para resguardar de las críticas a los funcionarios públicos. Cabe también destacar que los cuatro artículos del Código de Justicia Militar arriba mencionados han sido dejados prácticamente intactos, lo cual parece dificultar la consecución del objetivo del proyecto 212-347, que es eliminar el delito de desacato. El Relator Especial reitera los principios enunciados, entre otros, en el informe de su predecesor (**E/CN.4/1999/64**), en la cual se expone que “el único propósito legítimo de las leyes de difamación, libelo, calumnia e insulto es proteger las reputaciones, lo cual implica que... estas leyes nunca deberían utilizarse para impedir la crítica del Gobierno o ni siquiera por razones tales como el mantenimiento del orden público, para lo cual ya existen leyes específicas”.

147. Con respecto al caso de los **Sres. Diego Carrasco y Cesar Mamani**, y la **Sra. July Palomino** el Relator Especial, en espera de una respuesta del Gobierno, y sin pronunciarse sobre los hechos del caso, teme que estos incidentes constituyan intentos de obstruir el trabajo de promoción y protección de los derechos humanos y contra la impunidad llevados a cabo por los Sres. Carrasco, Mamani y la Sra. Palomino. También se han expresado temores por la seguridad de estas personas y la de sus familias. El Relator Especial reitera los principios enunciados, entre otros por la Comisión de Derechos Humanos en su Resolución **2005/67** y solicita al Gobierno que adopte “todas las medidas necesarias para garantizar la protección de los defensores de los derechos humanos y creen y mantengan un entorno favorable a la labor de los defensores de los derechos humanos y sus familiares”.

148. En espera de una respuesta del Gobierno, y sin pronunciarse sobre los hechos del caso, el Relator Especial, también desea expresar su grave inquietud por la seguridad de **Juana Calfunao Paillaef** en particular, y por la de todos los miembros de la Comunidad Mapuche en Chile en general.

### China

149. On 10 January 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Yang Tianshui**, a freelance writer. He spent ten years in prison for "counter-revolutionary activities" from 1990 to 2000 after publicly voicing his opinion on the 1989 events in Tiananmen Square. He was again detained from 27 May to 11 June 2004, reportedly on account of articles marking the 15th anniversary of the 1989 events in Tiananmen Square. He then wrote articles about the torture of human rights activists and the official protection of some criminals. According to the information received:

- i. Police of the People's Republic of China detained Mr. Yang Tianshui in Hangzhou, Zhejiang Province, on 24 December 2004.
- ii. On 31 December 2004, an arrest warrant was issued by the Baixia Branch of the Public Security Bureau, Nanjing City, stating that Mr. Yang had been transferred to Nanjing, 200km north of Hangzhou. The Public Security Bureau accuses him of "incitement to subversion of state power". According to the information

received, except for this warrant, his family had no news of him. Concern was expressed that the arrest and detention of Mr. Yang may have been motivated by his writing, including on alleged human rights abuses in China, and aimed at preventing his further reporting.

150. On 16 June 2005 the Government of China replied to the communication of 10 January 2005. At the time this report was finalized, this reply was still in the process of being translated.

151. On 20 January 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning three members of the unofficial Protestant Christian church: **Liu Fenggang**, **Xu Yonghai**, and **Zhang Shengqi**, a computer technician. They have already been the subject of a communication to the Government by the Special Rapporteur on Freedom of Religion or Belief dated 14 November 2004. The case of Mr. Liu was also the subject of a communication dated 6 October 2004, by the Working Group on Arbitrary Detention acting in its procedure involving the investigation of individual cases. According to information received, Mr. Liu was arrested on 13 October 2003, while Mr. Xu and Mr. Zhang were arrested in November 2003. They were reportedly charged with “providing state secrets to foreign organizations” pursuant to article 111 of the Criminal Law. These charges reportedly related to reports Mr. Liu had written documenting the destruction by the authorities of more than a dozen house churches and the arrest of at least 300 Christians, some of whom were allegedly ill-treated, in Zhejiang province in July 2003. Mr. Xu sent these reports to a US-based Chinese-language magazine, *Christian Life Quarterly*, and Mr. Zhang e-mailed the reports to foreign addressees. Allegedly, on 16 March 2004, these men were tried in secret by the Hangzhou Intermediate People’s Court in Zhejiang Province, and, on 6 August 2004, the court sentenced Mr. Liu, Mr. Xu and Mr. Zhang to three years, two years and one year of imprisonment respectively. Since the period of detention before the date of the judgment was credited towards the sentence imposed, Mr. Zhang should have completed his sentence by the time this communication was sent. It was not, however, known whether he had been released at the date this communication was sent.

152. On 16 June 2005 the Government of China replied to the communication of 20 January 2005. At the time this report was finalized, this reply was still in the process of being translated.

153. On 2 February 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Hada**. According to the allegations received, Mr. Hada, detained in Chifeng prison, Inner Mongolia Autonomous Region, was subjected to disciplinary punishment on the ground that he was “resisting reform”. The punishments included being held in solitary confinement and being handcuffed overnight to a metal board. He was prohibited from talking to other inmates, allowed only limited contact with his family and denied proper medical care. He reportedly suffered from a serious stomach ulcer, coronary heart disease, rheumatoid arthritis, and experienced psychological problems. In 1992, Mr. Hada was one of the founders of the Southern Mongolian Democratic Alliance (SMDA), and in an underground journal and a book he published, he alleged that the Government had committed systematic violations of the human rights of the Mongols of Inner Mongolia, including mass killings, deprivation of social and political rights, and suppression of Mongol culture. In 1995, Mr. Hada

and the SMDA organized several peaceful demonstrations in Hohhot, to demand that the Government respect the rights of the Mongols. Mr. Hada was arrested in December 1995 and was still being detained at the time this communication was sent. On 6 December 1996, he was tried behind closed doors, convicted on charges of "conspiring to overthrow the government" and "espionage", and was convicted to 15 years imprisonment. In view of the alleged ill-treatment, concern was expressed that he might have been at risk of torture or other forms of ill-treatment.

154. On 12 May 2005 the Government replied to the communication of 2 February 2005. At the time this report was finalized, this reply was still in the process of being translated.

155. On 22 February 2005, the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Zhang Lin**, a dissident writer and pro-democracy advocate. According to information received, Mr. Zhang was 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 searched by police on 6 and 12 February 2005, and 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 was reportedly being detained incommunicado at the No. 1 Detention Centre of Bangbu City, Anhui province, at the time this communication was sent. 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 that were posted on the internet.

156. On 8 July 2005 the Government of China replied to the communication of 22 February 2005. At the time this report was finalized, this reply was still in the process of being translated.

157. On 17 March 2005, the Special Rapporteur sent an urgent appeal concerning a petitioner Mrs. **Jiang Meili**, the wife of Mr. Zheng Enchong (subject of two urgent appeals sent on 16 March 2004 by the Special Rapporteur jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Representative of the Secretary-General on the situation of human rights defenders; and on 1 December 2004 by the Special Rapporteur jointly with 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), who was the subject of an urgent appeal sent on 16 March 2004 by the Special Rapporteur jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Representative of the Secretary-General on the situation of human rights defenders, a petitioner Mr. **Li Jianhong**, operator for the Qimeng website, petitioner Mr. **Wu Xuwei**, husband of a detained petitioner Mrs. Mao Hengfeng concerning whom an urgent appeal was already sent on 12 October 2004 by the Special Rapporteur jointly with the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences, a petitioner Mrs. **Shen Yongmei**, a petitioner Mr. **Xu Yongdao**, a petitioner Mr. **Tian Baocheng** and a petitioner Mrs. **Zhang Cuiping**. According to information received, people travelled to Beijing from all over China to present

their complaints to and to petition the central Government during the annual meeting of the National People's Congress (NPC) which commenced on 3 March 2005. Security was increased in Beijing during this event, and security forces reportedly arrested and detained various petitioners and persons holding protests. Moreover, some petitioners were prohibited from travelling to Beijing and were arrested and detained at their home villages. The following cases were brought to the attention of the Special Rapporteurs:

- i. On 10 March 2005, Jiang Meli, the wife of Zheng Enchong, together with her sister, was arrested outside the home of her husband's lawyer by the security police. They were both, at the time this communication was sent, being detained by Shanghai police at the Beicai Dispatch Station in Pudong Xinqu District. No arrest warrant was presented. Li Jianhong was also arrested outside Jiang Meli's home, where he had reportedly planned to meet her to accompany her to her husband's lawyer. Mrs. Jiang had intended to petition the National People's Congress on behalf of her husband.
- ii. Wu Xuewei, whose wife was being detained at the Re-education Through Labour camp at the time this communication was sent, had been under strict surveillance by security forces in Shanghai since 25 February 2005. He was moreover prevented from leaving his home at night.
- iii. On 6 March 2005, Shen Yohgmei, who had gone to Beijing to petition over redevelopment projects, was arrested and forcibly returned to Shanghai where she was being detained at the time this communication was sent.
- iv. On 5 March 2005, a 74-year old petitioner, Xu Yongdao, was arrested for petitioning in Beijing on behalf of his son Xu Zhengqing and was reportedly being kept under house arrest in Shanghai at the time this communication was sent.
- v. On 3 March 2005, Tian Baocheng and Zhang Cuiping were reportedly arrested by the security police and were being detained in a training centre, at the time this communication was sent. Both Tian Baocheng and Zhang Cuiping had already been detained, together with 80 other petitioners, in October 2003 for having petitioned the Government over forced relocation.
- vi. On 8 March 2005, a dissident artist Yan Zhengxue went to the court in Jiaojiang District, Taizhou City, Zhejiang Province, to ask for two copies of the written judgment relating to his lawsuit concerning alleged abuse of power and other unlawful activity by various local officials. Police officers reportedly beat and kicked him. He was then forced into a holding pen measuring 90 cm by 120 cm by 60 cm and transported to Jiaojiang Prison.

158. On 22 July 2005 the Government of China replied to the communication of 17 March 2005. At the time this report was finalized, this reply was still in the process of being translated.

159. On 18 March 2005, the Special Rapporteur sent an urgent appeal concerning a journalist **Shi Tao**, with regards to whom an urgent appeal was sent on 15 December 2004 by the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention. According to information received, on 11 March 2005, Shi Tao appeared before the State Prosecutor in the southern city of Changsha and was found guilty of illegally divulging state secrets abroad. He faced from 10 years to life imprisonment. The sentence was to be pronounced on 25 March 2005. It was reported that Shi Tao was assisted by a colleague of his lawyer, since his lawyer was, on 4 March 2005, banned by the Justice Department in the eastern city of Shanghai from practicing law for a year. The two-hour hearing was held behind closed doors. Despite the fact that Shi Tao suffered from the flu, the authorities did not allow his family to give him medication.

160. On 8 July 2005 the Government of China replied to the communication of 18 March 2005. At the time this report was finalized, this reply was still in the process of being translated.

161. On 5 April 2005, the Special Rapporteur, jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Guozhu Ye**, a housing rights activist who, on 24 August 2004, allegedly applied for legal permission to hold a 10000 people protest march against forced evictions in Beijing in mid-September 2004. According to information received, on 27 August 2004, the police arrested Mr. Guozhu and searched his house. He was reportedly charged with "disturbing social order" in connection with the application to hold the protest march. Allegedly, on 18 December 2004, the Beijing Intermediate People's Court sentenced Mr. Guozhu to four years imprisonment because his actions "seriously interfered with the work and order of state organs and public order". Information indicated that he was detained at an unknown location, at the time this communication was sent.

162. On 8 April 2005, the Special Rapporteur sent a letter of allegation concerning **Jiao Guobiao**, a journalism lecturer at the Beijing University. According to information received, on 21 March 2005, Jiao Guobiao received a letter from the university authorities demanding that he voluntarily resign from his post as lecturer. It appeared that this request followed various actions taken by the authorities against Mr. Jiao. At the end of 2004, Mr. Guobiao was not allowed to work at the Journalism and Communications Faculty, and in November 2004 the Public Department ordered the official media to stop publishing articles written by six pro-reform political commentators, including Mr. Jiao. Moreover, in September 2004, Mr. Jiao Guobiao was barred from supervising doctoral students and the journalism course he gave was closed; he was offered to work at the Archives Department instead. Concern was expressed that harassment of Jiao Guobiao by the authorities was directly linked to his criticisms of the Publicity Department. In an article he wrote entitled, "Crusade Against the Propaganda Department", which was circulated on the Internet in Summer in 2004, he accused the ruling Communist Party of obstructing the civilised growth of Chinese society through its censorship policies.

163. On 22 July 2005 the Government of China replied to the communication of 8 April 2005. At the time this report was finalized, this reply was still in the process of being translated.



164. On 22 April 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning five Tibetan monks: **Tashi Gyaltzen, Lobsang Dhargay, Thoe Samden, Tsultrim Phelgay** and **Jampel Gyatso**. According to information received, on 16 January 2005, they were arrested for having published a journal containing poems and articles of a political nature. They were sentenced to two to three years of re-education through labour and were being detained at Qinghai labour camp, close to Xining, north central China, at the time this communication was sent. The Special Rapporteurs expressed their concern that the five monks had been sanctioned solely for expressing their views.

165. On 12 July 2005 the Government of China replied to the communication of 22 April 2005. At the time this report was finalized, this reply was still in the process of being translated.

166. On 27 April 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning **Liu Yawen**. According to the allegations received, on 31 March 2005, she was arrested by the police when she was seen distributing Falun Gong Video-CDs in Beijing, and was being held at the Xuanwu District Detention Centre, at the date this communication was sent. After she was detained, police officers searched her home for other Falun Gong materials. She was denied visits by her family and it was not known whether she had been charged with any offence. In view of her alleged detention incommunicado, concern was expressed that she might have been at risk of torture or other forms of ill-treatment.

167. On 22 July 2005 the Government of China replied to the communication of 27 April 2005. At the time this report was finalized, this reply was still in the process of being translated.

168. On 1 July 2005, the Special Rapporteur, jointly with the Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning family members and business associates of Rebiya Kadeer, a human rights defender for the minority Uighur community in the northwest region of Xinjiang, in particular, her son **Ablikim Abdiriyim**, and two employees of her company Kadeer Trade Centre, **Ruzi Mamat** and **Aysham Kerim**. According to the information received, in August 1999, Rebiya Kadeer was detained in Urumqi on her way to meet with a United States Congressional Research delegation which was then visiting China. In March 2000, she was sentenced to eight years imprisonment on charges of "providing secret information to foreigners". On 17 March 2005, she was released on medical parole after serving five and a half years of this sentence and then joined her husband in exile in the United States. According to the new information received, on 11 May 2005, Ruzi Mamat and Aysham Kerim, the secretary and the director of the company respectively, were detained by the police. It was reported that Aysham Kerim was ill-treated by police during her arrest. Both were allegedly taken to the Fifth Branch of the Public Security Bureau in Urumqi. On 13 May 2005, the police reportedly took Ruzi Mamat and Aysham Kerim back to the Kadeer Trade Centre, and conducted a search of the office, under the pretext of a loan the Kadeer Trading Center had received from the state-owned Bank of China. During the raid it was reported that 100 security personnel were present both inside and outside the office, and that a large quantity of documents were removed from the office. Allegedly, at the time of the raid, police also tried to arrest Ablikim Abdiriyim, but he managed to escape and his whereabouts

were unknown, at the time this communication was sent. After the raid, Ruzi Mamat and Aysham Kerim were once again taken into the police custody. Concern was expressed that the harassment and intimidation of Ruzi Mamat, Aysham Kerim and Ablikim Abdiriyim may have been in retaliation for Rebiya Kadeer's activities in defending the human rights of the minority Uighur community. These concerns are heightened by allegations that, three days before her release on 17 March 2005, Rebiya Kadeer was threatened by prison guards that her business and children would be targeted if she associated with Uighurs abroad or revealed sensitive information about the Xingjiang. Nevertheless, since her release, Rebiya Kadeer had continued her work in defence of the human rights of the Uighur community, and had talked openly about her experiences in prison.

169. On 1 July 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Zhu Jiuhu**, a lawyer from the Jietong Law Office of Beijing. According to information received, 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. On 26 May 2005, approximately at 1.00 am, 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 other 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 was held by the Jingbian County Police at the Jingbian County Police Detention Centre. 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 not allowed admittance. The reason given was that Zhu's case was "a matter of national security". Mr. Zhu's wife had been denied the right to visit him, too.

170. On 6 July 2005, the Special Rapporteur sent a letter of allegation concerning **more than 30 petitioners** from Shanghai including **Wang Qiaojuan, Wang Mingqing** and **Yang Weiming**. According to information received, on 24 June 2005 at Shanghai's West train station, several police officers attacked the petitioners and stopped them from boarding a train going to Beijing. The police officers also prevented the petitioners from taking Wang Qiaojuan to a hospital to be treated for the injuries she sustained during the attack by the police officers. The petitioners were planning on going to Beijing to express their dissatisfaction with the new petitions regulations, which came into force on 1 May 2005, aimed at reducing the number of people going to the central authorities to file their complaints. These new regulations were aimed at improving the system of petitioning local officials. Many petitioners felt, however, that the local officials were not committed to properly dealing with their work as a result of which petitioners went back to filing their complaints before the central authorities.

171. On 19 September 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **CG**, aged 34, a blind peasant from Linyi, Shandong Province. Chen Guangchen was leading a legal campaign

against the use of forced sterilization and abortion in the city of Linyi. According to the information received, on the afternoon of 6 September 2005, several men in plain clothes grabbed CG as he left an apartment building in Beijing, dragged him across a parking lot and pushed him into an unmarked car with tinted windows. The men did not identify themselves. As he shouted for help and could be heard screaming in pain from inside the car, a small group of persons surrounded the vehicle and prevented it from driving away. Residents of the area called the Beijing police. Two uniformed officers arrived, consulted with the men who had seized CG, and then cleared the way for the car to drive away. The Beijing police officers informed the bystanders that the men who seized CG were police from Shandong province. A spokesman for the Shandong public security bureau stated, however, that he did not have any information about CG's detention. It was reported that the Shandong province police took Chen Guangcheng back to Linyi, where he was, at the time this communication was sent, confined to his farmhouse by a group of about 50 men acting on behalf of the Yinan county and Linyi city governments. CG was reportedly preparing a class-action lawsuit to challenge the population-control policies of the authorities of Linyi. In March 2005, the Linyi city government began requiring parents with two children to be sterilized and forcing women pregnant with a third child to have abortions. Officials also detained family members of persons who fled to avoid sterilization or abortion, beating them and holding them hostage until their relatives returned and submitted them to the operation.

172. On 12 December 2005 the Government of China replied to the communication of 19 September 2005. At the time this report was finalized, this reply was still in the process of being translated.

173. On 29 September 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, sent an urgent appeal concerning **Zeng Yichun**, a writer and poet. According to information received, on 22 September 2005, following a conviction against him for 'incitement to subversion', a court in Yingkou sentenced him to seven years in prison. The conviction against him was linked to 63 articles he wrote for foreign based publications and websites which were critical of the Communist party and Chinese government policy. Mr. Zeng called for political reform, increased capitalism in China and an end to the practice of imprisoning writers. He was, moreover, a regular contributor to overseas online news web-sites that are blocked in China. Mr. Zeng's trial lasted less than three hours. Mr. Zeng suffered from diabetes and was not receiving the necessary medical treatment for it in prison, at the time this communication was sent. He had been in No. 1 jail in Panjin, Liaoning Province, since 3 December 2004. His health had seriously deteriorated and he was suffering from a depression, at the date this communication was sent. His family had been under pressure by the authorities not to contact foreign human rights organizations and the media on his case. A US journalist who attempted to attend the trial of Mr. Zeng was detained for six hours and was only released after being forced to sign a confession admitting to unauthorised activity in China.

174. On 12 December 2005 the Government of China replied to the communication of 29 September 2005. At the time this report was finalized, this reply was still in the process of being translated.

175. On 29 November 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal

concerning **Zhao Xin**, the director of the Empowerment and Rights Institute in Beijing. According to information received, on 17 November 2005, Zhao Xin was severely beaten by seven men in Maoxin, Sichuan province. The men, reportedly armed with steel pipes and knives, confronted Zhao Xin as he left a restaurant with seven of his friends. Zhao Xin was the only target of the attack; his friends were intimidated and forcibly prevented from intervening. Following the attack Mr. Zhao was taken to a nearby hospital, where he received 11 stitches for a wound to his head; he also suffered a shattered knee cap. It had been reported that the police had refused to investigate the attack and that Zhao Xin had not been offered any protection when leaving the hospital. Zhao Xin was a former chief organizer of the banned opposition group the China Democracy Party and a student leader during the Tiananmen democratic movement in 1989. He had written articles, many under the pseudonym Zhao Zixian, advocating human rights and democracy in China. Reports also indicated that Zhao Xin had been instructed by officers from the Beijing Public Security Bureau (PSB) to leave Beijing during visits to China by the US President, George W. Bush, in mid-November, and the United Nations Special Rapporteur on Torture, Manfred Nowak, at the end of November. Zhao Xin had reported that since he arrived in Maoxin, and despite assurances from the PSB that he would be safe there, two cars, a black Audi and a VW Passat, had been following him.

176. On 14 December 2005 the Special Rapporteur, jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the Special Representative of the Secretary-General on the situation of human rights defenders sent an urgent appeal, concerning the detention of approximately **60 human rights defenders** who attempted to express their concern over ongoing forced evictions and lack of protection of adequate housing of affected communities in Shanghai. According to information received, on 1 December 2005, 60 persons were detained in front of the Oriental Pearl building in Shanghai as they attempted to deliver a letter addressed to UN Secretary-General, Kofi Annan to United Nations officials who were attending the UN Global Compact Summit. It was reported that approximately 40 of the activists were detained at the Century Plaza police station in Pudong, Shanghai and were subsequently released. It was reported that another twenty were returned to their home districts by local district officials. One of the activists, **Cai Wenjun**, who had been released after serving one year of “Re-education through Labour”, was officially notified that she remained under police investigation on suspicion of ‘disturbing public order’.

177. On 22 December 2005 the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal regarding **Dae Sub Hwang** of Korean Catholic Farmers Association, **Kyoung Kyu Yang** and **Dae Hyuk Lim** from the Korean Confederation of Trade Unions, **Seung Kyu Kang**, **Young Hoon Lee**, **In Hwan Park**, **Il Kwon Yoon**, **Suk Namgung**, **Chang Joon Kim**, **Dong Ung Han** and **Hyung Jin Lee** from Korean Peasants League (KPL), **Chien Ching Lee**, a Taiwanese Student, **Kosuke Makakiri**, a Japanese journalist for *People Newspaper*, and others arrested at the World Trade Organisation (WTO) Ministerial meeting in Hong Kong. According to information received, on 18 December 2005, at approximately 03:00, over 600 peaceful protesters were arrested at the WTO Ministerial meeting in Hong Kong. The above-mentioned persons and other individuals remained in detention, at the date this communication was sent, and had been charged with unlawful assembly under the Hong Kong Public Order Ordinance. Reports indicated that they were to face trial on 23 December 2005 at the Kwun Tong Magistrates Court, Hong Kong. According to reports many of those arrested were mishandled by the police and were denied medical aid, food, water and bathroom facilities.

### **Follow-up to previously transmitted communications**

178. On 5 September 2005 the Government replied to the communication dated 13 February 2004, concerning the case of **Wang Lin**. The Government provided that it investigated the matters referred to in the Special Rapporteur's communication. In 2001 she wrote statements advocating Falun Gong at a junior middle school exam paper. After this she quit school and left home. In May 2003 she engaged herself in Falun Gong activities in Harbin, Heilongjiang Province, and was placed in criminal detention, in accordance with the law, by the Harbin public security authorities. The local public security authorities "educated" her and released her, and then provided her with assistance regarding schooling and livelihood. The Government assured the Special Rapporteur that Ms. Wang was resuming a normal life and her health was good, at the time this reply was sent. The Government noted that in the Government's view, "Falun Gong" was not a religion, and that persons who practice it threaten public morality and undermine public security. The Government was of the view that the public security authorities took compulsory measures, in accordance with the law, in respect of the very small minority of persons engaging in Falun Gong. The Government also provided that in exercising their freedom of expression, citizens may not harm the interests or security of the State, society or other people.

179. On 24 May 2005, the Government replied to the communication of 1 October 2004, concerning a Chinese citizen **Zhao Yan**. The Government provided that Zhao Yan was arrested by the Beijing State Public Security Bureau on 20 October 2004, with the approval of the Beijing Municipal People's Procuratorate, on suspicion of involvement in illegally providing State secrets abroad. He was under investigation by the Beijing State Public Security Bureau, in accordance with the law, at the time this reply was sent. The Government stated that Mr. Zhao's case related to a breach of the Penal Code, and all action taken by the Chinese law-enforcement authorities against Mr. Zhao had been based on his criminal conduct and was unrelated to his reporting or research activities.

180. On 22 February 2005, the Government replied to the communication of 1 December 2004 concerning **Zheng Enchong**, formerly employed at the Minjian Legal Services Bureau in Shanghai. The Government provided that he 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. On 15 August 2003, the second division of the Shanghai Municipal People's Procuratorate initiated a prosecution against Mr. 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, Mr. 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. Mr. Zheng appealed to the Shanghai Municipal Higher People's Court, which rejected Mr. Zheng's appeal on 18 December 2003 and upheld the lower court's judgement. For the hearings both in first instance and on appeal, two advocates conducted Zheng's defence. The Government assured that, since being sent to prison, Mr. Zheng had never been harshly treated nor confined in a

high-security area. His cell had never housed more than two or three inmates at any one time. According to the Government, the director of the Shanghai Judicial Bureau had never spoken to Mr. Zheng. The Government was of the view that the case related to the criminal communication of State secrets to entities outside China, and that all coercive action taken by the Chinese law-enforcement authorities against Mr. Zheng had been based on his criminal conduct and has been consistent with Chinese law and the relevant requirements of international human rights agreements. The Government provided that, under Chinese law, the people's courts can reduce sentences passed on convicts concerning persons who show signs of genuine reform or perform meritorious service.

181. On 8 July 2005 the Government replied to the communication sent on 15 December 2004 concerning **Liu Xiaobo** and **Yu Jie**. At the time this report was finalized, this reply was still in the process of being translated.

182. On 22 February 2005, the Government replied to the communication of 15 December 2004 concerning **Shi Tao**. The Government stated that Shi Tao was formerly employed by the Dangdai Shangbao in Changsha City, Hunan Province, and took advantage of the facilities available through his employment to convey State secrets to persons outside China. His conduct was in breach of the Chinese Penal Code, and the Hunan State security authorities detained him for questioning on 24 November 2004, in accordance with the law. Under questioning, Shi made a full confession. On 14 November, with the approval of the Changsha Municipal People's Procuratorate, the Hunan State security authorities arrested Shi; the case was under investigation at the time this reply was sent. The case at issue, according to the Government, concerned the criminal conveyance of State secrets abroad. In handling the case in question, China's law-enforcement authorities had acted strictly in accordance with the Chinese Penal Code, Code of Criminal Procedure and so forth.

183. On 12 May 2005 the Government replied to the communication of 16 December 2004, concerning **Zhang Rongliang**. At the time this report was finalized, this reply was still in the process of being translated.

## **Observations**

184. The Special Rapporteur thanks the Government for its replies to the communications dated 13 February 2004, 1 October 2004, 1 December 2004, 15 December 2004 (two communications), 16 December 2004, 10 January 2005, 20 January 2005, 2 February 2005, 22 February 2005, 17 March 2005, 18 March 2005, 8 April 2005, 22 April 2005, 27 April 2005, 19 September 2005 and 29 September 2005.

185. The Special Rapporteur regrets that no replies to his communications dated 5 April 2005, 1 July 2005 (two communications), 6 July 2005, 29 November 2005, 14 December 2005 and 22 December 2005 were received at the time this report was finalized.

186. Regarding the communication dated 10 January 2005 concerning **Yang Tianshui**, the Special Rapporteur was further informed from another source that Mr. Yang was released on 25 January 2005.

187. With regard to the communication dated 18 March 2005 concerning **Shi Tao**, the Special Rapporteur was further informed from another source that that he was sentenced on 27 April 2005 to 10 years imprisonment in a closed trial before the Intermediate People's Court of Changsha in central China's Hunan Province. He was reportedly subject to forced labour in a jewellery factory at the high-security Chishan prison in Hunan Province, where he was transferred on 5 September 2005, and was suffering from respiratory problems and a skin inflammation at the time the information was received.

188. With regard to the communication dated 19 September 2005 concerning **Chen Guangcheng**, the Special Rapporteur was further informed from another source that his case was due to be heard on 10 October, but was postponed.

189. Moreover, in view of the allegations concerned in the communications sent to the Government in 2005, the Special Rapporteur deems it appropriate to call to the Government's attention the Commission on Human Rights' concerns as expressed in resolution 2005/38, that violations of the right to freedom of opinion and expression continue to occur, often with impunity, including extrajudicial killings, arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence and of discrimination, including gender-based violence and discrimination, increased abuse of legal provisions on defamation and criminal libel as well as on surveillance, search and seizure, and censorship, against persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers, Internet users and human rights defenders. In this context the Commission defined as unlawful those restrictions to the right to freedom of opinion and expression which are incompatible with paragraph 3 of article 19 of the International Covenant on Civil and Political Rights, including on i. discussions of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups; ii. the free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship; and iii. access to or use of information and communication technologies, including radio, television and the Internet.

190. Furthermore, the Special Rapporteur deems it appropriate to make reference to the fundamental principles enunciated in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

## Colombia

191. El 11 de febrero 2005, el Relator Especial, juntamente con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y Representante Especial del Secretario-General para los defensores de los derechos humanos, envió una comunicación en relación con la situación de dos jóvenes indígenas, **Manuel Salvador López Fernández, José Eduardo Boscán Epinayu**, y de su madre, **Francia Boscán**, todos ellos miembros de la Comunidad Wayuú. Según las informaciones recibidas, el 2 de febrero de 2005, en el casco urbano de Maicao, tres hombres que pertenecerían, según se alegó, a un grupo paramilitar, habrían irrumpido en la vivienda de Francia Boscán profiriendo amenazas de muerte contra ella y su familia. El 3 de febrero de 2005, a la 1.00 de la madrugada, en el sitio conocido como Santa Cruz, en la vía que conduce a La Majayura, en la jurisdicción de Maicao, José Eduardo Boscán Epinayu y Manuel Salvador López Fernández habrían sido asesinados. Según la fuente, los cuerpos sin vida habrían sido encontrados en el sitio conocido como La Esperanza, cerca de la frontera con Venezuela, y sus ropas habrían llevado distintivos de las "Autodefensas Unidas de Colombia".

192. El 10 de marzo de 2005, el Relator Especial, juntamente con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias y Representante Especial del Secretario-General para los defensores de los derechos humanos, envió una comunicación en relación con **Luís Eduardo Guerra Guerra y Alfonso Bolívar Tuberquia Graciano**. La Representante Especial y los Relatores Especiales habrían recibido información sobre la supuesta muerte de ocho habitantes de la Comunidad de Paz de San José de Apartadó, entre ellos dos defensores de derechos humanos y dirigentes de dicha comunidad, Luís Eduardo Guerra Guerra y Alfonso Bolívar Tuberquia Graciano. La Representante Especial envió anteriormente dos comunicaciones, con fechas del 3 de diciembre de 2003 y del 10 de febrero de 2004, con respecto a la seguridad de los habitantes de la Comunidad de Paz de San José de Apartadó. Según la información recibida, el 21 de febrero de 2005, hacia las once de la mañana, **Luís Eduardo Guerra**, uno de los dirigentes de la Comunidad de Paz; su compañera **Bellanyra Areiza Guzmán**; su hijo de 11 años, **Deiner Andrés Guerra**; y un testigo, habrían sido secuestrados por un grupo de hombres armados que se habrían identificado como miembros del ejército colombiano en Mulatos, una comunidad perteneciente a la Comunidad de Paz de San José de Apartadó. De acuerdo con los informes recibidos, los hombres habrían dicho que se llevaban a los cuatro para matarlos. Se informó que el testigo habría conseguido escapar. El 22 de febrero, según indican los informes, ese mismo testigo habría visitado la granja de Alfonso Bolívar Tuberquia Graciano, otro dirigente de la Comunidad de Paz. Se informó que al llegar, habría encontrado manchas de sangre en la casa y restos humanos fuera de ella, lo cual habría denunciado a las autoridades. El 25 de febrero, funcionarios de la Fiscalía General y la Procuraduría General habrían viajado a la zona para investigar la situación. Según los informes, habrían hallado cinco cadáveres desmembrados en dos fosas cerca de la granja, que fueron identificados como los de **Alfonso Bolívar Tuberquia Graciano**; su compañera **Sandra Milena Muñoz**; sus hijos **Santiago Tuberquia Muñoz y Natalia Andrea Tuberquia Muñoz**; y otro habitante de la zona, **Alejandro Pérez**. Además, ese mismo día, se habría hallado otra fosa con



los cadáveres de **Luís Eduardo Guerra Guerra, Bellanyra Areiza Guzmán y Deiner Andrés Guerra**, entre Mulatos y La Resbalosa, otra comunidad perteneciente a la Comunidad de Paz de San José de Apartadó. Se informó que las autoridades desconocerían aún quiénes fueron los responsables. El Relator Especial expresó su temor a que estos homicidios pudieran estar relacionados con el trabajo de los dirigentes de la Comunidad de Paz de San José de Apartadó en defensa de dicha comunidad.

193. Por carta con fecha 12 de mayo de 2005, el Gobierno de Colombia transmitió la siguiente información en relación con la comunicación del 10 de marzo de 2005 sobre el caso de ocho personas secuestradas y asesinadas en febrero de 2005, entre ellas, **Luís Eduardo Guerra Guerra y Alfonso Bolívar Tuberquia Graciano**. Con el propósito de esclarecer los hechos, el Gobierno creó una Comisión integrada por delegados de la Unidad de Derechos Humanos de la Fiscalía General y de la Procuraduría Delegada para los Derechos Humanos y Asuntos Étnicos. La Comisión se desplazó a la Comunidad de Paz de San José de Apartadó el 24 de febrero y al día siguiente efectuó el levantamiento de los cadáveres en el sitio conocido como “La Resbalosa”, y el 27 de febrero hizo lo propio en el Río Mulatos. El 2 de marzo, en el trayecto hacia Apartadó, la Comisión fue víctima de una emboscada. Varias personas resultaron heridas y un policía muerto. Las primeras indagaciones realizadas por la Fiscalía indicarían a las FARC como presuntos responsables de los asesinatos del mes de febrero de 2005. No obstante se seguía investigando el caso en el marco del Comité Especial de Impulso a las Investigaciones por Violaciones a los Derechos Humanos. Según la información proporcionada por el Ministerio de Defensa, no había unidades militares en la zona en el momento del asesinato, lo que en principio contradiría las afirmaciones según las cuales los presuntos responsables de la masacre serían militares. Asimismo el Gobierno insistió sobre sus acciones encaminadas a la implementación de las medidas provisionales decretadas por la Corte Interamericana de Derechos Humanos a fin de proteger la Comunidad de Paz de San José de Apartadó, como por ejemplo las visitas *in situ* de delegados del Gobierno y las reuniones interinstitucionales realizadas a nivel central. En agosto y octubre de 2004 el Vicepresidente de la República visitó la zona y en el marco de reuniones con organizaciones de derechos humanos, aseguró que el Gobierno seguiría sosteniendo dichas organizaciones en su trabajo. El Vicepresidente también se encontró periódicamente en Bogotá con los líderes de la comunidad con el objetivo de tomar medidas de protección y se propuso instalar un puesto de policía en la zona de los hechos.

194. El 11 de marzo de 2005, el Relator Especial, juntamente con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la situación en la que se encontrarían miembros de organizaciones de derechos campesinos e indígenas, en particular, **José Antonio Guerrero García**, gerente de la Federación Nacional de Cooperativas Agrarias (FENACOA) ; **Edilia Mendoza**, dirigente de la Asociación Nacional de Usuarios Campesinos – Unidad y Reconstrucción (ANUC-UR) ; **Everto Díaz**, Presidente de la Federación Nacional Sindical Unitaria Agropecuaria (FENSUAGRO) y **Germán Bedoya**, Presidente de Coordinador Nacional Agrario (CNA). Según los informes recibidos, el 10 de febrero de 2005, un panfleto con el logotipo del Bloque Capital de las Autodefensas Unidas de Colombia (AUC) habría sido deslizado debajo de la puerta del local de la Federación Nacional de Cooperativas Agrarias (FENACOA). En dicho panfleto se habría amenazado de muerte a José Antonio Guerrero García; Edilia Mendoza; Everto Díaz y Germán Bedoya. De acuerdo con la información recibida, José Antonio Guerrero García habría sido ya amenazado anteriormente, pese a haber

sido incluido en el programa de protección a líderes políticos y sindicales del Ministerio del Interior. En agosto de 2004, el citado ciudadano habría recibido una llamada telefónica anónima en la sede de FENACOA, en la cual, le habrían sugerido que abandonara su trabajo. En octubre de 2004, los escoltas de José Antonio Guerrero García habrían recibido otra llamada telefónica, en la cuál les habrían dicho “que ya sabían cuáles eran las regiones en las que trabajaban los dirigentes agrarios de FENACOA, y que con escoltas o sin ellos, los matarían”. De la misma manera, el 10 de noviembre de 2004, varios miembros del Ejecutivo de FENSUAGRO habrían sido víctimas de seguimiento por dos desconocidos que se movilizaban en una motocicleta sin placas. Ese mismo día, un vehículo con dos hombres no uniformados habrían permanecido frente a la sede de FENSUAGRO. El Relator Especial, expresó su temor a que estas nuevas amenazas contra cuatro importantes dirigentes pudiesen estar relacionadas con su trabajo de asistencia e información a las comunidades campesinas e indígenas.

195. El 15 de marzo de 2005, el Relator Especial, juntamente 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 en que se encontraría el Sr. **Miguel Alberto Fernández Orozco**, Presidente de la Central Unitaria de Trabajadores (CUT) Seccional Cauca y Coordinador del Área de Derechos Humanos del Comité de Integración del Macizo Colombiano (CIMA). Según las informaciones recibidas, el 8 de marzo de 2005, en horas de la tarde, se habría recibido en la sede de la CUT Seccional Cauca, un sobre conteniendo una carta de condolencia con supuestas amenazas contra el Sr. Fernández Orozco. Se informó que esta carta habría llegado un día después de la presentación pública de un informe sobre la situación de los derechos humanos en el Cauca realizada por el Sr. Fernández Orozco, en su calidad de Coordinador Regional de Derechos Humanos del CIMA. Se informó que esta persona habría sido, con anterioridad, objeto de otras amenazas debido a su trabajo como defensor de los derechos humanos. Según las informaciones, en 2004, se habría trasladado fuera del país para proteger su vida e integridad. El Relator Especial expresó su temor que estas nuevas amenazas en contra de Miguel Alberto Fernández Orozco pudieran estar relacionadas con la presentación del informe de violación de derechos humanos en el Departamento del Cauca y más generalmente con su actuación en las luchas sociales y su trabajo en favor de la reivindicación de los derechos de las comunidades campesinas y populares.

196. Por carta con fecha 7 de julio de 2005 el Gobierno de Colombia remitió la siguiente información en respuesta a la comunicación del 15 de marzo de 2005 relativa al señor **Miguel Alberto Fernández Orozco**. El 12 de abril, el Comité de Reglamentación y Evaluación de Riesgos (CRER) asignó un esquema individual de protección compuesto hasta ahora por un vehículo ordinario, hasta la adquisición de un vehículo blindado, y tres escoltas. Los hechos de hostigamiento y amenazas fueron puestos en conocimiento de la Dirección Nacional de Fiscalías para que se realizasen las investigaciones necesarias. También se solicitó a la Policía Nacional la adopción medidas para proteger al señor Fernández Orozco.

197. El 12 de mayo de 2005, el Relator Especial, juntamente con el Relator Especial sobre la tortura, envió una comunicación en relación con el menor **N.N.A.**, de 15 años de edad, Ricardo López Gómez, camarógrafo, Leonardo Luna Alzate, y Yohanna Guerrero. Según las informaciones recibidas, el 1º de mayo de 2005 aproximadamente a las 13h30 de la tarde, durante la marcha conmemorativa del día del trabajo en la ciudad de Bogotá, el estudiante, **N.N.A.** habría sido golpeado en la cabeza (zona occipital) por al menos ocho agentes del Escuadrón Móvil Antidisturbios de la Policía (ESMAD). Los policías, que tendrían el rostro

cubierto, habrían cercado al menor y lo habrían golpeado repetidas veces con palos. N.N.A habría sido trasladado al Hospital Centro Oriente donde habría permanecido hasta las 22.30 de la noche, hora en la que habría sido trasladado a una Clínica situada en la calle 104, donde habría sido hospitalizado en una sala de cuidados intensivos. Como consecuencia de la paliza, el menor presentaría trauma craneoencefálico severo, fractura del hueso occipital y un edema cerebral. Su estado de salud se habría agravado y el informe médico manifestaba que el desenlace podría ser la muerte cerebral. Además, a tenor del informe, los padres del menor habrían sido objeto de seguimientos, llamadas y hostigamientos supuestamente por parte de policías. Por otra parte, según los informes, durante dicha marcha del 1º de mayo habrían resultado heridas otras personas entre ellas las siguientes:

- **Ricardo López Gómez**, del programa de televisión de la Federación Colombiana de Educadores (FECODE), habría sido agredido mientras filmaba la agresión del grupo ESMAD contra algunos de los manifestantes. Como consecuencia de los golpes, habría presentado fractura de 4 dientes, heridas en los labios y debió recibir 30 puntos de sutura.
- **Leonardo Luna Alzate**, quien se desplazaba en un camión en el cual se llevaban pancartas, sonido y música, habría sido golpeado en una rodilla por uno de los agentes del ESMAD, así como herido por balas de goma. Habría sido trasladado al Hospital San Ignacio de Bogotá.
- **Yohanna Guerrero**, habría sido víctima de amenazas verbales y agresión física por parte de agentes del ESMAD. Habría sido herida por balas de goma, una de las cuales le impactó en la nuca, lo que le ocasionó un desmayo.

198. Por cartas con fecha 5 de julio y 25 de julio de 2005, el Gobierno de Colombia transmitió la siguiente información en relación con la comunicación del 12 de mayo de 2005 sobre el caso del menor N.N.A, y de los periodistas y manifestantes **Ricardo López Gómez, Leonardo Luna Alzate y Yohanna Guerrero**. La procuraduría General de la Nación, por medio del oficio 111046 – 136990-05/toru, del 16 de junio de 2005, informó del inicio de una investigación disciplinaria por los hechos en que falleció el menor. N.N.A El Gobierno de Colombia seguirá atento al resultado de las investigaciones que se adelanten, respecto de lo cual informará oportunamente al Relator especial.

199. El 23 de mayo de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con los periodistas Sres. **Daniel Coronell**, director del informativo “*Noticias Uno*”; **Carlos Lozano**, director del periódico “*Voz*” y **Hollman Morris**, productor del programa de noticias “*Contravía*” de Canal Uno, quienes habrían recibido amenazas de muerte mediante el envío de coronas fúnebres a sus oficinas y domicilios. De acuerdo a las informaciones recibidas, el 16 de mayo de 2005 por la mañana, Canal Uno habría recibido dos coronas florales: Una de ellas lamentaría la muerte de Daniel Coronell y la otra, la de su esposa e hija. Hacia las cuatro de la tarde, en la oficina de Carlos Lozano, habría sido entregada una corona floral con la dedicatoria. “De la familia Montoya para el sepelio de Carlos Lozano”. Hacia las ocho de la noche de ese mismo día, Hollman Morris habría recibido en su casa una corona de rosas blancas con una tarjeta que expresaba “sinceras condolencias” de parte de la familia Henao. A tenor de lo informado, los tres periodistas habrían sido también amenazados de muerte a través de

llamadas telefónicas anónimas. El Relator Especial expresó temor a que las amenazas contra ambos periodistas hubieran podido estar propiciadas por su labor profesional. En este contexto, el Relator Especial también llamó la atención del Gobierno sobre la información recibida en relación con el Sr. **Cristiano Morsolin**, periodista italiano. Según los informes, el 7 de abril de 2005, Cristiano Morsolin habría recibido un mensaje amenazante en el que se señalaba que grupos paramilitares habrían iniciado la búsqueda de un periodista italiano. En dicho mensaje se haría mención a una supuesta disconformidad mostrada por el Gobierno y el ejército colombiano en relación con las reacciones que habría suscitado en la comunidad internacional la difusión de una serie de artículos escritos por Morsolin sobre la masacre ocurrida en San José de Apartadó. Se informó además que el 8 de abril de 2005, hacia las ocho de la mañana, un individuo habría permanecido durante un poco más de una hora frente la vivienda del Sr. Morsolin. Por tales actos, el periodista habría tenido que mudarse. Tras su salida habría sido detectada en las calles cercanas a su casa, la presencia de hombres armados y un control permanente de la misma a cargo de personas no identificadas. El 11 de abril, un vehículo habría permanecido frente a las oficinas de CENSAT-Agua Viva -una organización con la que colabora el periodista- desde las dos de la madrugada hasta las siete de la mañana, hora en la que habría abandonado el lugar el Sr. Morsolin. El mismo vehículo habría sido visto frente las oficinas de CENSAT los días 15 y 21 de abril. Según los informes, ya habría sido otorgada protección policial a los Sres. Lozano y Coronell.

200. Por carta con fecha 30 de agosto de 2005, el Gobierno de Colombia transmitió la siguiente información en relación con la comunicación del 23 de mayo de 2005 sobre el caso de los periodistas **Daniel Coronel, Hollman Morris, Carlos Lozano y Cristiano Morsollín**. El Gobierno Nacional hizo un pronunciamiento público para reconocer el valor de los periodistas y rechazar esta clase de actos. La Fiscalía General de la Nación inició las acciones de investigación y de protección que se extienden a los familiares de los periodistas. El Comité de Reglamentación y Evaluación de Riesgos – CRER- del Programa de Protección a Periodistas y Comunicadores del Ministerio del Interior y de Justicia recomendó mediante Acta N°4 del 20 de Mayo de 2005 las medidas de protección siguientes:

- Daniel Coronel Castañeda: un esquema individual de seguridad con vehículo blindado, asignación de cuatro teléfonos celulares (2 para su esquema y 2 para el de su esposa, también periodista) y refuerzo del esquema de seguridad con un escolta más del DAS. De manera extraoficial, a través de los medios de comunicación se tuvo conocimiento que el Sr. Coronel salió del país.
- Hollman Morris: un esquema individual de seguridad con vehículo corriente, dos escoltas y tres radios avanteles. Por otra parte, el Área de Seguridad y Protección de la Dirección de Protección y Servicios Especiales de la Policía Nacional asignó un agente de policía en turno diurno en la residencia del Sr. Morris. Durante la noche la vigilancia se reforzaría por medio de patrullajes motorizados con personal de la DIRSE “vigilancia recomendada”.
- Carlos Lozano, dirigente y miembro del Comité de Reglamentación y Evaluación de Riesgos del Programa de Protección de la Unión Patriótica – Partido Comunista Colombiano (UP- PCC): un esquema individual de seguridad con vehículo blindado y un acompañamiento con otro vehículo corriente, siete escoltas,

medios de comunicación (avantel y celular), blindaje de la sede del periódico y su residencia, apoyo de reubicación temporal, tiquetes aéreos nacionales.

- Cristiano Morsolín. No presentó solicitud de protección y salió del país. En cuanto a la investigación, la Unidad Nacional de Derechos humanos y derecho internacional humanitario de la Fiscalía general de la Nación, abrió un expediente con el número 2193 por el delito de amenazas personales que se encontraba en etapa previa sin imputación a persona.

201. El 24 de mayo de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la situación de **Soraya Gutiérrez Arguello**, Presidenta de la *Corporación Colectivo de Abogados 'José Alvear Restrepo'*; de **otros miembros** de la organización y de **los familiares** de la Sra. Gutiérrez Arguello. Esta persona fue ya objeto de una comunicación enviada el 20 de septiembre de 2004 por la Representante Especial. Según la información recibida, el 13 de mayo de 2005, vigilantes del conjunto residencial donde vive la Sra. Gutiérrez Arguello en Bogotá le habrían entregado un paquete que habría sido dejado por una empresa de mensajería. Sospechosa de su contenido, la Sra. Gutiérrez Arguello habría avisado a la policía, la cual habría procedido a abrir el paquete. Dentro del mismo habría una muñeca decapitada y cortada en trozos. Partes de la muñeca estarían quemadas; el cuerpo estaría pintado con esmalte de uñas rojo, para que pareciera sangre y se habría dibujado una cruz. Se incluiría una amenaza escrita contra la familia. De acuerdo con los informes, el mismo día se habría publicado un anuncio en el periódico nacional 'El Tiempo', supuestamente contratado por la *Corporación Colectivo de Abogados "José Alvear Restrepo"*. En dicho anuncio se solicitaría a abogados, psicólogos, sociólogos y otros profesionales y estudiantes en busca de empleo, que se pusieran en contacto con la organización si deseaban obtener un empleo inmediato. En el aviso aparecerían los números de teléfono de la organización. El día siguiente, 14 de mayo, se habría publicado otro anuncio parecido en el mismo periódico, mediante el cual se buscaría guardias de seguridad para la organización. La fecha y el lugar para presentar candidaturas para los puestos eran las mismas que las fijadas para una reunión entre la organización y víctimas de violaciones de derechos humanos. El Relator Especial expresó su temor a que estas acciones pudieran implicar amenazas de muerte indirectas y que estuviesen directamente relacionadas con el trabajo en defensa de derechos humanos que llevan a cabo la Sra. Soraya Gutiérrez Arguello y los demás miembros de la *Corporación Colectivo de Abogados José Alvear Restrepo*.

202. Por carta con fecha 30 de agosto de 2005, el Gobierno de Colombia transmitió la siguiente información en relación con la comunicación del 24 de mayo sobre las amenazas dirigidas contra la Sra. **Soraya Gutiérrez Arguello**, presidenta de la *Corporación Colectivo de Abogados "José Alvear Restrepo"*, otros miembros de la organización y los familiares de la Sra. Gutiérrez Arguello. Se informó de que los miembros del Colectivo de Abogados eran beneficiarios de medidas cautelares desde 2002 a las cuales se hacía seguimiento constante. En cuanto a medidas de carácter material, el Ministerio de Interior y de Justicia informó que se habían realizado trabajos de blindaje en la sede de la organización y que se habían brindado medios especiales de comunicación. El esquema de seguridad incluiría: los servicios de seis escoltas contratistas y cuatro vehículos blindados. La **Sra. Gutiérrez Arguello** desde antes de las amenazas recibidas el 13 de Mayo contaba ya con un esquema individual de seguridad compuesto por un vehículo blindado, un conductor no armado según su solicitud y aparatos de comunicación. Por otra parte, se informó de que la Fiscalía General de la Nación inició una

investigación con el número 2193 por el delito de amenazas personales que se encontraba en etapa previa sin que existiera imputación. El CTI estaba realizando labores de policía judicial para identificar y sancionar a los responsables. El Gobierno seguirá informando oportunamente al Relator del resultado de las investigaciones.

203. El 26 de mayo de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la integridad física y psicológica de **varios miembros del Sindicato Nacional de Trabajadores de la Industria de Alimentos (SINALTRAINAL)**, seccional Barranquilla, en el departamento del Atlántico. Varios miembros de dicho sindicato ya fueron objeto de llamamientos urgentes enviados por la Representante Especial, conjuntamente con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Relatora Especial sobre ejecuciones extrajudiciales, el 7 y el 26 de abril de 2004. Según la información recibida, el 28 de marzo de 2005, un panfleto del Bloque Bananero de las Autodefensas Unidas de Colombia (AUC) Costa Atlántica habría sido encontrado debajo de la puerta de la sede de SINALTRAINAL, seccional Barranquilla. En dicho panfleto se habría hecho referencia a una ‘operación final’ y se habría amenazado de muerte a los siguientes miembros de SINALTRAINAL: **Eduardo García Pimienta, Eurípides Yance, Evelio Mancera, Eduardo Arévalo, Jesús Tovar, Antonio Andrade, Roberto Borja, Tomas Ramos, Adalberto Ortega, Víctor Vaca, Luís Jiménez, Osvaldo Camargo, Elicen Gárces, Jorge Eliécer Sarmiento, Freddy Páez, Ramón Camargo, Germán Castaño, Antonio García y Orlando Pérez Contreras**, así como a todos los sindicalistas y trabajadores sindicados en la región. El Relator Especial expresó su temor a que estas nuevas amenazas pudieran estar relacionadas con la defensa de los derechos de los trabajadores que hace SINALTRAINAL, sobre todo en relación con la preparación de un pliego de peticiones a presentar a las embotelladoras de Coca-Cola en la Costa Norte por la seccional Barranquilla.

204. Por carta con fecha 23 de diciembre de 2005, el Gobierno de Colombia transmitió la siguiente información en relación con la comunicación del 26 de mayo de 2005 sobre las amenazas dirigidas contra varios miembros del **Sindicato Nacional de Trabajadores de la Industria de Alimentos (SINALTRAINAL)**. La Fiscalía General de la Nación informó que se abrió la investigación N° 210841 a cargo del Fiscal 19 de Seguridad Pública el 6 de abril de 2005 por el delito de amenazas contra **Evelio Mancera Sánchez, Eduardo García Pimienta, Jesús Tovar y Antonio Andrade**. El departamento administrativo de seguridad informó que el nivel de riesgo era de medio bajo, que el Ministerio del Interior y de Justicia asignó un esquema de seguridad y que la fuerza pública estaba realizando vigilancias. Un informe del Cuerpo Técnico de Investigaciones indicó que no se logró identificar a los autores. El 20 de abril de 2005, se abrió la investigación N° 211679 a cargo del Fiscal 16 de Seguridad Pública por el delito de amenazas contra **Roberto Rojas, Tomás Ramos, Evelio Mancera, Eurípides Yance, Eduardo Arévalo, Jesús Tovar, Antonio Andrade, Víctor Baca, Luís Jiménez, Osvaldo Camargo y Jorge Sarmiento**. El 27 de Mayo el Fiscal emitió una resolución comisionando al Departamento administrativo de seguridad, a la seccional de policía judicial y al cuerpo técnico de investigaciones para evaluar el nivel de riesgo. Las víctimas habían sido citadas pero no comparecieron.

205. El 31 de mayo de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con **Álvaro Guisao Usuga y su familia**, familiares de Ángel Quintero, un

miembro de la Asociación de Familiares de Detenidos Desaparecidos (ASFADDES), quien habría sido secuestrado por hombres armados el 6 de octubre de 2000 en Medellín, junto con otra activista, **Claudia Monsalve**. Según la información recibida, el 7 de abril de 2005, hacia las seis de la mañana, Álvaro Guisao Usuga se dirigiría en motocicleta a su trabajo en la ciudad de Medellín, departamento de Antioquia. Al llegar a un cruce, habría sido atacado por dos encapuchados quienes viajaban en otra motocicleta y le habrían obligado a detenerse. Luego de golpearle en la espalda con un revólver, uno de los asaltantes habría saltado a su motocicleta y le habría obligado a seguirle. En este momento, Álvaro Guisao Usuga habría descendido de su motocicleta y huído. Los asaltantes habrían partido. Álvaro Guisao Usuga denunció el ataque a la policía. El día siguiente, hacia las ocho y media de la tarde, en una calle de Medellín, Álvaro Guisao Usuga habría recibido de un desconocido un sobre cerrado con el logotipo de una empresa de pompas fúnebres. El sobre contendría una amenaza según la cual todos los miembros de su familia "desaparecerían" y serían asesinados, al igual que sus tíos. El escrito incluiría el número de teléfono de una funeraria local y la advertencia de que continuaría siendo vigilado. A la luz de estas informaciones, se expresó temor por la vida de Álvaro Guisao Usuga, así como por la de otros miembros de su familia: particularmente, debido a que siete miembros de su familia habrían desaparecido y otros dos habrían sido asesinados desde 1995, según se afirmaba, por paramilitares que estarían respaldados por miembros del ejército.

206. El 22 de junio de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con **David Ravelo Crespo**, secretario de la *Corporación Regional para la Defensa de los Derechos Humanos* (CREDHOS), una organización no gubernamental ubicada en la ciudad de Barrancabermeja, departamento de Santander, **Georgina Morales**, estudiante y miembro de CREDHOS y **Stivenson Torres**, fallecido, miembro de la organización. De acuerdo con las alegaciones recibidas:

- El 31 de mayo de 2005 en la oficina de CREDHOS, David Ravelo habría recibido por teléfono una amenaza anónima en la cual se le aseguraba que iba a ser asesinado. Se informó de que David Ravelo anteriormente habría sido víctima de seguimientos repetidos por personas supuestamente vinculadas con grupos paramilitares respaldados por el ejército. En los últimos meses habría recibido varias amenazas de muerte telefónicas en la oficina por personas no identificadas.
- El 24 de mayo, dos hombres armados, montados en una motocicleta se habrían acercado a una compañera de clase de Georgina Morales y le habrían instruido que le dijera a Georgina Morales que dejara Barrancabermeja en un plazo de tres días. Según los informes, en febrero de 2005, Georgina Morales habría sobrevivido a un intento de asesinato y ante el peligro habría sido obligada a huir de la ciudad. En el momento de la comunicación se encontraría oculta.
- El 24 de abril de 2005 en Barrancabermeja, Stivenson Torres habría sufrido un atentado, supuestamente por parte de paramilitares, que habría acabado con su vida.

207. En marzo de 2005, CREDHOS junto con el Centro de Investigación y Educación Popular habrían presentado un informe sobre al menos 170 casos de desaparición forzada ocurridos en Barrancabermeja entre los años 2000-2003. Según los informes, la mayoría de dichos casos habrían cometidos por paramilitares respaldados por el ejército. Se expresó temor a que el

asesinato de Stivenson Torres y las amenazas de muerte de David Ravelo y Georgina Morales pudieran estar relacionados con su trabajo de promoción y protección de los derechos humanos en general y con dicho informe en particular.

208. El 27 de junio de 2005, el Relator Especial envió una comunicación en relación con la emisora **Latina Estéreo 91.3 FM** en Puerto Asís, Putumayo. Según las informaciones recibidas, el 25 de mayo de 2005, hacia las tres de la tarde, se habría producido un atentado contra las antenas de transmisión de la emisora. Se informó de que unos desconocidos habrían quemado parte de los equipos de la emisora después de haber esparcido gasolina alrededor del lugar donde se encontrarían las antenas, el transmisor y la planta. A tenor de lo informado, dicho atentado sería el segundo del año contra Latina Estéreo 91.3. El 13 de febrero la emisora habría sido víctima de un atentado similar, supuestamente realizado por miembros de las Fuerzas Armadas Revolucionarias de Colombia (FARC), en el que dos explosiones habrían destruido su antena. En aquel momento tuvo que dejar de emitir durante quince días. Se informó además de que el director de la emisora habría pedido a las autoridades la autorización del cambio de lugar de las antenas a una zona protegida. Hasta la fecha no habría recibido respuesta alguna.

209. Por carta con fecha de 1 de septiembre de 2005, el Gobierno de Colombia transmitió la siguiente información en relación con la comunicación del 27 de junio de 2005 sobre dos atentados contra las antenas de transmisión de la emisora **Latina Estéreo 91.3 FM**, en Puerto Asís, Putumayo. El Programa de Protección a Periodistas y Comunicadores Sociales del Ministerio del Interior y de Justicia, recomendó como medida de protección, que fueran expedidos al Sr. **Nixon Piaguaje**, periodista de la emisora Latina Estéreo, cuatro billetes aéreos nacionales para él, su esposa y sus dos hijos, y tres meses de apoyo para reubicación temporal, por valor de un millón ciento cuarenta y cuatro mil pesos cada uno.

210. El 26 de septiembre de 2005, el Relator especial envió una carta de alegaciones en relación con **Carlos Patiño**, reportero gráfico del diario *La Opinión* de Cúcuta. Según las informaciones, el 20 de septiembre de 2005, Carlos Patiño habría sido obstruido y agredido por la policía cuando se disponía a tomar unas fotografías para una nota periodística. El hecho se habría registrado hacia las ocho de la noche en el barrio Claret, donde se llevaba a cabo el levantamiento de un cadáver. El señor Patiño se habría acercado para tomar unas fotografías e inmediatamente habría sido abordado por un agente de la policía, quien de manera agresiva lo habría insultado y prohibido ejercer su labor. Además, otro agente de policía lo habría empujado e intimidado con su pistola. Finalmente las protestas de varios vecinos del sector, quienes se solidarizaron con el periodista, habrían neutralizado la situación.

211. Por carta con fecha de 21 de diciembre de 2005, el Gobierno de Colombia remitió la siguiente información adicional en respuesta a la comunicación del 26 de septiembre de 2005 relativa al Sr. **Carlos Patiño**. El Ministerio del Interior y de Justicia había trasladado la información enviada por el relator al Programa Presidencia de Derechos humanos y derecho internacional humanitario y a la Policía Nacional para que estas instancias envíen un informe sobre el incidente entre la fuerza pública y el periodista. Se informó que el Sr. Patiño era beneficiario del Programa de Protección a periodistas y Comunicadores Sociales que le había asignado un teléfono celular y ocho apoyos de transporte. El programa Presidencial de derechos humanos y DIH, le había solicitado al Comandante de Policía del Departamento de Norte de Santander, que se adoptasen medidas pertinentes para este caso, además de iniciar la investigación interna correspondiente.



212. El 28 de septiembre de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con **José Onofre Esquivel Luna**, dirigente de la sección de Bugalagrande del Sindicato Nacional de Trabajadores de la Industria de Alimentos (SINALTRAINAL) en el departamento de Valle del Cauca, quien fue objeto de un llamamiento urgente enviado el 26 de abril de 2004 por el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias y la Representante Especial del Secretario General para los defensores de los derechos humanos. Según las informaciones recibidas en 2004, el sindicalista habría sido declarado objetivo militar. También se recibieron informaciones que levantaron preocupación sobre la seguridad de otros miembros de SINALTRAINAL. El 7 de abril de 2004 el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, la Relatora Especial sobre ejecuciones extrajudiciales y la Representante Especial del Secretario General para los defensores de los derechos humanos ya enviaron un primer llamamiento urgente conjunto en relación a este caso. Según la nueva información recibida, El 12 de septiembre de 2005, José Onofre Esquivel Luna habría visto un automóvil blanco circulando en torno a su casa en el municipio de Bugalagrande. Posteriormente, el 19 de septiembre de 2005, habría visto un desconocido armado merodeando alrededor de su domicilio. Según los informes, los vecinos de José Onofre Esquivel Luna habrían reportado que en varias ocasiones se les habrían acercado desconocidos preguntando sobre el paradero del dirigente sindicalista. El Relator Especial, también fue informado que el 11 de septiembre se halló el cuerpo sin vida de **Luciano Enrique Romero Molina**, otro miembro de SINALTRAINAL que habría recibido amenazas de muerte en el pasado. A este respecto, el Relator Especial sobre la tortura y la Representante Especial del Secretario General para los defensores de los derechos humanos enviaron una comunicación el 20 de septiembre de 2005. A la luz de las alegaciones recibidas y teniendo en cuenta el reciente homicidio de otro sindicalista, El Relator Especial expresó temores por la vida y la seguridad física de José Onofre Esquivel Luna y de sus compañeros del SINALTRAINAL.

213. Por carta con fecha 13 de diciembre de 2005, el Gobierno de Colombia transmitió la siguiente información en relación con la comunicación del 28 de septiembre de 2005 sobre el caso del **Sr. José Onofre Esquivel Luna**. Se informó que el Sr. Onofre Esquivel era beneficiario de un esquema de protección colectivo asignado a la organización SINALTRAINAL-Bugalagrande por el programa del Ministerio de Interior y de Justicia que se componía de tres unidades de escoltas contratistas, dos pistolas, un arma de apoyo, dos chalecos antibalas y un vehículo. La Defensoría del Pueblo, a través de su Seccional del Valle del Cauca, estaba realizando un seguimiento especial a su situación.

214. El 3 de octubre de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con **Mario de Jesús Castañeda**, dirigente de la sección de Huila de la Central Unitaria de Trabajadores (CUT), una organización que se propone la unidad de todos los trabajadores colombianos, defiende las conquistas y derechos actuales de los trabajadores y busca el mejoramiento de sus condiciones de vida y de trabajo. Según la información recibida, el 22 de septiembre de 2005, Mario de Jesús Castañeda habría recibido una carta en las oficinas de la CUT en Neiva, departamento de Huila. La carta habría sido mecanografiada y firmada por el Bloque Central Bolívar de las Autodefensas Unidas de Colombia (AUC), y habría dicho: “Hoy estamos recordándole que desde hace tiempo nos molesta con su grosería atacando al gobierno

[...] usted y otros revolucionarios sindicalistas como usted que son gusanos habladores calumniadores contra cada gobierno que tenemos y gente de bien [...] que no dejaremos [de actuar] hasta verla en paz y libre de gente como ustedes [...] Se va, se calla o actuamos”. Además, según los informes, el 20 de septiembre de 2005, unos agentes de policía habrían sometido a Mario de Jesús Castañeda a un registro en la estación de autobuses de Neiva y lo habrían detenido durante unos 50 minutos. Los agentes habrían fotocopiado los documentos que llevaba. Entre los documentos se encontraba información recabada para presentar una denuncia formal ante las autoridades en relación con la presunta violación de una mujer por paramilitares. A la luz de las alegaciones recibidas, El Relator Especial expresó su temor a que los actos de acoso en contra de Mario de Jesús Castañeda estuviesen relacionados con su trabajo para la Central Unitaria Trabajadores, y en particular con su trabajo en el caso de la presunta violación de una mujer por paramilitares.

215. El 7 de octubre de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente, en relación con **Samuel Morales**, Presidente de la Central Unitaria de los Trabajadores (CUT) seccional Arauca, sus hermanas, **Omayra Morales**, **Matilde Morales**, **Gladys Morales**, y **otros miembros de su familia**. Según la información recibida, el 21 de septiembre de 2005, entre las 10:00 y las 10:30 de la mañana, la secretaria del Centro Educativo “Juan Jacobo Rousseau”, donde trabajan las profesoras, Omayra Morales y Gladys Morales, habría recibido una llamada de teléfono de una persona desconocida, quien se identificó como miembro de las Autodefensas Unidas de Colombia (AUC). El hombre habría dicho “Díganle a las profesoras Gladys y Omayra Morales que tienen 72 horas para abandonar el departamento, que los que sean familia del señor Samuel Morales son objeto nuestro y que deben desaparecer de Arauca; además que Samuel Morales aun tiene cuentas pendientes con nosotros AUC”. Además, el mismo día, entre las 10:30 y las 11:00, la secretaria de la escuela “Gabriel García Márquez”, donde trabaja Matilde Morales, habría recibido una llamada amenazante similar. Aquella tarde, aproximadamente a las seis y media, Omayra Morales habría recibido otra llamada en su casa, la cual habría repetido la amenaza. Samuel Morales se encontraría bajo custodia desde agosto de 2004, por cargos de actividad guerrillera que parecerían ser falsos. En varios casos, la gente acusada de este tipo de cargos es asesinada después de ser puesta en libertad. Según los informes, en las últimas semanas las hermanas Morales habrían sido retenidas repetidamente en controles militares, durante muchas horas. Además, agentes de policía habrían presionado al director de un hospital local para que diera el alta a la esposa de Samuel simplemente por ser su esposa. Se expresaron graves temores por la seguridad de Samuel Morales, Omayra Morales, Matilde Morales, Gladys Morales y otros miembros de su familia. El Relator Especial expresó su temor a que la detención de Samuel Morales y el acoso de su familia formasen parte de un intento para minar el trabajo de los sindicalistas y los defensores de los derechos humanos en Arauca.

216. Por carta con fecha de 21 de diciembre de 2005, el Gobierno de Colombia remitió la siguiente información adicional en respuesta a la comunicación del 7 de octubre de 2005 relativa al **Sr. Samuel Morales**, sus hermanas **Omayra**, **Matilde** y **Gladys Morales** y otros miembros de su familia. El Programa Presidencial para los derechos humanos y el derecho internacional humanitario, junto con la oficina de Derechos humanos del Ministerio de la Protección social y el funcionario encargado del mismo tema en el Instituto Nacional Penitenciario y Carcelario, llevaron a cabo una visita en el mes de octubre de 2005 a la Cárcel Modelo de Bogotá, para reunirse con el Sr. Morales, bajo custodia desde agosto de 2004 por cargos de actividad

guerrillera. De gestión conjunta con la Gobernación del Departamento de Arauca, el Ministerio de Educación Nacional y la Alcaldía de Arauquita se coordinaron con la fuerza pública acciones para preservar la vida y seguridad de las hermanas del Sr. Morales. El Programa Presidencial coordinó junto con la alcaldía del municipio de Saravena, medidas para proteger a la esposa del Sr. Morales. El Ministerio de Defensa Nacional informó que el caso del Sr. Morales y su familia fue remitido a la oficina de derechos humanos del comando general de las Fuerzas militares para que adoptasen las medidas adecuadas.

217. El 19 octubre de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con el Señor **Orlando Valencia**, de ascendencia africana, de Curvaradó, habitante de la zona humanitaria de “Bella Flor Remacho” y destacado defensor de la biodiversidad y de los derechos de su comunidad. El Sr. Valencia, que estaba bajo el amparo de medidas provisionales de protección dispuestas por la Corte Interamericana de Derechos Humanos (CIDH), habría sido recientemente invitado a la ciudad de Chicago, Estados Unidos, para asistir a una conferencia sobre la situación de los derechos humanos en Colombia. Según las informaciones recibidas, el 15 de octubre de 2005, el Señor Valencia habría sido detenido luego de que el vehículo en el que viajaba con acompañantes nacionales, extranjeros y miembros de las comunidades, fuera interceptado por la policía de Belén de Bajirá en el punto “La “Y”, a pocos minutos de Brisas. Los policías se habrían ubicado en la carretera y apuntando con sus armas, revisado los documentos de identidad y habrían ordenado al Sr. Valencia que se subiera al vehículo policial. El capitán habría ordenado a los demás acompañantes que le siguiesen de regreso hacia la estación de policía de Bajirá. Cerca del lugar se encontraba otro vehículo, tipo camioneta de color blanco, en el que se encontrarían tres conocidos paramilitares. Alrededor de las 11.30 horas los acompañantes del Sr. Valencia habrían sido puestos en libertad. Hacia las 12:30 horas, el Sr. Valencia y los otros detenidos habrían obtenido la libertad. Alrededor de las 12:40 se habrían dirigido a la casa del campesino Enrique Petro, uno de los que formaba parte del grupo, en la localidad de Bajirá. El Sr. Valencia, cuando iba a entrar en la casa de su amigo, habría sido abordado por dos conocidos paramilitares armados quienes le habrían gritado: “vamos o si no lo pelamos, lo matamos aquí”. Éstos le habrían seguido en una motocicleta. Un miembro de Justicia y Paz habría intentado interponerse, siendo amedrentado con un arma corta que portaba uno de los paramilitares. Éstos habrían obligado inmediatamente al Sr. Orlando Valencia a subir a la moto, y se lo habrían llevado rumbo a Chigorodó. Desde ese momento se desconocería su paradero. Según las informaciones, cuando el acompañante de Justicia y Paz se dirigía a una cabina telefónica a informar de lo sucedido, habría sido seguido por otros hombres en dos motocicletas. Se expresó temor a que la desaparición del Sr. Valencia pudiera estar relacionada con sus actividades en favor de los derechos humanos. El Sr. Valencia lideró un movimiento el 4 de septiembre de 2005, en el municipio de Murindó, exigiendo al Estado una respuesta eficaz de protección frente a la destrucción de la biodiversidad y de protección de sus vidas, amenazadas por las empresas palmicultoras y los agentes estatales y paraestatales que las sirven, así como la devolución de las tierras de las que se han apropiado ilegalmente en las cuencas del Curvaradó y Jiguamiandó. El Sr. Valencia sería además un posible candidato a asumir la representación legal del Consejo Mayor del Curvaradó. Se informó también que su actual representante, la Sra. María Ligia Chaverra, sería víctima de una persecución pública, militar y judicial por parte de los sectores proclives a la siembra extensiva de palma dentro de los territorios colectivos. Se informó por último que, días antes, el 10 de octubre de 2005, soldados

del ejército habrían registrado varias casas de la Comunidad de Nueva Esperanza y habrían amenazado a los habitantes diciéndoles que: “en tres días vienen los que van a cortar cabezas”.

218. El 1 de noviembre de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con el Señor **Orlando Valencia**, de ascendencia africana, de Curvaradó, habitante de la zona humanitaria de “Bella Flor Remacho” y destacado defensor de la biodiversidad y de los derechos de su comunidad. El Sr. Valencia fue objeto de una comunicación enviada 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 el 19 de octubre de 2005. Según las nuevas informaciones recibidas, el 24 de octubre de 2005, el cuerpo sin vida del Señor Orlando Valencia habría sido encontrado en el río León, en un lugar conocido como ‘Bocas de Zábalo’, a unos treinta minutos de la municipalidad de Chirigrodó, departamento de Antioquia. El Sr. Valencia habría recibido un disparo en la frente, y habría tenido las manos amarradas. El cuerpo sólo habría sido identificado dos días después del descubrimiento, después de tomar las huellas dactilares.

219. El 8 de diciembre de 2005, el Relator Especial, juntamente 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 **Lilia Solano Ramírez**, profesora de la universidad y directora de la organización no gubernamental de derechos humanos “Proyecto Justicia y Vida”, y su familia. Lilia Solano Ramírez fue el objeto de una comunicación enviada el 31 de agosto del 2004 y por la cual se recibió una respuesta el 8 de diciembre del 2004. Según la nueva información recibida, el 4 de diciembre de 2005, aproximadamente a las 17:30, dos hombres y una mujer armados que se presentaron como miembros de la policía, habrían entrado en el apartamento, en la ciudad de Bogotá, donde vive Lilia Solano Ramírez, y donde se encontraba solo su hijo. Le habrían amenazado con un arma de fuego, amarrado e insultado. Según los informes, los supuestos responsables del allanamiento habrían registrado toda la vivienda, en particular todos los documentos. Se habrían llevado el disco duro de su ordenador, varios documentos importantes, dos teléfonos celulares y algunos otros objetos. Se expresó temor que estas amenazas estuviesen relacionadas con su trabajo como directora de la organización no-gubernamental “Proyecto Justicia y Vida”.

220. El 16 de diciembre de 2005, el Relator Especial, juntamente 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 encontraría la Sra. **Gloria Isabel Cuartas Montoya**, acompañante de la Comunidad de Paz de San José de Apartadó, ex alcaldesa de Apartadó, y actual Secretaria General del grupo político “Frente Social y Político”, y candidata al Senado de la República. Según la información recibida, el 6 de noviembre del 2005, aproximadamente a las 19:00, la Sra. Gloria Isabel Cuartas Montoya habría recibido un mensaje de texto en su teléfono celular que decía: “Gloria Cuartas tiene que largarse de Colombia y que se calle la boca”. Ese mismo día habría participado en un homenaje rendido en Bogotá a los magistrados y demás personas que resultaron muertas y / o desaparecidas durante la Toma del Palacio de Justicia 20 años atrás. Además, el 30 de noviembre del 2005, hacia las 21:00, la Sra. Cuartas Montoya habría recibido un mensaje en el respondedor automático de su teléfono, en el cual se escucha música militar de fondo y el ruido de una ametralladora. El 3 de diciembre del 2005, hacia las 20:00, habría

recibido otro mensaje en el que se escucha el disparo de un arma de fuego. A la luz de estas alegaciones, se expresó la preocupación que las intimidaciones sufridas por la Sra. Gloria Isabel Cuartas Montoya estuviesen relacionadas con su labor en defensa de los derechos humanos y en particular porque ella ha manifestado públicamente la responsabilidad del Ejército colombiano en la masacre ocurrida en la Comunidad de Paz de San José de Apartadó el 21 de febrero de 2005.

### **Seguimiento de comunicaciones transmitidas previamente**

221. Por carta con fecha 12 de mayo de 2005, el Gobierno de Colombia transmitió la siguiente información en relación con la comunicación del 6 de septiembre de 2004 sobre el caso de la Sra. **Diana Teresa Sierra Gómez** del Colectivo de Abogados José Alvear Restrepo:

El Departamento Administrativo de Seguridad (DAS) no organizó y no tiene conocimiento del operativo mencionado. En ningún momento funcionarios del DAS participaron en los seguimientos, fotografías y filmaciones mencionados. Tampoco participaron en los hechos descritos y presentados el 28 de junio de 2004 en la ciudad de Armenia.

222. Por carta con fecha 8 de febrero de 2005 el Gobierno de Colombia remitió la siguiente información adicional sobre el asesinato del Sr. **Álvaro Raúl Márquez Polo** y la situación de inseguridad del Sr. **Cristián Herrera Nariño** en respuesta a la comunicación del 15 de septiembre de 2004 relativa a varios periodistas. El Departamento Administrativo de Seguridad (DAS) con oficio OJUR.102 148190 de 24 de noviembre de 2004 informó que en la localidad de San Andrés de Sotavento, un sujeto que se desplazaba en moto asesinó al Sr. **Álvaro Raúl Márquez Polo**. El 9 de mayo fue capturada una persona por las unidades de la policía Nacional identificada por un familiar de la víctima como la persona que había cometido el homicidio. Se están haciendo las diligencias necesarias para establecer la identidad de esta persona y se informará al relator una vez hechas las verificaciones. Por otro lado, la Defensoría del Pueblo con oficio 3010-03653 del 12 de noviembre de 2004, remitiendo oficio del Ministerio del Interior y Justicia del 16 de julio de 2004 sobre la situación de inseguridad del periodista Cristián Herrera Nariño, informó que el Comité de Reglamentación y Evaluación de Riesgos – CRER del programa de Protección a Periodistas y Comunicadores Sociales recomendó en su sesión del 24 de junio las siguientes medidas de protección: un agente escolta, un mes de apoyo de transporte por 90 horas mensuales, un radio avantel. El nivel de riesgo y grado de amenaza es medio bajo.

223. Por carta con fecha 24 de enero de 2005 el Gobierno de Colombia remitió la siguiente información adicional en respuesta a la comunicación del 23 de septiembre de 2004 relativa la Sra. **Claudia Julieta Duque**. El Ministerio del Interior y de Justicia informó que mediante Acta N° 9 de emergencia del CRER, el 24 de noviembre se recomendó aprobar de manera excepcional, un apoyo de reubicación temporal de un valor de dos millones de pesos M/CTE (\$2.000.000), para el pago de un mes de arriendo de la periodista, debido a las últimas amenazas recibidas en contra de su vida y de la de su hija. La Procuraduría Delegada para la Prevención en materia de Derechos Humanos y Asuntos Étnicos informó que el caso se encuentra en el sistema sobre investigaciones disciplinarias con el N° 9-113208/04 por presunta responsabilidad por amenazas, seguimientos y retención contra la Sra. Claudia Julieta Duque y que la queja se encuentra en estudio preliminar.

## Observaciones

224. El Relator Especial agradece al Gobierno por sus respuestas a las comunicaciones con fechas **10 de Marzo 2005, 15 de Marzo 2005, 12 de Mayo 2005, 23 de Mayo 2005, 24 de Mayo 2005, 26 de Mayo 2005, 27 de Junio, 26 de Septiembre, 28 de Septiembre 2005, y 7 de Octubre de 2005**; aunque lamenta que a la conclusión del informe no había recibido respuestas a sus comunicaciones con fechas **11 Febrero 2005, 11 de Marzo 2005, 31 de Mayo 2005, 22 de Junio 2005, 3 de Octubre, 19 Octubre/ 1 Noviembre, 8 de Diciembre, y 16 de Diciembre**.

225. Cómo ya manifestó en su informe presentado ante la Comisión de Derechos Humanos en su 61° programa tras su misión a Colombia (**E/CN.4/2005/64/Add.3**), el Relator Especial desea llamar la atención del Gobierno sobre el número de comunicaciones recibidas durante el 2005, en las cuales se denunciaron asesinatos, tentativas de asesinato, amenazas, agresiones, desapariciones, secuestros, allanamientos e intimidaciones sufridas por defensores de los derechos humanos, sindicalistas, trabajadores sociales y activistas en Colombia.

226. En lo relativo a los casos de los Sres. **Luís Eduardo Guerra Guerra y Alfonso Bolívar Tuberquia Graciano; Miguel Alberto Fernández Orozco; la Sra. Soraya Gutiérrez Arguello**; diversos miembros del **Sindicato Nacional de Trabajadores de la Industria de Alimentos (SINALTRAINAL)** entre ellos **Jose Onofre Esquivel Luna**, y el Sr. **Samuel Morales** así como sus hermanas **Omayra Matilde y Gladys Morales Sra. Soraya Gutiérrez Arguello** el Relator Especial toma nota de las explicaciones sobre los procesos administrativos e investigativos, y/o la asignación de medidas de protección por parte del Gobierno. No obstante el Relator Especial, sin pronunciarse sobre los hechos de los citados casos, apreciaría que se le mantuviese informado sobre cualquier avance o desarrollo significativo en la investigación de estos, así cómo sobre la asignación de medidas de protección de las personas que lo requieran.

227. En lo que concierne a los Sres. **José Antonio Guerrero García**; la Sra. **Edilia Mendoza**; el Sr. **Álvaro Guisao Usuga y su familia**, el Sr. **David Ravelo Crespo**, la Srta. **Georgina Morales**, los Sres. **Everto Díaz, y Germán Bedoya; Lilia Solano Ramírez**, el Relator Especial solicita al Gobierno que le informe oportunamente sobre cualquier acción llevada a cabo por el Gobierno para proteger, y garantizar el bienestar e integridad física y psicológica de estas personas y sus respectivas familias, en particular en lo que a la adopción de medidas de protección se refiere. El Relator Especial desea reiterar los principios enunciados, entre otros por la Comisión de Derechos Humanos en su Resolución **2005/67**, y solicita al Gobierno a que adopte “todas las medidas necesarias para garantizar la protección de los defensores de los derechos humanos y creen y mantengan un entorno favorable a la labor de los defensores de los derechos humanos y sus familiares”.

228. En lo concerniente al caso de las amenazas proferidas contra miembros de la comunidad Wayúu, y en particular contra los activistas **Manuel Salvador López Fernández, José Eduardo Boscán Epinayu**, y de su madre, la Sra., **Francía Boscán** el Relator Especial, a la espera de una respuesta del Gobierno, y sin pronunciarse sobre los hechos del caso, expresa su preocupación sobre la posibilidad de que estos supuestos asesinatos hayan podido estar motivados por la campaña de resistencia pacífica de estas personas, contra el monopolio paramilitar de las actividades económicas y comerciales más rentables de la región. Igualmente, se teme que los supuestos asesinatos pudiesen formar parte de una campaña de amenazas y ataques físicos por

parte de grupos paramilitares contra la Comunidad Wayúu. Como ya expresó en su informe **E/CN.4/2005/64/Add.3**, el Relator Especial expresa su temor ante las repetidas y persistentes violaciones de derechos humanos sufridas por las comunidades indígenas, y sus dirigentes.

229. Con respecto a los asesinatos de **Stivenson Torres, Orlando Valencia y Luciano Enrique Romero Molina**, el Relator Especial, a la espera de respuestas del Gobierno, y sin pronunciarse sobre los hechos del caso, expresa su grave consternación ante estos eventos y reitera los principios enunciados, entre otros, por la Comisión de Derechos Humanos en su Resolución **2005/38**, la cual insta a todos los Estados a que “Garanticen que las víctimas de violaciones de los derechos... puedan interponer recursos eficaces para investigar efectivamente las amenazas y actos de violencia... incluso en situaciones de conflicto armado, y llevar ante la justicia a los responsables de esos actos, para luchar contra la impunidad”.

230. El Relator Especial desea también expresar su preocupación ante el número de comunicaciones recibidas alegando agresiones, amenazas y estigmatización sufridas por periodistas, y trabajadores de los medios de comunicación.

- Con respecto a los casos **Ricardo López Gómez, Leonardo Luna Alzate y Yohanna Guerrero**, el Relator Especial, apela al Gobierno a que tome todas las medidas necesarias para asegurar que la gente pueda trabajar y expresarse libremente en un ambiente seguro.
- El Relator Especial toma nota de las explicaciones sobre la asignación de medidas de protección por parte del Gobierno en el caso de los supuestos atentados contra las antenas de transmisión de la emisora **Latina Estéreo 91.3 FM**. No obstante, el Relator Especial apreciaría que se le mantuviese informado sobre cualquier avance o desarrollo significativo en la investigación de este caso.
- De igual modo, el Relator Especial toma nota de las explicaciones sobre los procesos administrativos e investigativos, así como de la asignación de medidas de protección por parte del Gobierno en el caso **Daniel Coronel, Hollman Morris, Carlos Lozano y Cristiano Morsollín**. No obstante, de acuerdo con informaciones adicionales recibidas tras el envío de la comunicación, el Relator Especial desea expresar al Gobierno su grave preocupación ante las siguientes alegaciones.
- El 27 de junio de 2005, el periodista **Daniel Coronell**, habría denunciado en su columna de opinión publicada en la revista "Semana" que el 19 de junio habría recibido un correo electrónico anónimo e intimidatorio. Expertos informáticos contratados por el Sr. Coronell habrían determinado posteriormente que el correo provendría de la residencia de un ex Senador. Esta, y otras amenazas, habrían provocado que el Sr. Coronell abandonase Colombia el 14 de agosto de 2005.

231. Con respecto al caso del menor **N.N.A**, el Relator Especial lamenta recibir la noticia de su fallecimiento. El Relator Especial toma nota de las explicaciones sobre los procesos administrativos e investigativos llevados a cabo por el Gobierno, y sin pronunciarse sobre los hechos del caso, reitera los principios enunciados, entre otros por la Comisión de Derechos Humanos en su Resolución **2005/44**, la cual exhorta a los Estados “a que... adopten todas las

medidas adecuadas para prevenir todas las formas de violencia contra los niños y para protegerlos contra ellas, incluidos... el maltrato por la policía, otros órganos y agentes de orden público”.

### Côte d'Ivoire

232. Le 2 février 2005, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant le **Mouvement ivoirien des droits de l'Homme** (MIDH) et de certains de ses membres, en particulier **M. Amourlaye Touré**, son président, lequel a été l'objet d'un appel urgent du Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, de la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et du Rapporteur Spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires le 2 juin 2004. D'après les informations reçues, le 26 janvier 2005, le MIDH aurait publié, conjointement avec la Fédération de droits de l'homme, un rapport sur la reprise des hostilités en Côte d'Ivoire en novembre 2004 qui dénonçait les graves violations des droits de l'Homme perpétrées par les parties en présence lors de ces événements. Le 28 janvier 2005, le dirigeant de l'Alliance des jeunes patriotes dans une interview à la Radio, aurait réagissé aux informations contenues dans ce rapport, le qualifiant de " provocation ". Le 29 janvier, le MIDH aurait reçu un courrier anonyme de menaces informant Amourlaye Touré que ses membres devaient se considérer en " partance pour l'enfer". Depuis lors, les membres du MIDH plus particulièrement M. Touré, auraient été l'objet d'actes de harcèlement et de menaces répétées. Amourlaye Touré aurait été informé par des sources concordantes de l'existence de menaces d'expéditions punitives contre le siège de son organisation, ainsi que de la probable préparation d'un attentat contre sa personne.

233. Le 3 mai 2005 le gouvernement a répondu à la communication de 2 février 2005 et du 5 janvier 2004. Le gouvernement a assuré le Rapporteur spécial de l'étroitesse des contacts entre le Mouvement ivoirien des Droits de l'Homme (MIDH) et l'ancien Président de la Ligue ivoirienne des Droits de l'Homme (LIDHO). D'ailleurs, le Président ainsi que les membres de ce mouvement ont toujours été satisfaits des mesures prises à leur profit. Le Gouvernement réaffirme son entière disponibilité à les recevoir et à envisager, en accord avec eux, toutes dispositions utiles.

234. Le 3 mai 2005, le Rapporteur spécial a envoyé une lettre d'allégation concernant quatre journalistes, **Sylla Aruna** travaillant à *Info Soir*, **Hamadoun Ziao** à *L'Inter*, **Yacouba Gbané** au journal *Le Temps*, **David Yaount** du *Courrier d'Abidjan* ainsi que leur chauffeur **Didier Wahi**, alors que ceux-ci suivaient une réunion entre les Forces de Défense et de Sécurité de Côte d'Ivoire (FDSCI) et le commandement des Forces Armées des Forces Nouvelles (FAFN) se déroulant à Bouaké. Selon les informations reçues, le mercredi 13 avril 2005, en sortant de l'hôtel RAN, les quatre journalistes et leur chauffeur auraient été arrêtés, entraînés au cimetière de Bouaké et auraient été menacés de mort par un groupe de soldats des Forces Armées des Forces Nouvelles (FAFN) qui leur auraient reproché d'avoir écrit des articles inconsidérés au sujet des forces rebelles. Les journalistes auraient échappé de peu à la mort en plaidant leur innocence en Malinke, une langue communément parlée parmi les forces rebelles et les habitants du nord de la Côte d'Ivoire. Les soldats de la FAFN auraient ensuite conduits les journalistes à une rue menant vers le village de Yamoussoukro où il les aurait laissés.



### **Suite donnée aux communications précédemment envoyées par Le Rapporteur spécial**

235. Par lettre datée du 11 mars 2005, le Gouvernement a répondu à la communication urgente du 2 juin 2004 relative à Monsieur **Amourlaye Touré**, Président du Mouvement Ivoirien des droits de l'Homme (MIDH) et Monsieur **Mamadou Fofana**, militant de ce mouvement. Selon les informations communiquées, le 22 juin 2004, Monsieur Touré aurait été entendu par les services du Ministère des droits de l'Homme. Il ressort de ses déclarations que de passage à Paris, en provenance de Genève où il avait pris part aux travaux de la 60<sup>ème</sup> session de la Commission des Droits de l'Homme, des informations faisant état de menaces contre sa vie lui seraient parvenues depuis la Côte d'Ivoire. Après vérification, il se serait rendu compte du sérieux et de la gravité des menaces et aurait alors saisi Amnesty International ainsi que la Fédération Internationale des droits de l'Homme et différé son retour. Monsieur Toure aurait finalement regagné Abidjan le 6 juin 2004 et exercerait actuellement ses activités sans aucune entrave. Jusqu'à présent, il n'aurait pas déposé de plainte sur les menaces alléguées. Monsieur Toure aurait indiqué que Monsieur FOFANA serait en rupture de ban avec le MIDH suite à la publication dans les colonnes d'un journal français, avant qu'ils ne soient rendus publics des résultats de l'enquête menée par le MIDH sur les événements des 25 et 26 mars 2004. Des personnes s'étant mises à sa recherche, il aurait rallié la ville de Man dans la zone contrôlée par les rebelles avant de revenir à Abidjan pour solliciter l'obtention d'un visa et d'un asile politique en Europe.

### **Observations**

236. Le Rapporteur spécial remercie le Gouvernement pour sa réponse de 2 février 2005, 5 janvier et 2 juin 2004. Le Rapporteur spécial souhaiterait recevoir plus d'information sur les allégations des menaces visant le MIDH, comme mentionnés dans sa communication de 2 février 2005. D'ailleurs, le Rapporteur spécial a été informé par d'autres sources qu'un nouveau courrier anonyme aurait été adressé au MIDH le 21 mars 2005, dans lequel il apparaît que les déplacements de M. Touré seront surveillés par les auteurs du message.

237. Dans l'attente d'une réponse à sa communication du 2 février 2005 mais sans préjuger des faits examinés, le Rapporteur spécial souhaiterait attirer l'attention du gouvernement à l'article 12 para. 2 et 3 de la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus qui stipule que l'État prend toutes les mesures nécessaires pour assurer que les autorités compétentes protègent toute personne, individuellement ou en association avec d'autres, de toute violence, menace, représailles, discrimination de facto ou de jure, pression ou autre action arbitraire dans le cadre de l'exercice légitime des droits visés dans la présente Déclaration.

238. Le Rapporteur spécial regrette de ne pas avoir reçu une réponse à sa communication du 3 mai 2005. Dans l'attente de cette réponse et face à la gravité des menaces encourues par les journalistes dans l'exercice de leur profession, le Rapporteur spécial invite le gouvernement, sans qu'il préjuge des faits examinés, à l'informer sur les mesures prises afin d'assurer la sécurité des journalistes concernés de même que sur les enquêtes et éventuelles poursuites judiciaires mises en œuvre afin d'appréhender et juger les personnes qui seraient responsables de ces attaques.

### Croatia

239. On 14 November 2005, the Special Rapporteur sent a letter of allegation concerning **Predrag Matvejevic**, a journalist, writer and Vice-President of International PEN. According to information received, on 2 November 2005, a municipal court in Zagreb sentenced him to a five month suspended sentence for libel. The sentence was suspended for two years. The libel charges were in connection with an article he had written for the daily newspaper *Jutarnji* on 10 November 2001, in which he had criticized the political associates of former President Franjo Tudjman, including certain writers and journalists, who in the 1990s had, according to Mr. Matvejevic, deliberately stirred up racial hatred between Croats and Bosnians.

### Observations

240. The Special Rapporteur regrets that no reply to his communication was received at the time this report was finalized. Without making any determination of the facts of the case, and pending the Government's reply, the Special Rapporteur deems it appropriate to make reference to the principle enunciated, inter alia, by the Commission on Human Rights in its Resolution 2005/38, providing that the authorities should not resort to criminal laws and punishment for media related offences as these are deemed disproportionate to the gravity of the offence and are incompatible with international human rights law.

### Cuba

241. El 16 de junio de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un comunicación en relación con los tres periodistas polacos, **Seweryn Blumsztajn**, del diario *Gazeta Wyborcza*, **Jerzy Jurecki**, del diario regional *Tygodnik Podhalanski* y **Wojciech Rogasin**, de *Newsweek Polonia*, su traductor **Maciej Sarna**, **Francesco Battistini**, corresponsal del diario italiano *Corriere della Sera*, **Kart Schwarzenberg**, senador checo, **Arnold Vaatz**, diputado alemán y **Boguslaw Sonik** y **Jacek Protasiewica**, ambos diputados europeos. Según la información recibida, en la noche del 19 al 20 de mayo de 2005, los Sres. Blumsztajn, Jurecki, Rogasen y Sarna fueron detenidos en La Habana. La policía cubana les habría detenido en su hotel, ubicado cerca del aeropuerto de la capital y luego habrían sido trasladados al aeropuerto y expulsado del país. El Sr. Battistini habría llegado a Cuba el 19 de mayo y habría sido detenido y expulsado el día siguiente. En la misma fecha habrían sido expulsados los Sres. Schwarzenberg y Vaatz. Los dos diputados europeos, Sres. Boguslaw Sonik y Jacek Protasiewica habrían sido expulsados justo después de su llegada, el 17 de mayo. La Sra. Caferra, por su parte, habría sido detenida en su hotel el 21 de mayo y expulsada el día siguiente. A tenor de lo informado, las personas mencionadas habían llegado a Cuba para participar en la Asamblea para la Promoción de la Sociedad Civil en Cuba (APSC), una agrupación de 365 organizaciones de la sociedad civil con el objetivo de instaurar la democracia en el país. Se teme que las expulsiones y las deportaciones estén relacionadas con la cobertura del APSC que iban a llevar a cabo.

242. Por carta de 1 de julio de 2005, el Gobierno transmitió la información siguiente en relación con la comunicación del 16 de junio de 2005. Las personas incluidas en la comunicación no fueron detenidas, sino reembarcadas a sus puntos de origen por haber violado las disposiciones migratorias cubanas y haber entrado ilegalmente en el país. El reembarque de cada una de las personas fue decidida por las autoridades competentes tras verificar que

pretendían ingresar violando los derechos y restricciones sobre el uso de la visa turística cubana. La participación en eventos, reuniones, cursos, actividades de negocios necesita requerimientos especiales de visado que no fueron cumplidos por las personas identificadas. No fue presentada ninguna queja acerca del proceder de las autoridades cubanas.

243. El 26 de julio de 2005, el Relator Especial, juntamente con la Presidenta-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, el Relator Especial sobre la tortura, y la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió una comunicación en relación con la detención de al menos 33 personas el 22 de julio de 2005 en La Habana por miembros de los servicios de seguridad, cuando se disponían a participar pacíficamente en una manifestación convocada ante la Embajada de Francia por la organización autodenominada Asamblea por la Promoción de la Sociedad Civil (APSC) para demandar la liberación de opositores políticos. 24 personas habrían sido liberadas y las siguientes nueve continuarían en detención:

1. **Santiago Valdeolla Pérez.**
2. **Julio César López Rodríguez.**
3. **Francisco Mouré Saladrigas;** de 46 años de edad; delegado de la APSC por La Habana.
4. **Oscar Mario González.**
5. **Miguel López Santos.**
6. **Jesús Adolfo Reyes;** 44 años de edad; delegado adjunto de la APSC por la Capital.
7. **Raúl Martínez Prieto.**
8. **Ricardo Medina Salabarría;** dirigente de la APSC; y
9. **René Gómez Manzano;** de 62 años de edad; vicepresidente de la APSC.

Se afirmó que estas personas habrían sido conducidas luego de su arresto a los locales del Departamento Técnico de Investigaciones (DTI) del Ministerio del Interior. En el momento de enviar la comunicación se ignoraba su actual paradero.

244. Por carta del 9 de agosto de 2005, el Gobierno transmitió la información siguiente sobre las detenciones de los **Sres. Santiago Valdeolla Pérez, Julio César López Rodríguez, Francisco Mouré Saladrigas, Oscar Mario González, Miguel López Santos, Jesús Adolfo Reyes, Raúl Martínez Prieto, Ricardo Medina Salabarría, René Gómez Manzano** detenidos el día 22 de julio de 2005. Las personas detenidas no estaban ejerciendo un derecho reconocido en virtud de los instrumentos internacionales de derechos humanos. El Gobierno informó al Relator Especial que las personas arrestadas habían sido puestas a disposición de las autoridades

competentes y serían juzgadas bajo el respeto estricto del principio de debido proceso penal y acorde con la legislación penal vigente. Supuestamente no se habían presentado queja de maltratos durante las detenciones y es infundada la preocupación en la comunicación respecto al riesgo de padecer torturas o cualquier otra forma de malos tratos.

245. El 3 de agosto de 2005, el Relator Especial, juntamente con la Presidenta-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, y la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con el Sr. **Oscar Mario González**, quien había sido objeto de un llamamiento urgente enviado por la Presidenta-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, el Relator Especial sobre la tortura, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario-General para los defensores de los derechos humanos el 26 de julio de 2005. De conformidad con las nuevas informaciones recibidas, el Sr. Oscar Mario González, periodista de la agencia de noticias independiente Grupo de Trabajo Decoro, habría sido arrestado por agentes policiales el 22 de julio de 2005 aproximadamente a las 09.00 horas en la vía pública, a una distancia de 100 metros de su domicilio situado en el barrio Miramar, Municipio Playa, La Habana. Luego de ser conducido a tres comisarías de policía diferentes, habría sido trasladado a la comisaría de Miramar, donde se encontraría actualmente. Las autoridades policiales no habrían permitido a su esposa entregarle alimentos ni verle, aunque sí habrían autorizado la entrega de ropa y de artículos de aseo. Los motivos del arresto no le habrían sido aún comunicados. Se informó también que la detención del periodista González podría estar relacionada con su asistencia y la cobertura que prestó como reportero al congreso de la organización denominada Asamblea para Promover la Sociedad Civil en Cuba (APSC), en mayo de 2005. Sin embargo, no se le habría presentado acusación formal alguna. Ningún tribunal estaría considerando revisar la legalidad de su detención.

246. Por carta con fecha de 23 de agosto de 2005, el Gobierno transmitió la información siguiente con relación a la comunicación del 26 de julio de 2005 sobre el caso del Sr. **Oscar Mario González**. El Gobierno considera que la nota del 9 de agosto dio debida respuesta a las alegaciones contenidas en el llamamiento urgente del 26 de julio del 2005 y por lo tanto espera que esta comunicación sea discontinuada.

247. El 12 de agosto de 2005, el Relator Especial, juntamente con la Presidenta-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, envió un llamamiento urgente en relación con el Sr. **Florencio Cruz Cruz**, médico de profesión y periodista independiente, director adjunto de la agencia Líneas Sur Press y quien trabaja también para la agencia Nueva Prensa Cubana. De acuerdo con la información recibida, el Sr. Cruz Cruz habría sido detenido el 11 de agosto de 2005 en Aguado, Provincia de Cienfuegos, por cuatro agentes de policía. La razón de su detención habría sido que se encontró en su poder una suma de dinero, presuntamente enviada por una organización cubana-americana, Agenda Cuba, con sede en los Estados Unidos, como ayuda humanitaria para las víctimas del reciente huracán que asoló el país. El Sr. Cruz Cruz habría sido detenido cuando se dirigía al domicilio del director de la agencia Línea Sur Press, Sr. Bernardo Arévalo Padrón. Se informó también que se le habría negado el derecho de recibir visitas, incluso la de su esposa. Se expresaron temores de que esta detención pudiera tener relación con el trabajo periodístico que realiza el Sr. Cruz Cruz.

248. Por carta con fecha de 23 de agosto de 2005, el Gobierno transmitió la siguiente información en el caso del Sr. **Florencio Cruz Cruz**. Las alegaciones presentadas serían falsas dado que el Sr. Florencio Cruz Cruz no se puede considerar como periodista: su nombre no corresponde al de ninguna persona acreditada en Cuba como periodista o reportero de órgano de prensa o agencia de noticias nacionales o extranjeras. El Sr. Cruz se encuentra sujeto a investigación por los actos en que estuvo implicado. Si finalmente, fuera instruido de cargos se le garantizará el debido proceso y en caso de ser condenado tendrá el derecho de apelarse a un tribunal superior.

249. El 1 de septiembre de 2005, el Relator Especial, juntamente con la Presidenta-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, el Relator Especial sobre la tortura, y la Representante Especial del Secretario-General para los defensores de los derechos humanos, a envió un llamamiento urgente en relación con el Dr. **Oscar Elías Biscet Gonzáles**, quien había sido el objeto de un llamamiento urgente enviado el 19 de mayo de 2003 por el Relator Especial sobre la promoción 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 independencia de magistrados y abogados. De conformidad con las informaciones recibidas, el Dr. Oscar Elías Biscet Gonzáles, médico de profesión y uno de los fundadores de la Fundación Lawton de Derechos Humanos, una organización humanitaria encaminada a promover y exigir en Cuba la defensa de todos los derechos fundamentales, estaría siendo detenido en condiciones que representarían una seria amenaza para su salud, su integridad física y psíquica, su seguridad, y aun para su vida. Desde su último arresto el 6 de diciembre de 2002, habría perdido 18 kilos de peso, es decir un cuarto de su peso total. Habría perdido además casi toda su dentadura y padecería de gingivitis; gastritis; úlceras estomacales; hipertensión arterial; y elevada tasa de colesterol. Aunque su estado psicológico no habría sido examinado por un especialista, estaría padeciendo de un grado agudo de stress y ansiedad. Se afirma que el Dr. Biscet González, quien se encontraría actualmente en la prisión de Combinado del Este, sería trasladado pronto a la prisión Kilo Cinco y Medio de Pinar del Río, donde las condiciones de su detención serían aún peores. Este centro de detención se encontraría a más de 162 kilómetros de su domicilio. El Dr. Biscet González habría pasado anteriormente siete meses en dicha prisión en situación de incomunicado y confinado en una celda de castigo de tres metros cuadrados; oscura; con elevada temperatura, piso de cemento, y deficiente ventilación. Se le habría prohibido el acceso a material de lectura y a alimentos proveídos por sus familiares. Además, se le habría mantenido semidesnudo en la celda, al haberse negado a portar el uniforme de los prisioneros. También se le habría ubicado en una celda de castigo durante los dos primeros meses que pasó en la prisión de Pinar del Río.

250. Por carta del 26 de septiembre de 2005, el Gobierno transmitió la información siguiente en relación con la comunicación del 1 de septiembre de 2005 sobre la situación del Sr. **Oscar Elías Biscet González**. El Gobierno llamó la atención sobre el hecho de que había presentado información sobre la situación del Sr. Biscet González en previas ocasiones y que en su 32º período de sesiones, el Grupo de Trabajo sobre las Comunicaciones de la Subcomisión de Promoción y Protección de los Derechos Humanos decidió discontinuar la comunicación relativa a la situación del Sr. Biscet por no contar con elementos que demostraran la existencia de un caso de violaciones de derechos humanos. El Sr. Biscet González fue sancionado el 7 de abril de 2003 por el Tribunal Popular Provincial de Ciudad de la Habana en la causa 15/03 a 25 años de privación de libertad en virtud de la ley 88/99, de los cuales ha cumplido 2 años y cuatro meses. Actualmente se encuentra en la prisión del Combinado del

Este. Ha mantenido una conducta de violación sistemática del reglamento disciplinario del penal, motivo por el cuál, las autoridades del penal, de acuerdo con el reglamento vigente y de conformidad con las Reglas mínimas para el tratamiento de los reclusos adoptadas por Naciones Unidas en 1955, han dispuesto que el Sr. Biscet cumpla con las medidas disciplinarias correspondientes. En lo que se refiere a su estado de salud, el Sr. Biscet posee antecedentes de hipertensión arterial, dislipidemia y gastritis que no se han podido confirmar por su negativa a recibir asistencia médica, aunque tiene indicado un tratamiento con clortalidona y atenolol que por decisión propia se automedica a partir del suministro familiar al rechazar los que se le entregan por los médicos del penal. A pesar de ello el Sr. Biscet recibe cada 45 días visita familiar a la que asiste su esposa, hermano y padres y mantiene una comunicación postal y telefónica con su esposa para la cual dispone de 100 minutos mensuales. El Sr. Biscet ha sido juzgado bajo el respeto al debido proceso penal. Ningún de sus derechos ha sido violado y su estado de salud es bueno. No se ha presentado queja a las entidades nacionales de cualquier forma de maltrato durante la detención, juicio o permanencia en prisión del Sr. Biscet. Así mismo es infundada la preocupación manifestada en la comunicación respecto al riesgo de padecer torturas o cualquier otra forma de malos tratos.

### Observaciones

251. El Relator Especial agradece al Gobierno sus respuestas a todas las comunicaciones enviadas durante el 2005.

252. El Relator Especial agradece al Gobierno su respuesta a la comunicación con fecha del 16 de junio de 2005. El Relator Especial considera apropiado reiterar que el derecho a la libertad de opinión y expresión incluye el derecho a no ser molestado a causa de opiniones, el de investigar y recibir informaciones y opiniones, y el de difundirlas, sin limitación de fronteras, oralmente, por escrito, por medio del arte o mediante cualquier medio de expresión, así como los derechos intrínsecamente asociados a la libertad de pensamiento, de conciencia y de religión, la libertad de reunión y de asociación pacíficas. En base a estos derechos el Relator Especial apreciaría recibir información sobre la compatibilidad de las condiciones impuestas por el Gobierno sobre las personas que deseen entrar en Cuba con vistas a participar en eventos tales como Asamblea para la Promoción de la Sociedad Civil en Cuba (APSC), con este derecho fundamental reconocido internacionalmente.

253. Concerniente a su comunicación sobre las detenciones de los Sres. **Santiago Valdeolla Pérez, Julio César López Rodríguez, Francisco Mouré Saladrigas, Oscar Mario González, Miguel López Santos, Jesús Adolfo Reyes, Raúl Martínez Prieto, Ricardo Medina Salabarría, René Gómez Manzano**, sin pronunciarse sobre los hechos del caso, el Relator Especial pone en conocimiento del Gobierno las siguientes alegaciones, provenientes de informaciones adicionales recibidas tras el envío de la comunicación:

- Nueve de los arrestados, entre ellos **Oscar Mario González**, continuarían en prisión preventiva a la espera de juicio el 21 de Diciembre de 2005. Según las informaciones recibidas, este largo periodo de encarcelamiento estaría teniendo graves repercusiones sobre la salud del Sr. González quien sufriría de artrosis cervical y padece dolores de

la columna. Además, presentaría alteración del sueño y necesitaría tomar fármacos para poder dormir. Según las informaciones recibidas, otro de los detenidos, el Sr. **René Jesús Gómez Manzano**, habría iniciado una huelga de hambre en Agosto de 2005, en protesta por su encarcelamiento.

- A tres de los disidentes arrestados se les habría aplicado la Ley 88 del 15 de marzo de 1999, de "protección de la independencia nacional y la economía de Cuba". Los tres serían **Oscar Mario González**, el abogado **René Gómez Manzano** y el militante político **Julio César López**. Quienes podrían ser condenados a penas que llegan hasta los 20 años de cárcel.
- El acceso al expediente de cargos del Sr. Oscar Mario González, le habría sido supuestamente denegado a su abogada y a sus familiares en repetidas ocasiones, llegándose incluso a informarles de que dicho expediente no existiría.

El Relator Especial reitera los principios enunciados, entre otros por la "Declaración sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos", en particular el artículo 5 apartado a), el cual estipula que a fin de promover y proteger los derechos humanos y las libertades fundamentales, toda persona tiene derecho, individual o colectivamente, en el plano nacional e internacional a reunirse o manifestarse pacíficamente. El Relator Especial insta también al gobierno a que trate a las personas arriba mencionadas en conformidad con las "**Reglas mínimas para el tratamiento de los reclusos**", mientras dure su detención.

254. El Relator Especial toma nota de la información proporcionada por el Gobierno sobre la detención del Sr. **Florencio Cruz Cruz**. El Relator Especial continúa expresando su preocupación sobre la posibilidad de que la detención del Sr. Cruz se deba al ejercicio de su derecho a la libertad de expresión y opinión a través de cualquier medio, tal y como lo garantiza el **Artículo 19 de la Declaración Universal de Derechos Humanos** así como el artículo el artículo 9 párrafo 3 apartado (c) de la Declaración sobre los Defensores de los Derechos Humanos que establece que toda persona tiene derecho, individual o colectivamente, entre otras cosas, a ofrecer y prestar asistencia letrada profesional u otro asesoramiento y asistencia pertinentes para defender los derechos humanos y las libertades fundamentales.

255. El Relator Especial toma nota de la respuesta del Gobierno en el caso de las condiciones de detención a las que se encuentra el Dr. **Oscar Elías Biscet Gonzáles**. El Relator Especial reitera, que en su opinión **17/2003**, el Grupo de Trabajo Sobre la Detención Arbitraria ya determinó que la detención de Oscar Elías Biscet, había sido arbitraria, ya que esta se produjo cuando se iba a llevar a cabo "una reunión pacífica de disidencia política de su Fundación, lo cual constituye una libertad reconocida en la Declaración Universal de Derechos Humanos que debe ser garantizada". Sin pronunciarse sobre los hechos del caso, el Relator Especial expresa serios temores por la integridad física y psíquica del Dr. Biscet, y apela al Gobierno, a que mientras dure su detención este sea tratado de acuerdo con las "**Reglas mínimas para el tratamiento de los reclusos**".

### Democratic Republic of the Congo

256. Le 7 janvier 2005, le Rapporteur spécial, conjointement avec le Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant des membres de quatre organisations non gouvernementales, **l'Association africaine des droits de l'homme (ASADHO)**- section du Katanga, le **Centre des droits de l'Homme et du droit humanitaire (CDH)**, le **Groupe évangélique pour la non-violence (GANVE)** et la **Nouvelle dynamique syndicale (NDS)**, tous regroupés sous la Concertation des associations de défense des droits de l'Homme du Katanga (CADHOK). Selon les informations reçues:

- i. En octobre, novembre et décembre 2004, ces quatre organisations auraient dénoncé dans des communiqués conjoints l'exploitation abusive des ressources minières de la province du Katanga, notamment par une usine de la SOMIKA (Société Minière du Katanga) et la pollution de la nappe phréatique de Kimilolo qui alimente de 70 % de la population de Lubumbashi en eau potable découlant de ses activités. A la suite de cette dénonciation, le Vice-Ministre des Mines, dans une lettre adressée à la SOMIKA courant décembre 2004, aurait demandé à cette dernière de mettre fin à ses activités à Kimilolo. Cette décision aurait provoqué le mécontentement de l'entreprise et ses 350 salariés, pour la plupart journaliers, regroupés au sein de l'Association des exploitants miniers et artisanaux du Katanga (EMAK).
- ii. Le 2 décembre 2004, M. **Jean-Pierre Muteba**, secrétaire général de la NDS, aurait dû être hospitalisé à Lubumbashi, à la suite de ce que les médecins auraient identifié comme une tentative d'empoisonnement. M. Muteba aurait été transféré à Kinshasa pour y recevoir les soins nécessaires, et aurait pu revenir à Lubumbashi par la suite, car sa vie n'était plus en danger. M. Muteba aurait déjà été arrêté et détenu du 18 au 29 mars 2003, à la suite d'une déclaration qu'il avait faite à la presse, dénonçant les pillages des ressources naturelles dans la Province de Katanga.
- iii. Le 16 décembre 2004 au soir, un groupe d'individus se serait présenté au siège de l'ASADHO/Katanga. Ces hommes auraient affirmé à la sentinelle qu'ils recherchaient M. **Marc Walu**, directeur financier de l'ASADHO/Katanga. Toutefois, ils auraient déclaré qu'ils «reviendraient le chercher plus tard », alors même que la sentinelle les avait informés que M. Walu se trouvait dans les bureaux.
- iv. Le 21 décembre 2004, cinq personnes, s'étant présentées comme des cadres de la SOMIKA, auraient fait irruption à la « Maison Ekumène », organisation religieuse membre du GANVE, et auraient menacé deux volontaires espagnoles, qui avaient relayé les communiqués de la CADHOK et du GANVE relatifs à la SOMIKA dans leur dernier bulletin.
- v. Le 23 décembre 2004, l'ASADHO/Katanga, le GANVE et la NDS auraient reçu un courrier électronique anonyme en provenance de l'adresse « First true » contenant des menaces explicites à leur rencontre et celle de leur famille.



- vi. Le même jour, M. **Golden Misabiko**, président honoraire du ASADHO/Katanga, aurait été suivi par deux personnes dans une voiture alors qu'il se déplaçait en voiture avec ses enfants à Allilac Center à Lumbumbashi. Alors qu'il s'était arrêté devant un magasin d'alimentation, il aurait reconnu l'une des personnes le suivant comme un des agents de l'agence nationale des renseignements (ANR) qui l'avait arrêté en 2001. M. Misabiko aurait interpellé l'homme qui aurait tout d'abord affirmé n'avoir plus aucun lien avec les services de sécurité. Puis, devant l'insistance de M. Misabiko, il aurait lui répondu que « cette fois-ci cela sera plus grave. » Depuis cette date, M. Misabiko se serait aperçu qu'il était constamment surveillé à son domicile et dans ses déplacements.
- vii. Le 27 décembre, M. Misabiko aurait appris que plusieurs dizaines de membres de l'ANR auraient reçu l'instruction de suivre tous ses mouvements et que l'ANR et la Détection militaire des activités anti-patrie (DEMIAP) aurait décidé de l'arrêter le 15 ou le 16 Janvier 2005.
- viii. Le 28 décembre 2004, l'ASADHO/Katanga, le GANVE, le CDH et la Ligue congolaise de sauvegarde des droits des consommateurs (LISCO) auraient publié, dans le cadre de la CADHOK, un communiqué de presse conjoint dénonçant le refus de la SOMIKA d'obtempérer à la décision du vice-ministre, ainsi que les menaces perpétrées à l'encontre de leurs membres.
- ix. Le 29 décembre 2004, deux responsables de l'EMAK se seraient présentés sur le lieu de travail de M. **Jean-Marie Kabanga**, membre du GANVE. Ce dernier aurait cependant pu sortir sans être remarqué. Quelques heures plus tard, des personnes non identifiées auraient été aperçues dans le quartier où réside M. Kabanga interrogeant ses voisins sur son adresse exacte et ses horaires de travail.
- x. Le 31 décembre 2004, l'ASADHO, le GANVE, le CDH et la NDS auraient reçu un second courrier électronique de menace, provenant à nouveau de l'adresse « First true », et rédigé comme suit: «Vous ne voulez pas être raisonnable. Certains de vos amis l'ont été. Nous connaissons chacun d'entre vous, vos conseils d'administration respectifs. Nous vous disons qu'il y aura des actions concrètes et vous risquez de ne plus voir vos enfants. Nous connaissons votre comportement et votre emploi du temps:
  - ASADHO: **Jean-Claude Katende** (président de l'ASADHO/Katanga), **[Freddy] Kitoko**, **[Golden] Misabiko**, **[Marc] Walu**, **[George] Kapiaka**, **[Timothée] Mbuyia**
  - NDS: **Jean-Pierre Muteba**, secrétaire général, Cryspin
  - GANVE: **[Jean-Marie] Kabanga**, **[Léon] T[s]hiya**
  - CDH: **Grégoire Mulamba**

Si vous avez des femmes et des enfants, pensez une dernière fois à eux. Dernier avertissement et ceux qui vous entêtent ne vont pas vous protéger. »

- xi. Le même jour, le CDH et la NDS auraient reçu un autre courrier électronique d'un individu prétendant faire partie d'un complot organisé par la SOMIKA, avec la complicité de l'EMAK. Cette personne aurait cherché à les mettre en garde contre des tentatives d'empoisonnement à l'encontre des personnes citées par le second courrier électronique de « First true ».

Des craintes ont été exprimées que ces menaces à l'encontre des membres de l'ASADHO, de la NDS, du GANVE et du CDH et de leurs familles visent à décourager les activités menées par ces organisations en faveur du droit à la santé de la population de Lubumbashi, notamment, soient liées au rôle qu'elles ont joué dans la lettre du Vice-Ministre des Mines à la SOMIKA, demandant à cette dernière de mettre fin à ses activités à Kimilolo.

257. Le 26 janvier 2005, le Rapporteur spécial, conjointement avec le Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant M. **Sheldon Munihire Bihira**, directeur général de l'organisation non gouvernementale Action Sociale pour la Paix et le Développement (ASPD), M. **Richard Muhindo Bayunda**, directeur général de l'organisation non gouvernementale Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme (CREDDHO), et Maître **Charles Mukandirwa Wetemwami**, coordinateur de l'Union pour la paix permanente (UPP) et chargé des relations publiques de la Synergie pour la défense des droits de l'homme (SYDHO) du Nord-Kivu. Selon les informations reçues:

- i. Le 10 décembre 2004, la Société Civile du Nord Kivu, dont les personnes susnommées sont des membres actifs, aurait publié un rapport (« Le Nord-Kivu à la dérive: document d'analyse contextuelle de la situation de la province du Nord-Kivu ») dénonçant la distribution illégale d'armes dans la province et en identifiant les responsables. Ce premier rapport aurait été suivi dans les jours suivant par deux autres rapports portant sur des sujets similaires (« Qui mène la guerre au Nord-Kivu et Génocide et crimes de guerre au Nord-Kivu »). Le 12 décembre, Me. Mukandirwa aurait été interviewé au nom des organisations des droits de l'homme signataires desdits rapports, par la radio Canal Afrique et la BBC au sujet de la distribution d'armes.
- ii. Le 13 décembre 2004, trois hommes non identifiés seraient venus chercher M. Munihire chez lui. L'ayant manqué, ils auraient mis en garde son épouse, contre les activités politiques de son mari. Le 29 décembre 2004, vers 19 heures, M. Munihire aurait reçu un appel téléphonique anonyme. Son interlocuteur l'aurait menacé pour avoir participé aux deux rapports. Vers une heure du matin la même nuit, des inconnus auraient tenté sans succès de forcer la porte de M. Munihire. Le 1er janvier 2005, vers 20 heures, M. Munihire aurait reçu un nouvel appel téléphonique anonyme lui demandant s'il était bien Sheldon Munihire. Effrayé par ces menaces, le 5 janvier 2005 il se serait enfui de Goma pour Kampala.

- iii. Le 27 décembre 2004 à 22 heures, Me. Mukandirwa aurait reçu un appel anonyme. Son interlocuteur l'aurait menacé de mort après lui avoir rappelé qu'il était signataire de tous les rapports dénonçant la distribution illicite d'armes. Il lui aurait également rappelé les deux interviews accordées par Me. Mukandirwa et l'aurait menacé de lui trancher la tête pour qu'il se taise définitivement. Le 31 décembre 2004 à 18 heures, deux hommes habillés en civil mais armés se seraient présentés au domicile de Me. Mukandirwa, où ils auraient trouvé son jeune frère. Ils lui auraient demandé s'il connaissait Me. Mukandirwa. Ce dernier informé de la situation sécuritaire, aurait nié. Les visiteurs auraient alors fouillé sa parcelle en vain. Informé de ces événements, Me. Mukandirwa aurait commencé à vivre dans la clandestinité et se serait enfui de Goma le 7 janvier 2005, pour se rendre en Ouganda.
- iv. Le 28 décembre 2004 à 18 heures, M. Bayunda aurait reçu un coup de téléphone anonyme. Son interlocuteur lui aurait signifié qu'il savait que M. Bayunda mobilisait les défenseurs des droits de l'homme pour tenir des réunions au cours desquelles des rapports incluant son nom et ceux de ses complices étaient cités et aurait menacé Bayunda de l'abattre. Le 1er janvier 2005, trois hommes dans une voiture, vraisemblablement des agents des renseignements, auraient demandé à des garçons dans le voisinage de M. Bayunda où celui-ci habitait. Les garçons auraient déclaré qu'ils ne le connaissaient pas. Le lendemain M. Bayunda aurait quitté Goma pour l'Ouganda, où il se trouverait encore aujourd'hui.

258. Le 13 avril 2005 le gouvernement a répondu à la communication du 26 janvier 2005. Le gouvernement a informé le Rapporteur spécial que les allégations concernées dans sa communication n'étaient pas fondées. De plus, que plusieurs activistes des droits de l'homme, y compris ceux des associations auxquelles appartiennent Messieurs Sheldon Munihire Bihira, Richard Muhindo Bayunda et Charles Mukandirwa Wetemwami mènent sans entraves leurs activités dans la Ville de Goma et sur toute l'étendue de la Province du Nord-Kivu.

259. Le 2 février 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel urgent concernant **José Wakadila**, journaliste au quotidien "*La Référence Plus*", paraissant à Kinshasa, qui aurait été arrêté, le 31 janvier 2005, et conduit à la Prison centrale de Matadi (chef-lieu de la province du Bas-Congo) par des inspecteurs de la Police judiciaire des parquets, au moment où il embarquait dans un bus à destination de Kinshasa. Selon les informations reçues, José Wakadila était, depuis le 13 septembre 2004, sous le coup d'une condamnation pour "imputations dommageables" à 11 mois de prison ferme avec arrestation immédiate et au paiement, solidairement avec son journal, des dommages et intérêts de l'ordre de 600 \$US prononcé, par défaut, par le Tribunal de Paix de Kinshasa/Pont Kasa-Vubu. L'affaire pour laquelle le journaliste est emprisonné remonte au 24 juillet 2004, lorsque, par une citation directe, Mvuemba Ntanda et Jacobus Tarrablanche, président et vice-président respectivement de la Société Congolaise des Industries de Raffinage (SOCIR), dont le siège social est à Kinshasa, avaient porté plainte pour imputations dommageables contre Wakadila et le quotidien "*La Référence Plus*" et réclamé la condamnation "aux peines prévues" et le "paiement de la somme de 50 000 \$US de dommages et intérêts". "*La Référence Plus*", sous la plume de

José Wakadila, avait publié, dans son édition n° 3127 du 17 juillet, un article intitulé, "La SOCIR et la raffinerie de Kinlao condamnées à disparaître", très critique à l'égard de la SOCIR et de ses dirigeants.

260. Le 4 février 2005, le Rapporteur spécial, conjointement avec le Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur la torture, la Rapporteuse spéciale chargée de la question de la violence contre les femmes, y compris ses causes et ses conséquences et le Rapporteur spécial sur le droit à l'éducation, a envoyé un appel urgent concernant dix-sept lycéens dont quatre mineurs: **Issiaka Amisi** (m, 16 ans), **Famba Ramazani** (m, 16 ans), **Issa Oyongo** (f, 17 ans), **Aridjatou Tuaha** (m, 17 ans), **Mariama Ali** (f, 18 ans), **Abdala Amisi** (m, 19 ans), **Aziza Amisi** (f, 18 ans), **Bin Bushiri Bushiri** (m, 18 ans), **Atonyi Lumonga** (m, 20 ans), **Yema Maki** (m, 19 ans), **Mitamba Mwamba** (m, 20 ans), **Jonas Mwanya** (m, 24 ans), **Lutula Omba** (m, 20 ans), **Salima Ousseni** (f, 18 ans), **Aridja Saïdi** (m, 18 ans), **Manara Selemane** (m, 18 ans) et **Utchudi Wembonyama** (m, 20 ans). Selon les informations reçues, le 25 janvier 2005, les lycéens auraient protesté contre un changement dans leur horaire de classes et auraient menacé de recourir à une manifestation contre le préfet si leurs demandes n'étaient pas prises en compte. Afin de les dissuader dans leurs demandes, le préfet aurait fait appel à la Police d'Intervention Rapide (PIR) qui aurait procédé à l'arrestation des étudiants et frappé violemment plusieurs d'entre eux. Les lycéens, garçons et filles, étaient, au moment où cette communication a été envoyée, détenus ensemble dans une même cellule à Kindu. Au vu de leurs conditions de détention, en particulier de la détention de majeurs et de mineurs, d'hommes et de femmes, dans une même cellule, et des violences physiques subies par certains d'entre eux lors de leur arrestation, des craintes ont été exprimées au sujet de la santé physique et psychologique des lycéens.

261. Le 14 mars 2005, le Rapporteur spécial a envoyé une lettre d'allégation concernant une journaliste Mlle **Ginette Nzosa** et un cameraman M. **Aditien Basabose** de la chaîne de télévision '*Canal Congo de Télévision*'. Selon les informations reçues, le 8 mars 2005, Mlle Ginette Nzosa et M. Aditien Basabose, qui faisaient un reportage sur un conflit parcellaire, qui opposait le ministre de l'environnement et de la Conservation de la Nature à plusieurs familles occupant ladite concession, auraient été interpellés et appréhendés par des militaires commis à la garde de la concession qui appartiendrait au ministre dans le quartier de Brikin, commune de Ngaliema. De plus, les militaires auraient attaqué les deux journalistes devant le ministre concerné. Mlle Ginette Nzosa serait parvenue à s'échapper, mais M. Aditien Basabose aurait été arrêté et ensuite conduit à l'Inspection Provinciale de la police de Kinshasa (IPKIN). Les informations qu'il avait recueillies auraient été détruites et sa caméra aurait été confisquée. M. Aditien Basabose aurait été relâché le même jour vers 20 heures, sans que sa caméra ne lui ait été restituée.

262. Le 24 mai 2005, le Rapporteur spécial, conjointement avec le Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de l'**Association africaine des droits de l'Homme** (ASADHO) - en particulier M. **Amigo Ngonde**, le président de l'ASADHO, et M. **Golden Misabiko**, président d'honneur de l'ASADHO-Katanga. Selon les informations reçues, le 16 mai 2005, MM. Ngonde et Misabiko se seraient rendus sur le campus de l'Université de Lubumbashi, Katanga, afin d'enquêter sur un mouvement de panique parmi les étudiants, qui auraient quitté la cité universitaire à la suite de rumeurs selon lesquelles un commando militaire s'apprêtait à attaquer le campus dans la nuit du 16 au 17 mai 2005. Vers

21h00, MM. Ngonde et Misabiko auraient interrogé M. Kaumba Lufunda, recteur de l'université, alors entouré de plusieurs personnes qui leur auraient demandé la source de leur information. Aux alentours de 22h00, sur le chemin du retour, MM. Ngonde et Misabiko auraient été suivis par un véhicule, qui les aurait doublé et leur aurait barré la route. Trois personnes armées de revolvers - parmi lesquelles une des personnes présentes lors de leur entretien avec le recteur - seraient descendues du véhicule et auraient tenté de les faire sortir de force de leur voiture. MM. Ngonde et Misabiko auraient réussi à prendre la fuite. Ils ont ensuite trouvé refuge au bureau de la Mission de l'ONU en République démocratique du Congo (MONUC). Des craintes ont été exprimées évoquant le fait que cette attaque à l'encontre de MM. Misabiko et de M. Ngonde ne soit liée à leurs activités de défense des droits de l'homme. Ces craintes sont d'autant plus vives que M. Misabiko a été l'objet d'actes de surveillance et de graves menaces de mort le visant lui et sa famille, en décembre 2004 (appel urgent envoyé 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 envoyé le 7 janvier 2005).

263. Le 24 mai 2005, le Rapporteur spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé une lettre d'allégation concernant le cas de Madame **Francine Rutazana**, Secrétaire Exécutive de la Ligue des Droits de la Personne dans la région des Grands Lacs (LDGL). Selon les informations reçues, Francine Rutazana aurait été arrêtée mercredi 18 mai 2005 à 17H00 à l'aéroport international de Ndjili à Kinshasa par les agents de la Direction Générale des Migrations (DGM). Selon les informations reçues, Francine Rutazana aurait été en possession de documents de voyage valides. Francine Rutazana, de nationalité rwandaise, se serait rendue à Kinshasa avec Maître Joseph Sanane Chiko, membre du Comité Directeur de la LDGL, afin d'obtenir du Ministère de la Justice l'autorisation d'ouvrir une antenne de la Ligue dans la capitale congolaise. Elle aurait été relâchée le 19 Mai 2005. Des craintes ont été exprimées sur le fait que cet incident ne soit lié aux activités de défense des droits de l'homme de Madame Rutanaza. Ces craintes sont d'autant plus vives que d'autres membres de la LDGL auraient fait l'objet d'arrestations aux aéroports de la République Démocratique du Congo, en particulier, selon nos informations, François Xavier Byuma, premier vice-président de la LDGL, aurait été arrêté l'année dernière à l'aéroport de Ndjili au motif qu'il était Rwandais et relâché après avoir été soumis à un interrogatoire par des agents de l'ANR (Agence Nationale des Renseignements). Au cours d'un autre incident Mr Jean Jules Lema Landu, Congolais de nationalité, responsable du journal *Amani* de la LDGL, aurait été arrêté et détenu par les mêmes services à Béni parce qu'il détenait un ordre de mission de la LDGL signé à Kigali.

264. Le 26 mai 2005, le Rapporteur spécial a envoyé une lettre d'allégation concernant le cas de **Radiotélévision Débout Kasai (RTDK)**, une radio communautaire émettant à Mbuji-Mayi, capitale de la province du Kasai Oriental, qui a été fermée et tout le personnel évacué, le 17 mai 2005, par un groupe de policiers des Services Spéciaux de la Police Nationale Congolaise. Apparemment, aucun document écrit n'a été brandi lors de cette opération de la police. Le commandant des policiers qui ont procédé à la fermeture de la radio aurait affirmé que l'ordre d'effectuer telle mesure avait été donné par le gouverneur de la province. La rédaction de la *RTDK* affirme qu'aucun motif officiel ne leur a été donné et que cette fermeture serait liée au fait que la radio a diffusé, au cours du journal du 16 mai 2005, une information

faisant état des tracts distribués en ville invitant la population à une opération de désobéissance civile. En effet, le soir du 16 mai une manifestation de la population aurait été réprimée par les forces de l'ordre.

265. Le 31 mai 2005, le Rapporteur spécial, conjointement avec le Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel urgent concernant **José Nzau, Elule Leta, Kyungu Mbumba, Simon Pambu et Fils Mukambula**, membres actifs et militants de l'Union démocratique pour le progrès social (UDPS). Selon les informations reçues, ces 5 personnes auraient été arrêtées entre le 17 et le 18 mai 2005, dans le cadre d'une série d'arrestations de membres et sympathisants de l'UDPS dans plusieurs provinces, dont les deux provinces du Kasai et celle de Kinshasa. Ces arrestations auraient eu lieu à la suite de tentatives de manifestations "villes mortes", prévues pour les 17 et 18 mai 2005. Selon les informations reçues, ces 5 personnes auraient été arrêtées par des membres de l'ANR (Agence nationale des renseignements) et étaient, au moment que cette communication a été envoyée, détenues dans les cellules de l'ANR dans le quartier de Gombe à Kinshasa.

266. Le 6 juin 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur la torture et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation des personnes suivantes:

- M. **Timothée Mbuya**, directeur de publication à l'*Association africaine de défense des droits de l'Homme*, (l'ASADHO-Katanga).
- M. **Hubert Tshiswaka**, directeur exécutif de l'*Action contre l'impunité pour les droits de l'Homme*, (l'ACIDH).
- M. **Peter Kaodi**, directeur de publication à l'ACIDH.
- M. **André Murefu**, membre de l'ONG *Amis de Dag pour les droits de l'Homme*.
- M. **Emmanuel Impula**, membre de l'ACIDH.
- M. **Kapenda**, membre du CDH, le *Centre des droits de l'Homme et du droit humanitaire*.

Selon les informations reçues, ces 6 personnes auraient été arrêtées le 3 juin 2005 à Lubumbashi, alors qu'elles organisaient un rassemblement pacifique afin de demander la libération de M. Golden Misabiko, président d'honneur de l'ASADHO-Katanga, détenu dans les locaux de l'Agence nationale de renseignements (ANR-Katanga) depuis le 2 juin 2005. Alors qu'ils manifestaient devant le bureau de la direction provinciale de l'ANR-Katanga, des policiers de garde et des agents de l'ANR les auraient battus puis conduits au cachot de l'ANR où au moment où cette communication a été envoyée ils étaient toujours.

267. Le 6 juin 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de M. **Golden Misabiko**, président d'honneur de la section de l'ASADHO dans la province du Katanga. M. Misabiko a été l'objet de deux appels urgents

envoyés par la Représentante Spéciale du Secrétaire Général sur la situation des défenseurs des droits de l'homme et le Rapporteur Spécial sur le droit à la liberté d'opinion et d'expression datés du 7 janvier 2005 et du 24 mai 2005. Selon les informations reçues, le 2 juin 2005, vers 7 heures du matin, alors qu'il déposait sa fille à l'école, dans le quartier Makutano à Lubumbashi (Katanga), M. Golden Misabiko aurait été enlevé par trois agents armés de l'Agence nationale de renseignements (ANR-Katanga) et aurait été conduit à la direction provinciale, où il se trouvait au moment où cette communication a été envoyée, en détention. Son arrestation aurait été ordonnée par le directeur provincial et le directeur adjoint chargé des opérations de l'ANR. Cette arrestation serait en rapport avec son enquête sur les poursuites dont ferait l'objet M. André Tshombe, président national du parti politique CONACO accusé d'avoir préparé un mouvement de sécession du Katanga dans le dossier de "la sécession au Katanga" et en rapport avec sa dénonciation publique de l'absence de fondement de ces accusations. L'arrestation de M. André Tshombe aurait elle-même été ordonnée par les mêmes hommes que ceux ayant ordonné celle de Golden Misabiko, deux hommes dont l'implication dans des arrestations et détentions arbitraires, ainsi que des actes de torture, aurait déjà été dénoncées par l'ASADHO-Katanga. Des craintes ont été exprimées concernant le fait que cette arrestation ne constitue une représaille directe contre les activités de défense des droits de l'homme que mène Mr. Misabiko. Ces faits surviennent après une tentative d'enlèvement à son encontre en Mai dernier qui a fait l'objet des actions urgentes mentionnées ci-dessus.

268. Le 5 de juillet 2005, le Rapporteur spécial a envoyé une lettre d'allégation concernant la coupure du signal des chaînes du groupe **RAGA**, *RAGA FM*, *RAGA TV* et *RAGA Plus*, et la rafle de journalistes qui couvraient, le 30 juin 2005 à Kinshasa, une manifestation des militants de l'Union pour la démocratie et le progrès social au cours de la quelle ils y auraient eu plusieurs morts et blessés. Selon les informations reçues, *RAGA FM*, *RAGA TV* et *RAGA Plus* n'émettent plus depuis le matin du 1er juillet. Plus tard dans la journée, la Haute Autorité des Médias aurait décidé l'interdiction, pour une durée de dix jours, de *RAGA FM* et *RAGA TV* pour n'avoir pas traité de manière impartiale l'information en rapport avec la manifestation du 30 juin. Ce jour, à Kinshasa, **Luc Mikomo**, directeur des informations de la chaîne privée *RAGA TV* et le technicien **Jules Mpata**, **Basile Kokwalet**, cameraman de la chaîne publique française *RFO/AITV*, **Noël Ntunda** et **John Ngombwa**, respectivement directeur des programmes et animateur de la chaîne *Antenne A*, **Mills Tshibangu** et **Doudou Mukuna**, journaliste et cameraman à la chaîne *RadioTélé Kin Malebo*, auraient été interpellés et détenus pour plusieurs heures par différents services de sécurité qui auraient aussi confisqué du matériel technique. A Kikwit, ville de la province de Bandundu, **Kawanda Bakiman Nkorabishen**, journaliste et rédacteur en chef de la radio communautaire *TOMISA*, liée à l'Eglise catholique locale, aurait été battu par des militaires pendant qu'il couvrait la marche des sympathisants de l'opposition.

269. Le 13 juillet 2005, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de M. **Dismas Kitenge**, président du Groupe LOTUS, une organisation de défense des droits de l'homme basée à Kisangani, et animateur actif du Collectif qui avait déjà fait l'objet d'une lettre d'allégation de la part de la Représentante Spéciale en automne 2002. Selon les informations reçues, dans la nuit du 2 au 3 juillet 2005 vers deux heures du matin, des hommes armés en uniforme seraient entrés par effraction au domicile de M. Kitenge. Ils auraient emporté tous les meubles de valeur puis se seraient enfuis en tirant des coups de feu en l'air et en menaçant la famille de M. Kitenge de revenir si celui-ci n'abandonnait pas ses activités « politiques ». Les membres de la Garde spéciale de sécurité présidentielle

(GSSP), postés à 100 mètres de son domicile, n'auraient pas réagi en dépit des coups de feu. D'autre part, une plainte contre X aurait été déposée par M. Kitenge auprès de la police et du tribunal de Kisangani, mais aucune suite n'aurait été donnée par les autorités. Des craintes ont été exprimées concernant le fait que cette attaque visait à faire obstruction aux activités de M. Kitenge en faveur des droits de l'Homme. En particulier, elle survient dans le contexte d'une série de rencontres avec les autorités locales, initiée par la société civile, à la suite des manifestations du 30 juin 2005 à Kisangani, jour de l'indépendance nationale, considéré comme la fin de la période de transition. Lors de ces manifestations protestant contre la prolongation de cette période jusqu'en décembre 2005 et réclamant le départ du Président Joseph Kabila, de nombreux actes de violence auraient été perpétrés par les forces de l'ordre, notamment la GSSP. Selon les informations reçues, les associations de défense des droits de l'Homme de Kisangani, en particulier M. Kitenge, auraient au cours de ces rencontres dénoncé les violations des droits de l'Homme commises par des membres de la GSSP, ainsi que les menaces et les provocations faites par certains membres du Parti du président de la République (PPRD) à Kisangani contre les défenseurs des droits de l'Homme. Le 5 juin 2005, des cadres du parti présidentiel avaient rencontré M. Kitenge au siège du Groupe LOTUS, lui adressant notamment une mise en garde et lui demandant de modérer son langage.

270. Le 18 juillet 2005, le Rapporteur Spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de **l'Association africaine de défense des droits de l'Homme (ASADHO)**, section du Katanga. Selon les informations reçues, le 13 juillet 2005, environ 300 personnes auraient organisé une marche à Lubumbashi contre l'ASADHO/Katanga qui se serait terminée devant les bureaux de l'association, où les manifestants seraient restés pendant près d'une heure scandant des slogans affirmant que l'ASADHO/Katanga est "une association tribale qui travaille contre les intérêts de la province du Katanga" et que si elle "continue à s'attaquer à la Société Anvil Mining, [ils] reviendront[t] pour saccager ses bureaux [...]". Les manifestants auraient eu des banderoles mentionnant que l'ASADHO était "corrompue", et qu'ils la mettaient "en garde pour la dernière fois", lui demandant de "faire attention". Les membres de l'ASADHO/Katanga auraient été, de ce fait, retenus à l'intérieur de leurs bureaux. Des menaces similaires à celles scandées par les manifestants auraient également été diffusées par email. Cette manifestation serait en relation avec un communiqué diffusé par l'ASADHO/Katanga le 1er juillet 2005, intitulé "Les crimes de guerre de Kilwa doivent être punis". L'association y aurait dénoncé le manque de volonté du gouvernement de transition pour punir les auteurs des pillages, viols et exécutions sommaires perpétrés à l'encontre de la population civile lors de la reprise, le 18 octobre 2004, de la ville de Kilwa - occupée jusqu'alors par des troupes du Mouvement Révolutionnaire pour la libération du Katanga (MRLK) - par les forces armées congolaises. Selon les informations reçues, cette marche aurait été autorisée par le Gouverneur de la province du Katanga, et le maire de Lubumbashi. Elle aurait reçu l'appui financier d'un homme d'affaires proche de la société minière Anvil Mining, accusée par l'ASADHO/Katanga d'avoir loué du matériel de transport aux troupes armées congolaises lors de la répression de la rébellion de Kilwa en octobre 2004. Il a également été rapporté que le commandant des services spéciaux de la police nationale, que l'ASADHO/Katanga avait appelé pour assurer la protection de ses biens et de ses membres, n'aurait pas réagi. Des craintes ont été exprimées pour la sécurité de l'association et de ses membres en particulier : **M. Jean-Claude Katende**, président, **M. Freddy Kitoko**, vice-président, **MM. Georges Kapiamba, Marc Walu et Timothee Mbuya**, membres du comité directeur, **M. Golden Misabiko**, président d'honneur,



**M. Bertrand Kabembela, M. Jean-Claude Bakatunyingela, Mme Vela Musimisa, Mme Marie-Rose Bangambila et M. Kabasele Ntumba**, responsables de services. En effet, ces faits semblent s'inscrire dans le cadre d'un harcèlement récurrent à l'égard des membres de l'ASADHO et des défenseurs des droits de l'Homme dans la province du Katanga. Golden Misabiko, Timothee Mbuya et Georges Kampiamba avaient déjà fait l'objet d'appels urgents par le 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 la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, respectivement le 6 juin, le 24 mai 2005 et le 7 janvier 2005.

271. Le 18 juillet 2005, le Rapporteur spécial a envoyé un appel urgent concernant la situation de **Jean Marie Kanku**, éditeur du journal *L'Alerte*, paraissant à Kinshasa, qui aurait été incarcéré au cachot du Parquet de Grande Instance de Kinshasa/Gombe depuis le 12 juillet 2005. Le journaliste aurait été acheminé à ce cachot après avoir passé une première nuit dans le cachot du Parquet de Grande Instance de Kinshasa/Kalamu. Pendant une rencontre avec une organisation non gouvernementale dans sa cellule, le 13 juillet, Kanku aurait confirmé avoir été entendu sur procès verbal par un inspecteur judiciaire proche de la famille de Catherine Nzuzi wa Mbombo, ministre de la Solidarité et des affaires humanitaires, qui aurait déposé une plainte contre lui pour un article paru dans le numéro n°326 du 8 juillet du journal intitulé : "Pour une lettre adressée au Chef de l'Etat : Nzuzi wa Mbombo, Me Kamanda et R. Tshibanda cherchent le refuge protecteur de l'espace présidentiel". Cet article, qui mentionne le ministre dans le cadre d'une affaire de détournement d'argent, aurait été signé par un certain Parfait Luka.

272. Le 29 juillet 2005, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la torture, le Rapporteur spécial sur la vente d'enfants, la prostitution d'enfants et la pornographie impliquant des enfants, le Rapporteur spécial sur le droit de toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, la Rapporteuse spéciale chargée de la question de la violence contre les femmes, y compris ses causes et ses conséquences, l'Expert Indépendant sur la situation des droits de l'homme en République Démocratique du Congo, Rapporteuse spéciale sur la traite des personnes, en particulier les femmes et les enfants et Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé une lettre d'allégation concernant **les cas très répandus de violence sexuelle indiscriminée et systématique et d'autres formes de violence perpétrées contre des femmes et des filles sur le territoire de votre pays depuis 1996**. Cette année et l'année précédente, Les Rapporteurs avaient fait part au gouvernement de leur inquiétude par le biais de plusieurs communications, notamment une lettre d'allégation envoyée le 9 mars 2005, un appel urgent envoyé le 12 janvier 2005 et une lettre d'allégation envoyée le 11 octobre 2004 concernant des viols collectifs à Bongandanga et Songo Mboyo, envoyés conjointement avec le Rapporteur Spécial sur la torture. Selon les informations reçues, des femmes et des filles, et parfois des hommes et des garçons, les plus jeunes âgés de 3 ans, auraient été violés, mutilés, torturés, forcés à l'esclavage sexuel, contraints à l'inceste, au mariage, au travail forcé et au pillage. Tous les groupes armés présents dans le pays, nationaux et étrangers (RCD-Goma, RCD-ML, Mai Mai, Mudundu 40, MLC, UPC, FNI, FDD et FNL burundais, des groupes armés de Hutus et ex-interahamwe, aussi que l'armée nationale congolaise, FARDC), seraient responsables de ces crimes. Dans la communication envoyée au Gouvernement le 11 octobre 2004, Les Rapporteurs avaient exprimé leur crainte suite aux renseignements reçus selon lesquels, au 21 décembre 2003 à Songo Mboyo et Bongandanga, à Mbandaka, en Province d'Equateur, 119 femmes et filles auraient été violées et soumises à d'autres formes de violence sexuelle par un bataillon d'ex-

MLC. Le bataillon entier aurait protesté contre le fait qu'il n'avait pas reçu de salaire. Les Rapporteurs sont préoccupés quant au fait de ne pas avoir reçu de réponses de la part de votre Gouvernement concernant l'investigation et la poursuite pénale des auteurs présumés de ces graves violations des droits de l'homme et la compensation et la réhabilitation des victimes et de leurs familles. Les Rapporteurs redoutent que cela démontre que l'impunité pour la violence contre les femmes et les filles ne soit largement répandue dans le pays. Les allégations de viols massifs en décembre 2003 ne sont qu'un exemple de violence contre les femmes et les filles. L'ampleur exacte de telles violences est difficile à mesurer, principalement à cause du manque d'informations officielles sur ces actes, ceci, en raison de l'hésitation des victimes à déposer plainte devant les autorités (parce qu'elles craignent une revanche par les auteurs, la situation est caractérisée par un manque général de sécurité et il existe de forts tabous culturels autour des violences sexuelles) et du manque de confiance envers les autorités afin de désigner comme responsables les auteurs de violence contre les femmes et les filles. Les rapports ont aussi indiqué que la réponse des autorités aux plaintes de ce type de crimes ait été lente et insatisfaisante pour plusieurs raisons, dont la crainte de la police de revanches par les agresseurs, l'insécurité générale dans le pays, la corruption et le manque de volonté de coopérer avec les autorités appropriées. Ce manque de réponse des autorités a résulté dans l'impunité générale pour les actes de violence contre les femmes et les filles, et cette culture d'impunité aggrave et encourage la suite d'une telle violence. En outre, comme il a déjà été référé dans l'appel urgent du 12 janvier 2005, envoyé conjointement par la Rapporteuse spéciale chargée de la question de la violence contre les femmes, y compris ses causes et ses conséquences, le Rapporteur spécial sur la torture et le Rapporteur spécial sur le droit à l'alimentation, les Rapporteurs restent concernés par les rapports qui indiquent que les conditions de détention et les prisons ne se sont pas conformes aux standards internationaux, et que les prisonnières et détenues du sexe féminin sont sujettes à des violences, y compris sexuelles, pendant leur détention. En plus, leur attention a été attirée sur le fait que des membres de la société civile, spécialement des femmes défenseurs des droits humains, qui luttent contre la violence sexuelle et contre d'autres formes de violence contre les femmes et les filles dans le pays, ont été visées et sont sujettes à toutes formes de harcèlement, y compris à des menaces et à des attaques, ainsi qu'à des actes de violences sexuelles et à d'autres formes de violences. La violence sexuelle généralisée et systématique a eu comme conséquence la diffusion, sans contrôle, du SIDA et d'autres maladies sexuellement transmissibles, autant à l'intérieur qu'à l'extérieur du pays. Ceci a eu comme conséquences, inter alia, une augmentation du nombre d'orphelins et d'enfants nés avec le SIDA, et une augmentation du nombre de personnes handicapées du fait de leur maladie et empêchées d'avoir toute activité économique qui leur permettrait de subvenir financièrement à leurs besoins. Il a été rapporté que les centres de santé, les cliniques et les hôpitaux, spécialement dans les régions rurales, ne peuvent pas fournir les soins aux personnes infectées, et parallèlement, les victimes ne sont pas capables d'aller à ces centres de santé en raison de la situation d'insécurité dans le pays et du manque d'infrastructure de transport. Il a également été rapporté que ces centres de santé n'ont pas les ressources matérielles, financières et humaines nécessaires pour assister les personnes affectés.

273. Le 5 août 2005, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la fermeture de l'**association Solidarité Katangaise (SK)** et le harcèlement dont aurait fait l'objet son président national, **Jean-Claude Muyambo Kyassa**. Selon les informations reçues, la décision de fermer l'association Solidarité Katangaise aurait été

prise par arrêté provincial du Gouverneur le 21 mai 2005, interdisant le fonctionnement de Solidarité Katangaise sur toute l'étendue de la province du Katanga, au motif qu'elle "fonctionne comme une association de fait, opérant en marge de la loi, son activité n'étant pas légalement autorisée, ni au niveau national ni au niveau provincial" sur la base de l'article 5 de la Loi n° 004/2001, qui stipule qu' "en attendant l'obtention de la personnalité juridique, l'avis favorable du Ministre ayant dans ses attributions le secteur d'activité visé vaut autorisation provisoire de fonctionnement". Cependant, les Rapporteurs avaient reçu des renseignements selon lesquels le 18 juillet 2004, l'association Solidarité Katangaise avait adressé au Ministre de la Justice une requête pour l'obtention de la personnalité juridique, à la suite de laquelle le ministère de la Justice avait autorisé le 11 août 2004 le fonctionnement provisoire de l'association en attendant l'octroi de la personnalité juridique par voie d'arrêté ministériel (lettre n° Just. GS/20/593/2004), ce conformément à l'article 5 de la loi précitée. De plus, en vertu de l'alinéa 3 de cet article, "passé un délai de six mois, la personnalité juridique est sensée être octroyée". D'autre part, le Chef de Division Provinciale de la Justice et Garde des Sceaux du Katanga à Lubumbashi, responsable des cultes et des associations, aurait délivré à Solidarité Katangaise le certificat d'enregistrement n° 195/446/04, et le Gouverneur de Province lui-même aurait assisté à l'Assemblée générale extraordinaire de Solidarité Katangaise le 19 mars 2005, à Lubumbashi. Selon les informations reçues, l'arrêté du 2 mai serait contraire à l'article 23 de la Loi n°004/2001, en vertu duquel le Gouverneur a le pouvoir de suspendre et non d'interdire les activités d'une association dans la province, suspension ne se justifiant qu'aux motifs de trouble à l'ordre public ou attentat aux bonnes mœurs. Par ailleurs, depuis le 30 avril 2005, M. Jean-Claude Muyambo Kyassa, président national de Solidarité Katangaise, président du groupe socio-culturel Sempya et bâtonnier du Barreau de Lubumbashi, a fait l'objet de harcèlements divers en raison des actions menées par Solidarité Katangaise en faveur de l'éducation civique et de l'éveil de la conscience politique des citoyens. En particulier, les 5, 12 et 21 mai 2005, des agents de l'Agence nationale des renseignements (ANR) auraient à plusieurs reprises interdit à M. Jean-Claude Muyambo Kyassa de se rendre à Kinshasa. Le 11 mai 2005, lors d'une réunion au Gouvernorat de province entre le chef de l'Etat et les différents acteurs locaux du Katanga, dont des ONG, les agents de l'ANR lui auraient demandé alors même qu'il avait été invité par le protocole d'Etat, de quitter la salle avant l'entrée du Président Kabila. Des craintes ont été exprimées concernant le fait que la fermeture de l'association Solidarité Katanga et le harcèlement dont serait l'objet M. Jean-Claude Muyambo Kyassa, ne soient en relation avec le travail que fait l'organisation en faveur des droits de l'homme.

274. Le 5 septembre 2005, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de la Ligue des Electeurs (LE) et certains de ses membres en particulier, M. **Paul Nsapu**, président de la Ligue des Electeurs, porte-parole du cadre de concertation entre la Commission électorale indépendante (CEI) et la société civile depuis novembre 2004, coordinateur principal du Réseau national d'observation des élections (RENOSEC) depuis mai 2005 et animateur du Réseau d'observation des manifestations et des libertés publiques depuis juin 2005, qui avait déjà fait l'objet d'une lettre d'allégation envoyée par le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante Spéciale du Secrétaire Général concernant la situation des défenseurs des droits de l'homme le 4 mai 2004. Selon les informations reçues, M. Paul Nsapu, qui avait été contraint de quitter la RDC en juillet 2005 en raison de graves menaces à son

encontre, continuerait de faire l'objet d'une campagne de discrédit et sa famille, restée en RDC, serait dans l'insécurité. Selon les informations reçues, le 29 août 2005, la Ligue des Electeurs aurait reçu deux appels anonymes dont les auteurs se seraient présentés comme membres des services de sécurité, et auraient injurié et menacé de mort M. Nsapu et sa famille.

M. **Sabin Banza**, vice-président de la LE, et M. **Guillaume Kabeya**, chargé de la formation à la LE, auraient également reçu des appels téléphoniques de menaces en particulier à l'encontre de Paul Nsapu. Le même jour, l'épouse de M. Nsapu aurait également reçu un appel téléphonique lui indiquant qu'elle était suivie et qu'ils "connaissaient tous ses faits et gestes". Des craintes ont été exprimées concernant le fait que ces menaces ne représentent une forme de représailles, liée à l'engagement de M. Paul Nsapu pour veiller au respect des droits de l'Homme et des libertés fondamentales dans le cadre du processus électoral notamment ses prises de positions critiques concernant le fonctionnement de la CEI et la publication d'un rapport du RENOSSEC en mars 2005 ainsi que de nombreuses analyses de la LE en rapport avec le processus électoral. Selon les informations reçues, les 14 et 17 janvier 2005, M. Nsapu aurait déjà reçu des menaces téléphoniques à la suite de ses interventions sur des chaînes de télévision privées, durant desquelles il avait exprimé des critiques sur la gestion des élections par les autorités. Des menaces similaires lui auraient été adressées le 24 juin 2005, après son passage à l'émission "Grand Lisolo" sur la chaîne Horizon 33. Par ailleurs, en juin 2005, une campagne de dénigrement à l'encontre de M. Nsapu aurait été menée par des membres d'organes officiels auprès de représentants d'Etats et d'organisations internationales gouvernementales. Cette campagne aurait aussi eu pour conséquence la suspension par certains bailleurs de fonds de subventions destinées à la LE. Des craintes ont été exprimées quant à la sécurité de M. Nsapu et de sa famille. Ces craintes sont d'autant plus vives que début juillet 2005, un membre du Parti du peuple pour la reconstruction et la démocratie (PPRD), aurait déclaré en public que si M. Nsapu avait participé à la manifestation du 30 juin 2005 contre la prolongation de la transition - manifestation au cours de laquelle des participants ont été assassinés - "on l'aurait abattu sans pitié ou autre forme de procès". Le 16 Juillet, un autre membre du même parti aurait déclaré à la radio que M. Nsapu serait « à la solde de l'opposition ». Enfin, le 18 juillet 2005, deux inconnus en civil et armés se seraient présentés au domicile de M. Nsapu et auraient menacé son épouse, déclarant qu'ils étaient aux ordres du pouvoir et qu'ils le recherchaient.

275. Le 13 septembre 2005, le Rapporteur spécial a envoyé une lettre d'allégation concernant **Radio Moka**, une radio communautaire émettant de la ville d'Impfondo, dans le Département de la Likouala. Selon les informations reçues, le 2 septembre 2005, la radio aurait été suspendue pour une durée indéterminée par le Préfet du Département. qui lui aurait reproché "le manque d'impartialité dans le traitement des informations, le non respect de la déontologie professionnelle des journalistes et la non-conformité avec les obligations administratives en matière de création d'entreprises de presse". En effet, selon les informations reçues, en République du Congo il appartient au Conseil Supérieur de l'information et de la communication de connaître des questions administratives et à l'Observatoire des médias d'instruire les questions liées à la pratique professionnelle. Le Préfet n'aurait pas donc le pouvoir de suspendre la radio sur la base de ces raisons.

276. Le 29 septembre 2005, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de **Dimas Kitenge Senga**, président du Groupe Lotus, une organisation non gouvernementale de défense des droits de l'homme et animateur du Collectif des associations de défense des droits de l'homme, basés à Kisangani. Selon les

informations reçues, dans la nuit du 22 au 23 septembre 2005, le domicile de M. Dismas Kitenge Senga, situé dans la commune de Tshopo à Kisangani, aurait été incendié par plusieurs hommes non identifiés. Les incendiaires auraient d'abord tenté de forcer la porte d'entrée de l'habitation pour ensuite casser les fenêtres et mettre le feu aux rideaux, ainsi qu'à plusieurs meubles et documents. Selon les informations reçues, ces faits font suite à une conférence de presse le 16 septembre 2005, tenue au bureau du Groupe Lotus par Kitenge Senga, sur les violations des droits de l'homme commises par des membres de la Garde spéciale de sécurité présidentielle (GSSP) dans la région de Kisangani. Cette déclaration avait été relayée, les jours suivants, par plusieurs radios locales dont *Radio-Télévision Nationale Congolaise*, *Amani* et *Radio-Télévision Pêcheurs d'Hommes*. Kitenge Senga aurait déjà fait l'objet de plusieurs menaces de mort qui s'ajoutent à une série d'actes de harcèlement et de pressions en représailles à ses activités de défense des droits de l'homme. Par exemple, dans la nuit du 2 au 3 juillet 2005, des hommes en uniforme et armés, avaient pénétré par effraction au domicile de Kitenge Senga, avaient emporté plusieurs objets et menacé sa famille de revenir si ce dernier n'abandonnait pas ses activités politiques. Malgré une plainte contre inconnu déposée par Kitenge Senga auprès de la police et du tribunal de Kisangani, à ce jour aucune suite à cette affaire n'aurait été donnée par les autorités. 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 ont d'ailleurs envoyé un appel urgent relatant ces faits le 13 juillet 2005.

277. Le 29 septembre 2005, le Rapporteur spécial a envoyé une lettre d'allégation concernant le jour du 17 septembre 2005, quand **Luckson Kabala** et **Mayumba Mayiribu**, journaliste et animateur à la station locale de la Radiotélévision nationale congolaise (RTNC) à Kisangani, auraient été suspendu, pour une durée indéterminée, par le directeur provincial de la RTNC/Kisangani, apparemment sur ordre du gouverneur de la province. Les deux journalistes auraient été accusés d'incitation à la révolte. Dans son édition du radio journal du 15 septembre, Kabala avait lu un communiqué de presse concernant un appel des syndicats de la province à la solidarité avec la grève des enseignants de Kinshasa. Selon les informations reçues, le journaliste avait néanmoins obtenu l'aval de son directeur des programmes pour la lecture du communiqué. Quant à Mayiribu, au cours de son émission "La gaieté au Zénith" du 15 septembre, il s'était exprimé sur le même sujet en critiquant le gouvernement pour avoir bafoué les engagements pris avec le syndicat des enseignants. Dans une autre affaire, la Haute Autorité des médias (HAM) aurait décidé, le 19 septembre 2005, de suspendre pour une durée de trois mois **L'Ouragan**, **Le Journal** et son supplément **Pool Malebo**, des publications indépendantes paraissant à Kinshasa. Le journal L'Ouragan aurait été suspendu pour avoir reproduit une analyse de Jeune Afrique-l'Intelligent évoquant les exactions commises en 2002 par des soldats du Mouvement de Libération du Congo, ancien mouvement rebelle dont Jean-Pierre Bemba, actuel vice-président du pays, aurait été le chef. Le Journal et son supplément Pool Malebo auraient publié un article affirmant que le gouvernement avait effectué un don de 30 millions de dollars à la Tanzanie. La source citée par les journaux aurait en suite démentie cette information.

278. Le 5 octobre 2005, le Rapporteur Spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel urgent concernant la situation d'un groupe de militants de l'Union pour la Démocratie et le Progrès Social (UDPS) dans la province de Katanga, dont **Postolo Petro Mukalenga**, **Jacques Dianda**, **Nadine Mwadi Nkongolo**, **Kalala Mwepu**, **Emery Tshisanda**, **Jean Baita**, **Kapiamba**, **Maguy Luta**,

**Emanu Mutombo, Benoît et Eric** (non autrement identifiés). Selon les informations obtenues, le 29 septembre 2005, à Lubumbashi (Katanga), près de 200 militants de l'Union pour la Démocratie et le Progrès Social (UDPS) venus au Gouvernorat de la province pour y déposer un document à caractère politique auraient été brutalisés et dispersés par l'Unité des escadrons mobiles de la Police Nationale qui aurait aussi procédé à l'arrestation de certains d'entre eux, dont les personnes susmentionnées. Pour des raisons non élucidées, Postolo Petro Mukalenga, Jacques Dianda et Eric (non autrement identifié), auraient été soustraits par les agents de l'Agence Nationale de Renseignements (ANR) de la Police de la commune de Lubumbashi où ils étaient gardés avec les autres vers le cachot de l'ANR. De plus, Nadine Mwadi Nkongolo, Kalala Mwepu, Emery Tshisanda, Jean Baita, Kapiamba, Maguy Luta, Emanu Mutombo, Benoît et un autre individu non identifié, auraient été maintenus au cachot de la Police de la commune de Lubumbashi.

279. Le 18 octobre 2005, le Rapporteur spécial a envoyé une lettre d'allégation concernant M. **Jean-Jacques Luboya N'Samba Shake**, directeur de l'hebdomadaire "*La Vérité*", paraissant à Lubumbashi, capitale de la province du Katanga. Selon les informations reçues, le 13 octobre 2005, M. N'Samba Shake aurait été interpellé et gardé à vue, au cachot du parquet près le Tribunal de Grande Instance de Lubumbashi, sur décision du Procureur de la République, pour "diffamation" à l'encontre de trois hommes d'affaires étrangers installés à Lubumbashi. L'accusation concernerait deux articles parus le 10 et le 11 octobre 2005, et signés par le journaliste Kyungu Mwana Banza, qui dénonceraient une série de fraudes douanières commises au Katanga, en citant les noms des personnes impliquées. Selon les informations reçues, suite à la publication des articles, une confrontation aurait été organisée entre M. N'Samba Shake et ses accusateurs devant un magistrat. A l'issue de celle-ci, le magistrat aurait officiellement inculpé le directeur de "*La Vérité*" de diffamation car les deux articles feraient manifestement preuve de mauvaise foi et de l'intention de nuire.

280. Le 2 novembre 2005, la Mission Permanente à répondu à la communication du 18 octobre 2005. La Mission, en réitérant le grand intérêt que la République démocratique du Congo porte sur le respect des droits de l'homme conformément aux différents instruments ratifiés, allait transmettre la lettre à la Capitale, Kinshasa, aux autorités compétentes qui fourniront des éléments appropriés en rapport avec les préoccupations concernées.

281. Le 28 octobre 2005, le Rapporteur spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la fermeture de la **Fondation Chirezi** (FOCHI), une association à but non lucratif travaillant à la défense des droits de l'homme et sur des menaces à l'encontre de ses membres. Selon les informations reçues, le 5 octobre 2005 des agents de l'Agence nationale de renseignements (ANR) d'Uvira, se seraient rendus au siège de la Fondation sur ordre de l'un de leur major, à la recherche de M. **Floribert Kazingufu**, coordinateur de la Fondation et rédacteur en chef du bulletin de la Fondation Le Cor. Ne le trouvant pas, les agents de l'ANR auraient procédé à l'arrestation de M. **Philippe Bebe**, chargé de la sensibilisation aux droits de l'Homme, et de M. **Dieudonné Babunduzi**, membre de la Fondation et frère de M. Kazingufu, qui se trouvaient sur les lieux. Tous les deux auraient été emmenés dans les locaux de l'ANR-Uvira, où ils seraient restés détenus pendant deux jours. M. Floribert Kazingufu aurait fui Uvira de peur d'être également arrêté. Les agents auraient également emporté tout le matériel présent dans les bureaux (ordinateurs, fax, téléphone) ainsi que des documents en particulier des dossiers de recherche en cours. Ils auraient également confisqué la voiture de l'organisation. Des

craintes ont été exprimées concernant le fait que ces actes ne constituent une forme de représaille de la part des autorités locales d'Uvira contre les membres de la Fondation Chirezi en raison de leurs activités de dénonciation des violations des droits de l'homme perpétrées au Kivu.

282. Le 7 novembre 2005, le Rapporteur spécial, conjointement avec le Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel urgent concernant **Patrice Booto**, éditeur-directeur du trihebdomadaire *Le Journal* et son supplément *Pool Malebo*, paraissant à Kinshasa, capitale de la République démocratique du Congo (RDC). Selon les informations reçues, M. Booto aurait été interpellé sur l'avenue colonel Mondjiba à Kinshasa/Ngaliema, le 2 novembre 2005 en début de soirée, par cinq hommes armés habillés en civil. Le journaliste était détenu au poste de police "Kin-Mazière" à Kinshasa/Gombe, mais les autorités ne lui auraient pas permis de recevoir des visites. *Le Journal* et *Pool Malebo* avaient publié, dans leurs éditions respectives N° 181 du 16 au 19 septembre 2005 et N°20 du 15 au 20 septembre 2005, un article faisant état d'un don de 30 millions \$US de la RDC "remis au secteur éducatif de la République de Tanzanie au moment où un conflit de travail oppose en RDC le gouvernement aux syndicats du secteur de l'enseignement". Cette information attribuée à la Conférence Episcopale du Congo avait été démentie par cette dernière. La Haute Autorité des Médias (HAM) avait, par sa décision prise le 19 septembre 2005, suspendu les deux journaux pour une durée de trois mois estimant que "cet article contient des propos non vérifiés, des imputations dommageables rendus dans une absence totale de rigueur et dans la quête du sensationnalisme, manquements aux articles 2, 3, 6, 11 et 13 du Code d'éthique et de déontologie du journaliste en RDC. Depuis lors les rédactions des deux publications étaient entrées dans la clandestinité.

283. Le 9 novembre 2005, le Rapporteur Spécial a envoyé une lettre d'allégation concernant le 3 novembre 2005, quand **Franck Ngyke Kangundu**, responsable de la rubrique politique du quotidien *La Référence Plus*, et son épouse, **Hélène Mpaka**, qui auraient été abattus par balles, dans leur résidence de Kinshasa, par trois hommes cagoulés. Selon les informations reçues, les assaillants n'auraient emporté aucun bien de valeur, ni la voiture du journaliste. Au contraire, pendant l'agression ils auraient affirmé que leur mission était de tuer. La police, alertée par un familier du journaliste, ne serait pas intervenue avec célérité.

284. Le 14 novembre 2005, la Mission Permanente a répondu à la communication de 9 novembre 2005. La Mission, en réitérant le grand intérêt que la République démocratique du Congo porte sur le respect des droits de l'homme conformément aux différents instruments ratifiés, allait transmettre la lettre à la Capitale, Kinshasa, aux autorités compétentes qui fourniront des éléments appropriés en rapport avec les préoccupations concernées.

285. Le 17 novembre 2005, le Rapporteur spécial, conjointement avec le Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant l'assassinat de M. **Polycarpe Mpoyi Ngongo**, coordinateur du Réseau national d'observation des élections (RENOSEC) pour la région du Kasai-oriental, et responsable du Centre de formation et d'éducation populaire (CEFOP). Selon les informations reçues, le 9 novembre 2005, M. Polycarpe Mpoyi Ngongo aurait été renversé à Mbuji-Mayi, par un véhicule de la Police d'intervention rapide (PIR) qui aurait brusquement dévié de sa trajectoire pour le percuter. M. Mpoyi Ngongo serait mort sur le coup. D'autre part, trois militants des droits de l'Homme, venus s'assurer de la régularité de la procédure policière, auraient été arrêtés sur ordre du commandant des services spéciaux de la police en présence du

gouverneur du Kasai-oriental, arrivé le premier sur les lieux de l'assassinat. Ils auraient été relâchés quelques heures plus tard, sans qu'aucune charge ne soit retenue à leur encontre, mais continueraient à subir des pressions de la part des autorités locales. M. Polycarpe Mpoyi Ngongo avait fait l'objet de menaces et d'intimidations de la part d'agents de la PIR. Selon les informations reçues, le jour de sa mort et durant les trois jours qui l'ont précédé, des agents de la PIR se seraient régulièrement postés en faction aux abords de son domicile et y auraient effectué des rondes et le 7 novembre 2005, il aurait été suivi par des agents de la PIR. De sérieuses craintes ont été exprimées concernant le fait que la mort de M. Mpoyi Ngongo ne constitue une forme de représaille en raison de ses activités de défense des droits de l'homme. Il avait à maintes reprises dénoncé l'insécurité et les violations des droits de l'Homme dans le Kasai oriental. Il était par ailleurs l'un des principaux animateurs du RENOSSEC, mis en place pour veiller à la régularité du processus électoral en RDC. Plus particulièrement, il travaillait sur l'implication possible des autorités dans l'assassinat de Me Leonard Mukendi Kabongo, avocat au Barreau de Mbuji-Mayi, tué dans la nuit du 30 au 31 octobre 2005, dont l'enquête est en cours. Sa mort survient à la suite du meurtre de M. Pascal Kabungulu Kibembi, secrétaire exécutif de l'ONG Héritiers de la Justice et membre de la Ligue des droits de l'Homme dans la région des Grands Lacs, le 31 juillet 2005 à Bukavu sur lequel la Commission d'enquête mise en place par les autorités n'aurait toujours pas rendu ses conclusions). Il se place également dans un contexte de harcèlement accru à l'encontre des défenseurs des droits de l'homme en RDC.

286. Le 25 novembre 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel urgent concernant la situation de M. **Michel Mukebayi Nkosso**, directeur de publication de l'hebdomadaire "*AfricaNews*", paraissant dans la capitale. Selon les informations reçues, le 24 novembre 2005, Michel Mukebayi Nkosso aurait été placé sous mandat d'arrêt provisoire, par le Parquet près le Tribunal de Grande Instance de Kinshasa/Gombe, après avoir été interpellé à son domicile et immédiatement conduit au cachot du Parquet près le tribunal de Grande Instance. M. Mukebayi serait poursuivi pour "imputations dommageables" à l'endroit d'un éditeur directeur, dont le nom est connu du Rapporteur, d'un autre journal et membre actif du Rassemblement Congolais pour la Démocratie. Par ailleurs, M. Mukebayi aurait travaillé jusqu'il y a deux mois au journal du plaignant comme rédacteur en chef avant de démissionner et d'exiger, apparemment sans succès, le paiement de son décompte final.

## Observations

287. Le Rapporteur spécial regrette de ne pas avoir reçu de réponse à ses communications du 7 janvier, 24 mai, 24 mai, 31 mai, 6 juin, 6 juin, 5 juillet, 13 juillet, 18 juillet, 29 juillet, 5 août, 5 septembre, 29 septembre concernant **Dimas Kitenge Senga**, et 5 octobre 2005. Dans l'attente de ces réponses, mais sans préjuger des faits examinés, le Rapporteur Spécial souhaiterait attirer l'attention du Gouvernement sur la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 12 para. 2 et 3 qui stipule que l'État prend toutes les mesures nécessaires pour assurer que les autorités compétentes protègent toute personne, individuellement ou en association avec d'autres, de toute violence, menace, représailles, discrimination de facto ou de jure, pression ou autre action arbitraire dans le cadre de l'exercice légitime des droits visés dans la présente Déclaration. À cet égard, chacun a le droit, individuellement ou en association avec d'autres, d'être efficacement protégé par la législation nationale quand il réagit par des moyens pacifiques contre



des activités et actes, y compris ceux résultant d'omissions, imputables à l'État et ayant entraîné des violations des droits de l'homme et des libertés fondamentales, ainsi que contre des actes de violence perpétrés par des groupes ou individus qui entravent l'exercice des droits de l'homme et des libertés fondamentales.

288. Concernant **M. Misabiko**, le Rapporteur Spécial a été informé par d'autre source que le 2 juin 2005, vers 7 heures du matin, alors qu'il déposait sa fille à l'école, dans le quartier Makutano à Lubumbashi (Katanga), il aurait été enlevé par trois agents armés de l'Agence nationale de renseignements (ANR-Katanga). Il aurait ensuite été conduit au cachot de la direction provinciale, où il se trouvait toujours au moment où cette information a été reçue en juin. Selon ces informations, cette arrestation aurait été effectuée sur ordre du directeur provincial et directeur adjoint chargé des opérations de l'ANR. Il serait reproché à M. Golden Misabiko le fait d'avoir enquêté sur le dossier de "la sécession au Katanga", et d'avoir nié publiquement tout le fondement de ces poursuites.

289. Concernant la communication du 5 juillet 2005, le Rapporteur spécial a été informé par d'autres sources que **RAGA TV**, aurait été rouverte, le 11 juillet 2005 en début d'après-midi, après une suspension de 10 jours décidée par la Haute Autorité des Médias (HAM). Par la même occasion, RAGA Plus aurait aussi été autorisée à reprendre la diffusion des informations.

290. Concernant sa communication du 31 mai 2005, le Rapporteur Spécial a été informé par d'autres sources que **Simon Pambu** et **Elule Leta** aurait été relâchés le 4 juin 2005. Les autres détenus n'auraient pas, au moment où cette information a été reçue, été amenés devant un magistrat.

291. Concernant sa communication du 18 juillet 2005, le Rapporteur Spécial a été informé par d'autres sources que **Jean Marie Kanku** aurait été remis en liberté, mardi 8 novembre 2005, après avoir passé 12 jours de détention dans les cachots de l'ANR (Agence Nationale des renseignements) et de la Cour de Sûreté de l'Etat, communément appelé ASSANEF. Il aurait été inculpé de 'faux bruits' et il aurait payé une somme de 150 \$US de caution pour sa libération. De même, il lui aurait été interdit de quitter le pays et imposé de se présenter chaque mardi et vendredi au parquet de la cour de sûreté de l'Etat.

292. Le Rapporteur Spécial remercie le gouvernement pour la réponse à sa communication du 13 avril 2005. Le Rapporteur Spécial souhaiterait recevoir des informations sur les enquêtes menées à cet égard.

293. Le Rapporteur spécial regrette de ne pas avoir reçu de réponse à ses communications du 2 février et 18 juillet 2005 concernant **Jean Marie Kanku**, et du 18 octobre. Dans l'attente de ces réponses mais sans préjuger sur des faits examinés, le Rapporteur spécial reste inquiet et souhaiterait attirer l'attention du Gouvernement sur le principe de proportionnalité de la peine. A cet égard, des sanctions pénales, en particulier l'emprisonnement pour diffamation, ne semblent pas proportionnelles à un exercice effectif du droit à la liberté d'opinion et d'expression. Ce principe est réitéré par la Résolution 2005 /38 de la Commission de Droits de l'Homme qui a invité tous les Etats à ... j) ne pas recourir, pour des infractions concernant les médias, à des peines d'emprisonnement ou à des amendes qui sont sans commune mesure avec la gravité de ces infractions et qui violent le droit international relatif aux droits de l'homme.

294. Concernant sa communication du 2 février 2005, le Rapporteur spécial a été informé par d'autres sources que **José Wakadila** aurait été relâché provisoirement le 8 février 2005 après qu'il eut payé l'équivalent d'US \$200.

295. Le Rapporteur Spécial regrette de ne pas avoir reçu de réponse à ses communications du 4 février, 13 septembre, et 29 septembre 2005. Dans l'attente de ces réponses, le Rapporteur Spécial souhaiterait rappeler au gouvernement les normes et standards internationaux, comme mentionné par l'Ensemble de règles Onusiennes a minima pour le traitement des détenus et les conditions de détention, en particulier en ce qui concerne les femmes et leur vulnérabilité face à la violence. De plus, le Rapporteur spécial souhaiterait rappeler au gouvernement les craintes réitérés par la Commission des Droits de l'Homme dans sa Résolution 2005/38. La Commission s'est déclarée toujours préoccupée par le fait que, tout en notant que le paragraphe 3 de l'article 19 du Pacte international relatif aux droits civils et politiques dispose que l'exercice du droit à la liberté d'opinion et d'expression comporte des devoirs spéciaux et des responsabilités spéciales, elle a appelé tous les Etats à ne pas imposer de restriction incompatible avec le paragraphe 3 de cet article, notamment ... i) à la participation des manifestations pacifiques et à la libre circulation de l'information et des idées, notamment par des pratiques telles que l'interdiction ou la fermeture de publications ou d'autres médias et le recours abusif à des mesures administratives et à la censure.

296. Le Rapporteur Spécial regrette de ne pas avoir reçu de réponse à ses communications du 14 mars, et 26 mai 2005. Dans l'attente de ces réponses mais sans préjuger des faits concernés, le Rapporteur Spécial souhaiterait attirer l'attention du Gouvernement sur la Résolution 2005 /38 de la Commission de Droits de l'Homme ou la Commission s'est déclarée toujours préoccupée par le fait que ... a) des violations de la liberté d'opinion et d'expression continuent de se produire, souvent dans l'impunité, notamment dans des cas de détentions arbitraires, des actes de torture, d'intimidation, de persécution et de harcèlement, des menaces et des actes de violence et de discrimination, notamment de violence et de discrimination fondées sur le sexe, des recours abusifs accrus aux dispositions législatives concernant la diffamation et la calomnie, la surveillance, la perquisition et la saisie, ainsi que la censure, visant des personnes qui exercent, cherchent à promouvoir ou défendent ces droits, notamment les journalistes et autres professionnels des médias, les écrivains, les utilisateurs de l'Internet et les défenseurs des droits de l'homme.

297. Concernant la communication du 26 mai 2005, le Rapporteur spécial a agréablement été informé par d'autres sources que **La Radio télévision Debout Kasai (RTDK)**, aurait été à nouveau autorisée à émettre le 18 mai à 19h30, suite à l'intervention du gouverneur de la province.

298. Le Rapporteur Spécial souhaiterait bientôt recevoir une réponse à ses communications du 7, 9, 17 et 25 novembre 2005.

299. Concernant sa communication du 7 novembre 2005, le Rapporteur spécial a été informé par d'autres sources que **Patrice Booto** aurait été inculpé de "faux bruits", le 11 novembre 2005, par le Parquet près la Cour de sûreté de l'Etat (CSE) à Kinshasa/Lingwala, où il aurait été déféré, le 10 novembre en fin d'après-midi.

## Djibouti

300. Le 28 décembre 2005, le Rapporteur Spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation des 12 dirigeants de l'Union des travailleurs du port (UTP). Selon les informations reçues, le 3 octobre 2005, le procureur de la République aurait initié une procédure d'appel contre MM. **Mohamed Ahmed Mohamed, Ali Ibrahim Darar, Mohamed Abdillahi Dirieh, Moustapha Abchir Egueh, Mohamed Abdillai Omar, Mohamed Ahmed Ali, Samira Hassan Mohamed, Koulmiyeh Houssein et Djibril Houssein Awaleh**, qui avaient été acquittés le 2 octobre 2005 par la Cour Correctionnelle de Djibouti des chefs de "menace de commettre un délit, lesdites menaces ayant été matérialisées par des attroupements publics réitérés" et de "participation à des rassemblements sur la voie publique susceptible de troubler l'ordre public". Le procureur aurait également fait appel de la décision de la Cour Correctionnelle qui avait acquitté MM. **Kamil Mohamed Ali, Ibrahim Moussa Sultan**, également dirigeants de l'UTP, et **Ali Ahmed Aras**, secrétaire général de l'UTP, pour "participation délictueuse à un attroupement" et "incitation à la rébellion". Les poursuites auraient été en relation avec la participation des dirigeants syndicaux à une grève générale des travailleurs portuaires de Djibouti organisée du 14 au 17 septembre 2005 à la suite de laquelle, fin septembre 2005, les dirigeants auraient été arrêtés et détenus pendant plusieurs jours puis licenciés pour "entrave à la liberté de travail", à l'exception de M. Ali Ahmed Aras, mis en préretraite. Le procès aurait dû se tenir le 28 décembre 2005, devant la Cour d'appel de Djibouti.

## Observations

301. Le Rapporteur Spécial souhaiterait bientôt recevoir une réponse à sa communication du 28 décembre 2005.

## Ecuador

302. El 15 de marzo de 2005, el Relator Especial envió una comunicación en relación con **Orlando Pérez Torres**, periodista del diario *Hoy* y profesor de la Universidad de las Américas en Quito. Según la información recibida, el 25 de enero de 2005, cuando Pérez Torres caminaba hacia su trabajo en la universidad de las Américas, se le habrían acercado dos hombres quienes le habrían empujado contra una pared mientras uno le ponía un arma en el estómago y le decía "Deja de joder, de fastidiar, de escribir pendejadas; si no te vamos a matar". Se alega que dicho periodista habría recibido también una serie de llamadas telefónicas anónimas en su casa que tendrían como objetivo intimidarle a fin de que revelase su dirección. Se expresó temor que las llamadas anónimas y la amenaza de muerte pudieran estar relacionadas con unos artículos escritos por dicho periodista en los que criticó al ex presidente Lucio Gutiérrez y a miembros del Poder Judicial del país. Pérez Torres habría denunciado estos incidentes en dependencias policiales pero, según las fuentes, las autoridades no habrían iniciado investigación alguna.

303. El 25 de abril de 2005, el Relator Especial, envió una comunicación en relación con **Julio García Romero**, fotógrafo independiente chileno, el cual basándose en las informaciones recibidas, resultó muerto el 19 de abril de 2005, mientras cubría una manifestación pacífica en dirección al palacio de gobierno en Quito, supuestamente a consecuencia de haber inhalado gas lacrimógeno, que le habría causado un paro cardiorrespiratorio. Según los informes la policía habría lanzado gas lacrimógeno contra varios manifestantes y se teme que la policía pudiera haber hecho uso de fuerza excesiva.

304. El 26 de abril de 2005, el Relator Especial, envió un llamamiento urgente en relación con **Radio La Luna, Francisco Velasco**, periodista y director de *Radio La Luna* y **Santiago Guarderas**, decano de la Universidad católica de Quito, el cual el 20 de abril, aproximadamente a la 1 a.m., el local de la Radio La Luna habría sido supuestamente tiroteado por desconocidos, mientras sus periodistas informaban sobre las protestas y actos de represión que se estaban registrando en aquel momento en diferentes puntos de la capital. En la tarde del 19 de abril, la Radio La Luna habría recibido llamadas en una de las cuales un hombre no identificado avisaba que “esta noche volará en pedacitos la Luna”. Además, según los informes, desde el 17 de abril, Radio La Luna habría sufrido interferencias y cortes de energía temporales. Así mismo, a tenor de lo informado, Francisco Velasco, director de la emisora La Luna, habría recibido amenazas de muerte telefónicas en su domicilio. Se informó que la primera llamada habría sido realizada el 3 de abril. Cuando el hijo del periodista, de 13 años de edad, respondió un hombre le dijo “te vamos a matar”. El mismo mensaje habría sido repetido el 7 de abril cuando la hija del periodista, de 11 años de edad, descolgó el teléfono. El 14 de abril, la esposa de Velasco habría respondido una llamada de un hombre que le dijo “vamos a matar a tu hijo”. La emisora durante los últimos días se habría caracterizado por abrir sus micrófonos para que la gente expresara de manera libre sus opiniones sobre el futuro político del Ecuador. En otro incidente, el doctor Santiago Guarderas, decano de la Universidad Católica de Quito y el personal de dicha universidad habrían recibido una serie de llamadas telefónicas amenazadoras, después de que algunos empleados de la universidad hablaran públicamente contra la decisión del ex presidente Lucio Gutiérrez de destituir todos los jueces de la Corte Suprema. La amenaza más reciente se hubiera recibido el 15 de abril cuando un hombre desconocido habría dicho “Dígale a Guarderas que no salga a las calles porque si no le vamos a dar el vire”. El 11 de abril, según los informes, las oficinas administrativas habrían recibido varias llamadas anónimas en las que también se amenazaba de muerte al personal de la universidad en caso de abandonar el campus. Se informó de que algunos empleados de la universidad habrían estado haciendo campaña para sensibilizar sobre el deterioro del Estado de derecho y la independencia del poder judicial en Ecuador.

305. El 16 de junio de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió una comunicación en relación con **Acción Ecológica**, una organización que trabaja con el ecologismo social, especialmente en las comunidades indígenas del país. De acuerdo con las informaciones recibidas, el 22 de mayo de 2005 las oficinas de Acción Ecológica habrían sido allanadas por personas no identificadas. Se habrían llevado tres discos duros de computadora que contendrían informaciones sobre las actividades de las comunidades y de los líderes indígenas que hacen campañas en contra de la extracción de petróleo en sus territorios. Además, se habrían encontrado cajones y archivadores abiertos y revueltos. Cabe destacar que hubo otros objetos de valor que no habrían sido sustraídos. El allanamiento habría ocurrido en un momento en que dicha organización era la fuente principal de información crítica en cuanto a la política de las autoridades ecuatorianas de otorgar concesiones a compañías internacionales para extraer

petróleo, y en cuanto a sus presuntas consecuencias negativas para el medio ambiente donde viven las comunidades indígenas. La organización se opone también a las repercusiones que pueden tener, para el medio ambiente y la salud, las fumigaciones en la zona fronteriza con Colombia, en el marco del Plan Colombia. Se informó además de que Acción Ecológica anteriormente habría sido criticada y hostigada por parte de las autoridades gubernamentales y se temía que el allanamiento estuviese relacionado con el trabajo que lleva a cabo la organización.

306. El 13 de septiembre de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con **Lina María Espinoza Villegas**, misionera en el Vicariato Apostólico de la ciudad de El Coca, provincia de Orellana y defensora de los derechos humanos, que trabaja con las comunidades ecuatorianas que están organizando protestas contra las compañías petroleras que operan en la región del norte del Amazonas en Ecuador. De acuerdo con las informaciones recibidas, entre el 24 y el 26 de agosto 2005, Lina María Espinoza Villegas habría recibido varias llamadas en su teléfono móvil, de un hombre desconocido, que le dijo: “Si se está cuidando, cuídese mucho. ¿Usted dónde está? ¿Dónde están sus hijos? Si usted está bien ahora, después no va [a] estar tan bien”. Además, según los informes, el 27 de agosto 2005, el autor de las llamadas habría dejado un mensaje en su buzón de voz en el cual le dijo: “Escorpión rojo a escorpión negro. ¿Dónde le pongo la carga?”, y en otro, el 28 de agosto, se habría escuchado el sonido de disparos. Una denuncia habría sido presentada por Lina María Espinoza Villegas ante el Ministerio Público en Quito, pero no habría recibido ninguna noticia de que se hubiera abierto una investigación. El Relator Especial expresó temores de que las amenazas contra la misionera estuviesen estrechamente vinculadas con su trabajo con los campesinos e indígenas, en particular enseñándoles cómo proteger sus derechos humanos en su campaña contra las actividades de las compañías petroleras en la provincia de Orellana.

### **Observaciones**

307. El Relator Especial lamenta no haber recibido respuesta por parte del Gobierno de Ecuador a ninguna de las comunicaciones enviadas durante el 2005.

308. Según las informaciones recibidas, durante el año 2005, se produjeron diversos incidentes de intimidaciones, amenazas y ataques contra miembros de la prensa e académicos. El Relator Especial insta al Gobierno a llevar a cabo investigaciones exhaustivas y tomar medidas necesarias para que los culpables de estas violaciones de derechos humanos sean llevados ante los tribunales, de acuerdo con los principios enunciados entre otros, por la Comisión de Derechos Humanos en su Resolución 2005/38, la cual insta a todos los Estados a que Garanticen que las víctimas de violaciones de la libertad de opinión y expresión puedan interponer recursos eficaces para investigar efectivamente las amenazas y actos de violencia, así como los actos terroristas, dirigidos contra los periodistas, incluso en situaciones de conflicto armado, y llevar ante la justicia a los responsables de esos actos, para luchar contra la impunidad.

309. En lo referente a la situación del allanamiento **Acción Ecológica** el Relator Especial insta al Gobierno a iniciar una investigación exhaustiva y a tomar medidas para que los culpables sean llevados ante los tribunales, de acuerdo con los principios enunciados, entre otros por la

Comisión de Derechos Humanos en su Resolución 2005/67, la cual “Exhorta a todos los Estados a que adopten todas las medidas necesarias para garantizar la protección de los defensores de los derechos humanos y creen y mantengan un entorno favorable a la labor de los defensores de los derechos humanos y sus familiares”.

310. En lo relativo a las amenazas recibidas por la misionera y activista **Lina María Espinoza Villegas**, el Relator Especial reitera los principios enunciados, entre otros por la Comisión de Derechos Humanos en su Resolución 2005/67 en los cuales se “Exhorta a todos los Estados a que adopten todas las medidas necesarias para garantizar la protección de los defensores de los derechos humanos y creen y mantengan un entorno favorable a la labor de los defensores de los derechos humanos y sus familiares”. El Relator Especial solicita al Gobierno, que le informe oportunamente sobre, cualquier acción llevada a cabo por el Gobierno para proteger, y garantizar el bienestar e integridad física y psicológica de la Sra. **Espinoza Villegas** y su familia, en particular en lo que a la adopción de medidas de protección se refiere.

### Egypt

311. On 7 February 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning **Ayman Nur**, an elected member of the People's Assembly, who was arrested, on 29 January 2005, by security forces and was subjected to physical abuse by them. Reports indicate that he had been stripped of his parliamentary immunity and was, at the time this communication was sent, being detained by an order of the Supreme State Security prosecution services for 45 days. Investigations were simultaneously being carried into a complaint by an Interior Ministry office regarding his alleged forgery of signatures for the establishment of *Al-Ghad*, a legal opposition party which he headed. His arrest was reported to be connected to his outspoken stance on the need for constitutional amendments to allow for more than one candidate to run for the presidency ahead of the presidential elections. Moreover, **Ibrahim al-Sahar**, a journalist, **Marwa Faruq**, a lawyer, and **Baho Baksh**, a student, were arrested together, on 28 January 2005, by security forces on charges of "incitement against public order" as a result of having distributed leaflets at the annual Cairo International Book Fair calling for a demonstration on 4 February 2005 against President Mubarak's re-election for the fifth term. They were sentenced to imprisonment for 14 days.

312. On 2 October 2005, the Government of Egypt replied to the communication of 7 February 2005 concerning the case of **Ayman Nur**, a member of the People's Assembly, and others. The Government informed the Special Rapporteur that the acts imputed to Ayman Nur were punishable as criminal offences under the Egyptian Criminal Code. The Department of Public Prosecutions had charged him with forging government seals bearing the emblem of the Republic and the insignia of a number of public records offices, of falsifying official records, namely powers-of-attorney for the *Ghadd* Party which were submitted to the Political Parties' Committee, of making false declarations and affixing thereto seals and signatures falsely attributed to records offices and officials employed therein, and of knowingly submitting forged documents to the Political Parties' Committee in order to obtain authorization for the establishment of the *Ghadd* party. The Government stated that these acts did not constitute political offences, and that the *Ghadd* party was, at the time this reply was sent, still pursuing its activities in accordance with its statutes. The legal basis on which the Higher State Security Prosecutions Service assumed responsibility for this investigation was that it was appointed to do so by the Attorney General (the Service reports to his office). The Government further provided

that the Higher State Security Prosecutions Service has territorial jurisdiction over all parts of the country and, since the investigations involved the records offices of a number of estate registration agencies throughout the country, it was able to ensure the cohesiveness of the investigation and to bring it to a swift completion under the direct supervision and scrutiny of the Attorney-General. The Government assured the Special Rapporteur that, from the outset, including the point at which the People's Assembly agreed to lift the legal immunity of the accused, all procedures had been carried out in full compliance with the Constitution and the laws in force. The Department of Public Prosecutions had guaranteed the accused full safeguards, and the four-day period of preventive detention was extended by the competent court in the presence of the lawyers of the accused, who had accompanied their client during every stage of the investigation. The accused had six lawyers, at the time this reply was sent. The Department of Public Prosecutions conducted the confiscation and search operations, without any police involvement, in the presence either of the accused or his lawyers. The Department of Public Prosecutions confiscated 2005 powers-of-attorney contained in the file on the establishment of the *Ghadd* party submitted to the Political Parties' Committee of the Consultative Assembly. 1187 powers of attorney alleged to have come from the Amadi records office were forgeries, as were 246 powers-of-attorney from the North Cairo records office. The powers-of-attorney attributed to the father and the wife of the accused were also forgeries. The remaining documents were, at the time this reply was sent, being examined. The Department of Public Prosecutions ordered a police doctor to examine Ayman Nur after he mentioned that, during his arrest while leaving the People's Assembly after his immunity had been lifted, a policeman had poked him under the right eye. The Department of Public Prosecutions investigated the injury, but found no marks to indicate that the accused had been subjected to violence. It also decided to have him examined by a doctor at the first prison and the medical report found his state of health to be normal. The Prisons Service also informed him that he could summon his doctor or any other physician to give him a medical examination in prison, at his own expense. The Department of Public Prosecutions summoned the Deputy Director of the Institute of Cardiology and the Deputy Director of the Diabetes Institute to examine him, while at the Department of Public Prosecutions, in order to verify his state of health, but he refused. The Department of Public Prosecutions gave members of the Human Rights Committee of the People's Assembly, a group of members of the National Council for Human Rights, and members of the Board of the Journalists' Union, permission to visit the accused in prison. These visits were in fact carried out. The Department of Public Prosecutions ordered that the computers, cassettes and diskettes seized at the home and office of the accused be sent to the criminal laboratory for analysis, together with a firearm and some bullets that had been seized at his home. The Government assured the Special Rapporteur that the investigations were continuing at the time this reply was sent, and that the Department of Public Prosecutions would publicize its decisions once completed. Regarding the detention of **Ibrahim al-Sihar**, **Marwa Faruq**, and **Baho Baksh**, the Government stated that they were arrested on 28 January 2005 for distributing leaflets at the Cairo International Book Fair inciting acts contrary to the maintenance of public order and the security of the Fair, after the journalist had insulted and assaulted a police officer at the Fair who had asked the three why they were distributing the leaflets and had tried to stop them from doing so. These three persons were presented to the Higher State Security Prosecutions Service, which decided to remand them in custody pending further investigations (case No. 201/2005). Marwa Faruq and Baho Abdullah Baksh were released on 5 February on bail of 500 Egyptian pounds. Ibrahim al-Sihar was released on 7 February.

313. On 15 February 2005, the Special Rapporteur sent an urgent appeal concerning the opposition daily *Al-Ghad*. According to information received, on 8 February, the High Council for the Press decided to suspend the opposition daily *Al-Ghad*, the newspaper of the newly-formed party *Al-Ghad*. According to information received, the paper's management didn't get any explanation for the decision. Concern was expressed that the suspension of the daily newspaper was linked to charges being brought against the opposition party's president, Ayman Nour, who was being detained, at the time this communication was sent, for allegedly forging official documents. The paper's first issue included an article by Mr. Nour, written from his cell, as well as articles calling for constitutional amendments and criticizing the electoral system.

314. On 2 March 2005 the Government of Egypt replied to the communication of 15 February 2005. At the time this report was finalized, this reply was still in the process of being translated.

315. On 20 April 2005, the Special Rapporteur sent a letter of allegation concerning **Abdel Nasser Ali, Alaa Yeyha Mohamed** and **Youssef Taha Abdel Rahman**, journalists for the *Al Masry Al Youm* newspaper. According to information received, on 17 April 2005, the Cairo Criminal Court sentenced them to one year imprisonment and to a fine of 10,000 LE for defamation. The Minister for Housing presented a complaint against the three journalists following an article they wrote, entitled 'Ibrahim Suleiman's office searched', which article appeared on the 73rd edition of the *Al Masry Al Youm* newspaper, issued on 18 August 2004.

316. On 17 May 2005, the Special Rapporteur sent a letter of allegation concerning **Hussein Abdel Ghani**, the bureau chief for *Al-Jazeera*, chief Cairo correspondent, **Samir Omar; Raymon Adel** from the ground transmission unit, journalist **Nasser Hatem**, cameraman **Mohamed Ezzedin**, cameraman **Yasser Slime**, sound technician **Nassir Youssef**, news producer **Ahmed Anwar**, member of the ground transmission unit **Moataz Sawi** and cameraman **Mahmoud Meligy**, all working for *Al-Jazeera*. According to information received, on 13 May 2005 in Cairo, they were preparing for a live coverage of a Judges' Extraordinary General Assembly outside the Judges Club in downtown Cairo, when security agents arrested them. The Judges were holding a meeting to discuss their demands to the Government seeking (a) full judicial control over Egypt's presidential election in September and (b) for a law asserting judicial independence. It was reported that all concerned were detained in Lazoughly state security office for seven hours.

317. On 7 June 2005, the Special Rapporteur, jointly with the Special Rapporteur on violence against women, its causes and consequences, sent a letter of allegation concerning **Gamal Abdel Fattah, Ali Mahmoud, Ahmed Fouad, Abu Abdel Aziz Ezb** and **Rasha Ezb**, members of the Adala Justice Centre and the Youth Change for Movement, **Maha Reda** and **four other journalists working for a German television**, as well as **Gamal Fahmi**, a member of the board of the Press Syndicate and contributor to the weekly *Al-Arabi*, **Mohamed Abdel Kouddous**, another prominent syndicate member, **Abdel Halim Qandil**, editor for *Al Araby* newspaper, **Shaymaa Abu el Kheir, Abeer al Askary, Hany al Asr, Wael Tawfiq**, all journalists working for the *Dustour* newspaper, **Nawal Ali**, journalist working for the *Al Geel* newspaper, **Iman Taha Kamel**, freelancer, **Nawal Ali**, a journalist for *Al Jeel* newspaper, together with **around 100 other local and foreign journalists and demonstrators**. According to information received, on 23 May 2005 in Maadi, Cairo, Gamal Abdel Fattah, Ali Mahmoud, Ahmed Fouad,



Abu Abdel Aziz Ezb and Rasha Ezb, were arrested and detained at an unknown location for having distributed leaflets calling for political and social reforms in Egypt during a peaceful and public exhibition organised by the Kifaya (Enough) movement. Moreover, five journalists working for a German television, including Maha Reda, were also arrested and detained in Masr al Qadima police station. They were all released. Furthermore, on 25 May 2005 in downtown Cairo, particularly near the Sa'd Zaghlul shrine and the Press Syndicate headquarters, several foreign and local journalists together with around 100 demonstrators were assaulted by Government supporters and security forces during a demonstration calling for a boycott of the referendum of 25 May 2005 which would allow only limited presidential elections. Several demonstrators and journalists, were punched, kicked and slapped. Women were particularly targeted and assaulted. According to reports received, some of the women, including **N.A.M.**, were groped, had their hair pulled, their clothes ripped off, dragged on the ground, kicked and had personal objects stolen, while approximately 40 police officers who were monitoring the demonstration did nothing to intervene on their behalf. On the contrary, it appears that the police encouraged violence against the demonstrators, whilst protecting the Government supporters. On 26 May 2005, the National Council for Human Rights sent a petition, with an annex signed by a number of NGOs, denouncing the aggressions perpetrated against the demonstrators and journalists. The petition was also signed by 5 persons who were victims of those intimidations and was sent to the general prosecutor's office for action, registered under number 258/2005 in the appeals petition in Cairo. At the time this communication was sent, investigations into these allegations had been initiated.

318. On 19 July 2005 the Government replied to the communication 7 June 2005 concerning protesters involved in a demonstration on 25 May 2005. The Government reported that on that date, members of the so-called Egyptian Movement for Change (Kifaya) gathered on the steps outside the Journalists' Union and in front of the Sa'ad Zaghloun Mausoleum in Cairo and began waving banners and shouting slogans voicing opposition to the renewal of the mandate of the President of the Republic and to hereditary power. They also called for a boycott of the referendum on the amendment of article 76 of the Constitution. Supporters of the Government were also present, and were also shouting slogans and waving banners in support of the political leadership. As a result, a verbal altercation ensued that led to scuffles. The Government reported that after these incidents, N.A.M., a journalist employed by Al-Jil newspaper, filed a complaint at the Qasr al-Nil police station accusing members of the National Democratic Party of assault. Some members of the National Democratic Party in turn filed complaints against members of the Movement for Change accusing them of assault and battery. The Department of Public Prosecutions was, at the time this reply was sent, continuing with the investigations into these complaints, on which no decision had, at that time, been taken yet. The Government however reported that no evidence of violations or inappropriate interventions by the security forces in the aforementioned incidents had been proved.

319. On 8 August 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning the reported attacks and severe beatings by security forces of a number of people, including **George Ishaq** and **Amin Eskandar**, leaders of the opposition group *Kifaya* (Enough) and a member of this group **Abd al Hadi al-Mashad**, as well as two human rights activists, **Magdy Abdel Hamid**, a member of the *Egyptian Association for Community Participation*, and **Kamal Abbass**, the director of the *Center for Trade Unions and Workers Services*, journalist

**Shaaban Abd al-Rahim al-Daba**, and an activist with the *al-Hamla al-Sha`biyya min agl al-Taghyi* (Popular Campaign for Change) **Salah Adli**, who were attending a political rally in Tahir square, in Cairo, on 30 July 2005. Among the security forces there were also plain clothed men who brutalized several persons trying to flee the area. Some 40 people were reportedly arrested, detained and mistreated for several hours. Twenty-four amongst them were released on bail two days later, on 1 August 2005. According to information received, Kamal Abbass, Abd al Hadi al-Mashad and Shaaban Abd al-Rahim al-Daba sustained serious injuries and were brought to a local hospital.

320. On 23 November 2005 the Government replied to the communication of 8 August 2005. At the time this report was finalized, this reply was still in the process of being translated.

321. On 9 December 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning **Ahmed Mahmoud Abdallah**, a website and blog editor, and former editor of "*Al-Shaab*", an opposition newspaper that was shut down. According to information received, he was arrested on 5 December 2005 in Cairo by members of the Amn-El-Dawla state security agency at the Centre for Islamic Enlightenment, which he heads. Before going to his office, the state security agents searched his home, confiscating notes, books and computer disks. He was being held at the office of a prosecutor attached to the state security agency, at the time this communication was sent. His website had been shut down. Mr. Abdallah was able to phone his son, and told him that he had not been given any reason for his arrest and that no lawyer was present while he was being questioned. The state security agents reportedly told Mr. Abdallah that he would be held for about two weeks. According to his son, he was suffering from high blood pressure as well as a foot injury.

## Observations

322. The Special Rapporteur thanks the Government for its replies to his communications dated 7 February, 15 February, 7 June and 8 August 2005.

323. The Special Rapporteur regrets that no replies to his communications dated 20 April, 17 May 2005 were received at the time this report was finalized. The Special Rapporteur looks forward to receiving a reply to his communication dated 9 December 2005.

324. Regarding the communication dated 7 February 2005, the Special Rapporteur would appreciate being informed of the outcome of the investigations concerning **Ayman Nur**. The Special Rapporteur would also appreciate being informed of the grounds on which police officers requested **Ibrahim al-Sahar**, **Marwa Faruq** and **Baho Baksh** to refrain from distributing the leaflets concerned and how this request was compatible with the right to freedom of opinion and expression.

325. Regarding the communication dated 20 April 2005, without making any determination of the facts of the case, and pending the Government's reply, the Special Rapporteur deems it appropriate to make reference to the Commission on Human Rights in its Resolution 2005/38, which provided that the authorities should not resort to criminal laws and punishment for media related offences as these are deemed disproportionate to the gravity of the offence and are incompatible with international human rights law.

326. Regarding the communication of 17 May, pending a reply from the Government and without making any determination on the facts of the case, the Special Rapporteur remains concerned at the compatibility of the arrest of the journalists concerned with their right to freedom of opinion and expression as defined and further explained in Resolution 2005/38 of the Commission on Human Rights.

327. Regarding the communication of 7 June 2005, the Special Rapporteur welcomes the immediacy with which the authorities responded to the complaints concerned and would appreciate being kept informed of the outcome of the investigations concerned and any eventual prosecutions in this regard.

328. Regarding the communication of 8 August 2005, without making any determination on the facts of the case, and pending the translation of this reply, the Special Rapporteur deems it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights, that calls upon States to refrain from imposing restrictions which are not consistent with paragraph 3, Article 19 of the International Covenant on Civil and Political Rights, which the Government has ratified in 1982, including on discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

### **El Salvador**

329. El 17 de marzo de 2005, el Relator Especial envió una comunicación en relación con el deterioro del clima político en El Salvador, el cual se habría agravado recientemente hasta el punto de afectar negativamente a los actores políticos, quienes encontrarían dificultades para ejercer libremente y con garantías tanto su derecho a la libertad de expresión como su derecho de asociación. Según estas informaciones, la esfera política estaría en la actualidad marcada por un alto grado de crispación por el enfrentamiento que mantiene el Gobierno con el partido de la oposición **Frente Farabundo Martí para la Liberación Nacional (FMLN)** y, en particular, su candidato a la presidencia del Gobierno, el Sr. **Schafik Jorge Handal**. En base a estas informaciones se habría podido conocer que dirigentes y militantes de este partido político habrían sido víctimas de una presunta persecución política por parte de diferentes aparatos del Estado, siendo acusados, a través de los medios de información, de desestabilización y de constituir un peligro para el orden público.

330. Por carta con fecha 11 de julio de 2005 el Gobierno transmitió la siguiente información relativa a dirigentes del **Frente Farabundo Martí para la Liberación Nacional (FMLN)** en respuesta a la comunicación del 17 de marzo de 2005. El Gobierno salvadoreño afirmó que los hechos referidos no son exactos puesto que el FMLN nunca interpuso una demanda ante la Sala de lo Constitucional de la Corte Suprema de Justicia, entidad encargada de investigar casos de violación de la libertad de expresión y de asociación. La única denuncia interpuesta por el señor **Handal** fue contra un ciudadano particular por el delito de difamación. Las autoridades judiciales pronunciaron una resolución favorable para el señor Handal. Asimismo, el Gobierno informó que el Gobierno salvadoreño haya otorgado existencia legal a varias asociaciones de diversa tendencia ideológica, evidencia la existencia del derecho a la libertad de expresión y asociación en el país. Según el Gobierno también parece ilógico que el FMLN hubiera

encontrado dificultades para ejercer su derecho a la libertad de expresión y de asociación dado que el señor Schafik Jorge Handal fue autorizado por el Tribunal Supremo Electoral para presentarse a la Presidencia. En consecuencia, el Gobierno de El Salvador sostiene que no existen las acciones u omisiones que den origen de las alegaciones.

331. El 4 de mayo de 2005, el Relator especial, juntamente con la Presidenta-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, el Relator Especial sobre la independencia de magistrados y abogados, y la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación al arresto 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 acuerdo con las informaciones recibidas, las personas mencionadas, fueron arrestadas en el Aeropuerto Internacional de Comalapa el 28 de abril de 2005 a las 19.30 horas. El arresto se produjo por decisión de un Comisionado, 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. 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 informó también que el Comisionado García Funes se encontraba 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.

332. Mediante comunicación del 24 de junio de 2005, el Gobierno proporcionó información con respecto a la comunicación urgente enviada el 4 de mayo de 2005 en relación con los Sres. **Ariel Hernández, Wuilian Iraheta** y **Daniel Flores**. 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 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. 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 presume 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. 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 atribuían, 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 Luís Talpa decretó sobreseimiento definitivo en 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.

### **Observaciones**

333. El Relator Especial agradece al Gobierno sus respuestas a todas sus comunicaciones enviadas durante el 2005.

### **Eritrea**

334. On 20 May 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Tewelde Ghebremedhin**, the chairperson of the Food, Beverages, Hotels, Tourism, Agriculture and Tobacco Workers Federation, Mr. **Minase Andezion**, a secretary of the Textile and Leather Workers' Federation, and Mr. **Habtom Weldemicael**, Head of the Coca-Cola Workers Union as well as an executive committee member of the Food and Beverage Workers' Federation. According to information received, Mr. Tewelde Ghebremedhin and Mr. Minase Andezion were arrested by security police on 30 March 2005. Some days later, on or around 9 April 2005, security police also arrested Mr. Weldemicael, for reportedly urging protests against workers' worsening standard of living. The three trade union leaders had been held incommunicado with no access to lawyers for more than a month, at the time this communication was sent. Furthermore, they were not brought before a magistrate within 48 hours of their arrest.

335. On 16 December 2005, the Special Rapporteur sent a letter of allegation concerning reports of systematic arbitrary arrests and detentions of former cabinet ministers, outspoken political leaders, trade unionists and journalists, who had reportedly been detained incommunicado and held without charge since September 2001. In particular, 11 high-ranking government officials, who openly called for democratic reform and the implementation of the 1997 constitution, had allegedly been held in secret detention without charge since 2001. Moreover, three trade union leaders, **Tewelde Ghebremedhin**, **Minase Andezion** and **Habtom Weldemicael**, were arrested in March and April 2005 and were, at the time this communication was sent, being held without formal charges. Furthermore, on 19 November 2005, **Dawit Isaac**, a journalist with Swedish and Eritrean dual nationality and founder of the weekly *Setit*, which was banned from publication, had apparently been released from prison, after more than four years of detention, and rearrested two days later. Reportedly, Isaac was released to undergo medical examinations. He and 12 other journalists had been detained without trial since September 2001.

### **Follow-up to previously transmitted communications**

336. On 27 January 2005, the Ministry of Foreign Affairs of the State of Eritrea replied to the Special Rapporteur's communication dated 11 November 2004. The Government of Eritrea acknowledged that it had indeed conducted routine round-ups on the dates concerned, in search of males aged 18-40 believed to have failed to respond to the Government's call to report for National Service, or to be away without leave (awol). The Government stressed that participation in the National Service, is a constitutional duty for all able-bodied Eritreans in the above-described age bracket, made mandatory by the Government. In relation to the incidents concerned, the Government of Eritrea acknowledged that a riot had occurred in a temporary shelter, during which some arrested persons attacked the guards. According to preliminary investigations conducted by the Eritrean authorities, 4 detainees had been fatally injured with a few more receiving minor injuries. In relation to the allegations of arbitrary detention, the Government informed the Special Rapporteur that the very few non-draft dodgers that had been initially rounded up, were freed after preliminary enquiries. With regards to the allegations of incommunicado detention, the Government of Eritrea informed the Special Rapporteur that the detainees were only temporarily assembled in shelters, pending their transfer to training centers and duty stations. Furthermore, the Government stressed, that only very few of those arrested were subsequently charged.

### **Observations**

337. The Special Rapporteur thanks the Government for its reply to his communication dated 11 November 2004.

338. The Special Rapporteur regrets that no reply to his communication dated 20 May was received at the date this report was finalized. He looks forward to receiving a reply to his communication dated 16 December 2005.

339. With regard to the communication dated 20 May 2005, without making any determination on the facts of the case, and pending the Government's reply, the Special Rapporteur remains concerned that Mr. **Tewelde Ghebremedhin**, Mr. **Minase Andezion**, and Mr. **Habtom Weldemicael** might have been held in detention solely on account of their efforts to exercise their mandates as trade union officers and thereby defending the economic and social rights of their unions' workers. The Special Rapporteur, moreover, deems it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights, that calls upon States to refrain from imposing restrictions which are not consistent with paragraph 3, Article 19 of the International Covenant on Civil and Political Rights, which the Government has acceded to in 2002, including restrictions on reporting on human rights, peaceful demonstrations or political activities.

## Ethiopia

340. On 10 June 2005, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning the incommunicado detention of approximately 1500 demonstrating students, the killing of 26 persons, the wounding of 100 others and the arrest and harassment of various journalists including **Helen Mohammed**, **Temam Aman** and **Bereket Teklu** working for Voice of America, and **Tadesse Engidaw** and **Assegedech Yiberta** working for *Deutsche-Welle*, as well as a human rights defender **Chernet Tadesse**, an investigator for the *Ethiopian Human Rights Council*, and United Kingdom-based former deputy mayor for Addis Ababa, **Andargachew Tsige**. According to information received, on 15 May 2005, the Ethiopian Parliamentary elections were carried out in a peaceful climate. However, the decision of the National Elections Board to postpone the announcement of the official results to 12 July, because of the more than 100 contested results, led to agitation amongst the population, particularly amongst students and members of the opposition who feared that results would be manipulated. In defiance of the Prime Minister's ban on demonstrations for a month after elections, since 6 June 2005, students carried out sit-ins and mainly peaceful protests in the streets of Addis Ababa and surrounding towns. On 6 June 2005 at the two main Addis Ababa University campuses, several hundred peaceful demonstrating students were beaten with batons and rifle butts by police. The students were protesting the announcement of the provisional results of the 15 May 2005 Parliamentary elections indicating a majority for Prime Minister's Meles Zenawi's ruling party the Ethiopian People's Revolutionary Democratic Front (EPRDF). The students were also supporting the political opposition's demands for an investigation into alleged voting irregularities, including reported arrests and beating of opposition candidates in approximately 300 out of 547 constituencies. Other students protesting in Kotebe Teacher's College, the AAU's Commercial College and Technical College in Addis Ababa, were also beaten and arrested on 6 and 7 June 2005. At Kotebe, it was reported that, in response to the students throwing stones at the police and burning government vehicles, police opened fire, particularly on those who blocked police vehicles which were carrying arrested students. A female student, **Shebray Delelagne**, was killed; six others were wounded. It was reported that approximately 2000 students, as well as journalists were arrested. Around 500 students had been released at the time this communication was sent, but others remained incommunicado in police and military camps, including the Sendafa police training college, 40km north of Addis Ababa. It was reported that 26 persons had been killed as a result of security forces opening fire on the demonstrators. Reports further indicated that opposition party members, particularly members of the UEDP Medhin party, which is part of the Coalition for Unity and Democracy (CUD), who were accused by the Government of instigating the student protests and inciting violence, were reportedly beaten and detained for a short period. Lidetu Ayalew, the leader of the opposition party CUD, was kept under house arrest for 30 hours in his office, incommunicado, and without food or water. He was then allowed to go home where he was also being kept under house arrest and incommunicado. Furthermore, on 2 June 2005, six journalists from the Amharic-language private weeklies *Abay*, *Addis Zena* and *Menlik* were called by the Criminal Investigations Department (CID); they were held for questioning for several hours about articles they published during the election period. They were then released without charge. Moreover, on 6 June, the police confiscated the cameras belonging to reporter **Anthony Mitchell** and photographer **Boris Heger**, working for the *Associated Press*, while they were covering the student protests.

When they arrived at the police station to recover their equipment, they were prevented from leaving for seven hours, and when finally released, they found that the memory cards of their cameras had been erased. Finally, on 7 June 2005, the Information Ministry revoked the accreditation of five Ethiopian journalists working for *Voice of America* and *Deutsche-Welle*. Their work permits, which also served as identification, were also confiscated. The Information Ministry accused them of unbalanced reporting concerning the elections and warned them that legal action could be brought against them if they continued reporting; the threat was also directed generally to any other journalists found to report in a similar manner.

341. On 15 June 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Chernet Tadesse**, **Yared Hailemariam** and **Berhanu Adenaw**, human rights defenders and investigators for the Ethiopian Human Rights Council (EHRCO), Addis Ababa. According to the allegations received, on 8 June 2005, 9PM, Chernet Tadesse was arrested by the police at his home. On 13 June 2005, Yared Hailemariam and Berhanu Adenaw were arrested by the police at the EHRCO office. No reasons were given for their arrests and their whereabouts were unknown at the time this communication was sent. Concerns were expressed that the arrests of Chernet Tadesse, Yared Hailemariam and Berhanu Adenaw may have been linked to their activities in defense of human rights, in particular, their investigations and reporting of the recent deaths and arrests of demonstrators in Addis Ababa, which had already been the subject of an urgent appeal of 10 June 2005 by the Special Rapporteur jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture.

342. On 11 July 2005, the Special Rapporteur sent an urgent appeal concerning **Tamrat Serbesa**, the editor-in-chief for the privately-owned Amharic-language weekly *Satanaw*; **Andualem Ayle**, editor in chief for the privately-owned Amharic-language weekly *Ethiop*; and **Tesfa Tegen**, the managing director for *Ethiop*. According to information received, on 7 July 2005, the Supreme Court ordered the three newspaper executives to reveal the name of a lawyer their newspapers stated had criticized a recent Supreme Court decision. Tamrat Serbesa was jailed overnight and was then released on bail. Andualem Ayle and Tesfa Tegen were due to appear before the Supreme Court's on 22 July 2005.

343. On 11 July 2005, the Special Rapporteur sent a letter of allegation concerning **Befekadu Moreda**, the editor-in-chief for *Tomar* newspaper; **Zelalem Gebre**, the editor-in-chief for the *Menilik* newspaper; **Dawit Fassil**, the editor-in-chief for the *Asqual* newspaper and **Tamrat Serbesa**, the editor-in-chief for the *Satenaw* newspaper. According to information received, the four journalists were arrested on 28 June at 11:00AM for defaming the Ethiopian air force. They were later released on bail of approximately US\$ 239 each. The four journalists had reported that, following the civil unrest of 15 May 2005, 8 air force pilots requested asylum in Belarus where they were attending a training program.

344. On 26 July 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning **Captain Behailu Gebre** and **Abiyot Mangudai**. According to the allegations received, on 9 or 10 June 2005, Captain Behailu Gebre and Abiyot Mangudai, two pilots of the Ethiopian armed forces, landed a military helicopter in Djibouti. They sought



asylum in the country on the grounds that they had refused to use the helicopter to attack opposition demonstrators in Addis Ababa, which allegedly placed them at risk of persecution in Ethiopia. On 11 July 2005, however, they were returned from Djibouti to Ethiopia. They were detained incommunicado at Debre Zeit airforce base, southeast of Addis Ababa, at the time this communication was sent.

345. On 4 October 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning hundreds of opposition party officials and members, including **Birkayehu Mekecha**, an official in the head office of the Coalition for Unity and Democracy (CUD), **Dache Molla**, a CUD representative in Kolla Dibba district in North Gondar, **Emkulu Yiheyis**, a CUD youth official in Debre Sina town in Amhara Region, **Endrias Ero**, a CUD representative in Gamo Goffa zone, **Hailemichael Zijita**, a CUD parliamentary candidate in Gamo Goffa zone, **Solomon Tenaye**, a CUD secretary in Minjar district in Amhara Region, **Tefera Mengeste**, a CUD official in Eastern Hararghe district, **Tesfaye Tarekegne**, a CUD district secretary in South Gondar, **Wendwossen Shiferraw**, a CUD election observer in Debre Sina town, and **Yohannes Abate**, a CUD zone chair in western Gojjam. According to information received, they were being held incommunicado and without charge at the time this communication was sent. The authorities carried out the arrests with the aim of reportedly stopping them from organizing and attending nationwide demonstrations which had been planned for 2 October 2005. The authorities had in fact refused permission for the demonstrations in Addis Ababa, and other towns, accusing the opposition parties of "a violent conspiracy aimed at subverting the constitutional order. The CUD and the United Ethiopian Democratic Front (UEDF) denied such allegations, claiming that all planned demonstrations were intended to be peaceful expressions of protest against alleged fraud in the 15 May 2005 parliamentary elections. The authorities started arresting members of the two opposition coalitions, the CUD and the UEDF, in mid-September, following the announcement of the demonstrations planned for 2 October. The CUD and the UEDF claimed that over 850 people had been detained, mainly in the central Amhara and Oromia regions, and in the South. 12 of CUD's regional offices had been shut down by the authorities. The Oromo National Congress (ONC), part of the UEDF coalition, also claimed that its offices had been closed down by the authorities.

346. On 25 October 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Daniel Bekele**, Policy, Research and Advocacy Manager for Actionaid Ethiopia (an international non-governmental organization in Addisu Gebeya, Addis Ababa, which works on poverty alleviation). According to information received, on 16 October 2005, at approximately 20:00, Daniel Bekele was attacked in his car by two unknown armed individuals who pointed a gun at him and beat him with the pistol in the eyes and head. One of the assailants allegedly asked him: "who are you to criticize EPRDF (Ethiopian People's Revolutionary Democratic Front)? The assailants ran away once Daniel Bekele succeeded in attracting attention by blowing the horn of his car. He lodged a complaint at the nearest police station, and Actionaid Ethiopia filed a complaint with the Federal Police Commission. At the time this communication was sent, no investigation had commenced into the alleged attack.

347. On 3 November 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Hailu Shawel**, President of the Coalition for Unity and Democracy (CUD); **Debebe Eshetu**, CUD Vice President; Dr. **Berhanu Negga**, the mayor of Addis Ababa; **Gouache Shaffer**; Dr. **Hailu Araya**, the former editor of the Press digest Publication; Dr. **Yakob Hailemariam**, a former UN official and International Criminal Court official; Ms. **Birtukan Mideksa**, a lawyer; as well as a former army major **Getachew Mengiste** and Professor **Mesfin Woldemariam**, a renowned author and human rights defender and founder and former chairman of the Ethiopian Human Rights Council (EHRCO). According to information received, all the above-mentioned persons were arrested together with numerous other journalists, human rights defenders and members of the Ethiopian Free Press Journalists' Association, as well as other leaders of the Coalition for Unity and Democracy (CUD) and elected members of the parliament. Many of the arrests took place at their homes.

Mr. Hailu Shawel was also beaten by the police officers upon being arrested. None of the persons arrested are reported to have been brought before a court of law within the 48 hour limit prescribed by law. Some of the arrested persons were purportedly being detained at the Police Central Investigation Bureau, known as Maikelawi, and many others were being detained at unknown locations, at the time this communication was sent. Since 1 November 2005, the riot police, using live ammunition to target protestors in the central Mercato and other districts, killed at least 30 people, including women, and injured at least 150 protestors in anti-government protests in Addis Ababa. The protests had started peacefully but then degenerated into stone throwing and burning of vehicles after police began shooting at the protestors. Two police officers were also killed by the protestors. The protestors accused the Government of rigging the May Parliamentary elections. The Information Minister accused the EFJA and the Ethiopian Teachers Association of inciting the violence and of being used by the opposition CUD. The Minister also called radio stations *Voice of America* (VOA) and *Germany's Deutsche Welle* mouthpieces for CUD and claimed that the radio stations were determined to destabilize the peace and stability of the country. Moreover, on 30 October 2005, police officers stopped Eskinder Firew, a VOA correspondent, while traveling in a taxi with other journalists, and seized his tape recorder. They only returned the tape recorder after having listened to several minutes of the recording. Mr. Firew was then threatened by a man in plain clothes who was accompanying the police officers who said that they would kill him if he continued to work for VOA.

348. On 18 November 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **several journalists, opposition leaders, members of the Ethiopian Teachers' Association as well as human rights defenders and other members of the civil society**. According to information received, on 9 November 2005, the Prime Minister Meles Zenawi stated in an interview with BBC that journalists and opposition leaders in detention in connection with the demonstrations which took place starting 1 November 2005, could face charges of treason for

having attempted to violently undermine the constitutional order in the country. Treason is punishable by death in Ethiopia according to article 248 of the newly adopted Penal Code, although the Prime Minister indicated that he was not in favor of the death penalty. The Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal on 3 November 2005 concerning the arrest and detention of the demonstrators as well as the reported excessive use of force by authorities in bringing an end to these demonstrations, as a result of which more than 40 persons are reported to have been killed. Following the Prime Minister's statement, the Government issued a list with the names of persons the authorities planned to prosecute for attempting to violently undermine the constitutional order in the country in connection with the said demonstrations which had the aim of protesting against the May election results. Of the 58 individuals named, seventeen were newspaper publishers, editors or journalists. Kifle Mulat, the president of the Ethiopian Free Press Journalists' Association (EFJA), was also on the list. The list also included the names of opposition leaders, heads of the Ethiopian Teachers' Association as well as human rights defenders. It was distributed by state-owned media together with photographs of many of the journalists concerned and called on the public to inform the police of the whereabouts of any of the persons listed. Amongst the detained 24 top opposition leaders and members were **Hailu Shawel**, an elected member of Parliament and chairman for the Coalition for Unity (CUD) and Democracy; **Birdukan Mideksa**, the CUD Vice-President; **Dr. Berhanu Negga**, a CUD member and the mayor of Addis Ababa; **Maj. Getachew Mengiste**, a senior member of CUD; an elected member of parliament, **Engineer Gouache Shaffer**; a member of CUD executive committee; **Dr. Hailu Araya**, a former editor of the Press Digest and CUD elected member to parliament; **Dr. Yacob Hailemariam**, a CUD elected member of parliament; **Debebe Eshetu**, a CUD public relations officer; and **Muluneh Eyoel**, the CUD secretary general. Amongst the detained members of the press and civil society were human rights activist **Mesfin Wolde Mariam**; **Daniel Bekele**, Action Aid International's policy manager in Ethiopia; **Netsanet Demissie**, the Director of the local NGO Organization for Social Justice in Ethiopia; **Andualem Ayle**, a journalist working for the Amharic-language weekly Ethiopia; **Dawit Kebede**, the editor-in-chief for Hadar; as well as **Feleke Tibebu**, the deputy editor for *Hadar* and **Nardos Meaza**, a journalist working for the Amharic-language weekly *Satanaw*. On 9 November 2005, four other journalists, whose names were also on this list, turned themselves in to the police. The four journalists are **Zekarias Tesfaye**, a publisher for the privately-owned Amharic-language weekly *Netsanet*; **Dereje Habtewolde**, the deputy editor for *Netsanet*; **Fassil Yenealem**, the publisher of the Amharic-language weekly *Addis Zena*; and **Wosonseged Gebrekidan**, the editor-in-chief of *Addis Zena*. On 7 November, they were all brought before a court during closed hearings where they were denied bail and sent back to detention until 22 November 2005. It was reported that over 13,400 persons were initially arrested and detained. As of 18 November 2005, over 9,000 persons were released, so that approximately 4,400 persons remained in detention while their cases were being reviewed by the authorities, at the date this communication was sent. Places of detention included Addis Ababa, Zeway and Dedessa. None of the persons in detention in connection with the said demonstrations had been charged, and some of them were being held incommunicado, at the date this communication was sent. Most of the members of the private press, who were not in detention, were in hiding as they feared arrest, and private independent media was finding obstacles in accessing the major printing houses. Furthermore, the police had searched the offices of the newspapers *Netsanet*, Ethiopia and Abay, and taken

away computers, money and other equipment and materials. The House of Peoples Representatives had made a decision to establish a national Commission to investigate the causes of the violence and measures taken to quell the security problem and to also look at the loss of life and damage to property during both times of political protest and killings in early June and November 2005.

349. On 23 November 2005 the Government replied to the communication of 18 November 2005. The Government stated that, according to the police, the situation at the time this reply was sent had been restored in the affected parts of the country, and that a large number of persons who had been taken into custody in the wake of the disturbances but had not been involved directly in the violence, had been released. On the other hand, those that were either directly involved in the violence as well as those who were considered to be the masterminds of the violence were, at the time this reply was sent, still under custody pending prosecution. The process of releasing detainees was continuing in an expedited manner. Key leaders of the opposition had already been charged under the relevant provisions of the Penal Code and had appeared, at that stage, twice before the Federal High Court; their due process rights were fully respected. Moreover, following intensive debate on the Report of the Federal Police Commission, the Federal Parliament adopted a resolution to establish a Neutral Inquiry Commission with a mandate to investigate (a) the cause of the lapse in the security situation during the period concerned, (b) whether force used by the security forces was proportionate to the gravity of the situation, and (c) the extent of the loss of life and damage or destruction of property during the disturbances. The Government also attached a detailed report prepared by the Federal Police Commission on the incidents that followed the third national elections in Ethiopia held in May 2005.

350. On 15 December 2005 the Special Rapporteur sent an urgent appeal concerning **Wosonseged Gebrekidan, Getachew Simie and Leykun Engeda**. According to information received, on 6 December 2005, Wosonseged Gebrekidan, a journalist and former editor of the weekly *Ethiop*, was sentenced to eight months in jail for defaming a high-ranking official in an article of 2002. On 7 December, Getachew Simie, a former editor-in-chief of the weekly *Agere*, which is no longer published, was sentenced to three months in prison for criminal defamation. Leykun Engeda, a former editor-in-chief and publisher of the weekly *Dagim Wonchif*, was sentenced on 9 December to 15 months in prison for publishing false news. Both Simie and Engeda were reportedly sent to Kalitiy prison after the sentence. The three publications, including *Agere*, were published in Amharic language. According to information received, at least thirteen journalists had allegedly been arrested and were being detained, at the date this communication was sent, since renewed anti-government protests in early November. Some of them were reportedly accused of political offences and denied bail.

### Observations

351. The Special Rapporteur thanks the Government for its reply to his communication dated 25 October and 18 November 2005.

352. The Special Rapporteur regrets that no replies were received to his communications dated 10 June, 15 June, 11 July (two communications), 26 July, 4 October and 25 October 2005.

353. Regarding the communications sent on 10 June 2005, the Special Rapporteur received further information attesting to the fact that **Andargachew Tsige** and **Chernet Tadesse** were released on bail, on 5 July and 4 July, respectively. Andargachew Tsige was, however, reportedly beaten in an Addis Ababa police station and was then to Ziwai federal prison, along with approximately 4500 other detainees. Reports indicated that he was accused of organizing the demonstrations, seeking to subvert the Constitution and other offences which he denied, but he was not formally charged with any offence. Moreover, Chernet Tadesse and two other human rights defenders were reportedly released on bail following a third court hearing and formally charged with “trying to overthrow a legitimate government by force”. At the time this information was received, 190 Addis Ababa University students were still reportedly in custody at the Sendafa police training college. Several thousand others were reportedly being held in official prisons including the Ziwai prison (where over 500 were still being held) or in army or police centres including the Sendafa police college. Pending a reply to this communication and to that of and 4 October and 3 November 2005, and without making any determinations as to the veracity or otherwise of these extremely serious allegations, the Special Rapporteur deems it appropriate to make reference to the principles and concerns enunciated in Resolution 2005/38 of the Commission on Human Rights which, inter alia, expressed its continuing concern that violations of the right to freedom of opinion and expression continued to occur, often with impunity, including extrajudicial killing, arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence, increased abuse of legal provisions on defamation and criminal libel as well as on surveillance, search and seizure, and censorship, against persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers, Internet users and human rights defenders.

354. Regarding the communication of 15 June 2005, the Special Rapporteur, pending a reply to this communication and without making any determination on the facts of this case, deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 6, which provides that everyone has the right, individually and in association with others, ( a ) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems, ( b ) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and ( c ) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

355. Regarding the two communications dated 11 July 2005, and with regards to that concerning **Tamrat Serbesa**, **Andualem Ayle**, and **Tesfa Tegen**, the Special Rapporteur received further information indicating that **Tamrat Serbesa** was sentenced, on 5 August 2005, to one-month imprisonment for his refusal to reveal the source of the story in his newspaper *Satanaw*. **Andualem Ayle** reportedly received a fine of 2000 birr (approximately US\$ 225) for contempt of court in the same case. Pending a reply to both communications and without

making any determination on the facts of the cases, the Special Rapporteur deems it appropriate to make reference to the principle enunciated, inter alia, by the Commission on Human Rights in its Resolution 2005/38, that the authorities should not resort to criminal laws and punishment for media related offences as these are deemed disproportionate to the gravity of the offence and are incompatible with international human rights law.

356. Regarding the communication dated 25 October 2005, without making any determination of the facts of the case, and pending the Government's reply, the Special Rapporteur deems it appropriate to make reference to Article 12.2 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms which provides that states shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

357. With regard to the communication of 28 October 2005, the Special Rapporteur received further information indicating that **Birkayehu, Dache Molla, Emkulu Yiheyis, Endrias Ero, Hailemichael Zijita, Solomon Tenaye, Tefera Mengeste, Tesfaye Tarekegne, Wendwossen Shiferraw** and **Yohannes Abate** were released in early October. CUD claimed that over 800 of its members were still detained at the end of October 2005. UEDF also claimed that some of its members in the Oromia and southern regions were still detained at the end of October 2005. The Special Rapporteur welcomes the release of the above-mentioned persons, but remains concerned about the persons remaining under the detention.

358. With regard to the communications on 3 and 18 November 2005, the Special Rapporteur since received further information indicating that the group of persons referred to in the two communications were brought for a second time before the Federal High Court in the capital on 1 December 2005 but were not granted bail. They were known to be charged on 21 December 2005 by the High Court in Addis Ababa with a range of criminal offences, most of which can carry the death penalty. In total 131 individuals and organizations were charged. The charges include "outrages against the Constitution"; obstructing the National Election Board; inciting and organizing armed uprising; endangering the integrity of the state; and high treason. Most are also charged with "genocide", on the basis of allegations of the beating of an ethnic Tigrayan, arson against the property of two Tigrayans, causing fear and mental harm to members of an ethnic group, and harming members of the ruling Ethiopian People's Revolutionary Democratic Front (EPRDF) by excluding them from social events and funerals. All the defendants were held in Kaliti prison in Addis Ababa, with access to their families and legal representatives severely restricted, and not possible in private.

359. The Special Rapporteurs thanks the Government for its reply to his communication of 18 November 2005. Nevertheless, whilst welcoming the positive information concerning the judicial and administrative measures taken as well as the Federal Parliament's resolution to establish a Neutral Inquiry Commission to carry out investigations into the incidents concerned, the Special Rapporteur remains concerned at the compatibility of the arrest and detention of the persons concerned with the right to freedom of opinion and expression as defined and further outlined in Resolution 2005/38 of the Commission on Human Rights. The Special Rapporteur would appreciate being kept informed of the developments and outcomes of the investigations.

360. With regard to the communication sent on 15 December 2005, without making any determination of the facts of the case, and pending the Government's reply, the Special Rapporteur deems it appropriate to call the Government's attention to Resolution 2005/38 of the Commission on Human Rights which called upon States to refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence and which violate international human rights law. Media related offences should preferably be dealt with under civil law.

### Gabon

361. Le 22 août 2005, le Rapporteur Spécial a envoyé une lettre d'allégation concernant des renseignements selon lesquelles le 9 août 2005, le Conseil national de la communication (CNC) aurait suspendu la publication du bimensuel *Nku'u Le Messenger* jusqu'à nouvel ordre. La cause de cette décision aurait été la publication d'un article, le 8 août, dans lequel le directeur du bimensuel, Norbert Ngoua Mezui, aurait critiqué âprement les membres du CNC. Selon les informations reçues, le CNC aurait au préalable publiquement classifié *Nku'u Le Messenger* comme une publication « partisane », soutenue par un important personnage politique. En effet, l'arrêt du CNC prononcé le 9 août pose un remaniement de la rédaction comme condition à la levée de la suspension du bimensuel.

### Observations

362. Le Rapporteur Spécial regrette de ne pas avoir reçu de réponse à sa communication du 22 août 2005. Dans l'attente de cette réponse mais sans préjuger sur les faits examinés, le Rapporteur Spécial souhaiterait attirer l'attention du gouvernement sur la Résolution 2005/38 de la Commission des Droits de L'Homme qui invite tous les États, tout en notant que le paragraphe 3 de l'article 19 du Pacte international relatif aux droits civils et politiques dispose que l'exercice du droit à la liberté d'opinion et d'expression comporte des devoirs spéciaux et des responsabilités spéciales, à ne pas imposer de restrictions incompatibles avec le paragraphe 3 de cet article, notamment ... ii) par des pratiques telles que l'interdiction ou la fermeture de publications ou d'autres médias et le recours abusif à des mesures administratives et à la censure.

### Georgia

363. On 7 October 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Ucha Nanuashvili**, the executive director of the Human Rights Information and Documentation Center (HRIDC) in Georgia, which is an organization which works, inter alia, in monitoring the situation of human rights and minority rights in Georgia, particularly torture and trafficking. According to information received, on 27 September 2005, Ucha Nanuashvili was accused over the phone of being an "informer" and a "betrayor", by the Head of the Department for Relations with Georgian Diasporas and Inter-Ethnic Relations at the Georgian President's Office. HRIDC was accused of spreading false information about ethnic minorities in Georgia

and of representing the interest of foreign forces. According to the information received, HRIDC had previously received several threats from high ranking officials. In particular, in 2004, the Head of the legal department of the State Chancellery and advisor to the Prime Minister, asked HRIDC to cease its activities on refugee rights and indicated that the centre might “have problems” if it refused to comply with his request.

### Observations

364. The Special Rapporteur regrets that no reply was sent to his communication dated 7 October 2005.

### Ghana

365. On 20 July 2005, the Special Rapporteur sent an urgent appeal concerning **Claude Decker** and **Thomas Kpakpo Thompson**, directors of the newspaper *Free Press* and **Frank Boahene**, an editor of the same publication, who were sentenced to 15 days in prison for contempt of court, by an Accra High Court on 4 July 2005. The charge of contempt would be related to the failure of the editor and his directors to appear in a court hearing on 29 June. According to information received, *Free Press* published a series of allegedly defamatory articles against a regional police commander working in the surroundings of Accra. On 1 November 2004, the Court condemned *Free Press* to pay the police commander 80 million Cedis (approximately US\$ 9,000) in damages. The newspaper was further ordered to publish an apology in three issues of the newspaper. Reportedly, the defendants refused to comply with the Court's order and they did not appear before the court for the new hearing of 29 June 2005. Consequently, the Court found Boahene, Decker and Kpakpo Thompson liable for contempt. The journalists were serving the sentence at the Nsawam Medium Security Prison, north of Accra, at the time this communication was sent.

### Observations

366. The Special Rapporteur regrets no reply was sent to his communication dated 20 July 2005. Without making any determination of the facts of the case, and pending the Government's reply, the Special Rapporteur deems it appropriate to call the Government's attention to Resolution 2005/38 of the Commission on Human Rights, which calls upon States to refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence and which violate international human rights law.

### Greece

367. On 11 May 2005, The Special Rapporteur sent a letter of allegation concerning **Kostas Nikolakopoulos**, a sports journalist for *Sport FM Radio* and for the daily newspapers *Fos Ton Sport* and *Adesmeftos Typos*. According to information received, on 7 May 2005, as he was on his way home with his wife and two daughters after having finished broadcasting on *Sport FM Radio*, four hooded men beat him until he was lying on the ground on Ektoros Street in



Ilion, Athens. Kostas Nikolakopoulos was treated for head, rib and hand injuries at the Nikea hospital. He was later transferred to the private hospital Errikos Dynan for further tests. He was obliged to stop working for two weeks until he fully recovered. Kostas Nikolakopoulos stated that he had been receiving anonymous threatening phone calls for three months prior to the attack.

368. On 11 July 2005 the Government replied to the communication of 11 May 2005 concerning **Kostas Nikolakopoulos**. The Government stated that the 1<sup>st</sup> Department of Crimes against life of the Attioca Security Directorate had carried out preliminary investigations. Inquiries were, at the time this reply was sent, underway in preparation for possible criminal proceedings. Police officers were ordered to guard **Kostas Nikolakopoulos**' house around the clock with special emphasis on evening hours. Mr. Nikolakopoulos was also provided with a police officer as an escort from 20 May 2005 for three months.

369. On 31 May 2005, the Special Rapporteur sent an urgent appeal concerning **Christos Joachimides**, the curator for '*Outlook*', a contemporary art exhibition which was a key activity of the Cultural Olympiad preceding the Olympic Games of 2004. According to information received, on 3 June 2005, a trial against him was to be heard before the First Single-Member Misdemeanours Court of Athens, for having in December 2003 included in his exhibition, a painting by Belgian artist Thierry de Cordier portraying a crucifix and a seemingly circumcised fully erect penis, where semen appeared to be dripping from the crucifix. Christos Joachimides was being charged with having 'publicly and maliciously insulted the Eastern Orthodox Church with an obscene, repulsive and despicable painting that is anything but a piece of art' (Article 199 of the Greek Criminal Code). The Socialist Culture Minister had, in reaction to the protest of the leader of the Greece's extreme right party and other politicians, requested the organizing committee of the exhibition to withdraw the painting, and the committee complied with this request. This decision was, however, later found to be an unlawful restriction of artistic freedom by the Greek Ombudsman. Concern was expressed that Christos Joachimides was being tried before a criminal court for artistic activities protected by the right to freedom of opinion and expression.

## Observations

370. The Special Rapporteur thanks the Government for its reply to his communication dated 11 May 2005. He would appreciate being kept informed of the developments and outcome of the investigations into the attack against **Kostas Nikolakopoulos**.

371. The Special Rapporteur regrets that no reply was received to his communication dated 31 May 2005.

## Guatemala

372. El 18 de enero 2005, el Relator especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con **Leonel García Acuña**, Secretario General del Sindicato de Trabajadores de la Municipalidad de San Miguel Pochuta, en el departamento de Chimaltenango. Según las informaciones recibidas, el 3 de enero de 2005, durante una reunión, el alcalde municipal de San Miguel Pochuta habría amenazado a los fundadores del Sindicato de Trabajadores y dicho

que “desde ese momento los tomaba como sus peores enemigos por haber constituido el Sindicato”. Después de esta declaración, los trabajadores del municipio habrían presentado una petición a la comuna, y como no habrían dado ninguna respuesta, habrían finalmente presentado una queja ante la Inspección General de Trabajo. El 5 de enero de 2005, dos Inspectores habrían intentado encontrar al funcionario edil pero éste no habría asistido. Según la información recibida, el 7 de enero de 2005, mientras que realizaba gestiones en la finca California del municipio de San Miguel Pochuta, Leonel García Acuña habría sido víctima de un ataque sobre su vida. Según las fuentes, cuatro desconocidos armados se habrían acercado al grupo que acompañaba a Leonel García Acuña. Inmediatamente, las personas se habrían dispersado en todas las direcciones. Los desconocidos habrían continuado a disparar, mientras que gritaban: “Maten a ese hijo de puta, no hay que dejarlo vivo”. Leonel García Acuña habría de sus atacantes a pie. El Relator Especial expresó su temor a que las amenazas recibidas por Leonel García Acuña pudieran estar relacionadas con su trabajo como defensor de los derechos humanos y fundador del Sindicato.

373. Por carta con fecha 11 de noviembre de 2005, el Gobierno de Guatemala transmitió la siguiente información en respuesta a la comunicación urgente del 18 de enero de 2005 relativa al Sr. **Leonel García Acuña**:

- Como primera medida, se constató que los miembros del sindicato de Trabajadores no interpusieron denuncia ante la Procuraduría de los Derechos humanos de Guatemala.
- Por otro lado, el Estado de Guatemala, a través de la Comisión Presidencial Coordinadora de Política del Ejecutivo en materia de derechos humanos (COPREDEH) precedió a gestionar la investigación de los hechos.

El 28 de febrero, la COPREDEH solicitó información al Ministerio Público, a través de la fiscalía especial sobre delitos contra sindicalistas y a la fiscalía especial del departamento de Chimaltenango.

- El 6 de abril, el Ministerio Público contestó que dentro de sus archivos no se localizó ninguna denuncia del Sr. García Acuña y estableció que en la Fiscalía Especial de Santa Lucía Cotzumalguapa, se investiga la denuncia interpuesta por el alcalde municipal contra el Sr. Leonel García Acuña y otros miembros del sindicato.

El Estado de Guatemala, a través de la COPREDEH, seguirá gestionando el caso e informará al relator.

374. El 23 de febrero de 2005, el Relator Especial, juntamente 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 en la que se encontrarían miembros de **Hijos e Hijas por la Identidad y la Justicia contra el Olvido y el Silencio - H.I.J.O.S** – Guatemala, una organización que vela por los derechos humanos de la juventud y busca la aplicación de la justicia a los responsables de las violaciones de derechos humanos. De acuerdo con las informaciones recibidas, el 9 de enero de 2005, en horas de la madrugada, la sede de la organización H.I.J.O.S, en la Ciudad de Guatemala, habría sido la víctima de un allanamiento. Según las fuentes, personas desconocidas habrían forzado las puertas principales, revisado las

oficinas, registrado los archivos y sustraído materiales muy importantes para la organización. En particular, habrían robado tres computadoras, las cuales contenían información sobre investigaciones realizadas durante el año 2004, referentes a la militarización, la violencia institucional y a la persistencia de la práctica de la tortura. También se habrían llevado directorios con las direcciones y teléfonos de instituciones, personas colaboradoras de la organización e integrantes, así como objetos y materiales de uso general. El Relator Especial expresó su temor a que el nuevo acto de hostigamiento en contra de H.I.J.O.S pudiera estar relacionado con el trabajo que realizan en defensa de los derechos humanos, en particular, las investigaciones sobre la represión y la violencia institucional. Se nota que el ataque habría ocurrido pocos días después de la inauguración de la nueva sede. En 2002 la Comisión Interamericana de Derechos Humanos (CIDH) habría concedido medidas cautelares a todos los miembros y colaboradores. No obstante, en junio de 2004, dos miembros de la organización habrían recibido amenazas de muerte. En diciembre de 2004 el Estado de Guatemala habría brindado medidas de protección, a través de la seguridad perimetral prestada por miembros de la Policía Nacional Civil a las oficinas.

375. El 15 de marzo de 2005, el Relator Especial envió un llamamiento urgente en relación con los **periodistas del programa “Contacto Noticioso”**. De acuerdo con las informaciones recibidas, desde el comienzo del 2005, los periodistas del programa “Contacto Noticioso” que se emite en la cadena local por cable Canal 13, Departamento de Chiquimula, habrían recibido al menos 25 llamadas anónimas con amenazas de muerte. Supuestamente, estas llamadas tendrían como objeto intimidar a **Benjamín Martínez**, director del programa, y a su equipo, a fin de que dejen de emitir sus reportajes. El contenido de estas llamadas incluiría desde marchas fúnebres grabadas hasta amenazas directas de muerte. Recientemente un apartado del programa “Contacto Noticioso” habría estado dedicado al aumento salarial de algunos empleados municipales y se expresó temor a que las amenazas pudieran estar relacionadas con la difusión de este reportaje.

376. Por carta con fecha 7 de julio de 2005, el Gobierno de Guatemala transmitió la siguiente información en respuesta a la comunicación urgente del 15 de marzo de 2005 relativa al señor **Benjamín Martínez**. El señor Benjamín Martínez se encontró el 1 de junio de 2005 con un funcionario de la Comisión Presidencial de Derechos Humanos (COPREDEH). Según consta en la entrevista, las amenazas de muerte en su contra empezaron en el año 2002 porque denunció a través de su programa de noticias actos de corrupción por parte de la administración gubernativa del Frente Republicano Guatemalteco. Benjamín Martínez denunció estas amenazas en la Fiscalía que, según él, le dio poca importancia a su caso. A finales de 2004 se repitieron las amenazas de muerte por teléfono cuando Benjamín Martínez denunció anomalías en la Alcaldía y también le dispararon a su motocicleta que se encontraba en el estacionamiento de su trabajo. La COPREDEH solicitó al Ministerio de Gobernación y a la Policía Nacional Civil adoptar medidas de protección en el lugar de trabajo y de residencia del señor Benjamín Martínez y del señor **Néstor Reinaldo Verbena**, empleado del programa de noticias. El 2 de mayo de 2005 la COPREDEH solicitó al Ministerio Público que se realizase una investigación con respecto a los hechos denunciados, la cual no disponía de más información a la conclusión de este informe.

377. El 8 de abril de 2005, el Relator Especial envió un llamamiento urgente en relación con **Carlos Humberto Guárquez**, de *Fundamaya*, una fundación que forma parte de la coalición Frente Nacional contra la Minería, **Alfonso Guarquez**, periodista y **Dominga Vásquez**, Alcaldesa Indígena de Sololá. Según la información recibida, el 25 de marzo de 2005, en el

pueblo El Tablón, ubicado cerca de la ciudad Sololá, unos desconocidos habrían intentado quemar un vehículo de Fundamaya, utilizado por Carlos Humberto Guárquez. Se habrían encontrado en los alrededores de dicho vehículo, varias amenazas de muerte dirigidas por escrito al Sr. Carlos Humberto Guárquez, su esposa Dominga Vásquez y su hermano Alfonso Guárquez. En uno de los cuales se leería "eso te pasa Señor Carlos Humberto por estar metido en babosadas de la sociedad, mañana llegará tu día de desaparecer en este mundo, a todo coche se llega su sábado, también a la Señora Dominga y su supuesto esposo Alfonso Guárquez". A tenor de lo informado, el 5 de enero, Dominga Vásquez, habría recibido por teléfono, una amenaza anónima después de haberse pronunciado públicamente en contra de la expansión minera en la zona. La Sra. Vásquez habría presentado una denuncia ante las autoridades. Además se informó de que el periodista Alfonso Guárquez habría venido recibiendo amenazas desde el 11 de enero, supuestamente vinculadas a la cobertura informativa que realizó de los hechos violentos suscitados en la región occidental, producto de la oposición local contra la proliferación de la minería. Se informó además de que las autoridades habrían presentado una queja contra Humberto Guárquez, Guárquez y Vásquez sobre sus presuntas participaciones en dichos incidentes. El Relator Especial expresó su temor a que dichas amenazas de muerte pudieran estar relacionadas con el trabajo que hacen Carlos Humberto Guárquez, Alfonso Guárquez y Dominga Vásquez.

378. El 23 de mayo de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con las organizaciones **Hijos por la Identidad y la Justicia contra el Olvido y el Silencio (HIJOS)** y la **Coordinadora Nacional de Organizaciones Campesinas (CNOG)**. De acuerdo con dichas informaciones, el 8 de mayo de 2005, la oficina de la CNOG habría sido allanada por desconocidos. Durante el incidente, 15 ordenadores y diversos documentos que contenían información importante, de carácter confidencial, correspondiente tanto al trabajo desarrollado por la organización como datos personales de sus miembros, habrían sido sustraídos. Cabe destacar que hubo otros objetos de valor que no habrían sido sustraídos. Además, se informó que el 10 de mayo del año en curso, después que la CNOG trasladase sus oficinas al Instituto de Estudios Comparados en Ciencias Penales de Guatemala, la sede de dicho instituto habría sido igualmente allanada. En esta ocasión, los asaltantes no se llevaron nada. Por otra parte, se informó que el 11 de mayo de 2005, en horas de la noche, las oficinas de la organización HIJOS habrían sido también asaltadas. Las puertas traseras habrían sido forzadas y los archivos de la organización examinados. Se informó además que se habrían sustraído dos ordenadores que contenían información confidencial. Al igual que ocurriera durante el allanamiento de la CNOG, hubo objetos de valor material, entre otros un ordenador nuevo que no contenía información alguna, que no habrían sido sustraídos.

379. El 3 de junio de 2005, el Relator Especial envió un llamamiento urgente en relación con **Miguel Ángel Barrios**, director del informativo televisado "*Noti Galaxia*" del Canal 30, en el municipio de Tecún Umán. Según la información recibida, el 25 de mayo de 2005, el periodista habría recibido una llamada en las que dos hombres y una mujer le advirtieron que abandonara el municipio ya que de lo contrario lo asesinarían o lo atacarían a pedradas. Se informó de que las intimidaciones se habrían iniciaron dos semanas antes, pero se habrían intensificaron el 24 y 25 mayo. En su noticiero, el periodista habría incluido un reportaje sobre la creación de la nueva nomenclatura urbana de Tecún Umán, ordenada por el alcalde de la ciudad, una

decisión que habría provocado marchas por parte de grupos opositores. Se expresó temor a que las amenazas pudieran estar relacionadas con el trabajo que lleva a cabo Miguel Ángel Barrios ya que en las llamadas, los desconocidos lo habrían acusado de estar a favor de la medida impulsada por las autoridades.

380. El 4 de julio de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la situación del Sr. **José Ernesto Menchú Tojib**, miembro del Comité de Unidad Campesina (CUC) y del Movimiento de Víctimas del Conflicto Armado Interno de Uspantán. Según las informaciones recibidas, el 19 de junio 2005, aproximadamente a las 11.45 horas, cuatro desconocidos armados habrían entrado en el taller de José Ernesto Menchú Tojib, en el pueblo de Chamac, Uspantán, Departamento de El Quiché. Los hombres habrían preguntado a su esposa dónde estaba Menchú Tojib, pero ésta les habría respondido que no lo sabía. Los hombres se habrían llevado 500 Quetzales y el teléfono móvil de Menchú Tojib. Al marcharse, le habrían dicho a la esposa: “En cualquier rato lo encontramos y hasta que lo matemos”. En cuanto regresó a su taller, Menchú Tojib habría observado a un hombre que pasó dos veces por el taller, mirándole. Pudo reconocerle como guardia de seguridad de la cercana hacienda San Siguan, y como ex integrante de los “comisionados militares”, uno de los grupos paramilitares implicados en abusos contra los derechos humanos perpetrados durante el conflicto armado interno. Se informó que una denuncia por estos hechos habría sido interpuesta ante la Procuraduría de Derechos Humanos, ante la Policía Nacional Civil y ante el Ministerio Público. Además, Menchú Tojib habría solicitado medidas de protección a la Policía. El Relator Especial expresó su temor a que estas amenazas pudieran estar relacionadas con el trabajo que Menchú Tojib realiza como miembro del Movimiento de Víctimas del Conflicto Armado Interno de Uspantán, en particular, por su campaña en favor de un grupo de 112 familias de trabajadores agrarios de la hacienda San Siguan, quienes estarían en peligro de ser expulsados de las tierras donde viven y trabajan, dado que la hacienda habría sido vendida.

381. El 13 de julio de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la organización del **Sindicato de Trabajadores de la Educación** (STEG). De acuerdo con dichas informaciones recibidas, el 25 de junio 2005, Día Nacional de los Profesores, durante la noche, la sede del STEG, ubicada en la 4ª avenida y 6ª calle de la zona 1, en la ciudad de Guatemala, habría sido allanada por desconocidos. Según se informó, durante el incidente, se habrían robado los discos duros de los ordenadores, documentos importantes y discos compactos. Cabe destacar que otros objetos de valor no habrían sido sustraídos. Además, se informó que durante el allanamiento habrían manchado las paredes con pintura roja y específicamente cruces rojas en lugares estratégicos como en los afiches en contra de la privatización de la educación, los afiches donde aparece el nombre del STEG y donde aparecen personajes importantes del movimiento. Se expresó temor a que dichos actos de hostigamiento pudieran estar relacionados con el trabajo que lleva a cabo la organización, en particular una campaña nacional para aumentar el conocimiento de los peligros y riesgos de la propuesta Ley Nacional de Concesiones y la CAFTA.

382. El 15 de julio de 2005, el Relator Especial, juntamente con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la seguridad del Señor **Mario Antonio Godínez López**, 37 años, Coordinador General de la **Asociación para la Promoción y el Desarrollo de la Comunidad Ceiba (CEIBA)**, una organización que apoya y asesora a diversas comunidades y organizaciones a defender los derechos humanos y a promover la participación ciudadana. Según la información recibida, el 7 de julio de 2005, a las 07.40 de la mañana, Mario Antonio Godínez López habría recibido un fax amenazante en la oficina de CEIBA en Chimaltenango. El fax, firmado por el ‘Grupo De Acción Por La Paz de Huehuetenango’ habría ordenado que se dejara de organizar reuniones de más de 20 personas y quede no obedecer, esto se interpretaría como un acto de provocación y “*reaccionaremos en respuesta de sus acciones desestabilizadores*”. Le habrían recomendado que se tomara mucha prudencia en su trabajo. El Relator Especial expresó su temor a que estas amenazas en contra de Mario Antonio Godínez López pudieran constituir un intento de impedir su trabajo de defensor de derechos humanos, en particular su trabajo contra las concesiones mineras que hay autorizadas para 19 comunidades de Huehuetenango, y contra el Tratado de Libre Comercio (TLC) con Estados Unidos. En Abril de 2005, Mario Antonio Godínez López habría viajado a los Estados Unidos como parte de una delegación que habría cabildeado al Congreso para que no aprobaran el TLC. Además, el 16 de marzo de 2005, al día siguiente de la manifestación que se habría organizado contra el TLC en Huehuetenango, dos hombres armados desconocidos habrían ido a la oficina de CEIBA preguntando por el Jefe o el Segundo Jefe, el que habría sido Mario Antonio Godínez López, ninguno de los cuales se encontraría en el país.

383. El 28 de julio de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la seguridad de los miembros de las organizaciones: **UNSITRAGUA**, Unión Sindical de Trabajadores del Banco Crédito Hipotecario Nacional de Guatemala y **Sindicato de Trabajadores del Crédito Hipotecario Nacional**, organizaciones que protegen los derechos de trabajadores del Crédito Hipotecario Nacional. De acuerdo con la información recibida, el 25 de julio 2005, aproximadamente a las 7:30 horas, se habría encontrado una corona mortuoria colgada de una ventana de la sede de UNSITRAGUA, sita en la 9ª avenida, 1-43, zona 1 de la ciudad de Guatemala, así como dos escritos conteniendo amenazas de muerte a los siguientes ocho miembros del Sindicato de Trabajadores del Crédito: **Luís Morales; Vinicio Ordóñez; Fernando Cirín; Efraín López; Elio Monroy; Manuel Arias; Lic. Danilo Chea y Douglas Acencio**. Se expresó temor a que estos actos de hostigamiento en contra de miembros de las organizaciones sindicales mencionadas pudieran constituir un intento de intimidarles en represalia por su denuncia de la gestión de dicha entidad financiera y de los planes para privatizar dicho banco.

384. El 1 de septiembre de 2005, el Relator especial, juntamente con el Relator Especial sobre la tortura, envió una carta de alegaciones, en relación con varios reporteros, entre ellos **Edwin Benavente** y **Leonardo Noriega**, fotógrafo y camarógrafo, respectivamente del noticiero *Telediario*, Villa Nueva, Guatemala. De acuerdo con las alegaciones recibidas, el 23 de junio de 2005, varios reporteros que cubrían un homicidio en Villa Nueva habrían sido agredidos de forma verbal y física por elementos de la policía Nacional Civil de la Comisaría 15 de Villa Nueva. El más afectado habría sido el Sr. Edwin Benavente a quien los policiales golpearon cuando éste, por accidente, rompió la cinta amarilla colocada por las autoridades para

resguardar el lugar donde yacían los restos de tres jóvenes asesinados. Se alegó que los agentes habrían agredido a otros reporteros, entre ellos el Sr. Leonardo Noriega, y les habrían impedido cumplir con su labor de tomar notas y grabar imágenes, acusándolos de contaminar la escena del crimen.

385. El 18 de noviembre de 2005, el Relator Especial, juntamente con la Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias y Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la **Asociación de Mujeres Ixqik**, una organización que coordina con la Pastoral Social del Vicariato de Petén (Iglesia Católica) y brinda asistencia jurídica a mujeres víctimas de violación. Según la información recibida, el 31 de octubre de 2005, aproximadamente a mediodía, al llegar a las oficinas ubicadas en Santa Elena, Petén, las empleadas de la Asociación habrían notado que alguien había roto la cerradura y había forzado la puerta. Los perpetradores se habrían llevado una cámara con fotografías de una marcha en Santa Elena, capital de Petén, el 27 de octubre de 2005, que la Asociación habría encabezado en apoyo a una mujer de 50 años que había sido violada. Cabe destacar que otros objetos de valor, como ordenadores, dinero y una tarjeta de crédito, no habrían sido sustraídos. Las empleadas habrían denunciado el incidente a la policía. El 7 de noviembre de 2005, las oficinas habrían sido nuevamente allanadas. Esta vez, habrían sido sustraídos numerosos archivos, incluyendo una lista con las direcciones particulares y los números de teléfono de todas las empleadas, e información sobre el trabajo que hace la Asociación. Además, habrían intentado abrir el archivador en el que había copias de expedientes de casos de violación, pero no lo habían conseguido. El 9 de noviembre de 2005, las oficinas habrían sido allanadas otra vez. Se habrían llevado un televisor y un reproductor de DVD, así como todos los archivos relativos a otros procedimientos judiciales. Según los informes, el 11 de noviembre de 2005, una solicitud habría sido sometida ante la Comisión Interamericana de Derechos Humanos para que se dicten “medidas cautelares” a favor de la Asociación. Hasta ahora la organización no habría recibido ninguna protección. Se expresó temor a que dichos actos de hostigamiento estuviesen relacionados con el trabajo que lleva a cabo la organización, en particular porque estos allanamientos habrían ocurrido en días en que estaba previsto que el tribunal escuchara los alegatos finales en el caso de la víctima de violación de 50 años de edad a la que la Asociación está respaldando.

### **Seguimiento de comunicaciones transmitidas previamente**

386. Por carta con fecha 14 de febrero de 2005, el Gobierno de Guatemala transmitió la siguiente información en respuesta a la comunicación urgente del 5 de marzo de 2004 relativa a **Eloída Mejía Samayoa y Enrique Alcantará**. El 6 de agosto de 2004, la Comisión Presidencial de Derechos Humanos (COPREDEH), reiteró la solicitud de información sobre avances en las investigaciones de los hechos denunciados. La fiscalía Especial de derechos humanos informó que el día 24 de febrero de 2004, la Sra. Argelia Eloída Mejía Samayoa interpuso una denuncia contra sujetos desconocidos que actuaron en contra de las actividades desarrolladas por la “Asociación Amigos del lago de Izabal” que organizó un foro en el Salón municipal del Estor, el 21 de febrero. Ese día, una multitud asistió a las afueras del Salón municipal pero como no tenía invitación ingresaron por la fuerza, manifestando que querían trabajo y desarrollo para la actividad minera y gritando consignas contra la Sra. Mejía Samayoa. El Estado de Guatemala, a través del Ministerio público, solicitó protección personal y seguridad perimetral por la Policía Nacional Civil las 24 horas del día. El 19 de abril, el Ministerio Público

tomó declaración a la Sra. Mejía Samayoa. Varias personas estaban siendo investigadas. En las diligencias de investigación se solicitó la declaración de varias personas en julio de 2004. El 8 de julio, se practicaron planimetrías, inspecciones oculares y fotografías forenses de la sede de la Organización. Actualmente las investigaciones se encuentran en fase preparatoria.

387. Por carta con fecha 14 de febrero de 2005, el Gobierno de Guatemala transmitió la siguiente información en respuesta a la comunicación urgente del 19 de marzo de 2004 relativa a los Sres. **Victoriano Zacarías Mindez, Wilson Carreto y Miguel Ángel Ochoa**. La Comisión Presidencial de Derechos Humanos (COPREDEH), informó que tras haber agotado los mecanismos de negociación y diálogo, el Ministerio de Gobernación conjuntamente con el Ministerio Público precedieron a desalojar las vías públicas de la Ciudad de Guatemala, para evitar que se cumpliera la amenaza de provocar la explosión de las Cisternas y arrestar en forma flagrante a los autores y cómplices de la toma. Como resultado del operativo fueron aprehendidos en el lugar de los hechos los Sres. **Victoriano Zacarías Mindez, Wilson Carreto y Miguel Ángel Ochoa**. El Ministerio público actuó a través de la Fiscalía Metropolitana 19 e inició las investigaciones por los delitos de Terrorismo y atentar contra la seguridad pública ante el Juez Décimo de Primera Instancia Penal, Narcoactividad y Delitos contra el ambiente de la Ciudad de Guatemala contra los Sres. Zacarías Mindez, Carreto y Ochoa y 26 conductores más. El Ministerio Público como órgano acusador determinó que ellos y los otros 26 acusados no eran responsables de la amenaza que consistía en derramar gasolina sobre las rutas tomadas, y por lo tanto solicitó la modificación de estos delitos por los de instigar a delinquir y atentar contra la seguridad pública. En consecuencia, los Sres. Zacarías Mindez, Carreto y Ochoa y los otros 26 conductores, se acogieron al mecanismo de Procedimiento Abreviado contemplado en el Código Procesal Penal, declarándose culpables de los hechos imputados y por tal razón obtuvieron la conmutación de la Pena de prisión recobrando su libertad en forma inmediata.

388. Por carta con fecha 14 de febrero de 2005, el Gobierno de Guatemala transmitió la siguiente información en respuesta a la comunicación urgente del 22 de abril de 2004 relativa a **María Isabel Donis, Ana Morales, María Teresa Soto, Manuel Cedillo y Diego Sunuc**. El 25 de mayo de 2004, la Comisión Presidencial de Derechos Humanos (COPREDEH), entrevistó las personas mencionadas, indicando que el Estado de Guatemala adoptaría las medidas de seguridad consistentes en patrullaje perimetral en la sede de la organización. La comisión verificó el cumplimiento e implementación de las medidas de protección a cargo de la Policía Nacional Civil, comisaría 74 del Departamento de Sacatepéquez. La Comisión coordinó con los beneficiarios una próxima reunión para el 2 de julio de 2004, la cual no se llevó a cabo debido a la inasistencia de los beneficiarios. De nuevo se programó una reunión para el 11 de agosto en la sede de la organización pero esta no fue posible por no encontrarse el personal en la sede. El Estado de Guatemala había recibido 2156 demandas trasladadas de la Subsecretaría de la Presidencia de la República provenientes de diferentes organizaciones internacionales solicitando investigar amenazas en contra del personal de la organización "Dónde Están los Niños y las Niñas?" El Estado de Guatemala adoptó las medidas de protección del personal de la organización efectivas para un período de seis meses y sujetas a un estudio de riesgo y vulnerabilidad que necesitaría de la cooperación de los beneficiarios, así como de la participación de éstos en el sistema de justicia.



389. Por carta con fecha 14 de febrero de 2005, el Gobierno de Guatemala transmitió la siguiente información en respuesta a la comunicación urgente del 6 de agosto de 2004 relativa a **Gerardo Montenegro, Luís Romero, Mynor Tuc, Edgar Morales, Mario Morales, Julio Rodas, Francisco Revolorio y Dervin Revolorio**. En virtud de los hechos ocurridos el 31 de agosto de 2004, en los cuales el Estado de Guatemala, a través del Ministerio de Gobernación y por consiguiente de la Policía Nacional Civil incurrieron en uso excesivo de la fuerza con el objeto de repeler los ataques de campesinos armados, la Comisión Presidencial de derechos humanos, COPREDEH, inicio de oficio las gestiones ante las instituciones encargadas de la seguridad a fin de garantizar la vida, la seguridad, la integridad y la libertad de los periodistas. Durante el mes de noviembre de 2004, la COPREDEH tuvo dos entrevistas con los afectados a fin de coordinar medidas de protección, de conformidad con la petición de la Comisión Interamericana de derechos humanos. La petición de los periodistas que el Estado prestase protección a través de la Secretaría de Asuntos Administrativos y de Seguridad (SAAS), no fue posible dado que éste órgano sólo coordina la seguridad del Presidente y Vicepresidente de la República. Debido a las denuncias interpuestas por los periodistas ante el Ministerio Público sobre las agresiones por agentes de la Policía Nacional Civil, desistieron de la protección policial. En cuanto al proceso de los responsables, tres personas se encontraban sujetas a los procedimientos penales y administrativos para determinar si existía responsabilidad por acción u omisión como agente del Estado. El proceso penal seguido contra los 3 agentes del Estado por los delitos de abuso de autoridad, agresiones, robo agravado y violación a la libertad de expresión y opinión de los periodistas se encontraba en fase de investigación que duraría aproximadamente seis meses puesto que se encontraban con medidas sustitutivas a la prisión preventiva y en situación especial dentro del ejercicio del cargo en la Policía Nacional Civil, hasta que no se resuelva su situación jurídica y de la responsabilidad administrativa, de conformidad con lo aportado por el Ministerio Público y la Oficina de Responsabilidad profesional de la Policía Nacional Civil, ante el Tribunal disciplinario. El Estado de Guatemala integró la conformación de una Comisión humanitaria para atender las necesidades más urgentes de las familias afectadas por el desalojo de la Finca Nueva Linda que consiste en una ayuda alimentaria de 2000 raciones por aproximadamente 350 000 quetzales, ayuda para las familias de las personas fallecidas de 160 000 quetzales, y una remuneración de conformidad con el avalúo de los costos de siembra por manzana de un total de 446 4000 quetzales. No es posible por el estado actual del proceso, determinar si en el procedimiento policial, existieron tratos crueles, inhumanos o degradantes o incluso tortura.

390. Por carta con fecha 31 de enero de 2005, el Gobierno de Guatemala transmitió la siguiente información en respuesta a la comunicación urgente del 9 de agosto de 2004 relativa a la seguridad de los miembros del **Centro para la acción Legal en Derechos Humanos (CALDH)**. El 2 de abril de 2003, el Estado de Guatemala a petición de la Comisión interamericana de derechos humanos, otorgó medidas cautelares a favor del personal del CALDH de una duración de seis meses, que consistían en rondas perimetrales. El 17 de julio de 2004, tras el allanamiento de la residencia de la directora y de las oficinas del CALDH, la Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de derechos humanos (COPREDEH), coordinó las acciones de protección, estableciendo una extensión de las medidas de protección que consiste en seguridad de tipo perimetral en horario nocturno y de puesto fijo entre las ocho horas hasta las veinte horas por cuatro agentes de la Policía Nacional Civil con turno de veinticuatro horas. Respecto a la seguridad de la Sra. Edda Gaviola, se acordaron medidas de protección tipo perimetral en su residencia brindada

por agentes de la Policía Nacional Civil, según lo acordado el 17 de julio de 2004. La COPREDEH solicitó al Fiscal especial de derechos humanos informe sobre los avances de los hechos denunciados y se encuentra en espera de recibir el informe.

391. Por carta con fecha 14 de febrero de 2005, el Gobierno de Guatemala transmitió la siguiente información en respuesta a las comunicaciones urgentes del 2 de agosto y 21 de septiembre de 2004 relativas a miembros del **Centro para la atención legal en derechos humanos (CALDH)**. La denuncia fue presentada por el Sr. **Mario Eduardo Minera Monzón** en su calidad de trabajador del CALDH ante la policía Nacional Civil y el Ministerio Público. El órgano encargado de la investigación es el Ministerio Público y el control de la investigación corresponde al Juzgado Octavo de Primera Instancia Penal, Narcoactividad y Delitos contra el Medio Ambiente de la Ciudad de Guatemala. Hasta la fecha, no existía individualización de un responsable. De conformidad con el orden jurídico se procedería a la compensación de las víctimas únicamente a petición del agraviado y por sentencia firme emitida por el organismo judicial. El Estado de Guatemala, citó a Mario Minera y Andrea Barrios para coordinar medidas de protección. Ambos desistieron de las medidas de protección y de seguridad personal que el Estado de Guatemala ofreció como mecanismo preventivo. De conformidad con la información brindada por el Ministerio Público, se citó en varias oportunidades al Sr. Mario Minera para que extendiera la denuncia existente pero éste no ha asistido a las citaciones. La Policía Nacional Civil había informado al Ministerio Público que no existía denuncia por el presunto robo del vehículo. El Estado de Guatemala, pese a la situación difícil a la que se enfrenta, ha reiterado su compromiso ante los órganos interamericanos de derechos humanos de continuar coordinando y gestionando acciones orientadas a salvaguardar la vida e integridad física de los beneficiarios de las medidas de protección. En el caso del CALDH, se habían incrementado las medidas de protección para Edda Gaviola, Marino Minera, Héctor Mollinedo, Andrea Barrios y Miguel Ángel Alvizures, así como los testigos de la masacre Plan de Sánchez. Actualmente los casos se encuentran a cargo de la Fiscalía Especial de Derechos humanos del Ministerio Público.

392. Por carta con fecha 14 de febrero de 2005, el Gobierno de Guatemala transmitió la siguiente información en respuesta a la comunicación urgente del 19 de octubre de 2004 relativa a **Luís Alberto López Batzín** y personal de la auxiliatura departamental de derechos humanos de Coatepeque. La Comisión Presidencial de derechos humanos, COPREDEH, coordinó medidas de protección carácter urgente. El Estado de Guatemala instruyó a la institución policial a cargo de la comisaría 416<sup>a</sup>, la cual prestó servicio de protección de puesto fijo en la sede de la PDH como mecanismo preventivo. Durante el mes de septiembre, la Comisión interamericana de derechos humanos solicitó adoptar medidas cautelares a favor del Sr. López Batzín, que no se adoptaron formalmente porque el beneficiario se encontraba fuera de servicio hasta diciembre de 2004. La COPREDEH solicitó a la Procuraduría de derechos humanos convocar al beneficiario a fin de coordinar las medidas de protección pero hasta la fecha no se ha recibido contestación por parte de la institución. En cuanto a las gestiones del Ministerio Público, hasta la fecha, a pesar de sus solicitudes, la COPREDEH no ha recibido contestación referente a los avances de las investigaciones, a fin de identificar y sancionar a los responsables.

393. Por carta con fecha 14 de febrero de 2005, el Gobierno de Guatemala transmitió la siguiente información en respuesta a la comunicación urgente del 17 de diciembre de 2004 relativa a **Miriam Espina**. La Comisión Presidencial de derechos humanos, COPREDEH se encontraba en la fase de localización y entrevista de la persona afectada y de iniciar las gestiones ante el Ministerio Público. La COPREDEH se comprometió a brindar y ampliar la información cuando se tengan elementos necesarios e informaciones sobre las actuaciones del Ministerio Público.

### **Observaciones**

394. El Relator Especial agradece al Gobierno sus respuestas a las comunicaciones con fecha 18 de Enero de 2005, 15 de Marzo de 2005, 5 de Marzo de 2004, 19 de Marzo de 2004, 22 de Abril de 2004, 6 de Agosto de 2004, 9 de Agosto de 2004, 2 de Agosto y 21 de Septiembre de 2004, 19 de Octubre de 2004 y 17 de Diciembre de 2004; si bien lamenta no haber recibido respuestas a sus comunicaciones con fecha 22 de Febrero de 2005, 8 de Abril de 2005, 23 de Mayo de 2005, 3 de Junio de 2005, 4 de Julio de 2005, 13 de Julio de 2005, 15 de Julio de 2005, 28 de Julio de 2005, 1 de Septiembre de 2005 y 18 de Noviembre de 2005.

395. El Relator Especial expresa grave preocupación por el número de alegaciones recibidas relativas a amenazas y agresiones sufridas por defensores de los derechos humanos, líderes y miembros de grupos sindicales, y activistas comunitarios, como en los casos concernientes a los Sres. **Leonel García Acuña, Carlos Humberto Guárquez, José Ernesto Menchú Tojib Mario Antonio Godínez López**, así como a miembros de la organización **UNSI TRAGUA**, y los miembros del **Sindicato de Trabajadores del Crédito: Luís Morales, Vinicio Ordóñez, Fernando Cirín, Efraín López, Elio Monroy, Manuel Arias, Lic. Danilo Chea y Douglas Acencio**. El Relator Especial toma nota de las explicaciones del Gobierno sobre los procesos administrativos e investigativos llevados a cabo por el Gobierno en el caso del Sr. García Acuña. No obstante, con respecto a las demás casos, y a la espera de información adicional actualizada, y sin pronunciarse sobre los hechos, el Relator Especial reitera los principios enunciados entre otros por la Comisión de Derechos Humanos en su Resolución **2005/67y reiteradas en la resolución 2005/38**, en las cuales se “Exhorta a todos los Estados a que adopten todas las medidas necesarias para garantizar la protección de los defensores de los derechos humanos y creen y mantengan un entorno favorable a la labor de los defensores de los derechos humanos y sus familiares”, y apela al Gobierno a asignar medidas de protección a estos individuos, y llevar a cabo procesos investigativos con vistas a iniciar causas en los tribunales contra los autores materiales de tales amenazas. El Relator Especial solicita que se le informe oportunamente sobre cualquier acción llevada a cabo para proteger y garantizar la seguridad e integridad física y psicológica de los defensores de los derechos humanos, sindicalistas y demás activistas y cualquier persona que haya sufrido violaciones de derechos humanos por expresar sus opiniones en general y de las personas citadas específicamente, en particular en lo que a la adopción de medidas de protección se refiere.

396. El Relator Especial desea también llamar la atención del Gobierno, sobre el número de comunicaciones sobre periodistas que, según las informaciones recibidas han sido víctimas de amenazas, acoso, hostigamiento e incluso agresión durante el 2005, entre ellos: **Benjamín Martínez, Néstor Reinaldo Verbena, Alfonso Guarquez, Miguel Ángel Barrios, Edwin Benavente y Leonardo Noriega** el Relator Especial toma nota de las explicaciones sobre

los procesos administrativos e investigativos iniciados en el caso de los Sres. Martínez y Verbená. El Relator Especial llama al Gobierno de acuerdo con la resolución, 2005/38 de la Comisión de Derechos Humanos, a tomar las medidas cautelares y judiciales pertinentes para asegurarse de que los periodistas puedan trabajar libre e independientemente, de acuerdo con los principios enunciados entre otros, por los **artículos 19 de la Declaración Universal de Derechos Humanos y del Pacto Internacional de Derechos Civiles y Políticos**.

397. El Relator Especial también expresa su profunda preocupación por lo que, según las comunicaciones recibidas, parece ser una oleada de allanamientos y robo de materiales investigativos, informativos y confidenciales en las sedes de diversas organizaciones de derechos humanos y organismos sindicales como, **Hijos e Hijas por la Identidad y la Justicia contra el Olvido y el Silencio - H.I.J.O.S**, la **Coordinadora Nacional de Organizaciones Campesinas**, el **Sindicato de Trabajadores de la Educación (STEG)**, o la **Asociación de Mujeres Ixqik**. El Relator Especial, a la espera de respuestas del Gobierno, y sin pronunciarse sobre los hechos de estos casos, expresa su temor sobre la posibilidad de que los antemencionados incidentes no constituyan hechos aislados, sino que estén ocurriendo de manera sistemática y con el objetivo de evitar que estas organizaciones desempeñen sus actividades de protección y promoción de los derechos humanos. El Relator Especial toma nota de la existencia de medidas cautelares y de protección adoptadas por la CIDH y el Estado guatemalteco en lo concerniente a **H.I.J.O.S**. No obstante, en este contexto, el Relator Especial, considera apropiado reiterar los principios enunciados, entre otros por la Comisión de Derechos Humanos en su Resolución **2005/67** en los cuales se “Exhorta a todos los Estados a que adopten todas las medidas necesarias para garantizar la protección de los defensores de los derechos humanos y creen y mantengan un entorno favorable a la labor de los defensores de los derechos humanos y sus familiares”.

### Guinea

398. Le 23 février 2005, le Rapporteur Spécial, conjointement avec le Rapporteur Spécial sur la torture, a envoyé une lettre d’allégation concernant un journaliste du quotidien national gouvernemental *Horoya*, M. **Lansana Sarr**, qui aurait été arrêté par des agents de la Brigade Spéciale d’Intervention de la Police (BSIP) et gardé en détention pendant trois heures et demie le 14 février 2005. Selon les informations reçues, M. Lansana Sarr couvrait une manifestation à Conakry pendant laquelle des manifestants auraient été attaqués et bastonnés par des éléments de la BSIP. Des agents auraient vu M. Sarr tenter de photographier l’incident, l’auraient roué de coups, l’auraient traîné jusque dans la fourgonnette de patrouille et l’auraient jeté au sol. Ils lui auraient confisqué son appareil photo et son téléphone cellulaire, et l’auraient ensuite emmené à la prison de la Compagnie Mobile d’Intervention de la Sécurité (CMIS) dans la banlieue de Conakry. Après avoir été libéré, son téléphone lui aurait été rendu mais Mr. Sarr aurait été forcé de développer les photos prises pendant la manifestation afin de les détruire, et de l’empêcher de les publier dans le journal pour lequel il travaille.

### **Suite donnée aux communications précédemment envoyées par Le Rapporteur Spécial**

399. Le 5 août 2005 le gouvernement a répondu à la communication envoyée le 26 novembre 2004 relative au journal **Le Quotidien**. Le gouvernement a informé le Rapporteur Spécial que le Conseil National de la Communication (CNC) de Guinée s’est réuni en séance plénière le 6 mai 2005 pour étudier la communication envoyée. La Guinée compte 300 journaux qui paraissent difficilement, raison pour laquelle le CNC a introduit une

requête auprès du gouvernement pour une assistance financière à la Presse. Le Chef de l'Etat a ordonné que 400.000.000 francs guinéens annuels soient inscrits dans la Loi des finances pour aider la presse, une somme qui est répartie par le CNC en tenant compte des journaux qui ont peu de moyens et des journaux qui paraissent à l'intérieur du pays. Aucun journaliste n'est ni arrêté, ni en prison, ni aucun journal n'est saisi, ni suspendu, ni interdit.

Monsieur Siaka Kouyaté fait partie des doyens de la Presse privée guinéenne et dans ses articles les critiques de la société sont souvent présentes notamment sur des questions de corruption et de mauvaise gestion du pays. Le CNC n'a jamais jugé nécessaire de le sanctionner car il estime qu'un journaliste a le droit de porter un jugement sur les affaires de son pays mais il est par contre interdit d'appeler à la haine raciale, à la révolte et aux troubles de l'ordre public. Dans le cas précis, l'article « le pays va mal... à quand le soulèvement » est une violation flagrante des articles 1 et 72 de la Loi L/91/005/CTRN du 23 décembre 1991 sur la liberté de la presse. En pratique, la suspension a duré deux jours. Monsieur Siaka Kouyaté, réalisant sa faute, est venu de lui-même présenter ses excuses au CNC et la sanction a été immédiatement levée. Elle a par ailleurs permis à M. Siaka Kouyaté d'échapper à une poursuite judiciaire. Le CNC a donc agi en tant qu'organe officiel de régulation et estime qu'une suspension de 48h ne peut pas être à l'origine de la faillite du journal.

### Observations

400. Le Rapporteur Spécial regrette de ne pas avoir reçu de réponse à sa communication du 23 février 2005. Dans l'attente de cette réponse mais sans préjuger sur les faits examinés, le Rapporteur Spécial souhaiterait attirer l'attention du gouvernement sur l'article 6 alinéas b) et c) de la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus qui stipule que chacun a le droit, individuellement ou en association avec d'autres, conformément aux instruments internationaux relatifs aux droits de l'homme et autres instruments internationaux applicables, de publier, communiquer à autrui ou diffuser librement des idées, informations et connaissances sur tous les droits de l'homme et toutes les libertés fondamentales; d'étudier, discuter, apprécier et évaluer le respect, tant en droit qu'en pratique, de tous les droits de l'homme et de toutes les libertés fondamentales et, par ces moyens et autres moyens appropriés, d'attirer l'attention du public sur la question.

401. Le Rapporteur Spécial remercie le Gouvernement pour sa réponse du 26 novembre 2004.

### Haiti

402. Le 3 mars 2005, le Rapporteur Spécial, conjointement avec le Rapporteur Spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, a envoyé un appel urgent concernant la situation de M. **Makenson Remy** et de M. **Raoul Saint-Louis**, deux journalistes travaillant à la radio *Megastar* de Port-au-Prince. Selon les informations reçues, le 18 février dernier, Mr. Remy aurait été menacé de mort par des policiers alors qu'il rentrait chez lui en voiture. Il aurait été arrêté à un feu rouge dans le quartier Nazon à Port-au-Prince quand huit policiers qui étaient à bord d'un véhicule le suivant auraient encerclé sa voiture et l'auraient sommé de descendre. Les policiers l'auraient alors accusé de tenir des propos en faveur de l'ancien président Aristide à la radio, l'auraient battu et menacé de le tuer s'il persistait à travailler à la radio *Megastar*. Les policiers auraient également affirmé qu'ils l'auraient tué s'il avait fait nuit. Les craintes pour la vie de M. Remy sont d'autant plus vives qu'un autre journaliste à la radio

Megastar, Mr. Raoul Saint-Louis, aurait été l'objet d'une tentative d'assassinat le 4 février 2005. Celui-ci se serait fait tirer dessus alors qu'il était dans les locaux de la station de radio en présence de sa femme et d'autres collègues et il aurait été blessé à la main. Depuis cet attentat, il aurait été contraint de mettre un terme à sa carrière de journaliste et aurait déménagé, craignant pour sa vie et celle de ses proches. Peu avant l'attentat, Mr. Saint-Louis aurait reçu des menaces de mort par téléphone après avoir critiqué le gouvernement à l'antenne.

### Observations

403. Le Rapporteur Spécial regrette de ne pas avoir reçu de réponse à sa communication du 3 mars 2005. Dans l'attente de cette réponse mais sans préjuger sur les faits examinés, le Rapporteur Spécial souhaiterait attirer l'attention du gouvernement sur la Résolution 2005 /38 de la Commission de Droits de l'Homme qui s'est déclarée toujours préoccupée par le fait que ... a) Des violations de la liberté d'opinion et d'expression continuent de se produire, souvent dans l'impunité, notamment ... des d'intimidation, de persécution et de harcèlement, des menaces et des actes de violence, visant des personnes qui exercent, cherchent à promouvoir ou défendent ces droits, notamment les journalistes et autres professionnels des médias, les écrivains, les utilisateurs de l'Internet et les défenseurs des droits de l'homme.

### Honduras

404. El 4 de febrero 2005, el Relator especial, juntamente con 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 humanos, envió un llamamiento urgente en relación con miembros del **Consejo Indígena de la Comunidad de las Olominas**, en su país en particular, los activistas agrarios indígenas **Genaro Vásquez Lorenzo y Roberto Chicas Mejia**. Según la información recibida, el 31 de diciembre de 2004, Genaro Vásquez Lorenzo, Roberto Chicas Mejia e Higinio Hernández Vásquez, secretario del Consejo Indígena de la Comunidad de las Olominas, habrían estado de visita en la localidad de Planes, cuando habrían sido objeto de una emboscada tendida por dos hombres armados que les habrían disparado. Como consecuencia de los disparos Higinio Hernández habría resultado muerto. Tras el homicidio se habrían producido amenazas de muerte a los dos testigos si declaraban sobre el asesinato. A pesar de las amenazas, Genaro Vásquez Lorenzo y Roberto Chicas Mejia habrían prestado declaración ante las autoridades y habrían identificado a uno de los asesinos como un hombre de las Olominas que se habría opuesto a los esfuerzos del Consejo Indígena al cual ellos pertenecen. Según la información recibida, se expresó que su integridad física pudiera estar en peligro debida a las continuas amenazas recibidas. Según los informes, Higinio Hernández Vásquez, antes de su asesinato, habría recibido varias amenazas de muerte en relación con su trabajo en pro de los derechos comunitarios sobre la tierra. A pesar de haber denunciado las amenazas se informó que nunca consiguió protección. Se expresó temor que las amenazas recibidas por Genaro Vásquez Lorenzo y Roberto Chicas Mejia sigan, tengan relación con su trabajo como activistas agrarios indígenas y que la mismas amenazas sean finalizadas a obligarlos a renunciar a un nuevo título de propiedad comunitaria de la tierra, que el Consejo Indígena de la Comunidad de las Olominas ha tratado de obtener del Instituto Nacional Agrario (INA) desde 1996.

## Observaciones

405. El Relator Especial lamenta no haber recibido respuesta a la comunicación enviada el 4 de Febrero de 2005.

406. Con respecto a la situación de los miembros **Consejo Indígena de la Comunidad de las Olominas**, en particular, los activistas agrarios indígenas **Genaro Vásquez Lorenzo** y **Roberto Chicas Mejia**, el Relator Especial teme que este incidente pueda formar parte de una campaña de intimidación contra los habitantes de las Olominas para que renuncien a sus derechos sobre la tierra. El Relator Especial reitera los principios enunciados, entre otros por la Comisión de Derechos Humanos en su Resolución 2005/67, la cual “Exhorta a todos los Estados a que adopten todas las medidas necesarias para garantizar la protección de los defensores de los derechos humanos y creen y mantengan un entorno favorable a la labor de los defensores de los derechos humanos y sus familiares”, y solicita al Gobierno que le informe oportunamente sobre cualquier acción llevada a cabo para proteger y garantizar el bienestar e integridad física y psicológica de los Sres. Genaro Vásquez Lorenzo y Chicas Mejia, en particular en lo que a la adopción de medidas de protección se refiere.

## India

407. On 14 June 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning **G. Venugopal**, an editor for the Telugu-language *Veekshanam* based in the southeastern state of Andhra Pradesh; **Pinaka Pani**, the editor for the pro-Maoist literary magazine *Aruna Tara*; **V. Chenchaiiah**, the former editor of *Aruna Tara* and **Ravi Kumar**, a member of *Aruna Tara*'s staff. According to information received, on 30 May 2005, during a raid at a hotel in Aurangabad (near Nizamabad), special branch agents of the Andhra Pradesh state police arrested G. Venugopal, Pinaka Pani, V. Chenchaiiah and Ravi Kumar for holding a meeting with Maoist militants to discuss media interaction with the Maoist party, the second round of talks between the state and the Maoist party, as well as issues relating to the Revolutionary Writers Association. Two leaders of the communist party of India (Maoist) and four members of the Revolutionary Writers Association (Virasam) were also arrested. They were all tied with ropes, blindfolded and detained for 72 hours before being transferred to Bodhan prison. G. Venugopal was denied medication for his diabetic condition. Following widespread pressure on the authorities to provide him with the necessary medical attention, G. Venugopal was temporarily taken to the hospital; he was transferred back to the prison on 10 June 2005, despite the assurances of the Chief Minister of Andhra Pradesh that the Government would take steps to release him as soon as possible. On 3 June 2005, the above-mentioned persons were charged with ‘waging war against the state’ and ‘conspiracy.’

408. On 16 August 2005, the Special Rapporteur, jointly with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Dr. Lenin Raghuvanshi**, a human rights defender with the Peoples' Vigilance Committee for Human Rights (PVCHR), his associate Mr. **S.N. Giri**, and **Ms. Anupam Nagvanshi**, a field coordinator for PVCHR. PVCHR is an organisation working for the Dalits and ‘lower caste’ communities in Varanasi, Uttar Pradesh, India, focusing on education for children, including the setting up of a local school, and the right to self

determination for these community members. According to the information received, on 5 August 2005, at approximately 8:00 AM, Dr. Lenin Raghuvanshi allegedly received a phone-call, on his mobile phone, from a man linked to the village authorities demanding that Mr. S.N. Giri withdraw his nomination from an election due to be held in Belwa village on 17 August 2005. Furthermore, on 7 August 2005, at approximately 8:35 PM, Dr. Lenin Raghuvanshi received another phone call from the same person threatening that if his associate did not withdraw his nomination, Dr. Lenin Raghuvanshi, his family and Mr. S.N. Giri would be shot dead. Dr. Lenin recorded the phone conversation and has lodged a complaint with the Senior Superintendent of the Police and the District Magistrate. He reportedly also faxed a complaint to the Chief Minister of the State. Moreover, previously on 26 August 2003, Dr Lenin Raghuvanshi had been arrested and detained for 4 hours for organizing a protest before the Sub Divisional Magistrate in Varanasi. It was reported that on 10 August 2005, at approximately 4:00 PM, Ms. Anupam Nagvanshi was surrounded by a number of people connected to the village authorities who asked her why she was encouraging the Dalits and 'lower caste' community to cast their votes in the upcoming election. Ms. Anupam Nagvanshi was allegedly threatened with murder if she returned to Belwa village. Ms. Nagvanshi telephoned the police at approximately 6:00 PM on 10 August 2005 but no officer was dispatched. She then sent a written complaint by registered post to Phoolpur police station. It was reported that no action had been taken regarding this case by the Phoolpur police, at the time this communication was sent.

409. On 14 December 2005 the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning Mr. **Kirity Roy**, along with **21 other human rights defenders** Kirity Roy is a secretary of Manabadhikar Suraksha Mancha (MASUM), a human rights organization working against custodial torture and violence and National Executive Committee Member of Amnesty International of India, and also attached to several other human rights organizations, health rights organizations, and workers' rights organization. According to information received, on 9 December 2005, at approximately 3:00 PM, Kirity Roy along with 18 other males and three females were arrested in Kolkata and taken to the police headquarters at Lal Bazar. The activists had been putting up posters in preparation for Human Rights Day on the 10 December 2005 and were also holding a peaceful protest against human rights violations in the state of West Bengal. They were all released on the day of their arrest having signed personal bonds. Concern was expressed that the arrest of Kirity Roy and the other 21 human rights defenders constitutes an attempt to prevent them from carrying out their human rights work.

#### **Follow-up to previously transmitted communications**

410. On 15 February 2005, the Government replied to the communication dated 5 October 2004. The Government informed the Special Rapporteur that, on March 20 2004, a group of 70 to 80 persons assembled at Lal Chowk (Srinagar), in spite of Government orders prohibiting this gathering. The demonstrators then resorted to throwing stones aimed at vehicles and at the police contingents deployed there for the purposes of maintaining law and order. The police, in response, cane-charged the demonstrators, arrested a number of them and took them into preventive custody. The Women among those who were arrested were later released. A case, FIR No. 17/2004 under Section 147, 341, 336 and 323 of the Penal Code was registered against the demonstrators at Police Station Maisuma. Those charged were later



released on bail. The case was later challenged before the Hon'ble Chief Judicial Magistrate of Srinagar against five persons, including **Yasin Rah** and **Perveena Ahangar**. The case was still open as of 31 December 2004.

### Observations

411. The Special Rapporteur thanks for the Government's reply to his communication dated 5 October 2004. He regrets that no replies to his other communications were received.

412. Regarding the communication dated 14 June 2005, the Special Rapporteur was informed from other sources that **G. Venugopal** was released on bail on 16 June 2005.

413. With regard to the communication dated 16 August 2005, without making any determination of the facts and circumstances of the cases, and pending the Government's reply, the Special Rapporteur deems it appropriate to make reference to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 12, which provides that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. Reference is also made to Resolution 2005/38 of the Commission on Human Rights which does not consider restrictions connected with discussions on government policies and political debate, engaging in election campaigns, including by persons belonging to minorities or vulnerable groups, as legitimate limitations of the right to freedom of opinion and expression.

### Indonesia

414. On 11 May 2005, the Special Rapporteur sent an urgent appeal concerning **Darwin Ruslinur** and **Budiono Saputro**, the chief editor and journalist respectively for the weekly newspaper *Koridor Tabloid*. According to information received, on 4 May 2005, the Lampung District Court in Sumatra Island sentenced the two journalists to a term of nine months imprisonment. The journalists were found guilty of defaming Aluzier Dianis Thabrani and Indra Karyadi in an article published in the 12 – 18 July 2004 *Koridor* edition. The journalists accused them of embezzling political party funds. Both journalists were free pending an appeal which was due to be heard in nine days, at the time this communication was sent.

415. On 13 June 2005 the Government replied to the communication of 11 May 2005 concerning **Darwin Ruslinur** and **Budiono Saputro**. The Government stated that on 4 May 2005, after several hearings, the district court of Lampung in Sumatera Island found that the tabloid never confirmed the story with Aluzier Dianis Thabrani and Indra Karyadi, and on this basis ruled that the journalists were in breach of articles 310, 311 and 315 of the Indonesian criminal Code, and therefore found them guilty of defamation. The two journalists were not in custody at the time the Government sent this reply and they could have both appealed to the High Court and the Supreme Level court. The Government stressed that the court was not subject to any outside influence or interference.

416. On 16 June 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning three human rights defenders: **Mugiyanto Sri Suparyati**, Chairman of the *Indonesian Association of Families of the Disappeared*, **Usman Hamid**, Coordinator of the *Commission for Missing Persons and Victims of Violence* (KONTRAS), **Abdul Hakim Garuda Nusantara**, Chairman of the *National Commission on Human Rights* (KOMNAS HAM), and the President of the Trisakti University, **Thoby Mutis**. Members of KONTRAS had already been the subject of communications by the Special Rapporteurs on 3 December 2004, 16 August 2004, 3 July 2003, 25 June 2003, and 10 June 2003, as have KOMNAS HAM on 29 October 2003. According to information received, on 27 May 2005, a letter was sent by fax to the Asian Federation against Involuntary Disappearances (AFAD), during their workshop on "Protecting persons from enforced or involuntary disappearances" in Bangkok. The letter made death threats against Mugiyanto Sri Suparyati, Usman Hamid, Abdul Hakim Garuda Nusantara and Thoby Mutis, and stated that they would be killed within 14 days. The death threat was signed by a person who identified himself as "Defender of the New Order", and accused the aforementioned of affiliating themselves with the Indonesian Communist Party (PKI). Concern was expressed that these death threats were connected directly to their work in defending human rights. This concern was heightened by the alleged killing on 7 September 2004 of Mr. Munir, the Chairman of AFAD and co-founder of KONTRAS.

### Observations

417. The Special Rapporteur thanks the Government for its reply to his communication dated 11 May 2005. The Special Rapporteur, however, remains concerned at the penal nature of the sentence passed against the two journalists. He is further concerned in light of the new draft Criminal Code which provides for terms of imprisonment of up to seven years for journalists found guilty of violations such as libel. In this context, the Special Rapporteur deems it appropriate to refer to the principles enunciated in, inter alia, the Commission on Human Rights Resolution 2005/38, that the authorities should not resort to criminal laws and punishment for media related offences as these are deemed disproportionate to the gravity of the offence and are incompatible with international human rights law.

418. The Special Rapporteur regrets that no reply was received to his communication of 16 June 2005. Without making any determination of the facts of the case, and pending the Government's reply, he deems it appropriate to make reference to the principles enunciated in, inter alia, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

**Iran (Islamic Republic of)**

419. On 12 January 2005, the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture, sent an urgent appeal concerning **Hanif Mazroi, Massoud Ghoreishi, Arash Naderpour, and Fereshteh Ghazi, Mahbobeh Abbasgholizadeh, Omid Memarian and Ruzbeh Mir Ebrahimi**, who were already the subject of an urgent appeal dated 15 December 2004. According to the allegations received, they reportedly received death threats from judicial officials of the Prosecutor's Office and threats from the Chief Prosecutor of Tehran that they would be subject to legal action, lengthy prison sentences and that their family members would be harmed. These threats were reportedly in connection with 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 denied these allegations.

420. On 22 September 2005 the Government replied to the Special Rapporteur's urgent appeal dated 12 January 2005. The Government informed the Special Rapporteur that Ms. **Fereshteh Ghazi**, and Ms. **Mahboobeh Abbasgholizadeh** had been released.

421. On 13 January 2005, the Special Rapporteur, jointly with the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mrs. **SE**, Secretary General of the Defenders of Human Rights Centre, an organization established in 2002, who was awarded the 2003 Nobel Peace Prize. Mrs. SE was already the subject of an appeal sent by the Special Rapporteur jointly with the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders on 8 December 2003. According to the information received, Mrs. SE was summoned on 12 January 2005 by investigating judge n°14 of the Revolutionary Public Prosecutor's office of Tehran. It is reported that the summons document did not contain any reasons for the summons but indicated that if she did not present herself within three days, she would be arrested. The Special Rapporteur had expressed particular concern that Mrs. SE might have been targeted due to her human rights activities. Concern was heightened by the fact that in the previous year, Mrs. SE received anonymous threatening letters and the door of her garage, in Tehran, was damaged several times. She allegedly reported her fears for her security to the authorities but no action had, at the time this communication was sent, reportedly been taken up to now.

422. On 26 January 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers sent a letter of allegation concerning Mr. **Arash Sigarchi**, a journalist publishing both in print media and on the internet as well as the editor-in-chief of the daily *Gylan Emroz*. According to information received, Mr. Sigarchi was arrested on 17 January 2005, after responding to a summons from the Intelligence Ministry in Rashat. At the time this communication was sent, he was being 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. Concern was expressed that the arrest and detention of Mr. Sigarchi may have been a reprisal for his condemnation of the treatment allegedly inflicted by the authorities on fellow internet journalists, particularly the mistreatment of his colleagues Shahram Rafihzadeh and Rozbeh Mir Ebrahimi.

423. On 9 September 2005, the Government replied to the communication of 26 January 2005. The Government stated that Mr. Sigarchi was charged with espionage and cooperation with a hostile State and was, at the time this reply was sent, on bail.

424. On 16 February 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Nasser Zarafshan**, a lawyer of the Bar of Tehran, who was subject of a letter of allegation sent by the Special Rapporteur jointly with the Special Representative of the Secretary-General on human rights defenders and the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers on 5 December 2003, to which the Government replied by a letter dated 18 May 2004. According to the allegations received, on 2 December 2004, Mr. Zarafshan's health deteriorated after a severe kidney inflammation. He was hospitalized in Evin Prison and, on 6 December 2004, his lawyer asked for him to be hospitalized outside the prison. Mr. Zarafshan was later allowed out of the prison on three occasions, but he was not granted enough time to seek adequate medical treatment. The prison authorities and Mr. Zarafshan's doctor were in support of him receiving adequate medical treatment by a 24 hour leave from the prison. The Tehran prosecutor, however, reportedly refused to give Mr. Zarafshan permission for such a leave, in contravention of Article 291 of the Criminal Procedure Code.

425. On 2 March 2005, the Special Rapporteur sent an urgent appeal concerning Mr. **Mojtaba Lotfi**, a Shia cleric in the city of Qom and an internet blogger. Mr. Lotfi was reportedly arrested in May 2004 in connection with an article he wrote on *www.naqshineh.com* concerning the respect for human rights in cases involving the clergy. He was allegedly sentenced to three years and ten months imprisonment by the Special Court for the Clergy in the city of Qom on 14 August 2004. The Appeals branch of the Special Court for the Clergy rejected his appeal on 5 February 2005. His bail was set at 1 billion Iranian rial (\$127,000).

426. On 4 March 2005, the Special Rapporteur sent a letter of allegation concerning a political activist and member of the Iran Democratic Front and of the central committee of Iran Democratic Party, **Abass Khorsandi**, who was reportedly arrested, without charge, on 26 January 2005 by three agents of the Intelligence Ministry and was held in solitary confinement in section 209 of Evin prison in Tehran, until his release on 26 February 2005. Moreover, **Nargis Adib**, a political activist and an active member of the "Democracy Scouts" [Pishahangan Democracy], was reportedly also taken away from her house on 8 February 2005 by Intelligence Ministry agents, without being informed of the reasons for her arrest, and was also detained at Evin Prison, until her release one week before this communication was sent.

427. On 7 March 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal concerning **Arash Cigarchi**, an internet blogger for *www.sigarchi.com/blog* and editor of the local daily *Gilan Emrooz*. On 17 January 2005, Arash Cigarchi 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 had reportedly had no access to a lawyer since he was arrested.

428. On 9 September 2005 the Government replied to the communication of 7 March 2005 concerning **Arash Cigarchi**. The Government stated that Mr. **Arash Cigarchi** was charged with espionage and cooperation with a hostile state and was free on bail at the time this reply was sent.

429. On 10 March 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning:

- Ms. **N.O.**, webmaster of the internet site *Tolou Azadi* (the dusk of freedom), who was pregnant at the time this communication was sent. According to information received, Ms. N.O. was arrested on 3 March 2005 by the Intelligence Services of the city of Rafсандجان. It is alleged that her husband, a webmaster of another internet site, had also been arrested before her.
- Ms. **C.K.**, Ms. **C.N.A.** and Ms. **F.H.**, arrested previously for allegedly demonstrating in front of the United Nations Office in Tehran, were brought to Court on 1st March 2005 on charges of "illegal participation in a demonstration designed to endanger state security and causing trouble to public opinion in giving interviews to the media". The Prosecutor had requested sentences from two to five years imprisonment.
- Reports also alleged that on 28 February 2005, agents of the Bassidj paramilitary organization burned down a womens' publishing company in Tehran.
- Moreover, on 28 February 2005, Security forces of the State and city of Sanandaj, summoned Ms. **D.A.**, Secretary of the Support Association for Women, for interrogation for having organized a meeting in commemoration of International Womens' Day, and other related activities regarding Women and Children's Rights in March 2004.

- Finally, reports indicated that on 27 February 2005, State Security Forces had forbidden Dr. R.T., founding member of the Kurdish Womens' Centre for Peace and Human Rights, to deliver a speech and had forbidden the Centre's activities.

430. On 14 March 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on freedom of religion or belief, sent an urgent appeal concerning Mr. **Shahrukh Ta'ef**, Mr. **Kayvan Rahimiyan**, and his wife Mrs. **Fereshteh Subhani**: three prominent Baha'is. According to information received, they were arrested on 6 March 2005 in Tehran by agents of the Intelligence agency. No reasons were given for their arrests. Their family members and other Baha'is had been unsuccessful in locating them, at the date this communication was sent. It was also reported that on the same day, early in the morning, seven or eight agents entered the home of Mr. and Mrs. Rahimiyan and ransacked their house. They took away a quantity of documents, books, printed material, a copy machine and other possessions. It was further reported that Mr. **Mehran Kawsari** was re-arrested on 8 March 2005. He had been previously arrested for distributing a letter to the President of the Republic denouncing the destruction on 2-3 February 2005 of the Baha'i cemetery of Yazd. Mr. Kawsari was sentenced to three years imprisonment. He was being held in Evin prison at the time this communication was sent. Mr. Bahram Mashhadi, another Baha'i previously detained, was also re-arrested and given a one-year sentence for the same alleged offence.

431. On 27 May 2005 the Government replied to the communication of 14 March 2005 concerning Mr. **Shahrukh Ta'ef** and Mr. **Mehran Kawsari**. The Government stated that based on information received from the Revolutionary Court of Tehran, Mr. Shahrukh Ta'ef was charged with financial corruption and legal proceedings were underway at the time this reply was sent. Concerning Mr. Mehran Kawsari, he was charged with measures against the internal security of the State. Preliminary proceedings had been carried out. He then appealed and his case was sent to Tehran Appellate Court for consideration. He refused the offer of bail and was remanded in custody at the time this reply was sent.

432. On 11 May 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on freedom of religion or belief, sent an urgent appeal concerning Mr. **Abu'l Qasem Shushtari**. According to information received, on 2 May 2005, Mr. Abu'l-Qasem Shushtari was arrested in connection with a gathering of Bahá'ís who were celebrating the First Day of Ridvan (a holy day). After an argument with officials he was taken to the Prosecutor's Office, where an order was issued for his arrest. He was being held in Evin prison without charge at the time this communication was sent.

433. On 1 July 2005 the Government replied to the communication of 11 May 2005 concerning Mr. **Abu'l Qasem Shushtari**. The Government stated that Mr. **Abu'l Qasem Shushtari**, who was charged with activities against the State and disturbing public order, was released on bail for further consideration.

434. On 16 June 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning

**Nasser Zarafshan**, a lawyer and human rights defender for whom an allegation letter has been sent on 5 December 2003 by the Special Rapporteur jointly with 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; and an urgent appeal sent on 16 February 2005 by the Special Rapporteur jointly with the Special Representative of the Secretary General on the situation of human rights defenders, and the Special Rapporteur on the question of torture. According to the allegations received, he was being detained in Evin Prison, at the time this communication was sent, suffering from a chronic kidney condition for which he required specialist treatment, which was unavailable in the prison, according to the Prison Health Section. His requests for medical leave had reportedly been blocked by the Chief Prosecutor of Tehran. He had reportedly gone on hunger strike to protest the denial of medical treatment and was in a poor condition. His lawyer was denied a visit on 15 June. Nasser Zarafshan was sentenced to five years imprisonment in March 2002, before a secret trial before a military court for his role in representing the families of two political activists murdered in November 1998 during a series of killings which came to be known as the "serial murders". Moreover, on 9 June outside Evin prison, family members and supporters of Nasser Zarafshan, included prominent human rights and political activists, were arrested by security forces for having conducted a 'sit-in' protest in solidarity with him. They were released later that day following several hours of interrogation. Several other political prisoners in Evin prison were also said to begun a hunger strike in solidarity with Nasser Zarafshan at the date this communication was sent.

435. On 16 June 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent an urgent appeal concerning Mr. **Akbar Ganji**, aged 45, a journalist and former professor at the University of Shiraz. According to the allegations received, on 11 June 2005, Akbar Ganji, who was on medical leave from Evin Prison, Tehran, since 30 May 2005 was rearrested and immediately placed in solitary confinement in Evin Prison on the order of Tehran's Chief Prosecutor. Despite statements from the Deputy Head of Tehran's Justice Department on 30 May 2005, and the Judiciary spokesperson on 7 June 2005, concerning the extension of his medical leave, he had been returned to the prison without receiving the medical treatment recommended by a specialist for his chronic asthma. Akbar Ganji's lawyer went to the prison on 12 June but was denied access to him and was told that he was not allowed visits. It is reported that Akbar Ganji had gone on hunger strike to protest the denial of medical care. Akbar Ganji was arrested in 2000 after returning from a conference he attended in Berlin on human rights in Iran, where he reportedly expressed views critical to the Iranian authorities and the Supreme Leader. In view of the allegations that Akbar Ganji was denied medical treatment, concern was expressed for his physical and mental integrity if he did not receive prompt and adequate medical treatment.

436. On 27 June 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Akbar Ganji**, detained at Evin Prison in area 240. Mr. Ganji was already the subject of an urgent appeal sent by the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Rapporteur on the

right of everyone to the enjoyment of the highest attainable standard of physical and mental health on 16 June 2005. According to information received since then, Mr. Ganji was still denied medical treatment for his severe asthmatic condition and back pains, and his health had further deteriorated. The prison clinic was not equipped to treat asthma. Moreover, the prison doctor indicated the need to take x-rays of his back, which had not been done at the time this communication was sent, since the medical facilities provide only out-patient care. Mr. Ganji, in protest of the denial of medical treatment by the prison authorities, had started a hunger strike on 20 May 2005, which he interrupted while on medical leave and had taken up again after his re-arrest on 10 June. He had since lost 17 kg. Since his return to Evin Prison on 10 June 2005, Mr. Ganji had been kept in solitary confinement. He was not allowed to have any contact even with other prisoners and to receive visits from his lawyer or family until 18 June 2005, when his lawyer obtained a special permission from the Tehran Prosecutor General's office, which permission other prisoners did not need. Afterwards his lawyer and Mr. Ganji's wife were able to visit him. Mr. Ganji was not allowed to make phone calls. He was denied access to newspapers or other sources of news at the time this communication was sent.

437. On 4 August 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Abdolfattah Soltani**, a lawyer at the Bar of Tehran, and Mrs. **SE**, a 2003 Nobel Peace Prize Laureate and Secretary General of the Defenders of Human Rights Centre. Mr. Abdolfattah Soltani was already the subject of an urgent appeal sent by Special Rapporteur on the independence of judges and lawyers on 24 January 2001. Mrs. SE was also the subject of an urgent appeal sent by the Special Rapporteur jointly with the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders on 13 January 2005, and an urgent appeal sent by the Special Rapporteur jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders on 8 December 2003. According to information received, on 30 July 2005, Mr. Abdolfattah 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 being detained at the Evin Prison in Tehran, at the time this communication was sent. Concern was expressed that Mr. Abdolfattah Soltani's arrest may have been connected to his participation in a court case concerning the death of a 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. On 30 July 2005, Mrs. SE allegedly received a message twice on her answering machine, stating that 'We have Soltani, you are next'. It was reported that Mrs. SE had also been the subject of a campaign of defamation and intimidation in the press as a result of her human rights work for the Defenders of Human Rights Centre.

438. On 22 August 2005 the Government replied to the communication of 4 August 2005 concerning **Abdolfattah Soltani**. The Government stated that Mr. **Abdolfattah Soltani** was detained pursuant to a trial filed against him by the Ministry of Intelligence. He was charged with disclosing classified information and measures threatening internal security of the State. He was in temporary detention pending due legal proceedings at the time this reply was sent.



439. On 24 August 2005, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning several human rights defenders and journalists, including Dr. **Roya Toloui**, a human rights activist defending women's rights and Iran's Kurdish minority who was also editor-in-chief of *Resan* newspaper, **Azad Zamani**, a member of the Association for the Defence of Children's Rights from Sinne, **Jalal Qavani**, a journalist, **Mahmoud Salehi**, a labour rights activist, **Ujlal Ghavami**, a journalist for the weekly *Payam-e mardom-e Kurdistan Ahti*, the Kurdish language daily newspaper and *Asou*, the Kurdish and Farsi language weekly newspaper. According to information received, on 3 August 2005, judicial officials in Sanandaj, the capital of Kurdistan, closed *Asou*. The closure of *Ahti* followed shortly. Moreover, on 2 August 2005, Dr. Roya Toloui, who had been a harsh critic of the policies of the Islamic Republic concerning the rights of women and the Kurdish minority, and whose organization the Association of Kurdish Women for the Defence of Peace and Human Rights had been refused legal status, was detained by the police in Sanandaj and had not been given the right to receive visits. She was being charged with endangering national security, at the time this communication was sent. Moreover, Ujlal Ghavami, Azad Zamani, Jalal Qavani, and Mahmoud Salehi were also arrested. The Association for the Defence of Children's Rights had been very active in publicly raising concerns about the administration of criminal cases of minors and had also expressed opposition to the cruel, inhuman and degrading punishment reportedly imposed on children. Furthermore, the managing director for *Payam-e mardom-e Kurdistan Mohammad Sadegh Kabovand* was summoned to appear before the Sanandaj court on 4 August 2005. Concern was expressed that Dr. Roya Toloui, Ujlal Ghavami, Azad Zamani, Jalal Qavani, and Mahmoud Salehi were arrested because of their work in defending human rights, particularly women's and children's rights.

440. On 31 August 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning **Hojjatoleslam Ezimi Qedimi**, an ethnic Azeri Muslim cleric from Verziqan, close to Tabriz. According to information received, on 5 August 2005 in Tabriz, he was arrested by security forces for participating in a celebration commemorating the anniversary of the 1906 Constitution. The charges brought against him were those of leading an illegal gathering, giving an interview for the *Shams-e Tabriz* website, giving an interview to *Ana Yurdu* television station, opposing the Islamic Republic, for contempt of court, aiding and setting up the distribution and publication of a book called 'Rasul' and misleading young religious students in the city of Qom. Hojjatoleslam Ezimi Qedimi was being detained in Tabriz, at the time this communication was sent.

441. On 11 October 2005, the Special Rapporteur, jointly with the Special Rapporteur on freedom of religion or belief, sent an urgent appeal concerning the **situation of Baha'is in Iran** in August and September 2005. According to the allegations received, on 19 August 2005 Mr. **Davar Nabilzadeh** was arrested in the city of Mashhad. On 14 September 2005, Mrs. **Sima Rahmanian Leghaee**, Mr. **Changiz Derakhshanian** and Mrs. **Mina Hamran** were arrested in the city of Ghaem Shahr. On 21 September 2005, Mr. **Misagh Laghaee**, Mr. **Shahin Sanaee** and Miss **Mahvand Laghaee** were arrested in the city of Babol Sar. Mrs. **Soheila Motallebi** and Mr. **Foad Naemi** were arrested in Sari on 20 and 28 August 2005 respectively. It was feared that they were arrested because of their religious beliefs. All of them were still in custody at the date this communication was sent, except for Mr. Derakhshanian, who was released on bail on 17 September 2005, Mrs. Soheila Motallebi and Mr. Foad Naemi,

who were released on 19 September 2005. On 5 September 2005, the court in Karaj sentenced four Bahá'ís, Ms. Nasim Ashrafi, Mr. Pooya Movahhed, Ms. Nasim Naderi, and Mr. Emad Sharghi to ten months imprisonment on the charge of opposition to the Islamic Republic of Iran. This charge was verbally conveyed to the Bahá'ís. When they asked for a written document, the court refused to issue one. The sentence was under appeal at the time this communication was sent. On 5 September 2005, the homes of nine Baha'is, Mr. Farshid Dadvar, Mr. Ezzatollah Khorram, Mr. Ahmad Naeemi, Mr. Majid Ghane, Mr. Azizollah Khordadi, Mr. Farrokh Shadpour, Mrs. Ashraf Yavari, Mr. Amrollh Sarafraz, and Mr. Behnam Rohani Fard nine Bahá'ís in the city of Yazd were searched, and their books, along with their computers, tapes, videos and CDs confiscated.

442. On 8 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the question of torture sent an urgent appeal concerning **Grand Ayatollah Yasub al-Din Rastgari**, a religious leader and scholar, of Qom in Iran. According to the allegations, on 27 April 2004, he was arrested in Qom for publishing a book on religious history titled "The reality of religious unity". His two sons were also arrested and the company that published the book was closed down. It remained unclear what the criminal charges, trial and subsequent sentencing of Ayatollah Rastgari were. It was reported that he was secretly sentenced to four years imprisonment by the Special Court for the Clergy. Ayatollah Rastgari was being held in incommunicado detention at the time this communication was sent and his relatives had not been informed of his whereabouts. He was also reported to be in poor health, suffering from diabetes and heart disease.

443. On 7 December 2005, the Special Rapporteur, jointly with the Special Rapporteur on freedom of religion or belief, sent a letter of allegation concerning the statement made by Ayatollah Ahmad Jannati about non-Muslims, a parliamentarian and member of the Zoroastrian religious minority. According to information received, on 20 November 2005, Ayatollah Ahmad Jannati was reported to have described non-Muslims as sinful animals at a ceremony in north-eastern Iran. As a result, Kurosh Niknam had been charged with slander and summoned to appear before the Revolutionary Tribunal.

444. On 9 December 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture, sent an urgent appeal concerning **Firouz Abou Farhan**, also known as Nasr Daraji, a poet, **Abdulali Douraghi**, **Karim Douraghi** and **Eshaghi**. According to information received, they, all members of Iran's Arab minority, were reportedly arrested on 6 November 2005 after demonstrations to mark the 'Id al-Fitr' celebration. They were believed to be held incommunicado at an unknown location and were therefore at risk of torture or ill-treatment, at the time this communication was sent. Firouz Abou Farhan, a poet and supporter of rights for the Arab minority, had apparently helped to organize the demonstrations in Ahvaz City, the capital of Khuzestan province, and was filmed during the demonstration by the Iranian authorities. It was alleged that his friends later warned him to flee as he was on a "wanted" list. He went into hiding, but returned to his home late in the night of 6 November, to visit his aging parents and get some clean clothing. He found that his house had been raided by the police and he was arrested at approximately 3:00 AM. The police also reportedly beat his mother, who was aged about 65 and suffering from diabetes, when she asked why her son was being arrested and where he was being taken.

445. On 14 December 2005 the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Abdolfattah Soltani**, a lawyer at the Bar of Tehran and founding member of the Defenders of Human Rights Centre (DHRC). Abdolfattah Soltani was the subject of an urgent appeal sent by the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on the situation of human rights defenders on 4 August 2005, to which the Government replied on 22 August 2005. According to the new information received, on 3 December 2005, Abdolfattah Soltani had his preliminary detention period extended by three months. It was reported that the investigating judge in the case had recommended that he be released on bail. The Tehran Prosecutor, who had issued the arrest warrant against Abdolfattah Soltani, subsequently replaced the investigating judge, leading to the extended detention period in Evin prison, Tehran. Concern was expressed that the prolonged detention of Mr. Abdolfattah Soltani constituted an attempt to prevent him from carrying out his human rights work. Prior to his arrest Mr. Soltani had questioned the role of the Prosecutor in the death of Ms. Zahra Kazemi who the Commission of the Majlis had concluded died as a result of violent interrogation in Evin prison.

#### **Follow-up to previously transmitted communications**

446. On 24 May 2005, the Government of the Islamic Republic of Iran replied to the Special Rapporteur's letter of 5 October 2004, concerning Mr. **Mostafa Sabti** and "**Gorgan-e-Emrooz**". The Government informed the Special Rapporteur that Mr. M. Sabti had been charged and convicted of disseminating false information regarding the Judiciary and publishing materials banned from public distribution by the Supreme Council of National Security. He had been sentenced to three months of prison and four months suspended sentence, and the verdict had been upheld by the Supreme Court and carried out.

447. On 24 May 2005, the Government of the Islamic Republic of Iran replied to the Special Rapporteur's letter of 5 October 2004, regarding the "**No Andish**" weekly. The Government informed the Special Rapporteur that according to the local judiciary authority of Khorasan Province, the "**No Andish**" weekly, had been charged with dissemination of false information, and, according to Articles 697 & 698 of the Islamic Penal Code and articles 43 and 35 of the Press law, had been banned for 1 year and its editor-in-chief and concerned journalist fined 5 million rials.

448. On 22 September 2005 the Government replied to the communication sent on 9 December 2004 concerning the situation of Ms. **Fereshteh Ghazi**. The Government informed the Special Rapporteur that both Ms. **Ghazi** and Ms. **Mahboobeh Abbasgholozadeh** had been released.

#### **Observations**

449. The Special Rapporteur thanks the Government for its replies to his communications of 5 October 2004 (two communications), 22 September 2004, 12 January, 7 March, 14 March, 11 May and 4 August 2005.

450. The Special Rapporteur regrets that no replies to his communications of 13 January, 16 February, 2 March, 4 March, 10 March, 4 May, 16 June (two communications), 27 June, 15 August, 24 August, 31 August, 11 October and 8 November 2005 were received.
451. The Special Rapporteur looks forward to receiving replies to his communications dated 8 November, 7 December, 9 December and 14 December 2005.
452. Regarding the communications dated 16 February 2005, 16 June 2005 (two communications) and 27 June 2005, the Special Rapporteur received further information indicating that **Nasser Zarafshan** and **Akbar Ganji** were both permitted a temporary release for medical treatment. The Special Rapporteur welcomes this decision but remains concerned at the compatibility of the legal basis of their arrests with the right to freedom of opinion and expression, particularly pursuant to Article 19 of the International Covenant on Civil and Political Rights, as ratified by the Government in 1975.
453. Regarding the communication of 31 August 2005, the Special Rapporteur received further information indicating that **Hojjatoleslam Ezimi Qedimi** was released on bail pending trial against him.
454. The Special Rapporteur, whilst thanking the Government for its replies to the aforementioned communications, would like to raise his concerns at, what he deems, as the inadequacy of the information provided in these replies, particularly in that they do not necessarily reply to the issues and questions raised in the communications sent. In particular, the Special Rapporteur emphasizes the need to be provided with information concerning the grounds of arrest of the persons concerned in the communications and the compatibility of these grounds with the Government's national and international obligations concerning the right to freedom of opinion and expression pursuant to the International Covenant on Civil and Political Rights, as ratified by the Government in 1975.
455. Moreover, in view of the allegations concerned in the communications sent to the Government in 2005, the Special Rapporteur deems it appropriate to call to the Government's attention the Commission on Human Rights' concern as expressed in resolution 2005/38, that violations of the right to freedom of opinion and expression continue to occur, often with impunity, including extrajudicial killings, arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence and of discrimination, including gender-based violence and discrimination, increased abuse of legal provisions on defamation and criminal libel as well as on surveillance, search and seizure, and censorship, against persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers, Internet users and human rights defenders. In this context the Commission defined as unlawful those restrictions to the right to freedom of opinion and expression which are incompatible with paragraph 3 of article 19 of the International Covenant on Civil and Political Rights, including on i. discussions of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of

opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups; ii. the free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship; and iii. access to or use of information and communication technologies, including radio, television and the Internet.

### Iraq

456. On 21 February 2005, the Special Rapporteur sent a letter of allegation concerning **Abdel Hussein Khazaal**, a correspondent for the television station Al-Hurra, who was fatally shot outside his home in the city of Basra on 9 February 2005, together with his **three-year-old son Mohammed**. Mr. Khazaal, a member of the Shiite party Dawa, was also the head of the press department of the Basra City Council. He had been in exile during Saddam Hussein's regime.

457. On 8 April 2005, the Special Rapporteur sent an urgent appeal concerning **Marie Jeanne Ion** and **Sorin Dumitru Miscoci**, Romanian reporter and cameraman respectively, for the Romanian television station *Prima TV*; and **Ovidiu Ohannesian**, a journalist for the privately-owned daily newspaper *Romania Libera*. According to information received, on 28 March 2005, the three journalists were kidnapped at an unknown place in Iraq. This following interviews they had just conducted with the Iraqi interim Prime Minister Ayad Allawi. They were also planning on interviewing President Ghazi al-Yawar. Florence Aubenat, a French journalist for the French daily newspaper *Libération* and Ovidiu Ohannesian, her Iraqi interpreter, had also been kidnapped on 5 January 2005. The Special Rapporteur urged the authorities to carry out the necessary investigations and bring to justice those responsible.

458. On 26 April 2005, the Special Rapporteur sent a letter of allegation concerning **Shamal Abdallah Assad**, a Kurdish journalist working for the local Kurdish television station *Kirkuk TV* and satellite TV *Kurdstat* of President Jalal Talabani's Patriotic Union of Kurdistan. According to information received, on 15 April 2005, gunmen driving in a Nissan Primera shot Shamal Abdallah Assad dead while he was driving down the main street in Kirkuk, 250 km north of Baghdad.

459. On 21 July 2005 the Government replied to the communication of 26 April 2005 concerning **Shamal Abdallah Assad**. The Government stated that it did not find any registered case concerning Mr. Shamal Abdallah Assad.

460. On 11 May 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Rebwar Arif**, the secretary of the *International Federation of Iraqi Refugees*. According to the allegations received, on 5th May 2005, he was arrested by members of the Asayish, or security forces, following a speech he gave the previous day at a students' demonstration in Sulaimaniya, in which he spoke critically of the Patriotic Union of Kurdistan (PUK). He was taken to the Asayish headquarters and was being held incommunicado at the time this communication was sent.

461. On 4 August 2005, the Special Rapporteur sent a letter of allegation concerning **Mr. Steven Vincent**, a journalist and author, who was killed by unidentified gunmen in the outskirts of the city of Basra on 2 August 2005. According to the allegations received, Mr. Vincent and his Iraqi translator, Ms. Nour Weidi, were abducted by five men in a police car. Vincent's bullet-riddled body was found several hours later on the side of a highway leading out of the city. His translator was found seriously wounded and was rushed to a local hospital in critical condition. Vincent had been in Basra for months carrying out research for a book about the city and reporting for major American publications. He was also investigating the deaths of some former Baath party members in Basra.

462. On 2 September 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning **Abraham Al-Mashadani**, an Iraqi freelance cameraman and photographer working for *Reuters* in Ramadi. According to information received, on 8 August 2005, he was arrested by US troops after images of US troops were found on his videos, cameras and desktop computer. The spokesman for the US detainee operations in Iraq stated that Mr. Abraham Al-Mashadani would not be able to receive visitors for the first 60 days of his detention, including his family or a lawyer. No justification for his arrest had been provided. Mr. Abraham Al-Mashadani was being detained at Abu Ghraib at the date this communication was sent.

463. On 16 September 2005, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent a letter of allegation concerning the fatal shooting of **Waleed Khaled**, a TV soundman working for *Reuters*, based in Samawa. According to information received, on 28 August 2005 a *Reuters* TV crew, consisting of Waleed Khaled and the cameraman Haider Khadem, went to the site of a terrorist attack that had resulted in the death of two Iraqi policemen in the Hay-al-Adil district of West Baghdad. Upon arrival at the scene, a United States military sniper standing on the roof of a shopping centre opened fire on him, hitting him fatally once in the head and four times in the chest. Mr. Khadem was slightly wounded and immediately arrested by U.S. forces. A U.S. military statement said that "U.S. Task Force Baghdad units responded to a terrorist attack on an Iraqi Police convoy. (...) One civilian was killed and another was wounded by small-arms fire during the attack."

464. On 27 September 2005, the Special Rapporteur sent a letter of allegation concerning **Firas Maadidi**, the chief for Mosul bureau for the newspaper *As-Saffir* and chief editor of the local daily *Al-Masar*. According to information received, on Tuesday 20 September 2005 in the al-Noor neighbourhood of Slayhe Jowiree in Mosul, Mr. Maadidi was killed outside his home by unidentified gunmen. He was immediately taken to hospital where he died four hours later. The death of Mr. Maadidi brought to three the number of journalists killed in Iraq in the four days preceding the sending of this communication, two of whom were both affiliated with the newspaper *As-Saffir*. *As-Saffir*, which is based in Baghdad, has a strong pro-democracy editorial position and ran a campaign on the importance of the new constitution and the then upcoming general elections. It is also critical of insurgent attacks against Iraqi civilians, calling them terrorist operations. Moreover, on Saturday 17 September 2005, Ms. **Hind Ismail**, a reporter for *As-Saffir*, was killed in Mosul's southern suburb of al-Muthana. Her body was found with a

single bullet wound to the head. **Fakher Haider**, an Iraqi journalist who worked for *The New York Times*, was abducted on Sunday 18 September 2005 from his home in Basra. His body was found on Monday in Basra's southwestern al-Kiblah neighborhood with at least one gunshot to the head and his hands tied behind his back. Concern was expressed that the three journalists were targeted because of their work.

465. On 30 September 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning **violence against women and girls, women human rights defenders and political leaders**. According to information received, female political leaders and women campaigning to protect women's rights had been threatened and killed by members of armed group identifying themselves, on many occasions, as Islamic extremists targeting women for their activities in defence of women's rights. In January and February 2004, Mrs. **Y.M.** the Chairperson for the **Organisation of Women's Freedom in Iraq**, OWFI received death threats by e-mail from an Islamist group known as the army of Sahaba. Similarly, **A.S.**, the manager for the US-funded women's centre in Karbala, resigned as a result of repeated death threats against her. On 9 March 2004, US lawyer and civilian employee of the Coalition Provisional Authority (CPA) **F.H.** as well as **S.O.**, her Iraqi assistant, were both killed in an armed attack. Mrs. F.H was very active in supporting US-funded women's rights projects in the governorates of Babil, Karbala and Najaf. She was also involved in setting up women's centres in Hilla and Karbala. Furthermore, on 20 November 2004, **A.M.**, a women's rights activist, co-founder of the Advisory Committee for Women's Affairs in Iraq and the Independent Iraqi Women's Assembly as well as adviser at the Ministry of Municipalities and Public Affairs, was killed together with her secretary, bodyguard and driver in Baghdad. Moreover, **A.H.**, who was one of the three female members in the Iraqi Governing Council (IGC) was killed in September 2003. Her attackers were reportedly armed men opposed to the US-led occupation. **R.K.**, another IGC member received death threats for opposing proposed amendments to the Personal Status Law. Moreover, on 29 March 2004, former Minister of Public Works, **N.M.B.**, who was also the only woman in the cabinet, was attacked. She survived the attack, but two of her body guards were killed. Finally, **L.A.K.**, a member of former Prime Minister Iyad Allawi's political party, was killed upon returning home following a meeting of the National Assembly. Moreover, women and girls, including non-Muslims, are increasingly under pressure, often violent such as being subjected to acid attacks, to wear a veil or headscarf and to wear the traditional abaya. Justification for these attacks is based on the reasoning that when a woman or a girl does not wear a veil or the abaya, she is going against Muslim traditions and should be punished. This has led to a reduction in the number of girls and women attending schools and universities. The Ministry of Higher Education and Scientific Research has reportedly been informed of 3000 cases of women and girls who had requested a postponement of their studies as a result of the security situation linked to this matter. This, together with the general increase in insecurity in the country, has also drastically led to the restriction of women's freedom of movement and their ability or willingness to participate in public life, particularly in education, employment and political decision-making. The prohibition of deciding about one's choice of clothes also leads to a violation of the right to freedom of expression. Women and girls have also reportedly been subjected to sexual threats by members of the US forces, including at check points and during house searches, for example. Moreover, women and girls have allegedly been

beaten, subjected to humiliating treatment, held for long periods in solitary confinements, and sexually abused while in detention by US forces. Rape and killing by criminal gangs, extremist religious groups and armed opposition groups has also increased. Domestic violence continued to be very common and according to article 41.1 of the Penal Code of 1969, which was still in force at the time this communication was sent, a husband who 'disciplines' his wife was exempt from criminal liability. Moreover, most victims of domestic violence have no access to medical treatment. Such violence, including forced marriages and sexual abuse, has also led to the increase in suicides and self-immolations, as well as killings. In northern Iraq, the practices of Jin be Jin (exchanging one woman for another) had contributed to the high incidence of forced marriages. Honour killings and mutilations are also condoned in Iraqi legislation. The law allows the mitigation of punishment for perpetrators found guilty of these crimes. Finally, the continued use of female genital mutilation continues to be reported in the northern region of Iraq. Gender discrimination in Iraq's laws further exacerbates and entrenches the persistence of violence against women.

466. On 16 December 2005 the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent an urgent appeal regarding Mr. **Kamal Sayid Qadir**. According to information received, Kamal Sayid Qadir, an Iraqi Kurd writer with Austrian citizenship, had allegedly been detained incommunicado, at the time this communication was sent, since 26 October 2005. Qadir, who lived in Vienna, was on a visit to Iraqi Kurdistan at the time of his arrest. He was arrested in the city of Erbil by Kurdistan Democratic Party (KDP) intelligence agents reportedly in connection with articles that he had previously published on the Internet criticizing KDP authorities and the political leadership of the Kurdish territories of Iraq. Official sources of the KDP abroad confirmed that Qadir was being held by the Kurdistan authorities in Erbil and was being investigated for "slander, personal harassment and threats" of prominent elected politicians. Qadir had allegedly been ill-treated in detention and was in poor health.

#### **Follow-up to previously transmitted communications**

467. On 18 May 2005 the Government replied to the communication of 4 November 2004 concerning the murder of **Likaa Abdul Al-Razaq**, an announcer, and her driver by unknown assailants on a motorway on 27 October 2004. The Government informed the Special Rapporteur that a kalashnikoff rifle, a gun, a mobile phone set and a sum of money had been found, and that an investigation had been initiated under the supervision of the Al-Bayaa investigation court headed by the investigation judge. The investigation was still going on at the time this reply was received.

#### **Observations**

468. The Special Rapporteur thanks the Government for its replies to his communications dated 4 November 2004 and 26 April 2005. He welcomes the Government's initiation of the investigation into the death of **Likaa Abdul Al-Razaq** and her driver and wishes to be kept informed of any developments and outcome of the investigations into the incident.



469. The Special Rapporteur regrets that no replies were received to his communications of 21 February, 8 April, 11 May, 4 August, 2 September, 16 September, 27 September and 30 September 2005 at the time this report was finalized. He looks forward to receiving a reply to his communication dated 16 December 2005.

470. The Special Rapporteur remains gravely concerned at numerous of attacks against journalists, as reflected in his communications of 21 February, 8 April, 26 April and 27 September 2005, concerning **Abdel Hussein Khazaal** and his **son Mohammed; Marie Jeanne Ion, Sorin Dumitru Miscoci** and **Ovidiu Ohannesian; Shamal Abdallah Assad; Firas Maadidi, Hind Ismail** and **Fakher Haider**, respectively. The Special Rapporteur urges the authorities to take all necessary measures to ensure that journalists can work freely and independently in a secure environment. He furthermore urges the authorities to carry out thorough investigations into the threats, attacks, murders and kidnappings of all journalists.

471. With regard to his communication dated 11 May 2005 concerning **Rebwar Arif**, the Special Rapporteur received further information from another source indicating that Rebwar Arif was released without charge on 10 May 2005 and returned to his home in Sulaimaniya, northern Iraq. The Special Rapporteur welcomes the reported release, and looks forward to receiving information on the legal basis for his arrest and detention from the Government.

472. Regarding his communications dated 2 September 2005 concerning **Abraham Al-Mashadani**, without making any determination of the facts and circumstances of the cases, the Special Rapporteur wishes to draw the Government's attention to Principle 3 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, which provides that, in time of public emergency which threatens the life of the country and the existence of which is officially and lawfully proclaimed in accordance with both national and international law, a state may impose restrictions on freedom of expression and information but only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law.

473. Regarding the communication dated 30 September 2005, in light of reports documenting serious allegations of violence being perpetrated against women in Iraq, the Special Rapporteur encourages the Government to establish a safer climate which allows women to be able to participate freely in public life, and in so doing to have their rights and freedoms equally respected. The Special Rapporteur, moreover, encourages the Government to exercise due diligence in investigating and punishing those responsible for carrying out acts of violence against women and in preventing the recurrence of these acts in compliance with, amongst others, the Declaration on the Elimination of Discrimination against Women. The Special Rapporteur also deems it appropriate to make reference to article 7 of the Convention on the Elimination of all Forms of Discrimination against Women which explicitly provides for the promotion and protection of women in freely participating in public matters -states agreed to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure to women, on equal terms with men, the right (..) to participate in non-governmental organizations and associations concerned with the public and political life of the country.

474. With regard to the communication dated 16 December 2005 concerning **Kamal Sayid Qadir**, the Special Rapporteur received further information indicating that he was sentenced to 30 years imprisonment for defamation on 19 December 2005 after a trial at the State Security Court in the city of Arbil. The charges reportedly arose from two articles he had published on the internet, criticizing the leadership of the Kurdistan Democratic Party (KDP). He appealed. Reports indicate that he has started a hunger strike while still in detention. Without making any determination of the facts and circumstances of the case, and pending the Government's reply, the Special Rapporteur deems it appropriate to refer to the principles enunciated in, inter alia, Resolution 2005/38 of the Commission on Human Rights, which provides that the authorities should not resort to criminal laws and punishment for media related offences as these are deemed disproportionate to the gravity of the offence and are incompatible with international human rights law.

### Israel

475. On 12 January 2005, the Special Rapporteur sent an urgent appeal concerning Mr. **Majdi al-Arabid**, a Palestinian cameraman working for Israel's *Channel 10 TV*. According to information received, on 2 January 2005, Majdi al-Arabid was shot in the stomach when he and reporter Sholmi Eldar, his colleague, were in Beit Hanoun in the northern Gaza Strip. They were reporting on Israel Defense Forces, IDF, operations against Palestinians suspected of military actions against Israel. It appears that despite the fact that there had been shooting in the area that same morning, it had been quiet when the incident happened and both journalists had been there for at least 10 minutes with their equipment clearly in view before Majdi al-Arabid was shot. Majdi al-Arabid was also reported to have waved his microphone to make clear that they were journalists when he was, nevertheless, shot. It was reported that the shooting came from a roof where three soldiers from the IDF were standing. Al-Arabid was sent to a local hospital and was reported to be severely injured. The IDF, having declared that they were not responsible, stated that they were investigating the incident, at the time this communication was sent.

476. On 24 May 2005, the Special Rapporteur sent an urgent appeal concerning **Riyad Muhammad Yassin Barnat**, a Palestinian construction worker and farmer; **Alian Ibrahim Ahmad Abu Rahmeh**, a Palestinian school-bus driver; and **numerous Palestinian and Israeli demonstrators**. According to information received, on 28 April 2005 in Bil'in, a village in the West Bank, members of the Israel armed forces arrested them while they were taking part in a peaceful demonstration: 500 Palestinian villagers and around 200 Israeli peace activists participated in the demonstration to protest the ongoing construction of the wall the Israel army was building through the West Bank. The wall reportedly cuts their villages off from most of its agricultural land, depriving farmers of their source of livelihood. Despite the fact that the demonstrators informed the Israeli troops through loudspeakers and in Hebrew, that the march was strictly peaceful, Israeli forces used tear gas, fired rock salt projectiles at the demonstrators pushing and shoving some of them leaving several injured, and arresting Riyad Muhammad Yassin Barnat and Alian Ibrahim Ahmad Abu Rahmeh, as well as four Israeli demonstrators, as they were heading in the direction of the wall. It was reported that the four Israelis had been subsequently released, and Riyad Muhammad Yassin Barnat and Alian Ibrahim Ahmad Abu Rahmeh were to be released once the demonstration ended, according to Israeli army commander. However, instead of being released, they were taken to a police station in a nearby Israeli settlement of Pisgat Ze'ev and were later transferred to the detention centre at 'Ofer

military base. They were accused of assaulting members of the security forces. Sources and eye-witnesses present at the demonstration claimed that the demonstrators did not use violence against the Israeli forces, whereas Israeli members of the security forces used unwarranted force against the demonstrators. On 19 May 2005, a military judge ordered their release on bail. However, they remained in custody at the time this communication was sent, since the military prosecution announced its intention to appeal the judge's decision.

477. On 7 June 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Ziyad Muhammad Shehadeh Hmeidan**, a staff member of *Al Haq*, an affiliate organization of the International Commission of Jurists which conducts research and advocacy works on human rights. According to information received, on 23 May 2005, Ziyad Muhammad Shehadeh Hmeidan was arrested at around 16.30, 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. It was reported that 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 has been detained since May 27, 2005. No charges were filed against him, but Israeli security officials reportedly indicated that there was a file against him. It had 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 2 June, 2005, a lawyer tried to visit Mr. Hmeidan in Moscobiyya, but was denied access.

478. On 1 July 2005, the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Ziyad Muhammad Shehadeh Hmeidan**, human rights defender and fieldworker for Al-Haq, a Palestinian NGO. Ziyad Muhammad Shehadeh Hmeidan was the subject of an urgent appeal sent by the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 7 June 2005. According to new information received, on 16 June 2005, Ziyad Muhammad Shehadeh Hmeidan was placed under administrative detention for a period of six months by the Moscobiyya 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 Ziyad Muhammad Shehadeh Hmeidan might be held in administrative detention solely on account of his human rights work with the Palestinian NGO, Al-Haq.

479. On 11 July 2005 the Government replied to the communications of 7 June and 1 July 2005 concerning Mr. **Ziyad Muhammad Shehadeh Hmeidan**. The Government stated 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 were and would continue to be in conformity with the law. Furthermore, Mr. Ziyad Muhammad Shehadeh Hmeidan had had access to a lawyer since 5 June 2005.

480. On 26 July 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning Mr. **Khalil Abu Shammala**, the Director of the Al Dammeer Association, a Palestinian human rights NGO. According to information received, on 23 June 2005, Mr. Khalil Abu Shammala was on his way to Cairo to provide testimony before the United Nations Special Committee to Investigate Israeli Practices when Israeli security forces prevented him from passing through the Rafah international crossing point and held him for seven hours. He was finally informed that he was not allowed to travel without being given any reasons. Concern was expressed that this restriction of Mr. Abu Shammala's movement represented a means to obstruct his human rights activities. According to the information received, it was the third time that Mr. Abu Shammala was prevented from traveling through Rafah international crossing point, which is the only access point to leave Gaza Strip. Previously on 11 and 13 March 2005, the Israeli security prevented him from attending an NGO workshop. It was reported that Mr. Abu Shammala, who works on prisoners' issues, was permanently banned from leaving the Gaza Strip and had not been able to travel abroad for over a year.

481. On 10 November 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Nabil Al Mazzawi**, an *Al Jazeera* cameraman. According to information received, on 4 November 2005, in Bil'in, near the West Bank city of Ramallah, he was beaten by Israeli soldiers and subsequently detained for several hours for having filmed a demonstration at the Israeli-built separation barrier. An Israeli spokesman claims that Mr. Al Mazzawi had attacked a border guard. *Al Jazeera* footage, however, shows that this is untrue. This footage also shows that the Israeli soldiers surrounded the dozen peaceful Palestinian and international demonstrators at the foot of the separation barrier at Bil'in, north of Ramallah, to bring an end to their demonstration. It was reported that weekly demonstrations had taken place in the village of Bil'in almost every Friday since February 2005 with Palestinian, Israeli and international individuals peacefully demonstrating side by side against the construction of the separation barrier.

482. On 28 December 2005, the Permanent Mission of Israel replied to the Special Rapporteur's communication dated 10 November 2005 regarding Mr. **Nabil Al-Mazzawi**. The Permanent Mission informed the Special Rapporteur that the communication had been transferred to the appropriate authorities in Israel.

483. On 29 November 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Ziyad Muhammad Shehadeh Hmeidan**, human rights defender and fieldworker for Al-Haq, a Palestinian NGO. Ziyad Muhammad Shehadeh Hmeidan had already been the subject of an urgent appeal sent by the Special Rapporteur jointly with the Special Rapporteur on the independence of judges and lawyers, and the Special Representative of the

Secretary-General on the situation of human rights defenders on 1 July 2005; and an urgent appeal sent by the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 7 June 2005, to which the Government responded on 11 July 2005. According to the new information received, on 14 November 2005, Ziyad Muhammad Shehadeh Hmeidan was informed by the Israeli authorities that his administrative detention, which was due to be completed on 23 November 2005, was being renewed for another six months. It was reported that no formal charges had been brought against Ziyad Muhammad Shehadeh Hmeidan since his arrest on 23 May 2005, nor had he been informed of the reasons for his detention, at the date this communication was sent.

### **Observations**

484. The Special Rapporteur thanks the Government for its replies dated 7 June, 1 July and 10 November 2005.

485. The Special Rapporteur regrets no replies to his communications dated 12 January, 24 May, 26 July and 29 November 2005 were received at the date this report was finalized.

486. Regarding the communication dated 12 January 2005, concerning **Majdi al-Arabid**, without making any determination of the facts and circumstance of the case and pending the Government's reply, the Special Rapporteur would appreciate being kept informed of the outcome of the investigations and of any prosecutions in this regard.

487. With regard to his communications dated 7 June, 1 July and 29 November 2005, all concerning **Ziyad Muhammad Shehadeh Hmeidan**, while taking note of the Government's explanation that Mr. Hmeidan was being held on suspicion of involvement in terrorist activities, the Special Rapporteur remains concerned, on the basis of information received, that he might be held in administrative detention solely on account of his human rights work with the Palestinian NGO, Al-Haq. The Special Rapporteur would appreciate being informed of the legal basis of his detention and on how this is compatible with the Government's obligations under the International Covenant on Civil and Political Rights, particularly Article 19, which the Government ratified in 1991. The Special Rapporteur also deems it appropriate to make reference to Resolution 2005/38 by the Commission on Human Rights, which calls upon States to take utmost precaution in ensuring that counter-terrorism is not arbitrarily used as a pretext to restrict the right to freedom of opinion and expression in ways that are contrary to their obligations under international law.

488. With regard to his communication dated 24 May and 10 November 2005, without making any determination of the facts and circumstances, and pending the Government's reply, the Special Rapporteur remains seriously concerned at reports that Israeli soldiers or border police continue to prohibit the holding of peaceful demonstrations, held every week, against the construction of the wall, by arresting and detaining the demonstrators, sometimes using tear gas, stun grenades, firing rubber coated bullets and new types of ammunition such as pepper balls and blue sponges. In this context, the Special Rapporteur deems it appropriate to draw the

Government's attention to the Resolution 2005/38 by the Commission on Human Rights, which calls upon States to refrain from imposing restrictions which are not consistent with paragraph 3, article 19 of the International Covenant on Civil and Political Rights, including on (...) peaceful demonstrations or political activities, including for peace or democracy. The Special Rapporteur would appreciate being informed of the legal basis for prohibiting the holding of the reported peaceful demonstrations concerned.

489. Finally, regarding the communication dated 26 July 2005, without making any determination on the facts and circumstance of the case, and pending the Government's reply, the Special Rapporteur deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 9, which state that everyone has the right individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and to unhindered access to and communication with non-governmental and intergovernmental organizations.

### Italy

490. Le 3 Juin 2005, le Rapporteur Spécial a envoyé une lettre d'allégation concernant le 25 mai 2005, suite à la publication dans le quotidien *Corriere Della Sera* d'un article intitulé « Irak, le pistolet italien de la guérilla. Le mystère du fantôme Beretta ». Le ministère public de Milan aurait entendu pendant plus d'une heure l'auteur de l'article, **Nunzia Vallini**, ainsi que **Gianluca Di Feo**, rédacteur en chef de *Corriere Della Sera*. La Brigade financière de Milan s'aurait ensuite présentée au siège du quotidien, en compagnie d'un magistrat muni d'un mandat de perquisition signé par le procureur de la République de Brescia. Ils auraient procédé à l'inspection des ordinateurs, des bureaux et des documents des journalistes de la rubrique faits-divers du quotidien. Cette perquisition visait à déterminer les sources de la journaliste lui ayant fourni les informations mentionnées dans son article et à identifier d'éventuelles « fuites » dans le cadre de l'instruction menée par les procureurs de Brescia sur le dossier d'une entreprise italienne qui fabriquerait des armes légères apparemment utilisés par les membres du groupe terroriste Al-Qaïda.

491. Le 2 aout 2005 le gouvernement a répondu à la communication de 3 juin 2005 concernant les perquisitions effectuées dans les locaux du « *Corriere della Sera* ». Le gouvernement informe le Rapporteur Spécial qu'en date du 25 mai 2005 le quotidien italien « *Il Corriere della Sera* » de Milan a publié un article signé par Nunzia Vellini, portant le titre « Iraq, pistolets italiens à la guérilla – le mystère des Beretta fantômes » dans lequel on reportait que, d'après des sources militaires des Etats-Unis d'Amérique, « les hommes de la guérilla » en Iraq disposaient de plusieurs milliers des pistolets de la marque italienne Beretta ayant son siège à Gardone Valtrempia dans la province de Brescia de modèle récent et avec des numéros d'immatriculation effacés. Le Parquet auprès du Tribunal de Brescia, dans le cadre d'une procédure ouverte précédemment pour évaluer l'éventuelle existence de délits liés à la vente illégale d'armes, a, par conséquent, disposé une perquisition dans les locaux du quotidien mentionné, dans le but d'une part d'obtenir d'ultérieurs renseignements en plus de ceux déjà obtenus pour les enquêtes, et d'autre par de vérifier la violation du secret d'instruction. Pour la même raison le Parquet mentionné a délégué des organes de police judiciaire pour obtenir des renseignements par Nunzia Vallini, journaliste signataire de l'article et Gianluca Di Feo, qui, en

qualité de Rédacteur en Chef, avait modifié, avant sa publication, le projet d'écrit qui lui avait été envoyé. Au moment que cette réponse a été envoyée, les enquêtes étaient dans l'attente des résultats d'une rogatoire demandée auprès du Royaume Uni de Grande- Bretagne. Aucune plainte concernant l'épisode n'était en suspens.

### Observations

492. Le Rapporteur spécial remercie le gouvernement pour la réponse à sa communication du 3 juin 2005.

### Kazakhstan

493. On 11 May 2005, the Special Rapporteur sent an urgent appeal regarding the independent opposition weekly newspaper *Respublika*. According to information received, on 4 May 2005, the Appeals Court upheld the 25 March 2005 decision of the Almaty regional court, which had ordered the liquidation of *Respublika*'s owner – the Bastau company. Subsequently, on 5 May 2005, the Ministry of Information, Culture and Sport ordered the closure of *Respublika*, despite the fact that the newspaper had two weeks within which to appeal the decision. The ruling against *Respublika* followed the publication on 20 January 2005 of an interview with the leader of the liberal Democratic Party (LDPR), in which interview he criticized Kazakhstan's policies towards Russia. The authorities found the article to be a violation of the integrity of the Republic of Kazakhstan.

494. On 6 July 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Lutfullo Shamsuddinov** and **six of his family members**. Mr. Lutfullo Shamsuddinov is a member of the Human Rights Society of Uzbekistan, an organization which monitors human rights violations in Uzbekistan. According to the information received, Lutfullo Shamsuddinov and his relatives were arrested on 4 July 2005 in Almaty, Kazakhstan, by members of the Kazakhstani Police, following a request by the Uzbek authorities to extradite him. His family members were later released. The Uzbek authorities were, at the moment this communication was sent, reportedly seeking his extradition on the grounds that he participated in the protests in Andijan on 13 May. He was charged with five offences, including, premeditated aggravated murder, which carries a possible death sentence. Mr. Shamsuddinov fled to Kazakhstan on 25 May 2005, after the 13 May events in Andijan, Uzbekistan, and was registered at UNHCR on 27 May 2005. On 24 June 2005, he and his six dependents were recognized as mandate refugees, after a thorough refugee status determination process. UNHCR submitted their case to a third government for urgent resettlement and information received provided that a third government was willing, in principle, to accept the request. Concerns were expressed that Mr. Shamsuddinov was being targeted for his work as a human rights defender in particular his monitoring of and reporting on the protests that took place in Andijan in May 2005.

495. On 15 November 2005, the Special Rapporteur sent a letter of allegation concerning *Svoboda Slova*, an opposition newspaper, **Kaziz Toguzbayev**, a journalist working for *Azat* newspaper, as well as **Azamat Dospanov** and **Kazhymurat Abilkaliyev**, a volunteer and assistant to the editor of *Altyn Gasyr* newspaper, an Atyrau based opposition newspaper which is

published in both Russian and Kazakh. Its editor in chief is also a well-known member of the opposition who also leads the political movement 'For a just Kazakhstan'. According to information received, on 22 October 2005 the Almaty Inter-district Administrative Court decided that Gulzhan Yergaliyeva, editor-in-chief of "Svoboda Slova" newspaper was to pay 50 "monthly calculated indexes" (approximately US\$ 360). This decision, based on article 100 of the Administrative Code concerning the distribution of information about candidates and political parties known to be false, was based on allegations by the Chairman of the Almaty City Elections Committee claiming that the paper had insulted the honour and the dignity of the President. On the same basis, on 19 October 2005, Almaty police seized 50,000 copies of *Svoboda Slova* after having stopped a car that was transporting copies of the newspaper to the Dauyr printing press. This was reportedly done on the basis of a document signed by the Almaty City Election Commission Chairman, where the newspaper's owner and editor-in-chief were accused of distributing falsehoods. According to article 20 of the Law on Mass Media, it is only the courts which have the authority to decide on such action to be taken by the police. Furthermore, on 22 October 2005, the **Juma Times**, another opposition newspaper, was also fined 40 "monthly calculated indexes" (approximately US\$ 290) for insulting the honour and dignity of the President. Mrs. Yergaliyeva stated that she received a formal summons to appear in court only the evening before the hearing was to start and she and her editor were not allowed to study the case documents and to speak in court. The trial against Juma Times lasted 30 minutes, during which no attorney or witnesses were present. Moreover, according to information received, on 10 October 2005, police arrested Kaziz Toguzbayev while he was covering a demonstration by members and supporters of the Alga Party's Youth League. Despite having shown the police his press credentials, dictaphone and camera, he was arrested and detained for three hours. He was then re-arrested on 12 October 2005 and detained for five days before being released on 17 October 2005. Finally, on 13 September 2005, four unidentified persons attacked Azamat Dospanov, as he was driving the car Altyn Gasyr uses to distribute its copies, leaving him with head and back injuries. Finally, on 27 August 2005, in Geolog, Atyrau region, Kazhymjrat Abilkaliyev, was assaulted by four unidentified men, while distributing copies of the newspaper.

496. On 23 November 2005, the Special Rapporteur sent a letter of allegation concerning Mr. **Zamanbek Nurkadilov**, 61, a former public official who, after having served the Government from 1989 to 2004, when he was dismissed, became a prominent critic of the present Kazakh Government. According to the information received, on 12 November 2005, he was shot three times and killed at his home. Reports claim that Mr. Nurkadilov was dismissed from his post with the Government shortly after having criticized President Nazarbayev of ruling the country with 'Ceausescu-like authoritarianism.' Furthermore, earlier in the year, a Kazakh court found Mr. Nurkadilov guilty of slandering the President; Mr. Nurkadilov had stated that the President was responsible for the death of an independent journalist. Mr. Nurkadilov had also claimed to be in the possession of documents purporting to show that President Nazarbayev was corrupt and was involved in the embezzlement of state funds. He had also publicly called for the President's resignation. The Special Rapporteur had received information that the investigation into the murder of Mr. Nurkadilov had been placed under President Nazarbayev's control. In view of Mr. Nurkadilov's pronounced and sustained opposition to President Nazarbayev, concern was expressed that a thorough and independent investigation into his killing might have not, therefore, been possible.



## Observations

497. The Special Rapporteur regrets not having received any replies to his communications sent during 2005.

498. Concerning the communication of 11 May 2005, the Special Rapporteur, pending a reply from the Government and without making any determination as to the facts of the case, expresses deep concern at the closure of *Respublika*, particularly in light of the fundamental need for a variety of independent sources of information prior to the presidential elections that took place on 4 December 2005. Moreover, the Special Rapporteur wishes to remind the authorities that sanctions related to freedom of opinion and expression need to be strictly proportionate to the harm allegedly caused and not be prohibitive. Moreover, the Special Rapporteur deems it appropriate to make reference to the fundamental principle that, while noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, States should refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on, the free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship.

499. Concerning the communication of 6 July 2005, pending a reply from the Government and without making any determination as to the facts of the case, the Special Rapporteur deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

500. Concerning the communication of 14 November 2005, pending a reply from the Government and without making any determination as to the facts of the case, the Special Rapporteur urges the Government to refrain from adopting criminal laws and punishments to media related offences, and also wishes to reiterate the principle enunciated, inter alia, in the Commission of Human Rights Resolution 2005/38 urging States to respect freedom of expression in the media and broadcasting, in particular the editorial independence of the media.

501. Concerning the communication of 23 November 2005, the Special Rapporteur, pending a reply from the Government and without making any determination as to the facts of the case, wishes to reiterate the principles enunciated inter alia in Commission of Human Rights Resolution 2005/38, urging States to ensure that victims of violations of these rights have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

## Kyrgyzstan

502. On 1 March 2005, the Special Rapporteur sent a letter of allegation concerning *Radio Free Europe/Radio Liberty*, known as *Radio Azattyk* and *The Media Support Centre*, the country's only independent printing house which prints the Kyrgyzstan's major independent and opposition newspaper. According to information received, on 25 February 2005, a state broadcast regulator closed down *Radio Free Europe/Radio Liberty* reportedly due to an upcoming auction for the station's frequency set for 10 March 2005. It is reported that the radio normally signs an annual contract by submitting documents for renewal of its contract which, that year, it did on 8 February 2005. Moreover, on 22 February 2005, authorities cut *The Media Support Centre*'s electricity reportedly for not having proper documents. Concern was expressed that actions taken against *Radio Free Europe/Radio Liberty* and *The Media Support Centre* were connected with the politically sensitive parliamentary elections which took place on 27 February 2005.

503. On 20 June 2005 the Government of Kyrgyzstan replied to the communication of 1 March 2005. The Government informed the Special Rapporteur that the Ministry of Internal Affairs and the National Security Service of the Kyrgyz Republic have no information about the closure of broadcasting of Radio Free Europe/Radio Liberty, known as Radio Azattyk.

### Observations

504. The Special Rapporteur thanks the Government for its reply to the communication dated 1 March 2005.

## Lao People's Democratic Republic

### Follow-up to previously transmitted communications

505. On 21 April 2004, the Government replied to the Special Rapporteur's letter of 11 March 2004 concerning the death threats allegedly made by local authorities in the Sanamsay province of Attopeu, to **Christian believers** to give up their faith. The Government informed the Special Rapporteur that upon verification, these accusations had been found to be false and groundless. Moreover, the Government stated that the right of all Lao people of all ethnic groups to believe or not in any religion was fully guaranteed by the Constitution, and nobody had the right to threaten another on the basis of his/her religious belief. Furthermore, the Government referred to the existence of 245 Churches, (with over 375 clergymen), and the more than 140,000 Christian believers in the country as evidence of the ability of all religious communities in Lao to practice their faith freely, provided this is done in accordance with the law.

### Observations

506. The Special Rapporteur thanks the Government for its reply to his communication dated 11 March 2004. He welcomes the Government's guarantee of support for the exercise of all people of all ethnic groups of the right to freedom of religion, which is intrinsically linked to the right to freedom of opinion and expression, as provided in Resolution 2005/38 of the Commission on Human Rights.

## Lebanon

507. On 4 March 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning Dr. **Muhamad Mugraby**, a human rights lawyer and Chairman and co-founder of *Multi-Initiative on Rights: Search, Assist and Defend (MIRSAD)*, who had already been the subject of a previous communication sent by the Special Rapporteur jointly with the Representative of the Secretary-General on the situation of human rights defenders on 13 August 2003. According to information received, on 24 February 2005, the chief Public Prosecutor opened a file on Dr. Muhamad Mugraby. On 26 February 2005, he was arrested and detained in Beirut by the forces of the Sûreté Générale. He was accused of "assaulting the standing of the state"; although there is reportedly no provision for this charge in the Lebanese Penal Code. He was later transferred to a special unit, where he was interrogated by detectives reporting to the General Public Prosecutor and the Minister for Justice. During the interrogation, numerous references were made to a testimony he had given before the Mashrek Committee of the European Parliament in Brussels on 4 November 2003, in which he recounted the details of his arbitrary detention in August 2003 and exposed the alleged corrupt nature of the judicial system in Lebanon. He also urged the international community to support activists working to establish a modern and independent judicial system. He was released the same day, after spending some ten hours in detention. In 2004, attempts to prosecute him in connection with the same incident had failed in the face of intense opposition from the European Commission. According to additional information received, on 28 February 2005, Dr Muhamad Mugraby was scheduled to fly out of Beirut International Airport. However, he was again detained by officials, and although released shortly afterwards, he missed his flight. The Special Rapporteur had expressed concern that Dr. Muhamad Mugraby was being targeted in connection with his activities in defense of human rights, in particular, his work in exposing cases of institutional repression and human rights violation.

508. Par lettre datée 26 Mai 2005, le Gouvernement a répondu à la communication du 4 mars 2005 concernant la situation de Dr. **Muhamad Mugraby**. Le Gouvernement a confirmé que Dr. **Mugraby** a été appréhendé le 26 février 2005, et conduit devant une autorité judiciaire pour être entendu au sujet des supposés actes illégaux qu'il avait commis. Le même jour, un mandat de dépôt a été délivré contre lui par le Procureur général près la Cour de cassation. Le 18 mars 2005, le dossier de Dr. Mugraby a été transféré au Bureau du Procureur général près la Cour de cassation à Beyrouth et au délégué du Gouvernement auprès du Tribunal militaire, pour l'ouverture d'une procédure concernant les présumés infractions commises, sachant que certaines sont du ressort de la justice militaire alors que d'autres relèvent des tribunaux ordinaires. Selon l'information reçue, toutes ces mesures ont été prises conformément aux règles juridiques applicables en la matière.

509. Le 9 juin 2005 le Rapporteur spécial a envoyé une lettre d'allégation concernant **Samir Kassir**, éditorialiste du quotidien *An-Nahar*, correspondant de la chaîne internationale francophone *TV5*, écrivain et historien, collaborateur au mensuel français *Le Monde diplomatique* et membre fondateur du mouvement d'opposition *Gauche démocratique*. Samir Kassir aurait décédé le 2 juin 2005 dans l'explosion de sa voiture piégée dans le quartier d'Achrafieh de la capitale Beyrouth. M. Kassir. Le Rapporteur spécial a exprimé ses

préoccupations que M. Kassir aurait pu être visé en connection avec son travail notamment ses positions contre la présence de l'armée syrienne au Liban, et pour ses dénonciations de la politique en ce moment du Gouvernement libanais.

510. Le 7 décembre 2005, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur l'indépendance des juges et des avocats, et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de Me **Muhamad Mugraby**, avocat défenseur des droits de l'homme, âgé de 65 ans. Me Muhamad Mugraby a 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 nouvelles informations reçues, Me Muhamad Mugraby aurait été appelé à comparaître devant une cour de justice militaire le 9 janvier 2006, pour avoir diffamé les militaires libanais. Les charges se rapporteraient au témoignage qu'il aurait donné devant une Délégation Interparlementaire, à l'invitation du Parlement européen, en novembre de 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. Son cas aurait été, au moment que cette communication a été envoyée, toujours à l'examen. Le 26 février 2002, Me Mugraby aurait 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 aurait 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'aurait pas demandé l'autorisation de la BAB pour intenter son action civile contre la BAB. Me Mugraby aurait fait appel de cette décision.

511. Le 14 décembre 2005 le Rapporteur spécial a envoyé une lettre d'allégation concernant l'assassinat du 12 décembre 2005 de **Gibran Tueni**, journaliste et propriétaire du quotidien *Al-Nahar* et député libanais. M. Tueni et au moins trois personnes d'autres auront été tuées, et dix autres blessées, par une attaque à la voiture piégée à Mkalles. Avant son assassinat, le journaliste aurait passé plusieurs semaines à l'étranger après avoir reçu des menaces de mort. Selon les informations reçues, ce dernier attentat aurait pu être lié à sa volonté d'intimider la Presse libanaise à la veille de la présentation d'un nouveau rapport intermédiaire de la commission des Nations Unies qui enquêta sur l'assassinat de l'ancien premier ministre Rafik Hariri en février 2005. Deux autres journalistes auront été victimes d'attaques: Samir Kassir, tué en juin et May Chidiac, grièvement blessée en septembre 2005.

## Observations

512. Le Rapporteur spécial remercie le gouvernement pour sa réponse du 4 mars 2005. Le Rapporteur spécial souhaiterait recevoir plus d'information concernant les 'supposés actes illégaux que Dr. **Muhamad Mugraby** aurait commis,' comme mentionnés dans la réponse du gouvernement. Dans l'attente de cette réponse et la réponse à sa communication de 7 décembre 2005 mais sans préjuger des faits examinés, le Rapporteur spécial reste inquiet et il souhaiterait rappeler au gouvernement la Déclaration sur le droit et la responsabilité des

individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 1 et 2 qui stipulent que chacun a le droit, individuellement ou en association avec d'autres, de promouvoir la protection et la réalisation des droits de l'homme et des libertés fondamentales aux niveaux national et international.

513. Le Rapporteur spécial regrette de ne pas avoir reçu une réponse à ses communications du 9 juin, 7 décembre et 14 décembre 2005. Dans l'attente de ces réponses, le Rapporteur souhaiterait attirer l'attention du Gouvernement à la Résolution 2005 /38 de la Commission de Droits de l'Homme qui a invité tout les Etats à ... c) veiller à ce que les victimes de violations de droit à la liberté d'opinion et d'expression disposent d'un recours efficace, à enquêter effectivement sur les menaces et les actes de violence, y compris les actes terroristes, dirigés contre des journalistes, notamment dans des situations de conflit armé, et à en traduire les auteurs en justice afin de lutter contre l'impunité.

### **Libyan Arab Jamahiriya**

514. On 10 June 2005, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent a letter of allegation concerning **Daif al-Ghazal al-Shuhaibi**, 31, a journalist who wrote for the UK-based newspaper *Libya Today*, and member of the Journalists and Editors' Syndicate in Libya. According to information received, on 2 June 2005 his dead body was found in Kanfouda, in the eastern city of Benghazi. The autopsy report referred to extensive signs of torture and a gunshot to the head; most of his fingers were severed and his body was covered with bruises and stab wounds. Daif al-Ghazal al-Shuhaibi had been reported missing since midnight 21 May 2005 when he was kidnapped by two armed men claiming to be state security officers. His friend, who was with him when the men arrested Daif al-Ghazal al-Shuhaibi, was unharmed. The authorities were, at the time this communication was sent, conducting investigations. Security officers, who had been questioned by the Benghazi Prosecutor's Office, denied having arrested Mr. Daif al-Ghazal al-Shuhaibi. Several other people were being questioned. According to reports received, Daif al-Ghazal al-Shuhaibi had published articles on *Libya Today* which were very critical of Libya's Governing Party the Movement of Revolutionary Committee (MRC), particularly an article he published on 16 May 2005, where he reiterated that he had documents concerning corruption in Libya, which documents he would soon be making public. Moreover, he had worked with the MRC for ten years; he had also worked for the MRC-controlled newspaper, *Al-Zahf Al-Akhdar* (The Green March) for four years before leaving because of what he believed was widespread corruption within the MRC. In 2004 Daif al-Ghazal al-Shuhaibi had issued an appeal to intellectuals in Libya to form a civil society committee against corruption; this never materialized. Concern was expressed that the killing of Daif al-Ghazal al-Shuhaibi could have been directly connected to his work as a journalist and to the manifestation of his right to freedom of opinion and expression, especially since he reported having received many threats following the publication of his article on 16 May 2005.

515. On 9 November 2005, the Special Rapporteur sent a letter of allegation concerning **Abd al-Raziq al-Mansouri**, 52, an internet journalist. According to information received, on 19 October 2005, a court in Tripoli convicted him to one and a half years in prison. Mr. Mansouri was arrested on 12 January 2005 in Tobruk and was held in incommunicado detention for four months. He had his first contact with his family on 28 May 2005 and the trial

against him commenced in late Summer. Upon arrest, Internal Security agents confiscated his computer, papers, floppy and compact discs. Once at the Internal Security Agency's headquarters in Tobruk, he was questioned about articles he had written. In May, Mr. Mansouri was still unaware of any charges brought against him. He was then charged with illegally possessing a handgun. The gun was found at his home during a second search carried out separately after all the documents related to his work as a journalist had been confiscated. According to Mr. Mansouri, the gun had belonged to his father. In handing down the one and a half years sentence against him, the court refused to take into consideration the time he had already spent in pre-trial detention. Concern was expressed that the arrest, detention and conviction of Mr. Mansouri's was aimed at silencing his opinions and views and was directly linked with the approximately 50 articles and commentaries he wrote for a UK-based website [www.akbar-libya.com](http://www.akbar-libya.com), which articles were critical of the Government and Libyan society.

### Observations

516. The Special Rapporteur regrets not having received a reply from the Government to his communications of 10 June 2005 and 9 November 2005.

517. Regarding the death of journalist, **Daif al-Ghazal al-Shuhaibi** and the arrest and conviction of **Abd al-Raziq al-Mansouri**, the Special Rapporteur, pending a reply from the Government and without making any determination as to the facts of the case, expresses his grave concern that these two incidents may be related to the journalistic work of the two individuals, and in particular to their alleged criticisms of the Government. The Special Rapporteur urges the Government to uphold and respect the right "*to seek, receive and impart information and ideas through any media and regardless of frontiers*", contained *inter alia* in Article 19 of the Universal Declaration of Human Rights and, with regards to the killing of Daif al-Ghazal al-Shuhaibi, to carry out thorough investigations and to bring to justice those responsible.

### Madagascar

518. Le 4 mars 2005, le Rapporteur spécial a envoyé un appel urgent concernant la situation de **Lola Rasoamaharo**, directrice de publication du quotidien indépendant '*La Gazette de la Grande Ile*.' Selon les informations reçues, le 1 mars 2005, Mme. Lola Rasoamaharo aurait été condamnée à plusieurs peines de prison ferme dans trois différentes affaires de diffamation. Au moment que cette communication a été envoyée, elle était en attente du verdict en appel. Dans un premier cas, Lola Rasoamaharo aurait été condamnée à deux mois de prison ferme et à une amende de 3,000,000 d'ariary (environ \$1570) pour diffamation et injures par voie de presse à l'encontre du vice-président de l'Assemblée Nationale. Ce processus aurait fait suite à un article du 19 janvier 2005 concernant une insulte que le vice-président aurait lancé au directeur de la rédaction de *La Gazette de la Grande Ile*. Dans une deuxième affaire, Lola Rasoamaharo aurait été condamnée à deux mois de prison ferme et au paiement d'un ariary symbolique pour des allégations par voie de presse, portant gravement atteinte à son honneur, à sa considération et à sa crédibilité. **Rolly Mercia**, son rédacteur en chef, aurait également été condamné à un mois de prison avec sursis. De plus, Lola Rasoamaharo aurait été condamnée à un mois de prison ferme et à 1,000,000 d'ariary (environ \$525) de dommages et intérêts pour diffamation publique. Le

Rapporteur spécial avait exprimé son inquiétude par rapport à la sanction d'emprisonnement pour une question touchant sur la liberté d'opinion et d'expression, et pour d'autres journaux comme *Le Quotidien*, *Ngah* et *Madagascar-Tribune*, qui attendaient aussi de comparaître devant les tribunaux.

519. Le 4 octobre 2005 le gouvernement a répondu à la communication 4 mars 2005. Le gouvernement informe qu'après vérification auprès des juridictions qui ont statué sur les dossiers de **Madame Lola Rasoamaharo**, il est ressorti que elle aurait été effectivement impliqué et jugé dans cinq (5) dossiers de diffamation. Le Gouvernement a rappelé au Rapporteur spécial que lesdits dossiers devaient encore passer en appel au courant de juillet et d'août 2005 et les peines prononcées étaient encore susceptibles de réformation.

### Observations

520. Le Rapporteur spécial remercie le gouvernement pour sa réponse du 4 mars 2005. Le Rapporteur spécial souhaiterait être tenu au courant des résultats de l'appel, mais il reste inquiet, qu'en premier lieu, les autorités ont fait recours aux peines d'emprisonnement pour des actes concernant les médias. A cet égard, il souhaiterait appeler l'attention du Gouvernement sur le principe de proportionnalité de la peine. Des sanctions pénales, en particulier l'emprisonnement pour diffamation, ne semble pas proportionnel à un exercice effectif du droit à la liberté d'opinion et d'expression. Ce principe est réitéré par la Résolution 2005 /38 de la Commission de Droits de l'Homme qui a invité tous les Etats a ... j) ne pas recourir, pour des infractions concernant des médias, à des peines d'emprisonnement ou à des amendes qui sont sans commune mesure avec la gravité de ces infractions et qui violent le droit international relatif aux droits de l'homme.

### Malaysia

521. On 4 March 2005, the Special Rapporteur sent an urgent appeal concerning **Jeff Ooi**, a Malaysian blogger, who was reportedly under investigation for a posting on his Screenshots blog [www.jeffooi.com](http://www.jeffooi.com). According to information received, on 28 February 2005, Jeff Ooi was reportedly questioned by police for two hours. He was allegedly being investigated under Section 298A of the Penal Code relating to acts fostering religious disunity, an article which in 1987 was declared by the Malaysian Supreme Court to be unconstitutional. Jeff Ooi was nevertheless facing from two to five years imprisonment if found guilty under this article. It was furthermore reported that Jeff Ooi was, in 2004, threatened with detention under the Internal Security Act (ISA) which allows for imprisonment without trial for up to two years, and also with sedition under the Sedition Act in connection with his activities on the internet.

522. On 30 June 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning a **gathering of citizens of Myanmar**. According to information received, on 16 June 2005 outside the embassy of Myanmar in Jalan Ampang, Kuala Lumpur, a large crowd of dissidents carried out a peaceful demonstration in protest of the continued detention of opposition leader Aung San Suu Kyi. The protestors also called for the democratization of Myanmar. It is reported that approximately 64 of the protestors were arrested and were, at the time this communication was sent, being detained at the Jalan Pudu detention centre. It was feared that, in addition to being charged with illegal assembly, they might also have been charged with illegal

entry in Malaysia under the Immigration Act, and therefore risked being sent back to Myanmar. UNHCR confirmed that 38 of the persons arrested, including three women, were registered with it. According to police sources, 64 persons were arrested, 60 of whom had refugee status.

### Observations

523. The Special Rapporteur regrets not having received a reply to his communications of 4 March 2005, and 30 June 2005.

524. Regarding the communication of 4 March, pending a reply from the Government and without making any determination as to the facts of the case, the Special Rapporteur expresses his concern that the investigations undergoing against Jeff Ooi violated the right to freedom of opinion and expression, particularly when the charges were based on a law which was declared unconstitutional. The Special Rapporteur looks forward to receiving a reply to this communication and to being informed of the outcome of the charges brought against Mr. Ooi.

525. Concerning the communication of 30 June 2005, the Special Rapporteur, pending a reply from the Government and without making any determination as to the facts of the case, wishes to reiterate the fundamental principle that, while noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, States should refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on discussion of government policies and political debate, reporting on human rights, government activities and corruption in government, peaceful demonstrations or political activities, including for peace or democracy, and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

### Maldives

526. On 8 July 2005, the Special Rapporteur, jointly with the Special Rapporteur on freedom of religion or belief, and Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **a statement by the Supreme Council for Islamic Affairs banning people from possessing the Universal Declaration of Human Rights**. According to the information received, on 4 July 2005, the Supreme Council for Islamic Affairs issued a press release stating that the Universal Declaration, and in particular its article 18, contradicts the Constitution of the Maldives and the Islamic faith. Moreover, the aforementioned Supreme Council prohibited people from acquiring copies being given out by the National Human Rights Institution. In addition, the Council made the following statement: *“As no Maldivian wishes to practice another religion but Islam we have banned people from possessing the Declaration that is being distributed by the Commission”*. Following the press release, the National Human Rights Commission (NHCR) stopped the distribution of the Universal Declaration. Concern was expressed that this statement aimed at preventing the NHCR from carrying out its human rights activities in particular to raise awareness about religious freedom by distributing the UDHR.



527. On 11 July 2005 the Government replied to the communication of 8 July 2005. The Government provided the Special Rapporteur with the Media Release issued by the Government of Maldives on 11 July 2005 pending the official reply of the Government. The Media Release provided that the Government stated its support for the Universal Declaration on Human Rights and that the Supreme Council on Islamic Affairs was not mandated with interpreting the Constitution. The Press release stated moreover that the Supreme Council had not invoked Clause 4.a of Law number 4/75 which provided the legal authority to ban specified items so that there was no legal effect to the announcement on the Universal Declaration made by the Supreme Council. The Government asserted that the Universal Declaration on Human Rights asserts customary international law and also incorporates values and virtues that Islam had asserted as fundamental to human dignity centuries before the UN passed the Universal Declaration on Human Rights in 1948. Finally that although there are certain provisions that may be inconsistent with Muslim personal law, the objective of the Universal Declaration on Human Rights, which is to protect and promote human rights is fully endorsed by the Government. Moreover on 31 August 2005, the Government provided more information to the letter sent by the Special Rapporteur. The Deputy Minister of Foreign Affairs confirmed that the pronouncement of the Supreme Council had no legal effect. Moreover, the Government informed the Supreme Council to desist from making such pronouncements without prior consultation with the concerned authorities.

528. On 18 August 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning several **members of the newly established opposition party The Maldivian Democratic Party (MDP) and other pro-democracy activists**, as well as **a number of journalists**, including MDP chairperson **Mohamed Nasheed**, MDP Caretaker Committee member **Mohamed Ziyad**, former Minister and former Secretary General for the MDP **Ibrahim Hussein Zaki**, and MDP activist and journalist for opposition newspapers **Shuaib Ali**. According to the information received, on 12 August 2005, in Malé's main public square, Independence Square, several hundred pro-democracy activists including MDP members, among whom Mohamed Nasheed, **Ahmed Abbas**, Ms. **Latheefa Umar**, Ms. **Jennifer Latheef** who is also a documentary film-maker and free expression activist, **Ahmed Mohamed Fomy**, and **Ali Riyaz** were arrested during a peaceful demonstration held in commemoration of the anniversary of the mass arrests of opposition leaders and pro-democracy activists of 12 and 13 August 2004 in Malé. They were taken to the Dhoonidhoo interrogation centre, located on a small island near Malé. Several persons, including Ms. Latheefa Umar, Aminath Shareef and Ali Riyaz, were reportedly severely beaten by the police at the time of arrest and had to be taken to hospital for treatment of the injuries they sustained. The families of the persons concerned were not given any information concerning the reasons of the arrests and no right to visit the detainees was provided. Ms. Latheefa Umar was released on bail on 14 August 2005 after having been reportedly severely mistreated in detention and forced to sign a paper stating that she would not leave the island. Ms. Jennifer Latheef was also released on 14 August 2005. Moreover, in the days following the 12 August 2005 demonstration on Independence Square, the authorities proceeded with the arrest of other MDP party members and supporters as well as pro-democracy activists; many of these persons were arrested at their homes.

529. The following cases were reported to the Special Rapporteur:

- i. On 13 August, 2005 at approximately 0800 a.m., MDP Council Member **Mohamed Ziyad**, was arrested at his home and taken away from Malé by the police. The police also raided his house. His family has not been informed of his whereabouts. He remained in detention at the time this communication was sent.
- ii. At approximately 0630 a.m. on 13 August 2005, a group of police officers in riot gear entered the house of Shuaib Ali, handcuffed him and took him away in a police vehicle. When his wife asked to know the reasons for her husband's arrest and his whereabouts, the police requested that she make her complaints in writing. Mr. Ali remained in detention at the time this communication was sent.
- iii. MDP activist, **Ali Shiyam** was also arrested at his home by police officers at approximately 0730 a.m. on 13 August 2005. His family was not informed of the reasons for his arrest or of his whereabouts. The police did not answer any of the questions raised by his brother on Mr. Shiyam's whereabouts and of his right to be visited. He remained in detention at the time this communication was sent.
- iv. On 12 August 2005, MDP member Ms. **Aminath Shareef** was arrested at her home and handcuffed by ten police officers. No reasons were provided for her arrest. Her sister received a phone call from the police informing her that Ms. Shareef was in police custody. Eyewitnesses claim that she was beaten with batons by the police at the time of her arrest. She remained in detention at the time this communication was sent.
- v. On 13 August 2005 at approximately 21:15 p.m., **Ibrahim Rasheed**, the managing director of the state-owned weekly Adduvas, was arrested close to his house by police officers who beat him and then took him away in a police vehicle. His family had not been informed of the reasons for his arrest or of his whereabouts.
- vi. MDP activist, **Mohamed Asim** was arrested at his house on 13 August 2005 by police officers. No reasons were given for his arrest. He remained in detention at the time this communication was sent.
- vii. On 13 August 2005, MDP activist Mr. **Mohammed Areef** was also arrested. He remained in detention at the time this communication was sent.
- viii. **Ismail Shahail**, former bodyguard to the President, was arrested at his home on 13 August 2005. He was released.
- ix. **Abdullah Shabeer** was arrested on 13 August 2005 and was being detained at Dhoonidhoo interrogation centre at the time this communication was sent.
- x. Mr. **Abdullah Majeed** was arrested on 12 August 2005 from Haruge, which is the principal opposition party meeting place. He remained in detention at the time this communication was sent.

- xi. **Mohammed Hamdhan Zaki**, the son of an MDP council member was arrested on 15 August 2005. He remained under house arrest at the time this communication was sent.
- xii. The authorities were also looking for **Sirshan Zahir**, cameraman who filmed the arrest of the opposition leader on 12 August 2005. 15 masked men had been watching his house from 0300 a.m. every day.
- xiii. MDP activists **Ahmen Abbas, Dhadharaa Naseem, Ahmed Mohammed, Hassan Zahir, Mohammed Yoosuf, Mohammed Saizan, Abdul Lateef, Ahmed Zaki, Imad Solih, Rilwan Shareef, Mohammed Waseem, Hussain Rasheed**, and the following persons associated with the MDP Deputy Chairperson, **Abdul Majid, Rilwan Abdul Muhusin, and Mohamed Faizan**, were all arrested between 12 and 15 August 2005, and remained in detention at the time this communication was sent.

530. It is reported that over 140 persons, including those mentioned above, remained in detention, at the time this communication was sent, in connection with political opposition activities. Concern was expressed that the persons concerned were arrested and detained for the expression of their political views and for associating themselves with political opposition parties and activities. In view of the allegations that many of them remained in detention at undisclosed locations or otherwise without access to legal counsel or their families, fear was expressed that they might have been at risk of torture or other forms of ill-treatment. This concern was heightened by reports of beatings and other ill-treatment inflicted upon some of the arrestees.

531. On 23 August 2005 the Government replied to the communication of 18 August 2005. The Government stated that the persons concerned were arrested on suspicion of instigating public disorder and violence. Moreover, Mr. **Mohammed Nasheed** was charged by the Attorney General on 22 August 2005. The Government assured the Special Rapporteur that all detainees were well treated and that the ICRC and the Human Rights Commission of Maldives had been provided with access to the detainees. The Government stated that the disturbances of 12 – 14 August were not spontaneous but resulted from a sustained period of agitation and incitement by opposition elements, chiefly members of the Maldivian Democratic Party. The Government stated that the police used minimal force to disperse the crowds that kept meeting and creating agitation for ten nights in a row. Then, following a public notice issued by the Home Ministry explaining that public gatherings that had not been approved as required by law would be liable to dispersal if they caused public disorder; senior members of MDP appeared at Jumhooree Maidhaan and urged their supporters to go there. The crowd refused to disperse after being requested to do so by the police and at around 16:00 a group of some 300 people joined the gathering and began physically attacking the police, as a result of which 38 persons were arrested including Mr. **Nasheed** and Mr. **Abbas**, the latter having the previous week been charged with inciting violence. The three minors and three women who were among the detainees, as well as two other adults were released the following morning. The mobs which were eventually dispersed by the police continued to roam the streets of Male creating disturbances and unrest and chanting 'kill, kill'. They also gathered outside Government offices and attempted to attack the buildings. One of the groups broke down the gate of the state television station and stormed into the premises throwing large stones at the building.

Furthermore, the police conducted a search of the MDP camp premises and uncovered a large cache of sharp weapons including metal batons and wooden clubs. Upon carrying out another search on the premises, the police found that more steel rods were being made, as a result of which on 13 August, the tent at Dhufini Hiya was dismantled and the premises closed down. Nevertheless, the headquarters of MDP remained open. On the evening of 13 August 2005, a mob gathered outside the tent at Dhufini Hiya and demanded that they be allowed to enter the premises, after which they physically assaulted the security personnel, as well as caused major disruptions and some damages to homes and shops in the area. The security personnel did not manage to calm the crowd, despite urging them to disperse peacefully. Finally they used tear gas and water cannons to disperse the crowds after repeated warnings. Order was fully restored at around midnight across the capital, and no injuries amongst the public were reported. 21 persons were arrested on 13 August. The NSS arrested some more people as they carried out further investigations, and released them as soon as the interrogations were completed. The total number of persons in police custody at the time this reply was sent was 102. The police voiced their concern at reports they received that further violence was being planned for 14 August. That evening violence broke out again on the streets of Male, and the crowd threw petrol bombs and flaming petrol-soaked tennis balls at the security personnel who were trying to maintain public order as well as at bystanders. Extensive damage was caused to public and private property. Minors were also part of the violent crowds. The total number of arrests made throughout the disturbances was 185. 83 were since released and 102 remained in detention at the time this reply was sent. Seven protestors were injured and were treated in hospital. A number of security personnel were also injured. There were no street disturbances on the evening of the 15<sup>th</sup> August. The authorities requested the people, however, to remain indoors after midnight. The Government believes that the people instigating the violence belonged to the opposition. The investigations into these incidents were ongoing at the time this reply was sent.

532. On 4 October 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning *Minivian*, the only independent newspaper and the biggest selling newspaper in the Maldives. According to information received, once it was granted a licence to publish in July 2005, *Minivian* has been subjected to repeated acts of hostility against the newspaper itself and members of its staff by the authorities. In particular, on 28 April 2005, **Paul Roberts**, who works for *Minivian* online, was not allowed to enter the Maldives on the grounds of having links to Islamic terrorists. It is however reported that no charges were brought against him on this account and he was never arrested in relation to these accusations. In March 2005, Mr. Roberts had conducted a number of interviews in the Maldives on the current political situation, including a phone interview with the then Chief Government Spokesperson and now Foreign Minister Dr. Ahmed Shaheed. It is reported that other British nationals including a human rights activist, **David Hardingham**, founder of Friends of Maldives and trustee of the British charity Maldives Aid and **Jude Laing**, a lawyer working for the opposition Maldivian Democratic Party (MDP) were also prevented from entering the territory. This happened two days before the return from exile of the MDP leader Mohammed Nasheed. Moreover, in August, a number of journalists working for *Minivian*, including *Minivian*'s editor and human rights activist, **Aminath Najeeb** and reporters **Hussein Nazeer** and **Nazim Sattar**, were called to the police station in relation to a police investigation regarding an article published in the newspaper on 2 August 2005. It is reported that the article had quoted an MDP members saying that 'what we should do to those in the Star Force (police) who beat us, is to seek them out individually and

for us to act in such a manner that makes them feel that beatings result in pain, otherwise they will not be subdued'. The police informed the three journalists that criminal action could be taken against them for publishing the article since it "incited violence". On 13 August 2005, **Shuaib Ali** a journalist who also works for *Minivian*, was arrested and held in solitary confinement until 12 September 2005. He was charged with fabricating weapons made of iron and wood. He was then released because there was not enough evidence against him. On 15 August 2005, *Minivian*'s printers received repeated anonymous phone calls threatening them with arson if they continued to print *Minivian*. The printers then refused to print *Minivian*, so that it was then decided to print the newspaper on photocopy machines at the *Minivian* offices themselves. There had been no investigations into the threats. On 4 September 2005, **Imran Zahir**, a *Minivian* photographer, was arrested while taking photos of the police who forcefully entered the hall where an opposition MDP rally was taking place and removed their loud speaker system. He was, at the time this communication was sent, being detained for allegedly obstructing the police from their duty and engaging in violent activities. Mr. Zahir remained in detention, at the time this communication was sent, and it is reported that he had been subjected to beatings by the police. On 20 September 2005, other newspapers in the Maldives announced that the editor of *Minivian*, Aminath Najeeb, its sub-editor, Ahmed Nazim Sattar, Hussein Nazeer, **Abdulla Saeed**, **Hidayatulla**, **Mohammed Nasheed** and **Ali Zahir** were all under investigations by the Attorney General for potential criminal prosecutions against them in relation to six articles published by *Minivian*. Concern was expressed that the numerous actions taken against *Minivian* and its staff were an attempt to silence its critical reporting of the Government.

533. On 5 October 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Jennifer Latheef**, human rights activist and journalist working for opposition daily *Minivian*. She is also the daughter of Mohammed Latheef, the Maldivian Democratic Party (MDP) founder. Ms. Latheef was the subject of two urgent appeals sent by the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders on 6 October 2004 and by the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders on 18 August 2005. According to information received, she had been criminally charged of committing an act of terrorism for allegedly throwing stones at a policeman during a riot which broke out in Malé in September 2003. Ms. Latheef was covering the riot as a journalist and also went to the hospital to interview those who were injured during the riot. Ms. Latheef was also making documentaries about social issues in the Maldives at the time. She denies having resorted to violence during the riots. Her verdict, which was to be handed down on 25 September 2005, was postponed. Concern was expressed that the trial against Ms. Latheef was unfounded and was an attempt to silence her critical reporting of the Government.

534. On 2 November 2005 the Government replied to the communication of 5 October 2005. The Government stated that Ms. Latheef was one of six persons charged under the Prevention of Terrorism Act, for her role in the mob violence in Male on 20 September 2003. Ms. Latheef's confessional statements provided that she did not take part of a peaceful demonstration and she

did not take part as a journalist, but that she was involved in the incitement of a serious of violent incidents in the streets of Male. She also confessed to having confronted an NSS security officer. Moreover three eyewitnesses identified Ms. Latheef as one of those who aided and abetted the mob and that because of her encouragement, the mob had engaged in further violence and confrontation, including the hurling of stones at security officials attempting to restore order, damaging important public buildings and terrorizing the public. The Government denied that Ms. Latheef's arrest was politically motivated and her trial was conducted in strict accordance with the laws, regulations and penal code of the Maldives. Finally the Government provided that the sentence of 10 years of imprisonment was proportionate to the charges, which were of a very serious nature. Moreover, she had access to a lawyer both during detention and at trial and the defence was given ample time to prepare their case. All accusations that Ms. Latheef was abused while in detention was to be reviewed by the Human Rights Commission of the Maldives which would take swift action and would take any necessary action to bring to justice anyone identified to have committed such acts of abuse. At the time this reply was sent, Ms. Latheef had the right to appeal the decision against her.

### Observations

535. The Special Rapporteur thanks the Government for its replies to the communications of 8 July 2005, 18 August 2005 and 5 October 2005, but regrets not having received a reply to his communication dated 4 October 2005.

536. The Special Rapporteur thanks the Government for its detailed reply to his communication of 18 August 2005. The Special Rapporteur would appreciate being informed of the outcome of the investigations concerned.

537. The Special Rapporteur wishes to express his preoccupation with the allegations of harassment, arrest, prosecution, and denial of entry into the country of the press, journalists, reporters and collaborators of the independent newspaper *Minivian*. Pending a reply from the Government and without making any determination on the facts of these cases, the Special Rapporteur strongly reminds the Government of its international duties and responsibilities to uphold and respect the right "to seek, receive and impart information and ideas through any media and regardless of frontiers", contained *inter alia* in Article 19 of the Universal Declaration of Human Rights.

538. With regards to the communication of 5 October, the Special Rapporteur would appreciate being informed of the outcome of Ms. Latheef's appeal.

### Mali

539. Le 7 juillet 2005, le Rapporteur spécial a envoyé une lettre d'allégation concernant M. **Hamidou Diarra**, journaliste à la Radio Kéléidou. Selon les informations reçues, le 5 juillet 2005 dans la capitale Bamako il aurait été enlevé à sa sortie de la radio par un groupe de personnes non identifiées. Il aurait été retrouvé plus tard à quelques kilomètres de Bamako, dans la brousse, abandonné après avoir été brutalement battu. Sérieusement blessé, il aurait été amené à l'hôpital. Selon les informations reçues, *l'Union des Journalistes du Mali (UNAJOM)* considère que cet enlèvement en plein jour marquait une escalade dans les agressions contre les journalistes, devenues courantes au Mali, à cause de la pression montante du pouvoir politique et

économique sur les médias. Diarra est l'animateur d'un programme en langue malienne Bambara dans le quel il dénonce souvent les abus qui seraient commis par les pouvoirs politiques locaux.

540. Le 20 septembre 2005 le gouvernement a répondu à la communication du 7 juillet 2005. Le gouvernement a informé le Rapporteur spécial que le 5 juillet 2005, aux environs de 11h30, **M. Hamidou Diarra** di « Dragon » animateur à la radio Klédu qui rentrait chez lui après avoir assuré son émission hebdomadaire, aurait été enlevé non loin de la radio, par des inconnus qui se trouvaient à bord d'une 4x4 Nissan Patrol non immatriculée de couleur grise avec des rayures rouges et des vitres teintées. L'animateur aurait été embarqué de force à bord de 4x4 parti en direction de l'abattoir frigorifique de Bamako. La scène se serait déroulée devant un de ses collègues de service et l'ami de ce dernier. Les témoins ont alerté un responsable de la radio Klédu qui, à son tour, a alerté le Commissariat de police du 3<sup>e</sup> Arrondissement de Bamako pour signaler l'enlèvement de son animateur. Les recherches entreprises immédiatement ont permis à la police de le retrouver aux environs du Centre Emetteur de Kati à 12h30. L'animateur qui portait des traces de violences, a été transporté à l'hôpital Gabriel Touré pour y recevoir des soins. Le même jour vers 17h45, une délégation composée des Procureurs de la République des Communes II et III et des Commissaires chargés des 1<sup>er</sup> et 3<sup>ème</sup> Arrondissements de police de Bamako, s'est rendue au chevet du malade. Celui-ci a confié à ses interlocuteurs que ses ravisseurs étaient au nombre de quatre et portaient des « talkie walkie » et matraques et qu'ils étaient à bord d'un véhicule qui lui serait familier. Suite à cet événement, le Gouvernement a publié, le 6 juillet 2005, un communiqué dans lequel il « condamne sans réserve cette agression » qu'il a qualifiée « d'acte ignoble ». « L'agression d'un agent de la presse dans l'exercice de ses fonctions, indique le communiqué, est intolérable dans un Etat de droit comme le Mali. Un sit-in (le 11 juillet) et une marche (le 12 juillet) ont été organisés par les associations professionnelles de la presse pour condamner l'acte. Les manifestants ont été à chaque fois reçus par le Ministre de la Communication et des Nouvelles Technologies qui a réitéré à la presse la volonté du Gouvernement de faire la lumière sur l'évènement afin que les coupables soient punis conformément à la loi. Le Commissariat du 3<sup>ème</sup> Arrondissement de la Police de Bamako qui mène les enquêtes a transmis les « éléments » de sa procédure au procureur du tribunal du 1<sup>er</sup> instance de la Commune III du district de Bamako, afin que ce magistrat demande l'ouverture d'une information judiciaire contre X pour enlèvement de personne, torture, coups et blessures volontaires. Ce qui a été fait.

### Observations

541. Le Rapporteur spécial remercie le gouvernement pour sa réponse du 7 juillet 2005. Le Rapporteur spécial souhaiterait être tenu au courant du progrès fait à l'égard des investigations concernées.

### Mauritania

542. Le 18 mars 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel urgent concernant **M. Mohamed Lemine Ould Mahmoudi**, journaliste indépendant. Selon les informations reçues, M. Mohamed Lemine Ould Mahmoudi aurait été arrêté le 13 mars 2005 alors qu'il enquêtait sur un cas d'esclavage domestique à Mederdra, dans le sud-ouest de la Mauritanie. M. Mohamed Lemine Ould Mahmoudi aurait été arrêté en compagnie de Mme Aïchetou Mint El Hadar, enseignante, et

de Mme Moya Mint Boyah. Selon les informations, M. Mahmoudi et ses deux accompagnatrices étaient, au moment que cette communication a été envoyée, encore sous le contrôle de la gendarmerie. M. Mahmoudi et les deux personnes qui l'accompagnaient auraient été interpellés, après avoir recueilli par écrit le témoignage de Mme Jabhallah Mint Mohamed. Cette jeune femme alléguait avoir été employée par de riches "maîtres" à la garde d'un cheptel de moutons et de chèvres, sans toucher de salaire ni de rémunération en nature, et prétendait avoir été soumise à des mauvais traitements.

543. Le 9 mai 2005 le gouvernement a répondu à la communication envoyée le 18 mars 2005 concernant M. **Ould Mahmoudi** et Mmes. **Mint El Hadar et Mint Boyah**. Le gouvernement a informé le Rapporteur Spécial que leur intégrité physique, psychologique et morale était pleinement respectée et ils ont bénéficié, dès le départ, de toutes les garanties prévues par la loi. Ils ont pu en particulier se constituer librement des avocats. Après trente jours de détention préventive, les trois prévenus ont bénéficié d'une liberté provisoire. Au moment où cette réponse a été reçue, ces personnes vivaient librement à leurs occupations. Sur le fond, leur cause devrait être entendue par un Tribunal indépendant et impartial au cours d'un procès public où toutes les garanties nécessaires à leur défense seront assurées. M. OULD MAHMOUDI et Mmes Aichetou MINT EL HADAR et Moya MINT BOYAH ont été arrêtés à la suite d'une plainte déposée par Mme Jabhallah MINT MOHAMED. Les personnes nommées ont été inculpées en vertu des dispositions suivantes: Article 263 du Code pénal relatif de l'outrage aux bonnes mœurs commis par la voie de la presse; Article 23 de l'Ordonnance no 91-023 du 25 juillet 1991 sur la liberté de la presse se rapportant à la publication et à la diffusion de fausses nouvelles attribuées à des tiers; Article 5 de la loi no 019-94 du 18 juillet 1994 organisant l'exercice de certaines activités publiques dans le domaine de l'Audiovisuel.

544. Le 23 mai 2005, le Rapporteur spécial a envoyé un appel urgent concernant la situation de M. **Mohamed Mahmoud Ould Ebilamaali** et de M. **Mohamed Ould Abderrahmane**. Selon les informations reçues, Mohamed Mahmoud Ould Ebilmaali, rédacteur en chef du quotidien *Akhbar Nouakchott*, journaliste de la version arabe du quotidien *Nouakchott-Info* et correspondant local de la radio allemande *Deutsche-Welle*, aurait été enlevé à son domicile, le 19 mai 2005. Il aurait été kidnappé par des hommes se présentant comme des policiers. Selon les informations reçues, il aurait été arrêté après avoir publié, le 9 mai, une interview avec Jemil Ould Mansour, porte-parole en fuite du Mouvement Islamiste Mauritanien. De plus, Mohamed Ould Abderrahmane, journaliste de la télévision publique, aurait été arrêté le 25 avril 2005, lorsque les autorités mauritaniennes auront procédé à plusieurs coups de filet dans les milieux fondamentalistes religieux. Selon les informations reçues, les charges retenues contre lui n'auraient pas été connues.

545. Le 20 juillet 2005 le gouvernement a répondu à la communication du 23 mai 2005. Le gouvernement a informé le Rapporteur spécial que les deux personnes mentionnées ont été interpellées dans le cadre d'une affaire se rapportant à la sûreté intérieure de l'Etat. Elles étaient soupçonnées de faire partie d'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. Certains membres de ce Groupe ont commis des actes ayant pour objet d'exposer les Mauritaniens à des représailles tandis que d'autres ont 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 la loi. A l'issue de cette période de garde à vue un groupe de détenus a été libéré pour



insuffisance de charge. Les deux personnes en font partie. Celles-ci ont été donc arrêtées pour des motifs clairs et conformément à la procédure prévue par la loi. Le délai de garde à vue a été effectivement prolongé pour nécessité d'enquête mais elles ont été traitées avec humanité et de manière respectueuse de leur dignité humaine. Ceci dit, les faits pour lesquels ces deux personnes ont été interpellées n'avaient rien à voir avec la liberté d'opinion et d'expression. Par conséquent, l'invocation de l'article 19 de la Déclaration universelle des droits de l'homme n'est pas fondée.

### Observations

546. Le Rapporteur spécial remercie le gouvernement pour sa réponse du 18 mars 2005. D'ailleurs, d'autre source ont informé le Rapporteur spécial que **M. Mohamed Lemine Ould Mahmoudi**, ainsi que Mmes **Aïchetou Mint El Hadar** et **Moya Mint Boyah**, auraient été mis en liberté provisoire le 14 avril 2005. Selon les informations reçues, la cour d'appel de Nouakchott, saisie par un collectif d'avocats, aurait décidé de libérer le journaliste et les deux femmes qui l'accompagnaient, au terme de longues procédures judiciaires. M. Mohamed Lemine Ould Mahmoudi aurait été incarcéré depuis le 13 mars 2005 à la prison civile de Rosso. Le Rapporteur spécial, qui reste inquiet par les poursuites judiciaires qui restent engagées contre ces trois personnes, souhaiterait être tenu au courant du progrès du processus contre eux.

547. Le Rapporteur spécial remercie le gouvernement pour sa réponse du 23 Mai 2005.

### Mexico

548. El 15 de febrero 2005, el Relator especial envió una comunicación en relación con **Jorge Cardona Villegas**. Según las informaciones recibidas, el 7 de febrero por la mañana, la vivienda y el auto del periodista Jorge Cardona Villegas habrían sido alcanzados por más de 50 casquillos de balas de ametralladora. Cardona trabaja en la estación Televisa Monterrey, en la ciudad de Monterrey, donde cubre la fuente policial. El 3 y el 4 de febrero, el canal transmitió un reportaje sobre casos de ciudadanos estadounidenses que habían desaparecido o que habían sido secuestrados. En el reportaje, familiares de las víctimas implicaron a las autoridades y también una conclusión del reportaje era que miembros de un grupo paramilitar, presuntamente integrado por desertores del ejército estaban implicados en el secuestro. El Relator Especial expresó su temor a que el incidente pudiera estar vinculado a la labor periodística de Cardona. Según el director de noticias de Televisa Monterrey, ni Cardona ni el personal de la estación habían recibido amenazas. En el momento de enviarse esta comunicación, el periodista se escondía en un lugar no revelado.

549. El 16 de febrero 2005, el Relator especial, juntamente con el Relator Especial sobre la independencia de magistrados y abogados, Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y Representante Especial del Secretario-General para los defensores de los derechos humanos envió un llamamiento urgente en relación con la inseguridad y peligro en la que se encontraría la Sra. **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. Se informó que 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 denunció 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 tomase medidas cautelares para la protección de Obtilia Eugenio Manuel y sus familiares. Se informó que las amenazas y acoso continuarían, temiéndose por la integridad física de Obtilia Eugenio y de los demás miembros de la OPIT. Se cree que estos actos pudieran estar relacionados al trabajo que realiza Obtilia Eugenio Manuel en defensa de **M.P.V.R.C** e **I.F.O.**, 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. Esta probabilidad hizo que se expresasen temores de que la Sra. Obtilia Eugenio Manuel pudiera ser privada de un proceso jurídico que ofrezca todas las garantías posibles para asegurar un juicio justo respecto a los actos de hostigamiento mencionados.

550. Por cartas con fecha 24 de febrero y 4 de julio de 2005 el Gobierno de México ante la Oficina de las Naciones Unidas en Ginebra transmitió la siguiente información en relación con las comunicaciones del 16 de febrero y del 4 de julio 2005 sobre el caso de la Sra. **Obtilia Eugenio Manuel**: La Comisión Interamericana de Derechos Humanos (CIDH) solicitó al Gobierno mexicano adoptar medidas cautelares para la protección de la Sra. Obtilia Eugenio Manuel y sus familiares. Las medidas cautelares otorgadas por el CIDH con el fin de proteger a la Sra. Obtilia Eugenio Manuel permanecerían vigentes por un periodo de seis meses y se informaría 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 beneficiarios, se lograron avances en la implementación de las medidas de protección: El Gobierno mexicano se comprometió a que la Policía Federal Preventiva hiciera rondas dos veces por semana. Además de las rondas policiales, la Sra. Obtilia Eugenio Manuel fue acompañada en distintas ocasiones por la ONG Peace Brigades International. En cuanto al esclarecimiento judicial de los hechos, el Gobierno de México facilitó la presentación de la denuncia ante el Delegado de la Procuraduría General del Estado de Guerrero para que una investigación fuera realizada. La Procuraduría General de la República en el Estado de Guerrero abrió una averiguación previa pero a la fecha no había resultados definitivos. Finalmente, el Gobierno mexicano había informado a la Secretaría de la Defensa Nacional, al Gobernador del Estado de Guerrero y al Presidente municipal de Ayutla de los Libres, Guerrero, que Obtilia Eugenio Manuel y su familia se benefician de medidas cautelares otorgadas por la CIDH.

551. El 17 de febrero 2005, el Relator Especial, juntamente con el Presidente-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, Relator Especial sobre la tortura, envió un llamamiento urgente en relación con los ciudadanos **Daniel Martínez Dolores, Abdón Martínez Martínez, Crescencio Cardoza, Carlos Calderón Sánchez, Tomás Enrique Cardoza, Humberto Pérez Calderón, Saturnino Sánchez Sevilla, Joaquín Hernández Cardoza, Antonio García Martínez y Daniel Bautista Pérez**, campesinos del municipio de San Juan de Lalana en Choapán. De acuerdo a las informaciones recibidas, el 6 de febrero habrían sido llevadas a cabo dos operaciones diferentes por parte de miembros de la Policía Ministerial, la Policía Municipal y militares que dieron lugar a las detenciones de los ciudadanos mencionados. Respecto a la primera de las operaciones, a las dos de la madrugada habrían sido detenidos Daniel Martínez Dolores (Presidente del Cabildo Popular), Abdón Martínez Martínez (Secretario), Crescencio Cardoza (Presidente del Comisariado de Bienes Comunales), y los pobladores Carlos Calderón Sánchez, Tomás Enrique Cardoza, Humberto Pérez Calderón, Saturnino Sánchez Sevilla y Joaquín Hernández Cardoza en la desviación conocida con el nombre de "Sebastopol". Habrían sido obligados a bajar del autobús en el que viajaban a la Ciudad de Oaxaca a fin de entrevistarse con el Gobernador Ulises Ruiz Ortiz y habrían sido golpeados por personas encapuchadas que acompañaban a las fuerzas de seguridad que efectuaron las detenciones. A las 13 horas se desconocía su paradero y todavía no habría sido facilitada ninguna información al respecto, a pesar de que la Procuraduría ya estaría haciendo su informe sobre la detención. Respecto a la segunda de las operaciones, ese mismo día aproximadamente a las cinco de la madrugada, los Sres. Antonio García Martínez y Daniel Bautista Pérez habrían sido detenidos en sus domicilios por miembros de la policía acompañados de personas encapuchadas. Éstos últimos habrían hecho uso excesivo de la fuerza, amenazado y humillado a los detenidos. A las 17 horas los detenidos habrían sido localizados en la Penitenciaría del Estado de Oaxaca. Los Sres. Antonio García Martínez y Daniel Martínez Dolores se encontrarían muy golpeados y este último tendría además muy lastimados sus pies. Todas las detenciones habrían sido efectuadas de manera arbitraria para impedir las negociaciones que se iban a llevar a cabo a fin de resolver el conflicto originado con la última elección de concejales municipales, en las que no se habrían respetado los derechos indígenas a los usos y costumbres locales. En este sentido las informaciones recibidas revelaron que los detenidos habrían recibido en el Centro Penitenciario de Santa María Ixcotel una serie de propuestas encaminadas a evitar cualquier forma de presión sobre el Gobierno. Ello, a través de la renuncia expresa a formar parte de una organización concreta, hablar a la gente para que disolvieran las reuniones que estaban teniendo lugar en San Juan Lalana y permitir a las Autoridades hacerse cargo de la defensa de los detenidos. En lo que respecta a la toma de declaraciones del juicio en el que figuraban como encausados los detenidos, los abogados de la defensa habrían sido objeto de agresiones intimidatorias por parte de una funcionaria del Ministerio Público, quien habría tomado sus nombres e interrumpido a los procesados cuando estaban declarando.

552. Por carta con fecha de 23 de diciembre de 2005 el Gobierno de México ante la Oficina de las Naciones Unidas en Ginebra transmitió la siguiente información en relación con la comunicación del 17 de febrero de 2005 relativa la situación de la **comunidad de San Juan Lalana**. El 14 de diciembre de 2004 se llevó a cabo una reunión con el propósito de dialogar en relación a las inconformidades surgidas en la elección del 5 de diciembre de 2004. Durante esta reunión el Presidente Municipal electo propuso a los demás contendientes de las diferentes plantillas que se integraran a su cabildo para el trienio 2005-2007. Las cuatro plantillas (verde,

roja, azul y amarilla) aceptaron la propuesta. El 26 de diciembre de 2004, el Secretario General de Gobierno se reunió con el Presidente municipal electo y los candidatos de las plantillas roja y amarilla, Daniel Martínez y Abdón Martínez Martínez que firmaron un acuerdo y aceptaron participar en el Cabildo. A pesar de las negociaciones y compromisos que se hicieron, el 21 de diciembre de 2004, un grupo de simpatizantes de las dos plantillas dirigidos por Anastasio Sevilla Hernández privaron de libertad a 28 simpatizantes de la plantilla del presidente electo, bloquearon los accesos a San Lorenza Lalana, allanaron el domicilio del presidente electo y retuvieron al Delegado Regional de Gobierno junto con el encargado del departamento jurídico quienes habían acudido a dialogar. Ante los hechos, el Juez Mixto de Primera Instancia de Santiago Chiopan, libró orden de aprehensión en contra de los Sres. Antonio García Martínez, Daniel Martínez Dlores, Abdón Martínez Martínez, Humberto Pérez Calderón, Joaquín Hernández Mendoza, Florentino Pérez Manzano y Crescencio Calderón entre otros. El 1 de enero de 2005, un grupo de unos trescientos simpatizantes de las plantillas roja y amarilla bloquearon a un grupo de simpatizantes de la plantilla azul que se trasladaban a Colonia Morelos para asistir a la toma de protesta del presidente electo, los golpearon con palos, varillas y puños. Ante los hechos, el Juez Mixto de Primera Instancia de Santiago Chiopan, libró orden de aprehensión por los delitos de lesiones y lesiones calificadas. El 7 de enero de 2005, con motivo de los hechos referidos en el Municipio de San Juan Lalana, la Comisión Estatal de Derechos Humanos del Estado de Oaxaca solicitó al Secretario General de Gobierno implementar medidas inmediatas para evitar hechos violentos y enfrentamientos entre habitantes del municipio. El 6 de febrero, los elementos de la Policía ministerial del Estado, ejecutaron las dos órdenes de aprehensión. El 21 de febrero a fin de restablecer la paz en el municipio, el Titular de la Secretaría General de Gobierno celebró una reunión con los familiares de las personas detenidas en la que se firmó una minuta según la cuál, las partes aceptan respetar la minuta de la reunión del 26 de diciembre de 2004, en la que el grupo inconforme se integra al cabildo con cinco regidurías. Las partes también se comprometen a realizar reuniones previas a la asamblea en las que informarán a sus representados de los acuerdos obtenidos para evitar nuevas violencias. El Tribunal Superior de Justicia del Estado de Oaxaca informó que el 16 de marzo de 2005, se revocó el auto de formal prisión dictado por el Juez Mixto de Primera Instancia de Choapan el 12 de febrero de 2005, quedando libres las personas involucradas en los acontecimientos referidos. La segunda Sala Penal del Tribunal por resolución del 18 de marzo de 2005 revocó el auto de formal prisión, quedando libres las personas involucradas en los acontecimientos referidos.

553. El 23 de febrero de 2005, el Relator Especial, juntamente con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, envió un llamamiento urgente en relación con el caso de **Emilio Gutiérrez Soto**, corresponsal del "*Diario de Juárez*" en el pueblo de Ascensión, en la región de Chihuahua. De acuerdo con la información recibida, este periodista habría sido amenazado de muerte por parte de un oficial del Ejército Mexicano, el 8 de febrero de 2005 en horas de la noche. Las amenazas habrían sido proferidas en la vía pública cuando el periodista se presentó ante la convocatoria del oficial. A su llegada, el periodista habría sido rodeado por ocho soldados y amenazado de muerte. Se alegó que la razón de esta amenaza residiría en un artículo publicado por el periodista en el cual denuncia a

un grupo de militares adscritos a la guarnición de la plaza fronteriza, quienes habrían asaltado un hotel en Puerto Palomas, presuntamente en estado de ebriedad. El Sr. Gutiérrez Soto no habría denunciado el hecho ante la policía, ni solicitado medidas cautelares. Sin embargo, las informaciones indicarían que una investigación sobre los hechos descritos habría sido ordenada de oficio por las autoridades militares.

554. Por carta con fecha de 23 de diciembre de 2005 el Gobierno de México ante la Oficina de las Naciones Unidas en Ginebra transmitió la siguiente información en relación con la comunicación del 23 de febrero de 2005 relativa al **Sr. Emilio Gutiérrez Soto**. La Procuraduría General de Justicia Militar informó que la Comisión Nacional de los Derechos Humanos integró un expediente de queja en el cual resultó en dos compromisos. El primer compromiso fue que el Órgano Interno de Control de la Secretaría de Defensa Nacional abriera un procedimiento administrativo de investigación. El segundo compromiso consistió en el envío por este mismo órgano de una circular a todos los mandos territoriales del país para que el personal militar que tenga relación con periodistas sea instruido para llevar a cabo sus actividades con pleno respeto a su profesión y a la libertad de expresión. Tras el procedimiento administrativo se averiguó que las acusaciones del Sr. Gutiérrez contra el personal militar eran falsas. No obstante este resultado, la circular fue enviada.

555. El 23 de febrero de 2005, el Relator Especial, juntamente con el Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía; Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias y 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 encontraría **Lydia Cacho Ribero**, Presidenta del Centro de Crisis para Víctimas, Centro Integral de Atención a las Mujeres (CIAM) en Cancún, Estado de Quintana Roo. De acuerdo con las informaciones recibidas, recientemente, un ex agente del Cuerpo Especial Anti-secuestros de Torreón, de la Agencia Federal de Investigación (AFI), se habría presentado en varios refugios pertenecientes a la red del CIAM, en las ciudades de Saltillo, Monterrey y San Luís Potosí, portando un arma de fuego y procediendo a amenazar de muerte al personal que trabaja en dichos Centros. Se alegó que el ex-agente habría realizado dichas amenazas como represalia por la protección que el CIAM habría dado a su esposa, sus dos hijos y una hija luego de que éstos fugaran de su hogar al sufrir presuntos actos de agresión por parte de dicho ex-agente. Según las informaciones recibidas, luego de sufrir los actos de agresión, la esposa del ex -agente habría sido transferida al refugio de Cancún. La Sra. Lydia Cacho Ribero, Presidenta del CIAM, habría sido amenazada de muerte si no entregaba a la esposa del ex-agente. Además, se informó que cuando la Sra. Cacho notificó al delegado de la Procuraduría General de la República estos actos, habría recibido la recomendación de que “*no se metiera con él*”, ya que estaba “*muy protegido por sus jefes*”. Se alegó también que el 16 de noviembre de 2004, otro hombre, cuya esposa e hijo de tres años de edad habrían recibido también protección por parte del CIAM, se habría presentado en las oficinas del CIAM en Cancún portando armas de fuego y amenazando de muerte al equipo, en particular a la Sra. Lydia Cacho, si no le devolvían a su mujer y a su hijo. Se alegó que dicho señor habría comenzado a amenazar al equipo del CIAM tras la primera entrevista anónima que ella dio, en el marco de las investigaciones sobre acciones delictivas imputadas a su marido por parte del Centro de Investigación y Seguridad Nacional (CISEN). Se agregó que desde el mes de diciembre de 2004 y hasta la fecha, el CIAM-Cancún habría recibido amenazas por haber denunciado actos de abuso sexual de niños y niñas por parte de un empresario, (cuya identidad es conocida por el Relator Especial), y quien se encontraría detenido

en Arizona, Estados Unidos, acusado de abusos y prostitución infantil. Según las informaciones los integrantes del CIAM habrían recibido amenazas por teléfono y por medio de una lista enviada a la policía de seguridad pública local, en la cual aparecería el nombre de la Sra. Lydia Cacho como una de las personas a quienes dicho señor habría mandado asesinar. Aunque las autoridades habrían sido informadas de los presuntos actos de hostigamiento sufridos por los miembros del CIAM, ni la Representante Especial ni los Relatores Especiales tienen conocimiento de eventuales investigaciones sobre estos hechos ocurridos ni si se han otorgado medidas de protección a favor de los denunciantes. El Relator Especial expresó su temor a que estas presuntas amenazas de muerte en contra de la Sra. Lydia Cacho Ribero, y del equipo del Centro de Crisis para Víctimas (CIAM), pudieran estar relacionadas con su trabajo en defensa de las niñas y mujeres que corren peligro.

556. El 13 de abril de 2005, el Relator Especial envió una comunicación s en relación con la Sra. **Guadalupe García Escamilla**, reportera y locutora radial del programa *Punto Rojo*, de radio Estéreo 91, en Nuevo Laredo en el estado de Tamaulipas. Según la información recibida, el 5 de abril de 2005, poco antes de las 8 AM, Guadalupe García Escamilla habría sido tiroteada por unos desconocidos cuando salía de su coche para dirigirse al local de la radio. Se informó de que la comunicadora habría recibido aproximadamente 10 balazos que le habrían impactado en el abdomen, el pecho y las piernas. La reportera fue trasladada al hospital donde permanecía en estado grave. Se informó que García Escamilla fue la primera reportera que entrevistó a los presos Jorge Castañeda y Sergio Octavio Montelongo, cuando denunciaron que eran extorsionados por parte de la policía. Se expresó temor a que el intento de asesinato podría estar vinculado a dichas entrevistas.

557. Por carta con fecha 20 de junio de 2005 el Gobierno de México ante la Oficina de las Naciones Unidas en Ginebra transmitió la siguiente información en relación con la comunicación del 13 de abril de 2005 sobre el caso de la periodista **Dolores Guadalupe García Escamilla**. El 5 de abril, la Agencia Quinta del Ministerio Público en Nuevo Laredo inició de oficio las investigaciones y la Averiguación previa penal 243/2005, tras ser avisada de los hechos por parte de la Policía Ministerial del Estado de Nuevo León. La Sra. García Escamilla permaneció internada en el área de cuidados intensivos dónde falleció el 16 de abril. Debido a su estado de salud no fue posible que rindiera una declaración ministerial. Una de las líneas de investigación de la Policía Ministerial del Estado hace referencia a la probable relación entre el asesinato de la Sra. García Escamilla y la entrevista realizada, la cual fue grabada. Una copia en casete se anexó como evidencia. El 19 de abril, la Agencia Quinta del Ministerio Público se declaró incompetente y transmitió el caso a la Delegación Estatal de la Procuraduría General de la República. Se desconocía si se había concluido la investigación.

558. El 14 de abril de 2005, el Relator Especial envió una comunicación en relación con **Raúl Gibb Guerrero**, 53 años, propietario y editor del diario *La Opinión* de Poza Rica, Estado de Veracruz y **Alfredo Jiménez Moto**, 26 años, redactor del diario *El Imparcial en Hermosillo*, Estado de Sonora. Según la información recibida, el 8 de abril de 2005, Raúl Gibb Guerrero habría sido asesinado por cuatro desconocidos cuando conducía su vehículo en dirección a su domicilio. Habría recibido cuatro impactos de proyectil de arma de fuego en la cabeza. Según se informó el periodista habría recibido con anterioridad amenazas de muerte telefónicas. Asimismo, el diario *La Opinión* habría denunciado a menudo el narcotráfico, a través de artículos escritos, uno de los cuales fue publicado el día previo a su asesinato. Por otro lado, según la información recibida, desde el pasado 2 de abril de 2005, Alfredo Jiménez Moto se

encontraría desaparecido. Se informó de que el periodista, que cubría casos de seguridad pública y escribía sobre el narcotráfico, hacia las 21 horas avisó por teléfono a una de sus colegas de que tenía una cita con uno de sus contactos. Después de la llamada no habría vuelto a saber de él. El Relator Especial expresó su temor ante el hecho de que la desaparición de Jiménez Moto y el asesinato de Giba Cuerno pudieran estar relacionados con sus labores periodísticas.

559. Por carta con fecha 15 de junio de 2005 el Gobierno de México ante la Oficina de las Naciones Unidas en Ginebra transmitió la siguiente información en relación con la comunicación del 14 de abril de 2005 sobre el caso del Sr. **Raúl Gibb Guerrero y Alfredo Jiménez Mota**. En el caso del Sr. Gibb Guerrero, el 8 de abril se inició la investigación ministerial PZR2/185/2005 tras la llamada telefónica de un agrupamiento policial que atiende emergencias y encontró el cuerpo del Sr. Gibb Guerrero. El Sr. Giba Guerrero falleció a consecuencia de 6 disparos de arma de fuego, recibidos cuando se dirigía a su domicilio. No hubo testigos presenciales por lo que se desconoce la identidad de los probables responsables. Raúl Giba Guerrero no presentó denuncia por las amenazas recibidas y no existía denuncia en nombre de la víctima. El caso fue transmitido a la Procuraduría General de la República el 16 de abril y se encontraba en fase de Averiguación previa. En el caso del Sr. **Alfredo Jiménez Mota**, el director del periódico El Imparcial y el padre de la víctima presentaron una denuncia por la desaparición del Sr. Jiménez Mota. Las indagatorias 05/2005 y 90/2005 radicadas en la Procuraduría General de Justicia del Estado de Sonora fueron trasladadas a la Subprocuraduría de Investigación Especializada de Delincuencia Organizada (SIEDO) donde se inició la averiguación previa PGR/SIEDO/UEITA/031/2005. La SIEDO comisionó a tres agentes del Ministerio público y a personal administrativo para la indagatoria. Debido a la confidencialidad de las investigaciones, el Gobierno comunicó que se contaba con 11 líneas de investigación para determinar la persona o personas involucradas en la desaparición del periodista. En cuanto las investigaciones lo permitan se informará con mayor detalle.

560. El 9 de junio de 2005, el Relator Especial envió, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, una comunicación en relación con **Albertano Peñalosa Domínguez**, dirigente ecologista y co-líder de la *Organización de Campesinos Ecologistas de la Sierra de Petatlán y Coyuca de Catalán* (OCESP); sus hijos A.P.M (9 años), A.P.M (15), **Isaac Peñalosa Mujica** (19), y **Armando Peñalosa Mujica** (20). Según la información recibida, el 19 de mayo de 2005, hacia las 21:30 horas de la noche, al llegar a casa en la comunidad del Banco Nuevo en el municipio de Petatlán, Albertano Peñalosa Domínguez y sus hijos habrían sido atacados por hombres desconocidos y fuertemente armados. Se alega que dos de sus hijos, de A.P.M de 9 años y Armando, habrían perdido la vida y que Albertano Peñalosa Domínguez, junto con sus dos hijos restantes, A.P.M de 15 años e Isaac, se habrían encontrado gravemente heridos durante el ataque que consistió en 83 balazos. Según los informes, la Procuraduría General de Justicia del Estado de Guerrero habría abierto una investigación sobre la emboscada. Se expresó temor a que el ataque pudiera estar relacionado con la participación de Albertano Peñalosa Domínguez en el movimiento campesino ambiental de la Sierra de Petatlán, en particular, su oposición, desde 1998, a la supuesta extracción excesiva e ilegal de la madera en la región por parte de Bernardino Bautista Valle. La Representante Especial y el Relator Especial tienen conocimiento de que existen desde el 23 de mayo de 2004 órdenes de aprehensión en contra de Albertano Peñalosa Domínguez, así como otros líderes de la OCESP, por la muerte del hijo de Bernardino Bautista Valle el 30 de mayo de 1998. El 3 de noviembre de 2004, el Secretario de la OCESP, Felipe Arreaga Sánchez, habría sido detenido con respecto a la muerte

del hijo de Bernardino Bautista Valle, y fue ya el sujeto de una comunicación por La Presidenta-Relatora del Grupo de Trabajo sobre la Detención Arbitraria el 20 de diciembre de 2004.

561. El 29 de junio de 2005, el Relator Especial envió un llamamiento urgente en relación con el diario *Noticias, Voz e Imagen de Oaxaca*, cuyo caso ya fue objeto de una comunicación enviada el 29 de diciembre de 2004 por el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión. Según la información recibida:

- El 17 de junio de 2005, en la madrugada, los locales de *Noticias, Voz e Imagen de Oaxaca* fueron rodeados por unos 300 miembros de la Confederación Revolucionaria de Obreros y Campesinos (CROC), algunos supuestamente armados. 31 empleados se encontraban en aquel momento dentro de las oficinas. Al intentar salir, fueron agredidos verbalmente por los miembros de la CROC que les habrían gritado “Vamos a entrar para romperles la madre”. Los empleados que todavía se encontraban dentro de las oficinas llamaron a la Policía del Estado para pedir ayuda, pero la misma no intervino ni les garantizó seguridad. Se informa también que entre los participantes en el piquete de la CROC, se encontraban policías locales vestidos de civil.
- El 19 de junio de 2005 en Tuxtepec, otro grupo de la CROC en el que también habían policías locales, interceptaron una camioneta que transportaba parte de la edición del 20 de junio de *Noticias Voz e Imagen de Oaxaca*. Los asaltantes amenazaron al chofer, le robaron las llaves del vehículo y miles de ejemplares del periódico.
- El 20 de junio de 2005 se interrumpió el suministro eléctrico y el servicio telefónico en la redacción del periódico; hecho también imputado a la CROC.

562. Estas acciones contra el referido periódico estarían orientadas al cierre del mismo. Los integrantes de la CROC se encontrarían todavía montando piquetes ante las oficinas del diario cuando se envió esta comunicación. De los 130 empleados del periódico, 102 serían miembros de la CROC. No obstante, ninguno de ellos habría participado en las acciones referidas. Según los informes, la CROC es un sindicato controlado por el gobierno del Estado, y se encuentra dirigida por un diputado local del partido gobernante en Oaxaca, el Partido Revolucionario Institucional (PRI). Se expresó temor de que que las acciones en contra de este diario pudieran estar relacionadas con el hecho de que es el único periódico de Oaxaca que critica de manera continua al gobierno del Estado.

563. Por carta con fecha 20 de septiembre de 2005 el Gobierno de México ante la Oficina de las Naciones Unidas en Ginebra transmitió la siguiente información en relación con la comunicación del 29 de junio de 2005 sobre el caso del diario “**Noticias Voz e Imagen de Oaxaca**”. Según el informe del Agente del Ministerio Adscrito a la Procuraduría General de Justicia del Estado de Oaxaca (PGJ OAX), el 17 de junio, el Agente se presentó en el diario “Noticias” dando fe de la presencia de varias personas frente a los locales. Habló con un individuo que se negó a dar su nombre y a abrir la puerta del domicilio a quien informó que era personal de la PGJ OAX y que en el caso de que se encontrase privado de libertad le garantizaba la integridad física. La persona dijo que llamaría a un encargado pero nadie vino.



El Agente se presentó en otro local pero no encontró respuesta. El 19 de junio, el Agente inició una indagatoria La Comisión Nacional de Derechos Humanos (CNDH) abrió un expediente con motivo de una queja del diario “Noticias”.

564. El 18 de julio de 2005, el Relator especial, juntamente con el Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía, Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias, y 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 encontraría la Sra. **Lydia Cacho Ribero**, Presidenta del Centro de Crisis para Víctimas, Centro Integral de Atención a las Mujeres (CIAM) en Cancún, Estado de Quintana Roo, cuyo caso ya fue objeto de un llamamiento urgente enviado el 23 de febrero de 2005 por la Representante Especial del Secretario-General para los defensores de los derechos humanos con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión; Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía; Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias. De acuerdo con las informaciones recibidas, entre el 25 de abril de 2005 y el 1 de julio, Lydia Cacho Ribero habría recibido al menos 42 llamadas telefónicas amenazantes en las oficinas del CIAM. Según se informó, parece ser que todas las llamadas habrían sido realizadas por un ex agente de la Policía Judicial del Estado, que también habría pertenecido a una unidad anti-secuestros de la Agencia Federal de Investigación y (cuyo nombre tenemos es conocido por el Relator Especial). Según los informes, la esposa e hijos de aquel hombre estarían actualmente en un refugio del CIAM. De acuerdo con las informaciones recibidas: en algunas de las llamadas telefónicas más recientes, el hombre habría dicho “Esto es para Lydia Cacho, que sepa que pronto estaré en Cancún, cuando menos se lo espere [...] La PGR no puede hacerme nada [...] quienes se meten conmigo sufren hasta la muerte”. Según los referidos informes, el 30 de junio, el ex agente habría visitado el refugio para mujeres en la ciudad de Saltillo, estado de Coahuilla, y habría acosado a la directora, exigiéndole que dijera a Lydia Cacho Ribero que dejara de hablar sobre su caso, y que le devolvieran a su esposa y sus hijos. Se expresó temor de que que estas presuntas amenazas en contra de la Sra. Lydia Cacho Ribero, y del equipo del Centro de Crisis para Víctimas (CIAM), pudiesen estar relacionadas con su trabajo en defensa de las niñas y mujeres que corren peligro.

565. Por carta con fecha de 23 de diciembre de 2005 el Gobierno de México ante la Oficina de las Naciones Unidas en Ginebra transmitió la siguiente información en relación con la comunicación del 18 de julio de 2005 relativa a la Sra. **Lydia Cacho Ribero**. La Procuraduría General del Estado de Quintana Roo no tenía documentada ninguna denuncia de las amenazas de las que decían haber sido víctimas Lydia Cacho y el personal del Centro Integral de Atención a la Mujer e instó a la afectada a que acudiese a la autoridad ministerial competente para presentar denuncia. No obstante lo anterior, desde el 18 de febrero de 2005, se habían implementado medidas de protección para salvaguardar la integridad física de Lydia Cacho, del personal que trabaja con ella y de las personas que se encuentran bajo su custodia y en todo momento se habían ofrecido garantías para que durante la investigación la víctima se encontrase protegida. La Comisión Nacional de los derechos humanos solicitó a la Procuraduría General de la República la implementación de medidas cautelares a favor de Lydia Cacho, de acuerdo a la Recomendación General Número 7 relacionada con violaciones a la libertad de expresión de periodistas o comunicadores. Para cumplir con la solicitud, la Procuraduría instruyó a la Agencia federal de Investigación para que sus agentes brinden protección a Lydia Cacho.

566. El 12 octubre de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con el Sr. **Agustín Chávez**, periodista del Noticiero "*Enlace Informativo*", que transmite la radioemisora "*La Poderosa 830 AM*" de Tlaxiaco, Oaxaca. De acuerdo con las alegaciones recibidas, el 4 de octubre de 2005, a las 14:30 horas aproximadamente, Agustín Chávez habría sido agredido en la calle por dos hermanos del ex presidente municipal de Tlaxiaco. Agustín Chávez caminaba junto con otro hombre cuando dos individuos se le habrían aproximado y dicho: "Hijo de la chingada, a ti te andamos buscando". Le habrían golpeado durante unos diez minutos, hasta que el Sr. Chávez habría perdido el conocimiento. Le habrían robado su cámara, un teléfono móvil y algo de dinero. Al parecer, le habrían amenazado con matarle por haber denunciado la presunta corrupción de algunas autoridades municipales de Tlaxiaco; lo que perjudicaba al hermano de sus agresores. Varios colegas del periodista habrían llegado al lugar y conducido al Sr. Chávez a un consultorio médico. El médico habría ordenado su hospitalización y mantenerlo en observación durante 24 horas. Se informó también que esta agresión habría sido precedida de varios intentos de intimidación. El 3 de junio de 2005, el periodista habría recibido una llamada telefónica de un hombre que le habría dicho que "le bajara el tono o no seguiría vivo para hablar con nadie". Al parecer, el 17 de septiembre, un miembro del actual gobierno municipal de Tlaxiaco le habría abordado en la calle y le habría pedido que se retractara de lo que había escrito sobre él en una entrevista. El Sr. Chávez habría pedido al hombre que no le amenazara, y al parecer, éste le habría respondido golpeándole. Agustín Chávez habría presentado ante la oficina local del Ministerio Público una denuncia formal en la que detallaría las agresiones que había sufrido. También habría presentado una denuncia ante la Fiscalía Especial de Oaxaca para la Atención de Delitos Contra Periodistas. Se expresó temor a que estos actos de intimidación y agresión contra Agustín Chávez pudieran estar vinculados a su trabajo periodístico.

567. Por carta con fecha de 16 de diciembre de 2005 el Gobierno de México ante la Oficina de las Naciones Unidas en Ginebra transmitió la siguiente información en relación con la comunicación del 12 de octubre de 2005 sobre el caso del Sr. **Agustín Chávez**. El incidente del 3 de octubre de 2005 no fue derivado de la actividad periodística del Sr. Chávez sino de un conflicto personal entre el afectado y el agresor, después de que el Sr. Chávez agrediera verbalmente a la esposa de éste. El mismo día, se inició la averiguación previa 175(I)/2005 en contra de quien o quienes resulten responsables del delito de amenaza en agravio de Agustín Chávez quien presentó denuncia. La averiguación previa sobre las amenazas se encontraba en período de integración. El 3 de octubre de 2005, el Sr. Chávez se presentó ante la Agencia del Ministerio Público del Segundo Turno de la Ciudad de Tlaxiaco para interponer denuncia de los hechos en la que señaló que fue agredido y amenazado por lo que estaba diciendo en la radio. Se inició la averiguación previa 308(I)/2005, en contra de quien o quienes resultasen responsables de lesiones dolosas, amenazas y robo con violencia. El 7 de octubre de 2005, se realizó la ampliación de la declaración del Sr. Chávez en la que señaló a sus agresores. El 6 de octubre, uno de los presuntos agresores solicitó su intervención. El 13 de octubre se requirió al Sr. Chávez que presente testigos. Hasta la fecha el Sr. Chávez no había presentado testigos ni aportado pruebas para la debida integración de la averiguación previa.

568. El 11 de noviembre de 2005, el Relator Especial, juntamente con el Relator Especial sobre la independencia de magistrados y abogados, Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y 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 encontraría el abogado **Leonel Rivero Rodríguez** y su familia. El Sr. Leonel Rivero Rodríguez fue objeto de un llamamiento urgente enviado por la Representante Especial del Secretario General sobre la situación de los derechos humanos y la Relatora Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias el 10 de abril de 2002. Según la información recibida, el abogado Leonel Rivero habría recibido amenazas de muerte en tres ocasiones y habría 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. En este contexto, en octubre de 2001 la Corte Interamericana de Derechos Humanos habría 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. Dichas medidas habrían sido implementadas y la orden que les dio origen se encontraría vigente, incluso reiterada el 29 de junio de 2005 en una resolución emitida por la Corte. El 22 de septiembre de 2005, el Gobierno mexicano habría 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 habría solicitado al Gobierno a proseguir con las medidas de seguridad adoptadas a favor de Leonel Rivero. En este contexto, habría transcurrido más de un mes desde que la Corte habría ordenado el restablecimiento de las medidas de protección a favor de Leonel Rivero, sin la correspondiente respuesta por parte del Gobierno. Paralelamente, hasta la fecha, ninguno de los hechos sujetos en la investigación habría sido aclarado por el Gobierno, ni se habrían identificado ni sancionado a los responsables.

569. Por carta con fecha de 22 de diciembre de 2005, el Gobierno de México, transmitió la información siguiente en relación con el llamado 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. 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, 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. Existen varias investigaciones con motivo de diversos incidentes en los que se ha visto involucrado el Sr. Rivero Rodríguez.

570. El 15 de noviembre de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la Señora **Yesica Sánchez Maya**, Presidenta de la Liga Mexicana por la Defensa de los Derechos Humanos (LIMEDDH) filial Oaxaca, una organización que denuncia casos de violación o incumplimiento de los derechos humanos, y el Señor **Israel Ochoa**, Asesor legal de la LIMEDDH. Según la información recibida,

el 30 de octubre de 2005, Yesica Sánchez Maya e Israel Ochoa habrían sido amenazados por miembros de la Policía Preventiva del Estado de Oaxaca mientras viajaban en autobús, de regreso de la comunidad de San Juan Lalana donde habrían dado un taller sobre derechos humanos. Once miembros de la Policía habrían subido al autobús alegando que se trataba de una intervención rutinaria. Sin embargo, y a pesar de no tener una orden para llevar a cabo la revisión, habrían obligado a Yesica Sánchez Maya, Israel Ochoa y dos colaboradores que viajaban con ellos a bajarse del autobús y les habrían exigido dejar de frecuentar la región. Además, les habrían dicho que tenían conocimiento de las distintas actividades que efectuaban en la comunidad. Luego los policías se marcharon en una camioneta. Se expresaron temores por la seguridad de Yesica Sánchez Maya, Israel Ochoa y los miembros de la Liga Mexicana por la Defensa de los Derechos Humanos. Se teme que este incidente pudiera ser una forma de acoso para intentar minar su trabajo de los defensores de los derechos humanos en Oaxaca.

571. El 29 de diciembre, el Relator Especial, juntamente 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 encontraría la Sra. **Lydia Cacho Ribeiro**, Presidenta del Centro de Crisis para Víctimas, Centro Integral de Atención a las Mujeres (CIAM) en Cancún, Estado de Quintana Roo, cuyo caso ya fue objeto de dos llamamientos urgentes enviados el 23 de febrero de 2005 y el 18 de julio de 2005 por la Representante Especial del Secretario-General para los defensores de los derechos humanos con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión; Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía; Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias. Según la nueva información recibida, el 16 de diciembre de 2005, aproximadamente a las 13:00, la Sra. Lydia Cacho Ribeiro habría sido detenida en las oficinas del CIAM de Cancún, por agentes de la policía judicial del Estado de Puebla. No le habrían mostrado ninguna orden judicial en el momento de la detención, y no le habrían permitido comunicarse con su abogada. Los agentes judiciales la habrían llevado al Penal de San Miguel, Estado de Puebla, ubicado a más de 1500 kilómetros de Cancún, a pesar de que ella se encontraba convaleciente de una neumonía que requirió internamiento hospitalario por lo cual no era aconsejable su traslado. Según los informes solo le fue permitido comer y beber en una sola ocasión en las 20 horas del trayecto. Lydia Cacho Ribeiro habría sido detenida durante 30 horas, por cargos de difamación, antes de ser puesta en libertad bajo fianza.

### **Seguimiento de comunicaciones transmitidas previamente**

572. Por carta con fecha 26 de enero de 2005 el Gobierno de México ante la Oficina de las Naciones Unidas en Ginebra transmitió la siguiente información en relación con la comunicación del 15 de noviembre de 2004 sobre el caso del **Sr. Carlos Ramírez**. Las autoridades competentes estaban estudiando la posibilidad de adoptar alguna medida a favor del periodista, no obstante el impedimento que se presenta ante la ausencia de denuncia formal de los hechos.

573. Por carta con fecha 7 de enero de 2005 el Gobierno de México ante la Oficina de las Naciones Unidas en Ginebra transmitió la siguiente información en relación con la comunicación del 17 de septiembre de 2004 sobre el caso del **Sr. Roberto Javier Mora García**:

La Agencia Segunda del Ministerio Público con sede en la Ciudad de Nuevo Laredo inició la averiguación previa penal n° 151/2004 que culminó el 28 de marzo de 2004 con el ejercicio de la acción penal contra los dos presuntos responsables del delito de homicidio en agravio del Sr. Mora García, ante el Juzgado Segundo de Primera Instancia del Ramo Penal en Nuevo Laredo. El proceso penal se encontraba en período de instrucción.

574. Por cartas con fecha 14 y 17 de febrero de 2005 el Gobierno de México ante la Oficina de las Naciones Unidas en Ginebra transmitió la siguiente información en relación con la comunicación del 10 de diciembre de 2004 sobre el caso del Sr. Víctor Manuel Ulan Hernández. La Procuraduría General de Justicia de Tabasco informó que el 2 de noviembre de 2004 se inició la Averiguación Previa N° ARMPEC-II-812/2004 a partir de la denuncia del Sr. Ulan Hernández. El denunciante hasta el momento no ha presentado las pruebas necesarias para determinar si existe algún responsable de los hechos manifestados en su declaración ministerial. El agente del Ministerio Público Investigador se encuentra integrando la indagatoria referida y, una vez agotadas las diligencias debidas, podrá resolver y consignar ante el juez de la causa.

575. Por carta con fecha de 9 de marzo de 2005 el Gobierno de México ante la Oficina de las Naciones Unidas en Ginebra transmitió la siguiente información en relación con la comunicación del 31 de diciembre de 2004 relativa a la editora del diario "Noticias Voz e Imagen de Oaxaca". La Procuraduría General de Justicia del Estado de Oaxaca consideró que los hechos expuestos en la comunicación no eran exactos. Tras efectuar una búsqueda exhaustiva en los archivos, no se encontró antecedente que indique que Agentes de la Policía Ministerial hayan sido detenidos o vistos realizados algún tipo de pintas. De igual manera, tampoco es cierto que las autoridades del Gobierno del Estado de Oaxaca tengan algún vínculo con las personas que invadieron el inmueble ni que esas personas contaron con la anuencia de Agentes de la Policía Ministerial del Estado. En relación al caso, varias averiguaciones previas han sido iniciadas:

- 2039 (PME)/2004 iniciada el 4 de noviembre con base al parte informativo rendido por elementos de la Policía Ministerial del Estado sobre una pinta realizada por tres personas.
- 333(SL.)/2004 ó 10575 (SC.)/2004 iniciada en la Agencia del Ministerio Público de Santa Lucía del Camino con motivo de la denuncia presentada por el representante legal de la Empresa editorial tras la invasión del inmueble por un grupo de personas.

El 3 de diciembre se acordó la petición del apoderado legal del diario, sobre la devolución del inmueble y de la autorización para retirar de las bodegas los insumos necesarios para el funcionamiento del periódico.

El 23 de diciembre, el Agente del Ministerio Público realizó la diligencia de inspección ocular e inventario de las bodegas. El apoderado del diario se negó a firmar la diligencia, como lo constató el Director de Área del programa Agravios a Periodistas y Defensores Civiles de la Comisión Nacional de los Derechos humanos.

- 2175 (P.M.E.) iniciada el 29 de noviembre, con motivo del aviso verbal a la autoridad ministerial de la existencia de un cuerpo sin vida en el lugar donde el diario tiene sus bodegas de insumos. De acuerdo con la averiguación previa, al enterarse de la

invasión del inmueble, personas ligadas al diario “Noticias” quisieron rescatarlo por la fuerza, contratando para ello en la noche del 28 de noviembre, un grupo de aproximadamente 80 personas quienes recibieron 300 pesos cada una. A las 4 de la mañana el grupo partió a recuperar el inmueble dónde tuvo lugar un enfrentamiento en el cual perdió la vida por disparo de arma de fuego Juan Alfredo Méndez García, uno de los jóvenes reclutados por el diario.

- 156 (FM)/2004 iniciada el 1 de diciembre, con base al parte informativo de agentes de la Policía Ministerial del Estado según la cual aparece que la noche del 30 de noviembre, un numeroso grupo de personas desconocidas se apoderaron nuevamente de la parte sur del inmueble.

576. En conclusión las autoridades del Gobierno del Estado, ni servidores públicos de la Procuraduría han realizado acciones u omisiones que vulneren la libertad de expresión y opinión del diario “Noticias”.

### Observaciones

577. El Relator Especial agradece al Gobierno sus respuestas a las comunicaciones enviadas con fecha de 16 y 17, una de las dos enviadas con fecha de 23 de Febrero del 2005, 13 y 14 de Abril del 2005, 29 de Junio del 2005, 18 de Julio del 2005, 12 de Octubre del 2005 y 11 de Noviembre del 2005, así como sus respuestas a las comunicaciones enviadas con fecha del 15 de Noviembre del 2004, 17 de Septiembre del 2004, 10 de Diciembre del 2004, y 31 de Diciembre del 2004. No obstante, el Relator Especial lamenta no haber recibido respuesta a las comunicaciones enviadas el 15 de Febrero del 2005, una de sus comunicaciones enviadas el 23 de Febrero del 2005, 9 de Junio del 2005, 15 de Noviembre del 2005 y 29 de Diciembre del 2005.

578. El Relator Especial expresa su grave temor ante el número de alegaciones concernientes a agresiones tanto físicas como verbales contra periodistas ocurridas durante el 2005, específicamente: los asesinatos de la Sra. **Guadalupe García Escamilla**, y el Sr. **Raúl Gibb Guerrero**, el intento de asesinato contra **Jorge Cardona Villegas**, la desaparición de **Alfredo Jiménez Moto**, la agresión contra el Sr. **Agustín Chávez**, los piquetes y desalojos forzados los **trabajadores del periódico Noticias** de la ciudad de Oaxaca las amenazas a **Emilio Gutiérrez Soto**. El Relator Especial, a la espera de respuestas del Gobierno sobre cualquier avance o desarrollo en estas investigaciones, y sin pronunciarse sobre los hechos del casos, expresa su grave consternación y reitera los principios enunciados, entre otros, por la Comisión de Derechos Humanos en su Resolución **2005/38**, la cual insta a todos los Estados a que “Garanticen que las víctimas de violaciones de los derechos... puedan interponer recursos eficaces para investigar efectivamente las amenazas y actos de violencia...incluso en situaciones de conflicto armado, y llevar ante la justicia a los responsables de esos actos, para luchar contra la impunidad”. El Relator Especial insta al Gobierno a adoptar las medidas necesarias de que los periodistas puedan trabajar libre e independientemente.

579. El Relator Especial llama también la atención del Gobierno sobre las alegaciones recibidas en el 2005 relativas a ataques, amenazas y hostigamiento a defensores de los derechos humanos y activistas de la sociedad civil, específicamente las amenazas a **Obtilia Eugenio Manuel, Yesica Sánchez Maya e Israel Ochoa**, las reiteradas amenazas a

**Lydia Cacho Ribero**, y la emboscada e intento de asesinato contra **Albertano Peñalosa Domínguez**, en la cual según la información recibida fallecieron dos de sus hijos (uno de ellos de 9 años), y resultaron gravemente heridos los otros dos (un de los cuales también era menor de edad). El Relator Especial toma nota de las medidas de protección adoptadas en los casos de las Sras. Eugenio Manuel y Cacho Ribero, e insta al Gobierno a que le mantenga informado sobre cualquier avance o desarrollo significativo en la investigación de este caso. El Relator Especial agradecería también recibir información concerniente a la adopción de cualquier medida de protección en los casos de la Sra. Maya y el Sr. Ochoa. En lo relativo al supuesto intento de asesinato sufrido por el Sr. Peñalosa, el Relator Especial, a la espera de una respuesta del Gobierno, y sin pronunciarse sobre los hechos del caso, expresa grave consternación ante este incidente, y solicita al Gobierno que envíe información relativa al actual estado de salud del Sr. Peñalosa y de dos de sus hijos, los cuales fueron heridos de gravedad en el atentado, así como de la apertura de procesos investigativos encaminados a esclarecer los hechos y detener a los autores de este ataque. El Relator Especial reitera los principios enunciados, entre otros por la Comisión de Derechos Humanos en su Resolución **2005/67** en los cuales se *“Exhorta a todos los Estados a que adopten todas las medidas necesarias para garantizar la protección de los defensores de los derechos humanos y creen y mantengan un entorno favorable a la labor de los defensores de los derechos humanos y sus familiares”*.

580. Con respecto al arresto del Sra. **Lydia Cacho Ribero** por cargos de difamación y el supuesto trato recibido por la citada persona durante el periodo que pasó bajo custodia policial, el Relator Especial, a la espera de una respuesta del Gobierno, y sin pronunciarse sobre los hechos del caso, expresa su temor a que esta detención esté relacionada con el trabajo en defensa de los derechos de las niñas y mujeres en peligro llevado a cabo por la Sra. Ribero. Según informaciones recibidas tras el envío de la comunicación, la Sra. Ribero habría obtenido su libertad bajo fianza (tras pagar 70.000 pesos mexicanos) después de haber pasado treinta horas de detención en el Penal de San Miguel en Puebla. Supuestamente, Lydia Cacho Ribeiro debería comparecer ante un juez de Puebla todas las semanas mientras continúe el proceso judicial, durante el cual debería presentar pruebas en su defensa. De ser hallada culpable, podría ser condenada a una pena de entre seis meses y cuatro años de prisión. El Relator Especial reitera los principios en el informe presentado por su predecesor ante la Comisión de Derechos Humanos E/CN.4/2000/63, en el cual se señaló que: “las sanciones por difamación no deben ser tan graves que coarten la libertad de opinión y expresión y el derecho a buscar, recibir y difundir información; no deben imponerse jamás sanciones penales, en particular la reclusión, ni tampoco reparaciones por daños y perjuicios que no sean estrictamente proporcionales al daño real causado.” El Relator Especial agradecería recibir información actualizada sobre el desarrollo y resultado de este juicio.

581. En lo concerniente a las amenazas y acoso contra el abogado **Sr. Leonel Guadalupe Rivero Rodríguez**, el Relator especial, a la espera de una respuesta del Gobierno, y sin pronunciarse sobre los hechos del caso, desea reiterar los principios enunciados, entre otros por la Comisión de Derechos Humanos en su Resolución **2005/33**, en la que se *“exhorta a todos los gobiernos a que respeten y defiendan la independencia de los magistrados y abogados y, con este*

fin, adopten medidas legislativas, de cumplimiento de la ley u otras medidas eficaces apropiadas que permitan a los magistrados y abogados desempeñar sus funciones profesionales sin ningún tipo de hostigamiento o intimidación”. El Relator Especial solicita al Gobierno que le informe oportunamente sobre, cualquier acción llevada a cabo por el Gobierno para proteger, y garantizar el bienestar e integridad física y psicológica de esta persona y su familia, en particular en lo que a la adopción de medidas de protección se refiere.

### **Mongolia**

582. On 6 July 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Lodoisambuu Sanjaasuren**, aged 60 years, a lawyer and member of the Mongolian Advocate Association, a non-governmental body uniting all defense attorneys. According to information received, in November 2004, Lodoisambuu Sanjaasuren was sentenced to 18 months imprisonment, by Chingeltei District Court, under article 87-1 of the Criminal Code of Mongolia for “disclosure of a state secret”. It is reported that this conviction was in connection to his work defending a client who denounced torture practices by officers from the General Intelligence Agency (GIA). Lodoisambuu Sanjaasuren’s client was allegedly kidnapped from France by Mongolian intelligence officers who reportedly threatened him and forced him to involuntarily sign a letter which made him an informant. On 25 September TV 25, a Mongolian channel broadcasted an interview of a taped meeting between Lodoisambuu Sanjaasuren and his client in which the latter denounced the actions reportedly committed by Mongolian intelligence officers against him. According to the information received, Lodoisambuu Sanjaasuren was being held in a “restricted prison” outside the city of Ulaanbaatar, Bayanzurkh District at the time this communication was sent. Lodoisambuu Sanjaasuren was reportedly suffering from a serious heart condition for which he required urgent medical attention. It is reported that since his imprisonment in November 2004 Mr. Sanjaasuren was allowed to see his doctor twice in November 2004 and March 2005 and had since then been denied such access to his doctor. His health was reportedly “critical”.

### **Observations**

583. The Special Rapporteur regrets not having received a reply from the Government to his communication sent on 6 July 2005. Pending a reply from the Government and without making any determination on the facts of the case, the Special Rapporteur wishes to express his concern for Lodoisambuu Sanjaasuren’s arrest and detention and deems it appropriate to reiterate the fundamental principle enunciated in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 9 para. 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms. Furthermore, the Special Rapporteur urges the Government to treat **Lodoisambuu Sanjaasuren** in accordance with the principles enunciated inter alia in the “Standard Minimum Rules for the Treatment of Prisoners”; in particular Principle 22 (1) and (2), as long as he remains detained.



### Morocco

584. Le 4 janvier 2005, le Rapporteur spécial a envoyé une lettre d'allégation concernant **M. Lahcen Aouad**, journaliste de l'hebdomadaire "*Assahifa Al Ousbouia*", qui aurait été agressé le 9 décembre 2004 à Rabat par les forces de l'ordre. Aouad aurait couvert une marche, à Rabat, que des diplômés chômeurs marocains auraient organisé pour revendiquer leur droit au travail. Alors qu'il photographiait des manifestants qui auraient été tabassés par les forces de l'ordre, le journaliste aurait été victime, à son tour, de coups de pied et de bâton. Suite à cette agression, Aouad aurait souffert de multiples contusions à la cuisse et à la tête, qui auront lui valu un arrêt de travail de 22 jours.

585. Le 11 mars 2005 le gouvernement à répondu à la communication du 4 janvier 2005. Le gouvernement a informé le Rapporteur spécial que l'enquête menée par les autorités marocaines compétentes n'a pas permis de vérifier le bien fondé de ces allégations. Selon les éléments de l'enquête, le 9/12/2004 à Rabat, le dénommé **Lahcen Aouad** qui assurait la couverture d'un sit-in non autorisé, organisé devant l'enceinte du Parlement, se trouvait parmi les manifestants qui ont été dispersés par les forces de l'ordre, conformément aux dispositions légales régissant les attroupements et les manifestations non autorisées sur la voie publique. L'intervention des forces de l'ordre, qui a eu lieu conformément aux dispositions légales en la matière, a pris fin une fois les manifestants dispersés et l'ordre rétabli. Étant donné que l'intéressé n'a pas déposé plainte, aucune autorité n'a été chargée d'enquêter dans cette affaire et aucune sanction n'a été prononcée.

586. Le 4 janvier 2005, le Rapporteur spécial a envoyé un appel urgent concernant **M. Mohammed Bouhcini**, collaborateur du magazine hebdomadaire "*Tel Quel*", qui aurait été inculpé de trafic de drogue et incarcéré, le 13 décembre 2004 à Ouezzane, après avoir servi de guide à sa collègue, Mme Chadwane Bensalmia, qui réalisait un reportage sur les circuits de drogue dans la région du Rif central. Suite au témoignage d'un trafiquant de drogue, Bouhcini aurait été écroué, sans qu'aucune plainte n'ait été déposée contre lui, dans la même prison que le trafiquant qui l'accuse.

587. On 19 April 2005, the Government replied to the communication of 4 January 2005 concerning **Mohammed Bouhcini**. The Government informed the Special Rapporteur that after a quantity of drugs was seized from under the bed of a prisoner at the Wazan Prison local prison, he was charged for this offence. The prisoner asked to speak to the Crown Prosecutor at the Wazan Court of First Instance and made a statement indicating that he and a group of others were involved in drug dealing. After making arrangements with them by telephone, he reportedly agreed with the group concerned to supply him with the drugs through the intermediary of a prison official. He named Mohammed Bouhcini as a member of the band. After the police had carried out an investigation based on this information, the Public Prosecutor's Office at the Wazan Court of First Instance decided to refer the suspects, including Mohammed Bouhcini, to the investigating judge for conspiring to procure, possess and deal in drugs and contraband tobacco. Mohammed Bouhcini's prosecution had nothing to do with his role in helping the journalist Chadwane Bin al Salamiyah to prepare an investigative report. The judiciary alone has competence for deciding whether there is sufficient evidence to convict a

person charged with committing criminal acts and it fully respects the guarantees which the law grants to all individuals. The Government concluded that Mohammed Bouhcini was released since the investigating judge decided on 13 January 2005 not to extend his time in preventive detention.

588. Le 31 mai 2005, le Rapporteur Spécial a envoyé une lettre d'allégation concernant le cas du journaliste de l'hebdomadaire *El Bidaoui*, **Mounir El Ktaoui**, qui, le 24 mai 2005, aurait été agressé par plusieurs participants pendant une réunion d'un groupe sahraoui dans un hôtel à Rabat. Ses agresseurs auront détruit son appareil photo et lui auront obligé à quitter les lieux. *El Bidaoui* est un hebdomadaire qui traite courageusement des sujets très controversés tels que la future de la monarchie, les réseaux islamistes au Maroc et aussi la question du Sahara Occidental. Ce journal aurait aussi publié une interview du leader du Front Polisario ainsi que des reportages sur la situation humanitaire au Sud, un sujet qu'est rarement abordé dans les grands débats politiques sur le Sahara Occidental. Selon les informations reçues, les journalistes qui cherchent de couvrir le problème sahraoui de manière indépendante sont durement critiqués et parfois harcelé par des groupes ou des individus qui cherchent d'imposer avec la force leur vision du futur du Sahara Occidental.

589. Le 25 juillet 2005 le gouvernement à répondu à la communication de 31 mai 2005. Le gouvernement a informé le Rapporteur spcial que le 24 mai 2005, **M. Mounir El Kataoui** s'est présenté au services de la police de l'arrondissement Hassan à Rabat pour déposer une plainte à l'encontre d'individus qui, d'après ses déclarations, l'auraient violenté et malmené, au moment où il s'était rendu à la salle de conférence de l'hôtel « Farah Sofitel », en vue de participer à la couverture d'une réunion de représentants et notables des tribus du Sahara Marocain. Lors de son audition, le journaliste n'a à aucun moment déclaré que son appareil photo a subi des dégâts. A l'appui de sa plainte, l'intéressé a fourni un certificat médical de 8 jours d'invalidité et comme suite à sa plainte déposée, le procureur du Roi prés du tribunal de première instance de Rabat, a ordonné l'ouverture d'une enquête à ce sujet.

590. Le 23 juin 2005, le Rapporteur spécial a envoyé une lettre d'allégation concernant plusieurs journalistes, qui depuis le début du mois d'avril 2005, auraient été agressés, interpellés et expulsés dans la ville de Laâyoune notamment pendant des manifestations au sujet de la question du Sahara Occidental. Le 25 mai, **Salama Zoukani**, technicien de la chaîne de télévision régionale de Laâyoune, aurait été sérieusement blessé par les forces de l'ordre. Le 27 mai, **Abdessalam Razzak**, correspondant au Maroc de la chaîne satellitaire *Al-Jazzera*, aurait été refoulé à l'aéroport sans qu'aucune raison ne lui soit donnée. Le journaliste **Miguel Ángel Idígoras** et son cameraman de la télévision espagnole *TVE*, arrivés le 28 mai à Laâyoune, ils n'auraient pas pu envoyer leur reportage, en utilisant les locaux de la télévision marocaine, pour cause de « problèmes techniques ». Au début du mois de juin, **Lahcen Aouad**, journaliste du quotidien arabophone *Assahifa*, et **Mourad Bourja**, photographe indépendant, auraient dû patienter plusieurs heures avant de pouvoir quitter l'aéroport de Laâyoune et entrer en ville. Le 2 juin, la journaliste du quotidien en langue basque *Berria*, **Maria Cristina Berasain**, aurait été expulsée de la ville de Laâyoune et escortée par deux policiers qui l'auraient installée dans un avion pour Agadir. Par ailleurs, en avril, deux journalistes norvégiens, **Anne Torhild Nilsen** et **Radmund Steinsvag**, qui s'étaient rendus dans le Sahara occidental afin de préparer un documentaire sur la situation des droits de l'homme dans cette zone, auraient été systématiquement suivis par la police de Laâyoune et interpellés à deux reprises.

591. On 14 July 2005, the Government of Morocco sent a reply to the communication of 23 June 2005 concerning the treatment of several journalists in the city of Laayoune in 2005. The Government stated that with regard to **Salama Zoukani**, a technician working for a Laayoune television channel who was allegedly seriously injured by the forces of law and order, the King's prosecutor-general at the Laayoune Court of Appeal ordered the Laayoune intelligence services to conduct an investigation. After examining local police records, the intelligence services found no evidence to show that this person had been assaulted by any member of the police or that she had filed a complaint about such treatment. With regard to **Abdessalam Razzak**, a correspondent for Al-Jazeera satellite channel, according to an investigation carried out by the King's prosecutor-general, this man is a member of the Ayt Usa tribe and he and the two technicians who were with him were refused access to Laayoune because the police had received information that they posed a threat to public order due. With regard to the journalists **Lahsin Awad** and **Murad Burja**, the Government stated that they were not prevented from leaving Laayoune Airport. Their papers were simply checked to verify their identity and they were given full freedom to carry out their journalistic activities. They had an interview with the Laayoune chief of police, who answered all their questions about the events in Laayoune. With regard to **Maria Cristina Berasain**, a Spanish journalist and correspondent for a Basque newspaper who was allegedly refused permission to enter Laayoune and expelled after being escorted by two policemen to a plane bound for Agadir, it appears that she arrived at Laayoune Airport on 2 June 2005 and told a border policeman that she was a pharmacist and was on holiday. The security forces checked her story and discovered that she was a journalist. She was carrying a set of documents and files in her handbag on the territorial integrity issue. She was asked to leave Laayoune so that she could get authorization from the competent authorities for her press activities. She caught the same plane back to Agadir. With regard to **Anne Torhild Nilsen** and **Radmund Steinsvag**, who came to Laayoune to make a documentary on the human rights situation in the southern area and who were allegedly followed and questioned on two occasions by security officers, it appears that they arrived in Laayoune on 14 April 2005 and left on 19 April 2005, during which time they were given full freedom to carry out their work and were not harassed in any way. They interviewed a group of human rights activists in the city, as well as members of some human rights associations. They were received by the former prefect of the region of Laayoune Bujdur al-Saqiyah al Hamra and subsequently left the city without incident. The Government points out that all the journalists who came to Laayoune had full freedom to carry out their activities without being subjected to any form of harassment or ill treatment. Neither the Laayoune prefecture nor the department of public prosecutions received any complaints about journalists being harassed by the security forces because they were covering the events in Laayoune. With regard to **Miguel Angel Idigoras**, a correspondent for the TVE news channel, and his assistant, who were allegedly unable to broadcast footage which they had filmed during the events in Laayoune owing to technical difficulties at a local television channel in Laayoune, the Government stated that this matter should be referred to the Ministry of Communications.

592. Le 27 juillet 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur la torture et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de M. **El Houssein Lidri**, M. **Brahim Noumria**, membres du Forum Vérité et Justice Sahara dissout en 2003, et M. **Laarbi Massoud**, engagé en faveur des droits humains, tout les trois sahraouis. Selon les

informations reçues, le 20 juillet 2005, vers dix heures du matin, des agents de la Direction de la surveillance du territoire (DST) auraient fait irruption au domicile de l'activiste sahraouie Mme Fatma Ayach à Laâyoune, où ils auraient arrêté M. El Houssein Lidri, M. Brahim Noumria et M. Laarbi Massoud. Les forces de sécurité auraient conduit les trois hommes vers un endroit inconnu, où ils auraient été, au moment que cette communication a été envoyée, détenus, sans accès à l'assistance d'un avocat ni à leurs familles.

593. Le 19 septembre 2005, le Gouvernement a répondu à la réponse de la communication du 27 juillet 2005 selon lesquelles les dénommés **Mohamed El Moutaouakil, Larbi Massoud, Houssein Lidri, Ali Salem Tamek, et Ibrahim Noumria**. Le Gouvernement a informé le Rapporteur spécial que suite à l'enquête effectuée par la police judiciaire, il s'est avéré que les accusés, qui avaient été arrêtés à la suite des événements qu'a connus la ville d'Al Ayoun, étaient impliqués dans des actes criminels. En ce qui concerne l'allégation selon laquelle il y a eu violation du délai de garde à vue, il convient de préciser que le dénommé Ali Salem Tamek a été arrêté le 18 juillet 2005 sur ordre du Procureur général du Roi et placé en garde à vue pour interrogatoire. Il a reçu au cours de sa garde à vue la visite du Procureur général du Roi d'Al Ayoun, qui s'est enquis de son état de santé et s'est assuré du respect des garanties devant être observées au cours de la garde à vue. Il a en outre reçu la visite de son avocat, Me Habib El Reguibi du barreau d'Agadir Al Ayoun et a été présenté, le 21 juillet 2005, au Procureur général, qui a décidé de demander l'ouverture d'une enquête au sujet des actes qui lui étaient imputés. L'intéressé a donc été déféré devant le juge d'instruction. Il a bénéficié de toutes les garanties juridiques. Quant aux dénommés Houssein Lidri, Ibrahim Noumria, Larbi Massoud et Mohammed El Moutaouakil, ils ont été placés en garde à vue le 20 juillet 2005 pour être interrogés sur leur participation aux actes qui leur étaient imputés. Ils ont bénéficié de toutes les garanties légales tant en ce qui concerne le délai légal de garde à vue que l'inscription de leurs noms sur le registre de garde à vue. Le 23 juillet 2005, ils ont été présentés au Procureur général du Roi près la cour d'appel d'Al Ayoun, qui a décidé de demander l'ouverture d'une enquête sur les actes qui leur étaient imputés. Devant le Procureur général et le juge d'instruction, les accusés étaient représentés par Me Mohammed Abou Khaled et Me Hassen Benman du barreau d'Agadir Al Ayoun. Après avoir été interrogés par le juge d'instruction, ils ont été écroués. Pour ce qui est des allégations selon lesquelles les intéressés ont été victimes de mauvais traitements et de tortures, il y a lieu de signaler que ni le dénommé Ali Salem Tamek ni son avocat n'ont réclamé devant le Procureur général du Roi un examen médical et aucune trace de violence n'a été constatée sur le corps de l'intéressé. Dès que M. Tamek a été déféré devant le juge d'instruction, le 21 juillet 2005, des instructions ont été données pour qu'il fasse l'objet d'une visite médicale. Un examen effectué par trois médecins a montré qu'il n'y avait aucune trace de violence ou de torture et que son état de santé était normal. D'autre part, conformément à l'article 88 du Code pénal, le juge d'instruction a demandé, le 26 juillet 2005, que l'accusé subisse un examen psychique à l'hôpital psychiatrique de la ville d'Inazagan. À cet effet, le détenu a été transféré à la prison d'Ayat Melloul pour qu'il soit à la disposition des médecins et que les examens nécessaires soient effectués dans les meilleures conditions. Après son transfert à la prison susmentionnée, le détenu a affirmé avoir fait l'objet d'un traitement humiliant de la part d'un agent de la force publique. En conséquence, le Procureur général du Roi près la cour d'appel d'Al Ayoun a demandé l'ouverture d'une enquête. En ce qui concerne les autres personnes mentionnées plus haut, le juge d'instruction a demandé que les accusés Houssein Lidri, Ibrahim Noumria, Larbi Massoud et Mohammed El Moutaouakil fassent l'objet d'un examen médical, qui a été effectué par le docteur Saïd Ramadhan Akoudad de l'hôpital

Moulay El Hassan Belmahdil. L'examen n'a révélé aucune trace de violence ou de torture. Il convient aussi de signaler que Houssein Lidri et Ibrahim Noumria ont déposé des plaintes selon lesquelles ils auraient été brutalisés par des membres de la police. Suite à ces allégations, le juge d'instruction a ouvert une enquête qui était, au moment que cette réponse a été envoyée, en cours.

594. Le 28 juillet 2004, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur la torture et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de Mme. **Aminatou Haidar**. Selon les informations reçues, Mme Aminatou Haidar aurait été arrêtée vers 23:30 heures du 17 juin 2005 à l'hôpital Hassan ben Mehdi de Laâyoune, où elle recevait des soins suite à des graves blessures subies au cours de l'intervention des forces de sécurité lors d'une manifestation pacifique à Laâyoune dans l'après-midi du même jour ayant pour but de dénoncer les violations des droits de l'homme qui auraient été perpétrées par les autorités marocaines à l'encontre des citoyens sahraouis. Mme. Haidar aurait été emmenée au commissariat central de police de Laâyoune, en avenue de Smara, où elle aurait été détenue en isolement et soumise à des longs interrogatoires. Elle aurait de surcroît été privée de médicaments et d'alimentation apparemment pour réduire sa résistance. Le 20 juin 2005 Mme. Haidar aurait été transférée à la Prison noire de Laâyoune, où elle était toujours en détention, au moment que cette communication a été envoyée. Face aux allégations de détention incommunicado et de privation de médicaments et d'alimentation, les Rapporteurs Spéciaux ont exprimés leur vive préoccupation pour l'état de santé de Mme. Haidar. En plus, les Rapporteurs Spéciaux ont exprimés leur préoccupation face aux allégations selon lesquelles Mme. Haidar aurait été attaquée et frappée par les forces de l'ordre pendant qu'elle était en train de préparer, avec un groupe d'activistes, une manifestation pacifique pour dénoncer des violations des droits humains.

595. Le 19 septembre 2005, le Gouvernement a répondu à la communication de 28 juillet 2005 concernant **Aminatou Haidar**. Le gouvernement a informé le Rapporteur spécial qu'elle a été placée en garde à vue du 17 juin 2005 à 22 heures jusqu'au 19 juin 2005, après le prolongement du délai de garde à vue de 24 heures sur ordre du Procureur du Roi. La mère de l'intéressée, a été avertie et la défense de Mme Haidar durant l'instruction a été confiée à Me Habib El Reguibi. D'autre part, à la demande de l'avocat d'Aminatou Haidar, le juge d'instruction a ordonné qu'elle fasse l'objet d'un examen médical suite à des plaintes selon lesquelles elle aurait été brutalisé par des membres de la police. Le juge d'instruction a ouvert une enquête qui était, au moment que cette réponse a été reçu, en cours. Au sujet de la détention arbitraire présumées de la dénommée Aminatou Haidar, le Gouvernement a informé le Rapporteur spécial qu'il ressort de l'enquête effectuée par le Procureur général du Roi près la cour d'appel d'Al Ayoun que Mme Haidar a participé à des déprédations et atteintes à l'ordre public commises dans la ville d'Al Ayoun. En conséquence, Mme Haidar a été placée en garde à vue du 17 juin 2005 à 22 heures au 19 juin 2005 après le prolongement de son délai de garde à vue de 24 heures sur ordre du Procureur général du Roi. Il ressort de ce qu'il précède que Mme Haidar n'a pas été arrêtée en raison de ses opinions mais parce qu'elle avait commis des actes criminels.

596. Le 18 octobre 2005, le Rapporteur spécial a envoyé un appel urgent concernant **M. Abderrahmane El Badraoui**, ancien directeur de l'hebdomadaire *Al-Moulahid Assiyassi* (« L'observatoire politique »). Selon les informations reçues, le 5 octobre 2005, Abderrahmane El Badraoui, aurait été transféré à la prison de Mohdya, située à 150 kilomètres de Rabat, où réside sa famille. En réaction à cette mesure, il aurait entamé, le 7 octobre, une grève de la faim. M. El Badraoui aurait été emprisonné, depuis janvier 2002, à la prison de Saleh après qu' il aurait été jugé pour « usurpation de fonction » et condamné en appel à quatre ans de prison ferme. Avant d'être incarcéré, le journaliste aurait enquêté sur les malversations commises par certains cadres de la police d'une région proche de Rabat. Selon les informations reçues, les conditions de détention dans la prison de Mohdya, où le journaliste partagerait sa cellule avec des prisonniers de droit commun, seraient déplorables. Son transfert pourrait être lié à la mise en place, d'un site internet (<http://almoulahid.ifrance.com>) dénonçant le cas judiciaire et l'incarcération d'El Badraoui.

597. Le 3 novembre 2005, le Rapporteur spécial a envoyé un appel urgent concernant **M. Anas Tadili**, directeur de l'hebdomadaire *Akhbar al-Ousboue*. M. Tadili avait déjà fait l'objet d'un appel urgent envoyé par le Rapporteur spécial le 10 juin 2004 et d'un appel urgent envoyé par le Rapporteur spécial conjointement avec la Représentante Spéciale du Secrétaire Général sur la situation des défenseurs des droits de l'homme le 28 avril 2004. Le 15 avril 2004, Anas Tadili aurait été incarcéré pour une affaire de droit commun de dix ans. Compte tenu de l'impossibilité du journaliste de s'acquitter immédiatement d'une amende au montant très élevé, une mesure de contrainte par corps aurait été prononcée pour être en suite levée sept mois plus tard. Pendant sa détention, le 29 septembre 2004, la cour d'appel de Rabat aurait condamné Anas Tadili à un an de prison et 10 000 dirhams d'amende (environ 900 euros) pour « diffamation » à l'encontre d'un ministre dans un article publié le 9 avril 2004. Le journaliste aurait dû être libéré le 29 septembre 2005 après avoir purgé sa peine d'un an de prison, mais malgré les nombreuses demandes de ses avocats et de sa famille, il était, au moment que cette communication a été envoyée, toujours détenu dans la prison de Kénitra. Selon les informations reçues, les conditions de santé d'Anas Tadili étaient mauvaises: atteint de diabète, de cholestérol, de rhumatismes et de problèmes cardiaques, le journaliste aurait été aussi soigné pour dépression. De plus, il aurait été maintenu en quartier de haute sécurité où il lui aurait été interdit de communiquer avec les autres prisonniers et de profiter des lieux de détente.

598. Le 3 novembre 2005, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la torture, a envoyé une lettre d'allégation concernant **Lmbarki Hamdi ould Salek ould Elmahjoub**. Selon les informations reçues, le 29 octobre 2005, il aurait été arrêté par des agents des groupes marocains urbains de sécurité, suite aux manifestations organisées dans la ville d'El Aiun pour exiger le droit à l'autodétermination et la libération immédiate des prisonniers politiques sahraouis. Lmbarki Hamdi, après avoir été brutalisé dans la rue et amené au siège de la police judiciaire, aurait été transféré tard dans la nuit, dans un état critique, à l'hôpital Belmehdi où il aurait succombé à ses blessures. Par ailleurs, les forces de l'ordre auraient violemment réprimée une grande manifestation organisée en ville après la confirmation du décès de Lmbarki Hamdi, et déclenchée une campagne de répression et d'intimidation qui se poursuivrait toujours au moment que cette communication a été envoyée.

599. Le 8 novembre 2005, le Rapporteur spécial, conjointement avec le Vice-président du Groupe de Travail sur la détention arbitraire, et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent

concernant la situation de M. **Gaoudi Mohamed Fadel**, membre du Conseil national du Forum vérité et justice (FVJ), M. **Iguilid Hammoud**, président de la section de Lâyyoune de l'Association marocaine des droits de l'Homme (AMDH), et M. **Brahim Sabbar**, secrétaire général de l'Association sahraouie des victimes des violations massives des droits de l'homme commises par l'Etat marocain au Sahara Occidental, et M. **Brahim Dahane**, ancien disparu et président de cette dernière association. Selon les informations reçues, le 30 octobre 2005, un rassemblement populaire en faveur de la cause sahraouie se serait tenu à Lâyyoune. Lors de ce rassemblement, les membres des Groupes urbains de sécurité (GUS) et d'autres forces de sécurité marocaines auraient fait usage de la violence. En particulier, M. Hamdi Lambarki, 31 ans, aurait été battu par 11 agents des GUS, et serait décédé à la suite de ces blessures dans l'après-midi. La police judiciaire aurait également arrêté plus de 70 personnes qu'elle aurait relâchées deux ou trois heures plus tard, dont M. **Lakhal Mohamed Salem**, membre de l'Association sahraouie des victimes des violations graves des droits de l'Homme commises par l'État marocain au Sahara occidental. Vers 3h du matin, M. Gaoudi Mohamed Fadel, M. Iguilid Hammoud, et M. Brahim Sabbar se seraient rendus au commissariat central pour s'informer du sort de M. Lakhal Mohamed Salem où ils auraient été sévèrement battus par des agents des GUS, à l'extérieur du commissariat. Alors qu'elles voulaient leur porter secours, Mme **Yaya Manni**, épouse de M. Gaoudi Mohamed Fadel et membre de l'Association sahraouie des victimes des violations graves des droits de l'Homme commises par l'État marocain au Sahara occidental, et ses sœurs, Mmes **Mariam Aicha** et **Soukaina**, auraient elles aussi été battues. Le 31 octobre 2005, M. Lakhal Mohamed Salem aurait été libéré sans charge. Selon des informations complémentaires, vers 17h45, M. Brahim Dahane aurait été arrêté par des membres des GUS, alors qu'il prenait part à un rassemblement spontané devant la maison de la famille du jeune défunt sahraoui M. Hamdi Lembarki, et qu'il communiquait par téléphone des informations sur la mort de ce dernier à l'agence espagnole EFE. Le 1er novembre 2005, M. Brahim Dahane aurait comparu devant le procureur général du Tribunal pénal de Lâyyoune, qui aurait ordonné de le conduire à la « Prison Noire » de Lâyyoune. Il serait accusé de « constitution d'un groupe criminel » et d'« adhésion à une organisation non autorisée.

### **Suivi aux communications envoyés l'année passé**

600. On 6 April 2005 the Government replied to the communication dated 27 May 2004, concerning **Mohammed Rachid Chrii**. According to the information received Mr Chrii was prosecuted by the King's Counsel at the Asafi Court of First Instance, where he was acquitted of drug dealing and convicted of various criminal offences. He was sentenced to one and a half years in prison and a fine of 4,000 dirhams. The verdict was upheld at appeal and partly overturned. On 7 January 2004, he was pardoned by His Royal Highness King Mohammed VI under the terms of a special royal pardon.

### **Observations**

601. Le Rapporteur spécial remercie le gouvernement pour sa réponse du 4 janvier 2005 concernant **Lahcen Aouad** et **Mohammed Bouhcini**, du 31 mai 2005, du 23 juin 2005, du 27 et 28 juillet 2005 et du 27 mai 2004. En ce qui concerne la réponse du 31 mai et du 27 et 28 juillet 2005, le Rapporteur spécial souhaiterait recevoir plus d'information sur la suite des enquêtes menées. Concernant Mohammed Bouhcini, le Rapporteur spécial a agréablement reçu l'information par d'autres sources que le tribunal d'Ouezzane a abandonné les charges contre lui.

602. Le Rapporteur spécial souhaiterait recevoir bientôt une réponse à ses communications du 18 octobre, du 3 novembre concernant **Lmbarki Hamdi ould Salek ould Elmahjoub** et du 8 novembre 2005.

603. Le Rapporteur spécial souhaiterait bientôt recevoir une réponse à sa communication du 3 novembre 2005 concernant **Anas Tadili**. Dans l'attente de cette réponse mais sans préjuger des faits examinés, le Rapporteur spécial reste inquiet et souhaiterait appeler l'attention du gouvernement sur le principe de proportionnalité de la peine. A cet égard, des sanctions pénales, en particulier l'emprisonnement pour diffamation, ne semble pas proportionnel à un exercice effectif du droit à la liberté d'opinion et d'expression. Ce principe est réitéré par la Résolution 2005 /38 de la Commission de Droits de l'Homme qui a invité tous les Etats a ... j) ne pas recourir, pour des infractions concernant des médias, à des peines d'emprisonnement ou à des amendes qui sont sans commune mesure avec la gravité de ces infractions et qui violent le droit international relatif aux droits de l'homme.

### Myanmar

604. On 17 January 2005, the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights in Myanmar and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Saw Pan Koo**, a 30-year old member of National League for Democracy, who was arrested on 6 December 2004 with 13 other NLD members. Initially, they were charged with attempting to celebrate Burmese National Day; subsequently Saw Pan Koo was charged with distributing leaflets containing the Universal Declaration of Human Rights. Reportedly, Saw Pan Koo and the other NLD members had been detained at Pyapon Prison pending their trial.

605. On 7 March 2005 the Government replied to the communication of 17 January 2005 concerning Mr. **Saw Pan Koo, Aung Zaw Ok, Kyaw Zeya** and **Thein Tun**. The Government stated that they were charged by the Pyapon District Police under section 17 of the Printing and registration Act. The Pyapon District Court opened the case on 16 December 2004. Aung Zaw Ok, Kyaw Zeya and Thein Tun did not appear in court as a result of which action was taken against them as absconders. Saw Pan Koo only appeared at the time of the proceedings. After hearing the witnesses, the Judge found that Saw Pan Koo and the other three were not guilty; the case against them was closed on 19 January 2005 and no further action was taken against San Pan Koo.

606. On 16 February 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture, the Special Rapporteur on the situation of human rights in Myanmar and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Khun Htun Oo**, Mr. **Sai Nyunt Lwin**, and General **Sao Hso Ten**. Reportedly, on 9 February 2005 Special Branch Police arrested Mr. Khun Htun Oo, Chairman of the Shan Nationalities League for Democracy (SNLD), and Mr. Sai Nyunt Lwin, Secretary of the SNLD. The reasons for their arrest and detention as well as their whereabouts at the time this communication was sent was unknown. On 8 February 2005, two further SNLD members were reportedly detained in Taungoo, central Myanmar. It is also alleged that two more SNLD members from Kengtung were arrested on their way to Yangon where they were planning to join the 58th Union Day celebration on 12 February, raising the total number of detained SNLD to



six. Moreover, in Taunggyi, Shan State, security forces arrested Gen. Sao Hso Ten and several other leaders of the Shan ceasefire groups, including from the Shan State Peace Council, after they had attended a meeting between opposition and ethnic groups held in Shan State on 7 February 2005. The grounds for the detention of these Shan ethnic leaders were not clear. In view of their detention at an undisclosed location, concern was expressed for the physical and psychological well-being of the abovementioned persons.

607. On 25 February 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture, the Special Rapporteur on the situation of human rights in Myanmar and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning the conditions of detention and the state of health of the following prisoners:

- Dr. **May Win Myint**, the elected Parliament Member from Mayangon constituency, detained in Insein Prison (Rangoon Division), who was reportedly suffering from hypertension, heart disease and cervical spondylosis. Dr. Myint was sentenced to seven years in prison for having, on 28 October 1997, together with other National League for Democracy (NLD) members, attended a founding meeting of a local NLD youth wing. Her prison term was, on 2 February 2005, extended by one year.
- Dr. **Than Nyein**, the elected Parliament Member from Kyauktan constituency detained in Prome (Pyi) Prison (Pegu Division), suffers from liver problems, heart disease, and diabetes and nerve problems. Instead of receiving medical treatment, on days when he had appointments with doctors he was transferred to a different prison. While his health condition worsened, his sentence was extended for another year under the State Protection Law. Dr. Than Nyein was arrested on 28 October 1997 following an attempt to hold a meeting with other NLD members. He was arrested with seven other NLD members, who were also sentenced to seven years imprisonment.
- Ko **Nay Oo**, a member of the National League for Democracy (NLD) detained in Kalay Prison (Sagaing Division), suffers from mental health problems which are the consequence of both torture and malnutrition. Ko Nay Oo was arrested in February 1998 and subsequently sentenced to 14 years imprisonment for having allegedly actively participated in NLD activities.
- Ko **Thet Win Aung** and Ko **Nay Lin Soe**, two student leaders detained in Mandalay Prison (Mandalay Division), suffer from serious mental health conditions. In addition, Ko Nay Lin Soe now suffers from poor eyesight and muscle paralysis. Ko Thet Win Aung was sentenced in October 1998 to 52 years imprisonment, which term was increased to 60 years, for having been active in student demonstrations and other student political activities. Ko Nay Lin Soe was sentenced in February 1998 to 14 years imprisonment.

608. On 13 April 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the situation of human rights in Myanmar, sent an urgent appeal concerning **U Kyaw Khin**, National League for

Democracy (NLD) elected representative (MP) from Taunggyi Township, Constituency 1 in Shan State, who was allegedly sentenced to 14 years imprisonment by Taunggy District Court on 8 April 2005. He was reportedly charged and sentenced to seven year imprisonment under Section 5-J of the 1950 Emergency Provisions Act for allegedly distributing political leaflets to female students. In addition, he was reportedly charged and sentenced to another seven year sentence under Section 17-1 of the Printing Law for allegedly possessing Daw Aung San Suu Kyi's awards and prizes list and a leaflet containing the BBC's predictions on the country.

609. On 28 April 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the situation of human rights in Myanmar, sent an urgent appeal concerning the following persons:

- **Ye Kyaw Zwa**, aged 33, Myingyan Prison, Mandalay. Since 2004, he was suffering from severe depression. Despite his poor condition, the authorities reportedly ignored appeals on humanitarian grounds by the family that he be moved closer to them to Insein Prison. He was first arrested in 1990, sentenced to three years' imprisonment whilst he was a high-school student, and released in 1992. He was arrested again in 1996 in connection with the student movement in Yangon, and sentenced to 19 years' imprisonment.
- **Thet Naung Soe**, aged 34, Insein Prison, Yangon. He was suffering from mental health problems and skin diseases. He was arrested and imprisoned on 18 August 2002 in connection with a peaceful solitary protest in front of Yangon City Hall, concerning economic and social conditions in Myanmar.
- **Kyaw Linn Htun**, aged 28, Insein Prison. He was suffering from severe depression. He was arrested in 2004 for student union activism.
- **Myo Min Zaw**, age 30, Mandalay Prison. He was suffering from serious mental health problems and gastric pain. He was arrested and sentenced to 52 years' imprisonment in September 1998 for "agitating unrest" after having staged a peaceful protest and distributing leaflets concerning the poor quality of education and the human rights situation in Myanmar. He was beaten at the time of his arrest and during interrogation. He was tried together with 50 other students in a ten-day closed-door trial for which he was denied a lawyer. Reportedly, the prison authorities had denied all four persons adequate medical treatment. In view of the above allegations, concern was expressed for their physical and mental integrity if they did not receive prompt and adequate medical treatment.

610. On 4 May 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, the Special Rapporteur on the situation of human rights in Myanmar and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning Ms. **Ma Than Htay**, also known by her Buddhist name as Mar Lar Yee, and Ms. **Ma Tin Tin Oo**, also known as Thayzawaddy, both human rights defenders and Buddhist nuns. According to the allegations received, on 16 January 2003 in the morning, they were arrested following their participation in a demonstration near the City Hall, Yangon,

which called for the release of political prisoners in Myanmar, for progress in the dialogue between the Government and the National League for Democracy (NLD), and for basic commodity prices to be lowered. On 17 January 2003, the authorities announced that they had been arrested for distributing “pamphlets to agitate the people to stage demonstrations” and for shouting slogans outside the City Hall. The authorities accused them of “trying to instigate the people under the guise of nuns”; that Ms. Htay had become a nun only recently, after having worked as a migrant worker in Thailand; and that both had attended courses on human rights and democracy in Thailand. The authorities characterized the demonstration as a “scheme of the expatriate NLD insurgent group to commit destructive acts at the expense of religion”. Ms. Htay and Ms. Oo were reportedly ill-treated in pre-trial detention, and later sentenced to 13 years’ imprisonment under the Unlawful Associations Act, and the Emergency Provisions Act, a law that is reportedly vaguely worded and is frequently applied to peaceful protests. Their place of detention was unknown at the time this communication was sent.

611. On 20 May 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, the Special Rapporteur on the situation of human rights in Myanmar and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning twenty-two political prisoners currently detained in Insein Prison in the capital Yangon. Two of the prisoners, **Naing Naing**, an NLD Member of Parliament who was arrested in September 2000 and sentenced to 21 years’ imprisonment for writing a letter protesting restrictions on the NLD, and **Soe Han**, an NLD lawyer who was arrested in 2000 and was serving 21 years’ imprisonment for writing a letter protesting restrictions on the NLD, were the subject of a previously transmitted communication (E/CN.4/2005/62/Add.1. para. 1009) by the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, to which no response was received. According to the allegations received, on 28th April 2005, **Aye Lwin**, **Han Win Aung**, a student and member of the All Burma Federation of Student Unions (ABFSU) who was arrested in October 2003 and sentenced to 7 years’ imprisonment for distributing leaflets, **Kyaw Kyaw**, a student and ABFSU member, **Kyaw Moe**, **Kyaw Naing**, **Lwin Ko Latt**, a student and member of the All Burma Federation of Student Unions who was arrested in September 2003, **Myo Khin**, a member of Myanmar’s main opposition party the National League for Democracy who was sentenced to 3 years for protesting restrictions on the NLD in 2003, **Myo Win**, and a monk whose name is not known initiated a hunger strike in protest at the decision of the Insein Prison authorities to make political prisoners share cells with prisoners convicted of criminal offences, who allegedly ill-treated them. Two of the hunger strikers were confined to special punishment cells originally built as dog kennels for army dogs and were severely beaten by the authorities. **Myint Ye**, **Ne Kyaw**, **Myint Naing** and lawyer **Soe Han**, were transferred to other prisons in Myanmar, including Thayet Prison, 340 miles from Yangon, because of having carried out a hunger strike. Some of the aforementioned prisoners were denied contact with their families and some were, at the time this communication was sent, still reportedly being kept in solitary confinement. Several of the hunger strikers suffered from health problems. Nine other political prisoners were also being denied contact with their relatives. **Hla Moe**, **Htun Yin**, NLD from Dallah Township, Yangon, **Naing Naing**,

**Myint Htay**, an NLD Youth member and builder who were sentenced to 7 years in 2003 for distributing leaflets criticizing official plans for political transition, **Nanda Sit Aung**, ABFSU who was sentenced to 17 years' imprisonment in 2003 for distributing leaflets, Nan Shin Mon, a student who was sentenced to 15 years' imprisonment in 2003 for forming a student union without official permission, **Ohn Than** who was sentenced in 2004 to two years for a peaceful demonstration outside UNDP offices in Yangon, monk **U Rajadamma**, who was arrested in 2003 for refusing to accept alms from Military Intelligence officers, and **Zaw Min Oo**, ABFSU student, were not thought to have taken part in the hunger strike, but might have been at risk of torture or ill-treatment in connection with the protest. In view of the reported health issues affecting some of the individuals concerned, concern was expressed for their mental and physical integrity if they did not receive prompt and adequate medical attention.

612. On 1 July 2005, the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Rapporteur on the situation of human rights in Myanmar, sent an urgent appeal concerning **U Hkun Htun Oo**, chairman of the Shan National League for Democracy (SNLD), aged 62. According to the information received, U Hkun Htun Oo had been detained at the Rangoon Insein Jail special cell since 9 February 2005. He was to be charged with treason and business-related offences, including keeping foreign currency illegally. He was reportedly not allowed to appoint a lawyer of his own choice for his defence and was not allowed to see family members. U Htun Oo was suffering from breathing problems and stomach ache and urgently needed proper medical treatment. He depended on receiving the necessary medications from his home, and his health was deteriorating. The authorities accused the SNLD of conspiring against the state because of political discussions held during an SNLD meeting in February 2005, which the authorities claim attacked the union, national solidarity and the union's sovereignty.

613. On 20 July 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the situation of human rights in Myanmar, sent an urgent appeal concerning Mr. **Chit Swe**, aged 65, press cartoonist and deputy chairman of the National League for Democracy's (NLD) Thanlyin branch. According to the information received, Mr. Chit Swe was arrested on 12 July 2005 shortly after a meeting of members of the NLD, the party headed by Aung San Suu Kyi, which meeting was held in the morning of 12 July at Chit Swe's home in Thanlyin, near the capital, Rangoon. Even though the meeting was held legally, the authorities arrested Mr. Chit Swe. Mr. Chit Swe being held at Thanlyin's police station where he was forced to sleep on the concrete floor of his cell. It was reported that he was suffering from tonsillitis and acute bronchitis that prevented him from eating normally. On 25 July 2005, he was expected to appear before a Court to learn what charges were brought against him. If convicted, he faced a heavy prison sentence. If released, he faced a possible ban on publishing his cartoons, or/and surveillance by the Censorship Bureau.

614. On 27 July 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Rapporteur on the situation of human rights in Myanmar, sent an urgent appeal concerning **U Win Tin**, aged 75, an editor and senior advisor to the National League for Democracy. According to the allegations received, he was being detained in Insein Prison, where he was reportedly suffering from heart disease and spondylitis. He had reportedly been in and out of prison hospital. His poor state of health was exacerbated by his treatment in prison, including torture, inadequate access to medical treatment and detention in a cell designed

for military dogs, with concrete floors, without bedding, and deprivation of food and water for long periods of time He was arrested 16 years ago on 4 July 1989 and received three consecutive sentences totaling twenty years. The grounds given for his detention included "giving seditious talks, organizing subversive movements within the National League for Democracy and writing and publishing pamphlets to incite treason against the state" and for having "secretly published anti-government propaganda to create riots in jail." He was reportedly denied the right to a fair trial and to humane prison conditions. In 1996, he was again sentenced for his attempt to send a report concerning the ill-treatment and inhumane prison conditions in Insein prison to the UN Special Rapporteur on Myanmar.

615. On 29 August 2005, the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights in Myanmar, sent a letter of allegation concerning *The Myanmar Times*. According to information received, on 16 August 2005, the Ministry of Information Press Scrutiny and Registration Division (PSRD) did not allow the newspaper to publish a Burmese translation of an article concerning new publishing licence regulations in Myanmar. The article was to appear in the paper's edition of 18 August 2005. These new publishing rules reportedly tightened control over the editorial teams of authorized publications. Moreover the director of the PSRD, stated that negative reports and commentary on China, India and the Association of the Southeast Nations (ASEAN) were still banned, and criticism of the Government was only tolerated as long as it was deemed constructive. It was reported that news coverage of natural disasters and poverty issues would be allowed, as long as it did not affect the national interest. Such media coverage was previously banned entirely. Furthermore, on 16 August 2005, the Censorship Board banned local journalists from reporting the looting of a pagoda, situated close to the heavily-guarded house of a military junta chief.

616. On 2 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the situation of human rights in Myanmar, the Special Rapporteur on the question of torture, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (the right to the highest attainable standard of health), the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on trafficking in persons, especially women and children and Independent Expert on Minority Issues, sent a letter of allegation concerning widespread and systematic violence against women and girls in Myanmar. According to information received, in all states in Myanmar, both in conflict areas and in ceasefire areas, Government forces subject women and girls to multiple forms of violence including abduction, forced marriage, rape, including gang rape, mutilation, suffocation, scalding, murder, sexual slavery and other forms of sexual violence. These acts are reportedly often committed by commanding officers, or with their acquiescence. In many cases, women and girls are subjected to violence by soldiers, especially sexual violence, as 'punishment' for allegedly supporting ethnic armed groups. Women and girls are in these cases reported to have been detained and repeatedly raped by the soldiers, sometimes leading to their death. In other cases it is reported that the authorities sanction violence against women and girls committed by military officers, including torture, inter alia, as a means of terrorising and subjugating the population, particularly those in the Shan state. One report detailed the alleged rape of 625 women and girls in Shan State by soldiers from 52 different battalions. It was alleged that 83% of the rapes were committed by officers, often in front of their troops; and 61% of the rape incidents involved gang rapes. In only one of these cases was the perpetrator punished by his commanding officer. On many occasions there was apparently

no attempt to conceal the bodies of dead women who were raped and subjected to other acts of violence. Women and girls also face violence when they are used as porters and forced to carry heavy military equipment and food, inter alia. Subjected to forced labour by the military troops during the day, they are often used as sex slaves at night. If they try to escape they risk being beaten, deliberately starved, tortured or even killed. Pregnant women are not exempt from forced labour assignments. In Mon State, women and girls have been allegedly subjected to all forms of forced labour, including working on military agricultural projects, and guarding railways, motor roads, gas-pipelines, dams and other government infrastructure projects in order to warn the soldiers of any detected movement from the armed ethnic groups. The isolation of most of these posts makes the women and girls more vulnerable to sexual violence. Moreover, in 2004, it was reported that Government soldiers in Mon State took women and girls from their homes and forced them to participate in so-called 'fashion and beauty shows.' During the course of the fashion shows and immediately thereafter, the women and girls were subjected to sexual harassment and some were purportedly raped by the soldiers after being forced to stay at the army barracks. Also in 2004, it is reported that during military operations in the Mon State, soldiers asked villagers to provide them with a number of women per day. The women were forced to work and serve the soldiers during the day and were also subjected to sexual violence. Some of the women and girls were instructed to visit the soldiers' homes repeatedly. Furthermore, while in detention, particularly in military camps, women and girls, as men, suffer from the existing harsh conditions including overcrowding, poor sanitation, lack of proper food and nutrition as well as a lack of access to adequate medical treatment. In addition to being reportedly subjected to beatings and torture, women are often allegedly subjected to sexual abuse, harassment and rape at the hands of the military authorities. This reality is aggravated by the fact that most prison officials are male and prisons are not necessarily gender segregated. Furthermore, women are not provided with the necessary sanitary supplies for their menstruation, clothes or adequate water to be able to wash, while in detention. Pregnant women are frequently denied medical or other assistance while giving birth, which often leads to complications for both mother and child. Widespread violence against women and girls also results in their restricted movement as they are often fearful of working in the fields or traveling unaccompanied given the regular military checkpoints where women and girls are often subjected to sexual harassment. This especially affects women and girls in rural areas and their access to necessary public services including access to medical care. As a consequence, many women and girls attempt to leave Myanmar for Thailand to flee the insecure climate. This, however, brings its dangers, as they are sometimes arrested for illegally trying to cross the border and are once again subjected to violence or deported back to their former aggressors. This matter has already been raised with the Government on 16 June 2005 in a letter of allegation jointly sent by the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on violence against women, its causes and consequences. No response from the Government had, at the time this communication was sent, been received. In most cases, especially when the perpetrators are Government officials, victims do not lodge complaints to the authorities on any acts of violence committed against them, for fear of retaliation by the perpetrators. In many instances, those that do complain are invariably instructed to accept meagre compensation under the threat that if they do not retract their complaint, they would be subjected to more violence. Alternatively, they are arbitrarily arrested and detained until they withdraw their complaints. Sometimes the families of the victim are threatened as a means of exerting pressure on the victim. On one occasion, a

community leader who reported a rape of one of his villagers was beaten and tortured to death by the military. It is also reported that medical personnel who treat a rape victim are reluctant to take any action with the authorities out of fear of possible reprisals against them. As a result of this, victims are entirely discouraged from making complaints; investigations are as a result rarely initiated and perpetrators are seldom brought to justice. The existence of such a widespread culture of impunity exacerbates the magnitude of violence against women and girls in Myanmar. Moreover, in August 2002, Government authorities carried out investigations into the report 'Licence to Rape' where rape cases of Shan women and girls from 1996 to 2001 were documented. It is reported that the authorities forced people throughout central and southern Shan State to sign documents testifying that no incidents of sexual violence had been committed by military troops in their areas. In some places, people were also made to stage public demonstrations to support this claim. It was then publicly announced by the authorities that the findings of the said report were false and fabricated. Moreover, in October 2002, prior to the visit in Shan state of the Special Rapporteur on Myanmar, the authorities threatened Shan villagers not to testify against their troops and sent out military intelligence officers to track down rape survivors. The same warnings were sent to the population prior to the visit of a delegation from the ICRC in Southern Shan State in late 2002. Military officers threatened to cut the tongues and slit the throats of anyone who dared speak to the ICRC delegations about human rights abuses committed by the military troops. The population was similarly threatened when a delegation from Amnesty international visited Myanmar in January 2003. It is deeply regrettable that repeated calls by the Special Rapporteur on the situation of human rights in Myanmar, for an independent investigation to be conducted into allegations of widespread rape against Shan women, following the publication of the License to Rape report, have not been followed up by the Government. Women and girls also face serious health concerns. Abortion is illegal in Myanmar in all circumstances, including cases of rape and incest, which leads to unsafe, illegal abortions. It has been reported that 50% of maternal deaths are a result of unsafe abortions. Abortion is also ranked as the third main cause of illness and complications arising from abortions constitute 20% of all hospital admissions. People are not provided with sexual and reproductive health information, and information about birth spacing and safe sex is particularly inaccessible to young single women since they are assumed to be sexually inactive until they are married. Women and girls in rural areas, particularly women and girls members of ethnic minorities are particularly affected. HIV/AIDS and other sexually transmitted diseases are serious threats to women's well-being and have increasingly become recognized as being closely related to the increasing sex trade in Myanmar. High rates of HIV among women and girls are also closely linked to widespread violence against them as rape and sexual assault take away their control over when, with whom and how they experience sex. Despite efforts by the authorities to address these issues, including the organization of AIDS prevention and education, cultural taboos continue to contribute to the lack of knowledge about HIV/AIDS and other sexually transmitted diseases. Moreover, members of Shan communities, for example, cannot take full advantage of such information campaigns since the information is provided only in Burmese. It is deeply regrettable that the Government restrictions and regulations placed upon the operations of the Global Fund which was providing grants to assist in the combat of AIDS, led it to announce in August 2005, its withdrawal of significant funding from Myanmar, citing its inability to effectively conduct its activities. Finally, whilst commending efforts by the

Government on the progress that has been made in addressing human trafficking, including educational campaigns and the establishment of a police anti-trafficking unit, it is nevertheless reported that many women and girls continue to be trafficked for forced labour and sexual exploitation. Trafficking is taking place from Myanmar to neighbouring countries, and within Myanmar from poorer agricultural rural areas towards urban centres, mining areas, areas near military bases and cities along trade routes and the border where prostitution is common. Moreover, the spread of HIV/AIDS within the country and from Myanmar to neighbouring countries, due to the extent of trafficking is an issue of rapidly mounting concern in the region. The attitude of families adds to the cycle of migration and exploitation since families are reported to put pressure on their female members to contribute to the family's finances as a result of their extreme poverty. Corruption and complicity amongst local and border officials, who also profit from trafficking, are also a cause for serious concern. Concerning all of the above allegations, on most counts, civilians in ethnic minority areas such as Shan, Karen, Kayah and Mon States have been especially vulnerable to such violations.

617. On 3 November 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights in Myanmar and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Ms. **Su Su Nway**, aged 34, a youth member of the National League for Democracy, usually resident in Htan Manaing Village, Kawmoo Township, Rangoon Division. According to information received, in January 2005, Su Su Nway successfully sued local authorities because of their forced labour practices. This was a historic case in Myanmar, as it was the first time such a case was brought to court and won by the plaintiff. Soon thereafter, the local authorities of Htan Mainang Village reportedly began to severely harass Su Su Nway, including through public taunts, in an attempt to make her flee the village. At the end of April 2005, the local authorities filed criminal charges against Su Su Nway, accusing her of "besmearing their reputation" and swearing at them under articles 506 and 294B of the Myanmar Penal Code. Su Su Nway proclaimed her innocence. Su Su Nway was arrested on 13 October 2005, the day her trial began. Villagers seeking to be witnesses in favour of Su Su Nway were intimidated by the local authorities, who stated that those intending to testify would have to "pay a visit to the police station" before appearing as witnesses. One man was detained for 24 hours for his attempt to support Su Su Nway. Su Su Nway had not been informed in a timely manner about the charges against her and was thus unable to effectively prepare her defence. She pleaded not guilty to the charges, but the clerks entered a guilty plea for her. In mid-trial the original township judge was replaced by another judge from Henzada township. The accused faced harassment and taunts from the authorities also during the trial. Su Su Nway suffers from a heart condition and slipped and fell during the trial, hurting herself, but the local nurse treating her was intimidated by the authorities and was thereby prevented from continuing treatment of Su Su Nway. Su Su Nway was found guilty of "besmearing the reputation" of the village authorities and of swearing at them under articles 506 and 294B of the Myanmar Penal Code. She was sentenced to 18 months imprisonment. Su Su Nway was, at the time this communication was sent, detained at Insein Prison, Rangoon Division and her health was deteriorating. She was unable to speak or walk properly, and the prison conditions at Insein Prison as well as the lack of adequate health care there further exacerbated the situation.



## Observations

618. The Special Rapporteur regrets not having received any replies to his communications.

619. The Special Rapporteur wishes to express his concern at the numerous allegations of arbitrary arrest, harassment, threats, torture and unfair trials suffered principally by members of the **National League for Democracy (NLD), human rights defenders are persons expressing a political opinion**. Without making any determinations as to the facts of these cases and pending replies from the Government, the Special Rapporteur deems it appropriate to reiterate the principles contained in inter alia the Commission of Human Rights Resolution 2005/67 and 2005/38, which calls upon all States to take all necessary measures to ensure the protection of human rights defenders, and to ensure and maintain an environment conducive to the work of human rights defenders, and to take all necessary measures to put an end to all violations of the right to freedom of opinion and expression and to create conditions to prevent such violations, including by ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented.

620. The Special Rapporteur reiterates his particular concern at the reported conditions of detention, the alleged ill-treatment (including confinement of human beings in facilities destined for dogs), and the reported denial of medical treatment suffered by a number of detainees, who are again predominantly members of the opposition party **National League for Democracy (NLD), human rights defenders and/or persons expressing a political opinion**. Moreover, pending a reply to his communications and without making any determination on the facts of the cases, the Special Rapporteur, in light of the reported physical, and psychological health afflictions reportedly suffered by most of these inmates, he calls on the Government to treat these prisoners as in accordance with the principles enunciated inter alia in the “Standard Minimum Rules for the Treatment of Prisoners”; in particular Principle 22 (1) and (2).

621. The Special Rapporteur also takes this opportunity to voice his concerns at the serious allegations of violence against women in Myanmar and the need for the Government to respect its international human rights obligations as well as internationally recognized norms and standards on violence against women. In this context the Special Rapporteur also deems it appropriate to reiterate the principle reiterated in Resolution 2005/38 of the Commission on Human Rights which calls on states to facilitate the full, equal and effective participation and free communication of women at all levels of decision-making in their societies and in national, regional and international institutions, including in mechanisms for the prevention, management and resolution of conflicts.

## Nepal

622. On 24 January 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning Mr. **Sudip Pathak**, President of the **Human Rights Organisation of Nepal (HURON)**. On 6 January 2004, the Supreme Court issued an order for the release of Mr. **Dev Bahadur Maharjan**, a man detained at Sundarijal detention centre near Kathmandu. The following morning, HURON sent a letter to the Home Ministry, the office of the Chief of District Officer and the spokesperson of the RNA to inform them that a delegation from HURON would visit the Sundarijal detention centre. On 7 January at 3pm, members of his family and

representatives of HURON met Mr. Maharjan as he was released from Sundarijal detention centre, in order to ensure his safe passage home. A black pick up Toyota van, with five armed members of security forces in civilian clothes, was parked in the parking area. Later on, the HURON members saw another private white van, with security forces in it parked at a distance of 500 meters from the detention centre. At around 3.30 pm, at Jorpati (place), Kathmandu Metropolis ward no. 6, a policeman stopped the jeep of the HURON team and seized the license of the driver without giving any reasons. When the HURON team decided to continue driving without the licence, however, the policeman gave the license back. Shortly thereafter, at Baudha, Pipalbot (place) in the same ward of Kathmandu Metropolis, three vans with around 25-30 armed security personnel in civilian clothes, surrounded and stopped the jeep of HURON President Mr. Sudip Pathak, who was traveling with three other people. They identified themselves as personnel from the security forces, pointed their guns towards the jeep, and asked Mr. Pathak whether the jeep was coming from Sundarijal. They then asked him about the whereabouts of the recently released detainee Mr. Maharjan. Mr. Pathak told them that the jeep was coming from Sundarijal, but that the person they were looking for was taken away by his family members in another vehicle. Mr. Pathak was requested to hand over his identification card, which he refused to do, but the security forces took down his name and contact details. Mr. Pathak also requested to know the names of the members of the security forces present.

623. On 27 January 2005 the Permanent Mission of the Kingdom of Nepal to the United Nations replied to the communication of 24 January 2005 and informed the Special Rapporteur that the communication was sent to Kathmandu. They would provide him with any information received in this regard.

624. On 26 January 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning:

- i. **Mr. Jitman Basnet**, a lawyer and journalist (editor of the *Sagaramatha Times*), who had written about human rights violations. On 4 February 2004 at 6 pm, he was abducted from Tinkune, Kathmandu, by four armed men in plain clothes. He was taken to a detention camp run by the Royal Nepalese Army (RNA). During the first days of his detention he was repeatedly subjected to severe assaults by RNA members, including being kicked, punched, hit with a pipe and sticks, and repeatedly submerged in a hole filled with water. He was questioned about an article he wrote and published in the *Sagaramatha Times* about an incident in which the RNA allegedly killed 19 arrested Maoist rebels. Mr. Basnet was also forced to remain undressed in cold temperatures and was denied food for several days. Three sets of *habeas corpus* proceedings were brought on his behalf before the Supreme Court. In all three cases, the RNA denied detaining him. The RNA transferred him and other camp detainees to different places on three occasions in order to hide them from the International Committee of the Red Cross (ICRC). Mr. Basnet was released on 17 October 2004, but the Special Rapporteur was concerned that he may be arrested again.

- ii. **Mr. Bishnu Prasad Bastola**, the public relations officer of the non-governmental organization HimRights. On 2 December 2004, wearing the distinct HimRights LifeLine vest, he gave a ride home on his motorcycle to **Mr. Bal Kumar Devkota**, a man released from the central jail that day. Security forces in a van stopped **Mr. Bastola** in front of the Hotel Himalaya, Kupondole, Lalitpur, pushed him aside and dragged **Mr. Devkota** from the motorcycle, boarded him into the van and drove away.
- iii. **Mr. Kailash Thakur**, Human Rights Organisation of Nepal (HURON) Nawalparasi District President, and HURON members **Mr. Dhana Jaisi Sharma** and **Mr. Narsarulla Ansari**. On 24 December 2004, a delegation of the National Human Rights Commission (NHRC) visited Nawalparasi District, where they visited the Guthisuryapura Village Development Committee (VDC). That same evening, the same VDC suffered an attack by Maoist forces which resulted in the killing of two villagers. The following day, 25 December 2004, a group of members of civil society organizations, including **Mr. Thakur**, **Mr. Sharma** and **Mr. Ansari**, returned to the Guthisuryapura VDC, in order to gather information about the attack of the preceding evening. Tensions arose between the villagers and the team of civil society activists. Security forces present at the site proceeded to arrest **Mr. Sharma** and **Mr. Ansari**, purportedly for security reasons, and placed them in a police van. In the police van, both of them were blindfolded; their hands were tied behind their backs, kicked with boots and hit on their shoulders with gun butts. Having observed this treatment, **Mr. Thakur** approached the van and requested the security forces to stop. He was arrested and put into the same van. The security forces took the men to the Armed Police Barrack in Bardhghat, Makar VDC. There they were photographed and taken to the office of the Chief District Officer (CDO). Their cameras were seized and they were asked to name all the persons who had accompanied the NHRC on its monitoring visit of the VDCs of Nawalparasi District. They were questioned on the whereabouts of human rights activists affiliated with the Forum for Protection of Human Rights (FOPOHR), namely its secretary **Indrajit Harijan**, member **Lila Dhar Marasin**, and the District President of the Federation of Journalists Association of Nawalparasi District, **Krishna Bahadur Karki**. **Mr. Thakur**, **Mr. Sharma** and **Mr. Ansari** declined to answer these questions. After the questioning, they were released on the personal guarantee of the District President of the Nepal Bar Association on the condition that they report back on 28 December 2004. When the men presented themselves on 28 December 2004, they were received by the CDO and a colonel of the army, and again asked to provide the names of their colleagues who were with them on 25 December. The Army Colonel said that he had received orders to detain them in the barracks, but he handed them over to the CDO instead. They were also informed that they were alleged to have links with the Maoist rebels. On the same day, 28 December 2004, **Mr. Thakur**, **Mr. Sharma** and **Mr. Ansari** complained to the NHRC about these incidents. In a press conference in Kathmandu on 31 December 2004, the spokesperson of the Royal Nepal Army (RNA), Brigadier General **Deepak Gurung**, accused international and national human rights defenders of being carried away by the Maoist propaganda and of

discrediting the RNA. He further accused the “so-called human rights activists” of terrorizing the people and supporting the Maoist rebels, citing the HURON members arrested in Nawalparasi District (Mr. Thakur, Mr. Sharma and Mr. Ansari) as an example.

- iv. **Mr. Naman Kumar Shahi**, a member of the Informal Sector Service Centre (INSEC), and **Mr. Bhupendra Shahi**, editor of the Gorkhapatra Daily, district Chairman of Journalist Forum and district President of the Human Rights and Peace Society (HURPES). On 2 January 2004, they went to Dailekh District to collect information relating to the killings of **Mr. Dil Bahadur Rana**, a member of the District Working Committee of the Nepali Congress Party, as well as the Secretary of the Independent Committee of the Internally Displaced Persons in the Dailekh District, who was killed by Maoist forces that day. At around 3pm at Nayabazaar, Narayan Municipality, the two men were assaulted and beaten by a plain clothed policeman of the Dailekh District Police Office. On behalf of the police, the Head of the district police apologized for the misconduct of these members of the security forces.

625. On 28 January 2005 the Government replied to the communication of 26 January 2005 and informed the Special Rapporteur that the communication was sent to Kathmandu. They would provide him with any information received in this regard. On 9 June 2005 the Government provided information on some of the individuals concerned in the communication of 26 January 2005. The Government stated that on 21 December 2004, at Pakalihawa VDC, the police provided **Kaialsh Thakur**, **Mr. Dhana Jaisi Sharma** **Mr. Narsarulla Ansari** with security when a mob became aggressive with them and some other human rights defenders. They were taken to the District police Office for protection. With regards to **Mr. Naman Kumar Shahi**, and **Mr. Bhupendra Shahi**, the Government stated that on 2 January 2005 at the scene of crime concerning the death of Dil Bahadur Rana, they were both pushed by police officers who were attempting to secure the area and control the crowd gathered at the scene. Reportedly, the police later apologized.

626. On 7 February 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning the arrest of the following persons:

- i. **Mr. Bishnu Nisthuri**, General Secretary of the Federation of Nepalese Journalists (FNJ), on 4 February 2005 at his residence.
- ii. **Mr. Khagendra Sangraula**, columnist for *Kantipur daily* who has criticized the monarchy on 4 February 2005 and detained at the armed police headquarters at Halchowk, on the outskirts of Kathmandu.
- iii. **Mr. Sindhu Nath Pyakurel**, former President of the Nepal Bar Association, on 1st February 2005 at his office in Kathmandu, and who was being detained at Armed Police Force headquarters in Halchowk at the time this communication was sent. It had also been reported that several former ministers, including Former Prime Minister **Sher Bahadur Deuba** and other leaders, such as the

Former Foreign Minister had been put under house arrest following the dissolution by King Gyanendra of Nepal of the constitutional Government on 1st February 2005. In addition, reports also indicate that hundreds of political and student leaders had been arrested by security forces following the above-mentioned events.

627. On 7 March 2005 the Government informed the Special Rapporteur that Mr. **Sindhu Nath Pyakurel** and Mr. **Bishnu Nisthuri** were released on 14 and 25 February 2005 respectively. Mr. Nisthuri had been arrested in accordance with the Security Act of 1990.

628. On 11 February 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning the following persons:

1. Mr. **Divakar Devkota**, District Secretary of Communist Party of Nepal (CPN)/United Marxist-Leninist (UML), arrested on 1st February 2005, and detained in Saptari at the time this communication was sent.
2. Mr. **Gagan Thapa**, Student Leader of NSU, arrested on 1st February 2005, and detained in Halchowk at the time this communication was sent.
3. Mr. **Girija Prasad Koirala**, President of Nepali Congress (NC), arrested on 1st February 2005, and detained under house arrest at the time this communication was sent.
4. Mr. **Karan Bahadur Shah**, Activist of NC, arrested on 1st February 2005, and detained in Kanchanpur at the time this communication was sent.
5. Mr. **Krishna Prasad Bhattarai**, Ex-President of Nepali Congress, arrested on 1st February 2005, detained under house arrest at the time this communication was sent.
6. Mr. **Kundan Raj Kafle**, Student leader and FSU President, arrested on 1st February 2005, detained in Halchowk at the time this communication was sent.
7. Mr. **Lokendra Bahadur Chand**, Former Prime Minister of RPP, arrested on 1st February 2005, detained under house arrest at the time this communication was sent.
8. Mr. **Madhav Nepal**, General Secretary CPN/UML, arrested on 1st February 2005, detained in Kakani at the time this communication was sent.
9. Mr. **Nain Singh Gurung**, Student of NC, arrested on 1st February 2005, detained in Kanchanpur at the time this communication was sent.
10. Mr. **Narayan Datta Panta**, Student of NC, arrested on 1st February 2005, detained in Kanchanpur at the time this communication was sent.
11. Mr. **Narayanman Bijukche**, Chairman of Nepal Workers and Peasants Party (NWPP), arrested on 1st February 2005, detained under house arrest at the time this communication was sent.

12. Mr. **Narhari Acharya**, Central Committee Member, Nepali Congress, arrested on 1st February 2005, detained in Halchowk at the time this communication was sent.

13. Mr. **Bandev Gautam**, Standing Committee Member of CPN/UML, arrested on 1st February 2005, detained in Kakani at the time this communication was sent.

14. Mr. **Om Aryal**, General Secretary, Student/ML, arrested on 3rd February 2005, detained in KTM at the time this communication was sent.

15. Mr. **Pradeep Nepal**, Leader of CPN/UML, arrested on 1st February 2005, detained in Halchowk at the time this communication was sent.

16. Mr. **Prakash Sharan Mahat**, Leader NC/Democratic, arrested on 1st February 2005, detained in Kanchanpur at the time this communication was sent.

17. Mr. **Rajendra Rai**, Ex-Chairman of ANNFSU, arrested on 1st February 2005, detained in Halchowk at the time this communication was sent.

18. Mr. **Ram Kumar Chaudhari**, President of Nepali Congress, arrested on 1st February 2005, detained in Kanchanpur at the time this communication was sent.

19. Mr. **Ram Singh Aeir**, Activist of Nepali Congress, arrested on 1st February 2005, detained in Kanchanpur at the time this communication was sent.

20. Mr. **Rudra Raj Chhattaut**, Activist of Nepali Congress, arrested on 1st February 2005, detained in Kanchanpur at the time this communication was sent.

21. Mr. **Rupnarayan Shrestha**, Student Leader of ANNFSU, arrested on 1st February 2005, detained in Halchowk at the time this communication was sent.

22. Mr. **Sher Bahadur Deuba**, Ex-Prime Minister of NC Democratic, arrested on 1st February 2005, detained under house arrest at the time this communication was sent.

23. Mr. **Tarka Raj Bhatta**, Activist of KTM, arrested on 1st February 2005, detained in Kanchanpur at the time this communication was sent.

629. These arrests reportedly followed the actions taken on 1 February 2005 by King Gyanendra of Nepal to dissolve the constitutional Government of Prime Minister Sher Bahadur Deuba and assume direct power, proclaiming a nation-wide state of emergency and suspending constitutional guarantees and civil and political liberties. It is also reported that members of the cabinet were put under house arrest and troops deployed around the homes of leaders of political parties, that fundamental rights provisions contained in the Constitution of Nepal had been suspended, including those enshrining the freedoms of opinion, expression, association and assembly. This wave of arrests had allegedly spread from top political leadership to upper and middle-level cadres and student leaders who would have been taken into custody at the Armed Police Force Headquarters in Kathmandu. Human Rights defenders and potential critics of the new regime were also under threat and had, reportedly, either been arrested or gone into hiding to avoid arrest at the time this communication was sent.

630. On 7 March 2005 the Government sent a reply to the Special Rapporteur concerning the communication of 11 February 2005. The Government stated that **Lokendra Bahadur Chand**, Mr. **Narayanman Bijukche**, were free from preventive restrictions. **Divakar Devkota** was released on 18 May 2005 after having been held in preventive custody at Shaptari since 1 February 2005. **Gagan Thapa** who was arrested on 1 February 2005 by the security forces, was held under preventive custody at Lalitpur until he was released on 25 May 2005 on the orders of the Supreme Court. **Girija Prasad**, who was arrested on 1 February 2005 by the security forces, was held under house arrest and released on 31 March 2005 by the orders of the District Security Committee. He had been arrested, when with another 300 protestors, he violated the order of the District Administration Office banning political activities within the ring road at Kathmandu District. The Government had no information concerning **Karan Bahadur Shah**. **Kundan Raj Kafle**, who was arrested on 1 February 2005 by the security forces, was held under preventive custody at Kathmandu until he was released on 8 April 2005 on the orders of the Supreme Court. **Madhav Nepal**, who was arrested on 1 February 2005, was held under house arrest in Kathmandu and released on 30 April 2005 following the orders of the District Security Committee. **Narayan Dutta Panta**, who was arrested on 1 February 2005, was held in preventive custody in Kanchapur and was released on 1 April 2005. **Narhari Aacharya**, who was arrested on 1 February 2005, was held in preventive custody. **Bamdev Gautam**, who was arrested on 1 February 2005, was held in preventive custody at Kathmandu until he was released on 18 May 2005 on the orders of the Supreme Court. **Om Aryal**, who was arrested on 1 February 2005, was held in preventive custody at Kathmandu until he was released on 11 March 2005 on the orders of the Supreme Court. **Pradeep Nepal**, who was arrested on 1 February 2005, was held in preventive custody at Kathmandu until he was released on 25 February 2005 on the orders of the Supreme Court. **Prakash Sharan Mahat**, who was arrested on 1 February 2005, was held in preventive custody at Kathmandu until he was released on 9 March 2005 on the orders of the Supreme Court. **Rajendra Rai**, who was arrested on 1 February 2005, was held in preventive custody at Kathmandu until he was released on 20 May 2005 on the orders of the Supreme Court. **Ram Kumar Chaudhari**, who was arrested on 1 February 2005, was held in preventive custody in Shaptari, until released on 16 May 2005 by the orders of the District Security Committee. **Ram Singh Aeir** and **Rudra Raj Chattaut** were both arrested on 1 February 2005 in Kanchapur until released on 13 February and 30 April 2005 respectively. **Sher Bahadur Deuba**, who was arrested on 1 February 2005, was held under house arrest in Kathmandu, until released on 11 March 2005 by the orders of the District Security Committee. **Rupnarayan Shrestha**, who was arrested on 1 February 2005, was held in preventive custody at Kathmandu until he was released on 16 May 2005 on the orders of the Supreme Court. **Tarka Raj Bhatta**, who was arrested on 1 February 2005, was held in preventive custody at Kanchapur until he was released on 1 April 2005. **Kundan Raj Kafle**, the chairman of the student union, was injured as a result of having been hit by stones that were thrown by demonstrators at the police.

631. On 17 February 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning the following persons:

1. Mr. **Bal Krishna Poudel**, District Secretary of HURON (Human Rights Organization of Nepal), arrested on 1 February 2005, and detained at APF Battalion Duwakot in Bhaktapur at the time this communication was sent.

2. Mr. **Nanda Bhandari**, Advocate of CVICT (Centre for Victims of Torture), arrested on 1 February 2005, detained at Birendranagar Jail at the time this communication was sent.

3. Mr. **Lok Prasad Pant**, Chairperson of Civil Society Network, arrested on 1 February 2005, detained at Birendranagar Jail at the time this communication was sent.

4. Mr. **Bam Dev Adhikari**, Vice-chairperson of SOPHRE (Society for Protection of Human Rights and Rural Environment), arrested on 4 February 2004, detained at Lamjung Jail at the time this communication was sent. These arrests also reportedly formed part of the taken on 1 February 2005 by King Gyanendra of Nepal to dissolve the constitutional Government of Prime Minister Sher Bahadur Deuba and to assume direct power, proclaiming a nation-wide state of emergency and suspending constitutional guarantees and civil and political liberties.

632. On 28 April 2005 and 9 June the Government replied to the communication of 17 February 2005. The Government stated that Mr. **Bal Kirshna Poudel (Chandra)** had been under detention in Bhaktapur prison since 28 February 2005. The Government then provided information that Mr. **Bal Krishna Poudel** had been released on 11 March 2005. Mr. **Nanda Bhandari (Nanda B.C.)** was arrested on 1 February 2005 and was released on 1 March 2005. Mr. **Lok Prasad Nagar** was arrested on 1 February 2005 under TADO in the Birendra Nagar prison in Surkhet. Mr. **Bam Dev Adhikari** (Basudev Adhikari) was detained since 4 February 2005 at Lamjung and was released on 11 March 2005.

633. On 18 February 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Gauri Pradhan**, advocate for children's rights, and founding president of Child Workers in Nepal Concern Centre (CWIN), a leading child rights organization in Nepal focusing on issues including child labour, trafficking, and the impact of conflict on children. According to the information received, Mr. Pradhan was arrested by police at Kathmandu Airport on 17 February 2005 following his return from Geneva, where he attended a working group meeting of the Committee on the Rights of the Child. It is reported that Mr. Pradhna had expressed fear that he might be arrested when he returned home to Nepal. The reason for his arrest was not known. He was reportedly being held at the police headquarters in Naxal, Kathmandu at the time this communication was sent.

634. On 22 February 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Narayan Adhikari**, Correspondent of the *Rastriy Samachar Samitee (RSS)* (National News Agency) and **Basant Parajuli**, correspondent of *Gorakhapatra Daily*. According to the information received, on 13 February 2005, security forces arrested them at separate places in Chitwan district. Allegedly, the local administration stated that they were arrested for necessary interrogation. According to the information received by the Special Rapporteur, they were detained at an unknown location.



635. On 9 June 2005 the Government replied to the communication of 22 February 2005 and informed the Special Rapporteur that **Basant Parajuli** was arrested on 13 February 2005 and detained at Chitwan until released on 1 March 2005.

636. On 25 February 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur, sent an urgent appeal concerning the following persons:

1. Mr. **Aanandi Devi Singh**, Chairperson of Nepal Sadhavwana Party (Anandidevi) (NSP-A), arrested on 1 February 2005, detained in Rajbiraj at the time this communication was sent.
2. Mr. **Ajaya Aryal**, Secretary of the Free Students Union (FSU), Mahendra Ratna Campus Tahachal, Kathmandu, arrested on 11 February 2005, detained at the District Police Office at the time this communication was sent.
3. Mr. **Amrit Bohara**, Deputy-Secretary General of the Communist Party of Nepal-Unified Marxist Leninist (CPN/UML), arrested on 1 February 2005, detained under house arrest at the time this communication was sent.
4. Mr. **Anis Ansari**, Ex-State Minister of CPN/UML, arrested on 1 February 2005, detained under PSA in Rajbiraj Jail at the time this communication was sent.
5. Mr. **Babu Ram Chaudhari**, District Vice-Secretary, of CPN/UML, arrested on 9 February 2005, detained at District Police Office at the time this communication was sent.
6. Mr. **Bidur Khadka**, member of All Nepal National Free Students Union (AANFSU), arrested on 12 February 2005, detained at the District Police Office at the time this communication was sent.
7. Mr. **Bikash Lamsal**, Secretary of CPN/UML arrested on 8 February 2005, detained at Parvat Jail at the time this communication was sent.
8. Mr. **Chaturbhuj Shahi**, member of the Nepal Revolutionary Student Association (NRSA), arrested on 11 February 2005, detained at the District Police Office at the time this communication was sent.
9. Mr. **Chauenlai Shrestha**, Activist, Former FSU Secretary of TU Campus, arrested on 1 February 2005, detained at the Ward Police Office, Singhadarbar at the time this communication was sent.
10. Mr. **Deepak Rai**, Central Committee Member of the student wing of the Communist Party of Nepal-Marxist-Leninist (CPN/ML), arrested on 1 February 2005, detained at Bharatpur Jail at the time this communication was sent.

11. Mr. **Dilli Bohora**, Secretariat Member of the student wing of CPN/ML, arrested on 1 February 2005, detained in Bharatpur Jail at the time this communication was sent.
12. Mr. **Indra Lal Sapkota**, District Vice Secretary of CPN/UML, arrested on 16 February 2005, detained at the District Police Office at the time this communication was sent.
13. Mr. **Jagannath Shaha**, member of the Nepali Congress (NC), arrested on 1 February 2005, detained under the Public Security Act (PSA) in Rajbiraj Jail at the time this communication was sent.
14. Mr. **Jamindra Man Ghale**, Former President of the District Development Committee (DDC), arrested on 4 February 2005, detained under PSA in Rajbiraj Jail at the time this communication was sent.
15. Mr. **Jyoti Shama**, Central Committee Member of the student wing of CPN/ML, arrested on 3 February 2005, detained in Bharatpur Jail at the time this communication was sent.
16. Mr. **Kedar Prasad Adhikari**, Civil Servant at the Appellate Court in Lalitpur, arrested on 11 February 2005, detained at the District Police Office at the time this communication was sent.
17. Mr. **Lawos Rai**, member of the Nepal Students Union (NSU), arrested on 9 February 2005, detained at the District Police Office at the time this communication was sent.
18. Mr. **Lila Giri**, District Secretary of CPN/UML, arrested on 9 February 2005, detained at the District Police Office at the time this communication was sent.
19. Mr. **Lochan KC**, Treasurer of the student wing of CPN/ML, arrested on 1 February 2005, detained in Bharatpur Jail at the time this communication was sent.
20. Mr. **Lok Raj Bhatta**, District Level Worker, arrested on 15 February 2005, detained at the District Police Office at the time this communication was sent.
21. Mr. **Lok Raj Pant**, Coordinator of Surkhet, arrested on 3 February 2005, detained at Birendrangar Jail at the time this communication was sent.
22. Mr. **Mahendra Pandey**, Central Committee Member/Formal MP of CPN/UML, arrested on 1 February 2005, detained at Maharajgunj Jail at the time this communication was sent.
23. Mr. **Mahesh Basnet**, Bhaktapur District Committee Member, arrested 11 February 2005, detained at the District Police Office at the time this communication was sent.

24. Mr. **Malechi Chaudhari**, Former Mayor of Itahari Municipality, arrested on 7 February 2005, detained at the District Police Office, Inaruwa at the time this communication was sent.

25. Mr. **Manoj Dhungel**, member of FSU, Patan Multiple Campus, arrested on 9 February 2005, detained at the District Police Office at the time this communication was sent.

26. Mr. **Manoj K. Myangbo**, Ex-Mayor of Dharan, member of CPN/UML, arrested on 8 February 2005, detained at the District Police Office, Dharan at the time this communication was sent.

27. Mr. **Murari Subedi**, District Committee Member of CPN/UML, arrested on 8 February 2005, detained at the District Police Office, Inaruwa at the time this communication was sent.

28. Mr. **Pradeep Bhandari**, Municipality Committee Secretary, arrested on 8 February 2005, detained at the District Police Office, Inaruwa at the time this communication was sent.

29. Ms. **Puspanjali Upadhaya**, District Chairperson of CPN/UML Women Wing, arrested on 9 February 2005, detained at the District Police Office at the time this communication was sent.

30. Mr. **Raghubar Bhatta**, member of the District Level Workers, arrested on 15 February 2005, detained at the District Police Office at the time this communication was sent.

31. Mr. **Raghuji Panta**, member of CEC, arrested on 1 February 2005, detained under house arrest at the time this communication was sent.

32. Mr. **Raj Kumar Rai**, Member of the DNYF Dharan Municipality Committee, arrested 8 February 2005, detained at the District Police Office at the time this communication was sent.

33. Mr. **Rajan Rai**, Chief of the Foreign Department, arrested on 8 February 2005, detained in Maharajgunj Jail at the time this communication was sent.

34. Mr. **Rajendra Pandey**, member of CEC, arrested on 1 February 2005, detained at the Nepal Police No. 2 Battalion at the time this communication was sent.

35. Mr. **Ram Bahadur Basnet**, former President of DDC, arrested on 11 February 2005, detained at the District Police Office, Inaruwa at the time this communication was sent.

36. Mr. **Shushil Koirala**, Secretary of NC, arrested on 3 February 2005, detained at Nepalgunj Jail at the time this communication was sent.

37. Mr. **Umesh Mishra**, Activist of NC, arrested on 1 February 2005, detained in Rajbiraj Jail at the time this communication was sent.

38. Mr. **Khagendra Bhattarai**, former Chairperson of the Nepal Professors' Association (NPA), arrested on 18 February 2005 at Asan, Kathmandu, and detained in Electricity Training Centre, Kharipati, Bhaktapur at the time this communication was sent.

39. Mr. **Krishna Prasad Dahal**, Professor at Patan Multiple Campus, arrested on 18 February 2005 at Asan, Kathmandu, and detained in Nepal Electricity Training Centre, Kharipati, Bhaktapur at the time this communication was sent.

637. On 9 June 2005 the Government replied to the communication of 25 February 2005. The Government informed the Special Rapporteur that Mr. **Amrit Bohara**, who was arrested on 1 February 2005, was held in preventive custody in Kathmandu until being released on 30 April 2005. Mr. **Bijaya Kumar Rai**, who was arrested on 1 February 2005, was held in preventive custody on 3 April 2005 in Kathmandu until released on 2 May 2005 on the orders of the Supreme Court. Moreover, the Government informed the Special Rapporteur that **Anandi Devi Singh** was arrested on 1 February 2005 and kept under house arrest until he was released on 9 February 2005. **Ajaya Aryal**, was arrested in February and held under preventive custody in Kathmandu until released on 30 April 2005. **Amrit Kumar Bohara**, was arrested in February and held under preventive custody in Kathmandu until released on 30 April 2005. **Anis Ansari**, was arrested in February and held under preventive custody in Shaptari until released on 16 May 2005. **Babu Ram Chaudhari**, was arrested in February and held under preventive custody at Rupandhehi until released on 11 March 2005. **Bidur Bikram Khadka**, was arrested on 1 February 2005 and held in preventive custody in Kathmandu, until released by the order of the district security committee on 1 March 2005. **Bikash Lamsal**, was arrested in February 2005 and held in preventive custody in Parbat until released on 1 April 2005. **Chaturbhuj Shahi**, was arrested in February 2005 and held in preventive custody in Surkhet until released on 11 March 2005. **Chuenial Shretha**, was arrested in February 2005 and held in preventive custody in Kathmandu until released by the order of the Supreme Court on 11 March 2005. **Deppak Rai**, was arrested in February 2005 and held in preventive custody in Kathmandu until released by the order of the District Security Committee on 11 March 2005. **Dilli Bohara**, was arrested in February 2005 and held in preventive custody in Kathmandu until released on 11 March 2005. **Indra Lal Sapkota**, was arrested in February 2005 and held in preventive custody in Baglung until released on 1 April 2005. **Jamindra Man Ghale**, was arrested in February 2005 and held in preventive custody in Lamjung until released on 1 April 2005. **Jyoti Shama**, was arrested in February 2005 and held in preventive custody in Kathmandu until released on 11 March 2005. **Kedar Kumar Adhikari**, was arrested in February 2005 and held in preventive custody in Lalitpur until released on 1 April 2005. **Lawos Rai**, was arrested in February 2005 and held in preventive custody in Kathmandu until released on 1 April 2005. **Lila Giri**, was arrested in February 2005 and held in preventive custody in Rupandhehi until released on 11 May 2005. **Lochan K.C.** was arrested in February 2005 and held in preventive custody in Kathmandu until released by the order of the Supreme Court on 1 April 2005. **Lok Raj Bhatta**, was arrested in February 2005 and held in preventive custody in Dadeldhura until released on 26 May 2005. **Mahendra Pandey**, was arrested in February 2005 and held in preventive custody in Mahargung. **Mahesh Basnet**, was arrested in February 2005 and held in preventive custody in Bhaktapur until released by the order

of the Supreme Court on 8 April 2005. **Manoj K. Myangbo**, was arrested in February 2005 and held in preventive custody in Sunsari until released on 11 May 2005. **Murari Subedi**, was arrested in February 2005 and held in preventive custody in Sunsari until released on 11 May 2005. **Puspanjali Upadhyaya**, was arrested in February 2005 and held in preventive custody in Rupandhehi until released on 10 February 2005. **Raghubar Bhatta**, was arrested in February 2005 and held in preventive custody in Dadeldhura until released on 26 May 2005. **Raj Kumar Raj, Rajan Rai** was arrested in February 2005 and held in preventive custody in Kathamndu until released on 28 April 2005. **Rajendra Pandey**, was arrested in February 2005 and held in preventive custody in Maharagung. **Ram Bahadur Basnet**, was arrested in February 2005 and held in preventive custody in Sunsari until released on 11 May 2005. **Shushiri Koirala**, was arrested in February 2005 and held in preventive custody in Napalgun until released on 26 May 2005. **Umesh Mishra**, was arrested in February 2005 and held in preventive custody in Shaptari until released on 16 May 2005. **Khagendra Bhattarai**, was arrested in February 2005 and held in preventive custody in Kathmandu until released on 26 February 2005. **Krishna Prasad Dahal**, was arrested in February 2005 and held in preventive custody in Kathmandu until released on 25 February 2005.

638. On 7 March 2005, the Special Rapporteur sent an urgent appeal concerning the **aggravation of attacks on freedom of the media in Nepal**. According to information received, new regulations prohibiting the reporting by journalists on news related to security matters without prior authorization from the security forces were issued. These prohibitions were issued simultaneously with reported increased violent attacks on the media by security forces including beatings of journalists and prolonged interrogations. It appears that these incidents followed widespread reporting by the Kathmandu media on Maoist looting and the burning of a Television Nepal Program centre in Western Nepal.

639. On 7 March 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders sent a letter of allegation concerning:

1. The reported arrests by security forces, on 10 February 2005, of members of the *Human Rights and Peace Society (HURPES)*:

- i. **Suresh Chandra Pokhrel** (Vice-president)
- ii. **Bal Ram Aryal** (Treasurer)
- iii. **Jay Ram Basnet**
- iv. **Laxmi Pariyar**
- v. **Suman Shrestha**
- vi. **Jibe Lal Kharel**
- vii. **Narayan Datta Kandel**
- viii. **Laxman Acharay**

- ix. **Bal Ram Neupane**
- x. **Hira Lala Acharya; and**
- xi. **Basu Devkota**, General Secretary of the *Human Development and Peace Campaign (HUDEP)*

640. These persons were allegedly arrested at Putalisadak, Kathmandu, following their peaceful protest against the human rights implications of changes to the Nepalese Government on 1 February 2005. Information indicates that they were detained at Ward Police Office, Baneshwor and released on 14 February 2005.

2. The alleged arrests of the following persons:

- xii. **Rajesh Sharma**, District Chairperson of the *Human Rights Education Radio Listeners Club (HRERLC)*, arrested on 9 February 2005 at Pokhara Municipality, Kaski, detained at Bijaypur Barrack, Pokhara, and released on 10 February 2005.
- xiii. **Arjun Upreti**, Correspondent of *Saptakoshi FM*, arrested on 1 February 2005 at Irahari, Sunsari, detained at the Police Office, Itahara, and released after two hours.

641. On 25 October 2005 the Government informed the Special Rapporteur that **Basu Devkota**, who had been arrested as per the Security Act of 1990, was released on 14 February 2005.

642. On 10 March 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning:

1. Mr. **Kanak Mani Dixit**, editor of the Nepalese language magazine *Himal Khabarpatrika*, arrested at his home on 7 March 2005 and questioned for several hours in Kathmandu by plain clothes police officers who arrested him. Mr. Kanat Mani Dixit had returned from India where he had spoken at a press conference about Nepal's current political crisis. Mr. Kanat Mani Dixit, who also directs the press group Himal Media, publishers of the weekly Nepali Times, had criticized the coup mounted by King Gyanendra on 1st February 2005.

2. Mr. **Lavadev Dhungana**, editor of the daily *Panchther Times* and correspondent for the daily *Rajdhani* in Panchther district, far-eastern Nepal, arrested by security forces on 3 March 2005. He was allegedly accused of publishing articles about pro-democracy demonstrations and a detention order was reportedly issued against him for disturbing the public order.

3. Mr. **Arjun Prasad Shah**, editor of the weekly *Batabaran* and Mr. **Monohar Pokhrel**, editor of the weekly *Jana Aakrosh*, both arrested on 22 February 2005 in Saptari district by the army. It is reported that both journalists are local officials of the Federation of Nepalese Journalists (FNJ).

643. On 9 June 2005 the Government replied to the communication of 10 March 2005 and informed the Special Rapporteur that **Kanak Mani Dixit** was released the same day he was arrested, that is on 7 March 2005. **Lavadev Dhungana**, was arrested on 3 March 2005 and held in preventive custody at Patchthar district jail. **Arjun Prasad Shah**, was arrested by the army on 22 February 2005 and held in preventive custody in Shapthari district jail.

644. On 24 March 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning journalists **Sharad Adhikari**, **Arjun Dhanuk**, **Ganesh Lama** and **Suryaa Thapa**. According to information received:

- On 14 March 2005, Sharad Adhikari, reporter for the satellite TV station *Channel Nepal*, was arrested while covering a pro-democracy demonstration. He was taken to district police station in Ghoradi and fear had been expressed that he could spend three months in prison.
- On 14 March 2005, Arjun Dhanuk, editor of the weekly *Abhimat*, was arrested in the western town of Mahendranagar after a protest against King Gyanendra. The journalist, who is a member of the communist leftist party People's Front Nepal (PFN), was taken to the police station of the Kanchanpur district.
- On 13 March 2005, Ganesh Lama, reporter for the weekly *Jana Prahaar*, was arrested in Kathmandu while covering a demonstration against King Gyanendra. He was reportedly being held at the Ward police station in the Kamal Pokhari district of Kathmandu.
- On 8 March 2005, Suryaa Thapa, reporter for the weekly *Haank* and leader of the Communist Party of Nepal (CPN-UCM), was arrested while participating in a meeting organized by political parties to mark International Women's Day. She was reportedly being held in the Mahendra police station in Kathmandu at the time this communication was sent.

645. On 9 June 2005 the Government replied to the communication of 24 March 2005 and informed the Special Rapporteur that **Sharad Adhikari** was arrested on 8 April 2005 and held in preventive custody in Dang until released on 10 April 2005. **Arjun Dhanuk** was held in preventive custody on 14 March 2005 in Kathmandu until released on 1 April 2005. **Ganesh Lama** was held in preventive custody on 13 March 2005 in Kathmandu until released on 23 March 2005. **Suryaa Thapa** was held in preventive custody on 8 March 2005 in Kathmandu until released on 28 April 2005.

646. On 13 April 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning **Robin Poudel**, journalist and editor for the weekly newspaper *Tanahu Aawaj*. According to information received, on 8 April 2005 in the Tanahu district, western Nepal, police arrested Robin Poudel on the grounds of being a threat to domestic security and tranquility, in violation of the Public Security Act. He was taken to the Tanahu district police office where he was kept for three months of preventive detention. Mr. Poudel was arrested while covering a demonstration in protest of the state of emergency declared by King Gyanendra in Damauli.

647. On 19 April 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Shiva Kumar Pradhan**, a human rights defender and the Secretary General of the People's Forum for Human Rights and Development (PFHRD), a Nepal-based Bhutanese non-governmental organization. Mr. Pradhan was already the subject of an urgent appeal sent by the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders on 22 April 2004 concerning his arrest on 19 September 2001 and subsequent detention relating to murder charges. According to information received, on 22 August 2004, the District Court of Chandragari, Jhapa, sentenced Mr. Pradhan to three years imprisonment. Reportedly, the sentence was to be completed on 21 September 2004, and Mr. Pradhan was released on that day. On 10 November 2004, Mr. Pradhan allegedly applied to the Governmental Refugee Coordination Unit (RCU) for a travel document to attend the World Forum for Democracy in Asia (WFDA) conference in Taiwan from 14 to 17 December 2004, organized by the Taiwan Forum for Democracy. Reportedly, he was denied such a travel document. Moreover, according to the information received, in early March 2005, Mr. Pradhan applied to the RCU for a travel document to attend the 61st session of the United Nations Commission on Human Rights (UNCHR) in Geneva, Switzerland. Allegedly, he included in his application a recommendation letter from the Government appointed supervisor at the refugee camp Beldangi-II extension, as he had been requested to. He was reportedly denied the travel document on grounds of long absence from the camp.

648. On 29 April 2005, the Special Rapporteur sent a letter of allegation concerning **Surya Thapa** and **Rajendra Dahal**, editors for Budhabar weekly and Himal Khabara Patrika respectively. According to information received, on 18 April 2005, the Kathmandu District Administration Office (DAO) summoned Surya Thapa for an explanation concerning a cartoon which appeared on the newspaper on 30 March 2005. The cartoon, entitled 'Where is the Democracy, Your Majesty?' compared King Gyanendra with the King of Bhutan. This would have been the seventh time that Surya Thapa was called in for questioning by the DAO with regards to his work. Rajendra Dahal was summoned with respect to a news article entitled 'National Crisis: Situation and Opportunity'. The Special Rapporteur urged the authorities to allow journalists to work freely and independently. Concern was expressed particularly in light of the adverse effects that the Government's decision of 7 April 2005 to revise its advertising policy, with the aim of only allowing advertising to media organizations which are supportive of nation, nationalism and the crown, might have on the media.

649. On 3 May 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent a letter of allegation concerning **18 metis**, or males who dress as women. According to the allegations received, on 13 April 2005 at around 11pm, they were attacked by police officers from Durbar Marg Police Station as they walked along the Kantipath Road, Kathmandu, toward a festival. One person was threatened at gunpoint, beaten in the stomach with the butt of a gun, and kicked repeatedly. Another suffered a broken hand. The inspector of the Durbar Marg station watched the beatings from inside a nearby police van. Nine persons were severely beaten with batons, gun butts, and sticks. The metis attempted to report the incident at the station, but police refused them entry. They went to the Bir Hospital, where their injuries were treated and recorded.



650. On 16 May 2005 the Permanent Mission of the Kingdom of Nepal to the United Nations replied to the communication of 3 May 2005 concerning the **18 metis** and informed the Special Rapporteur that this communication had been forwarded to Kathmandu, and that they would inform him as to any information received in this regard. On 1 July 2005 the Government provided information about this case. The Government stated that the police patrol team from Durbar Marg Police Station had tried to pacify the **metis** concerned as they were under the influence of alcohol and were trying to pick up fights with local people. The metis, however, picked up a fight with the police too, as a result of which the patrol team then chased away without beating them up or taking them into custody or subjecting them to torture. On 14 September 2005 the Government provided further information, stating that some of the **metis** concerned filed a case before the district court in Kathmandu against the ward police station in Darbarmarg for compensation. The officer in charge, submitted a written explanation to the court and the case was, at the time this reply was sent, under investigation.

651. On 1 June 2005, the Special Rapporteur sent a letter of allegation concerning *Communications Corner PVT. Ltd*, a private company involved in the production and distribution of materials for 14 FM radio stations around the country using satellite technology. According to information received, on 27 May 2005, the Ministry of Information and Communication (MoIC), sent a letter to *Communications Corner PVT. Ltd* requesting it to close down its operations since it was running its operations illegally. No law was cited as a legal basis for such a decision, neither were any allegations of unlawful activities on the part of the company cited as a justification for ordering its closure. *Communications Corner PVT. Ltd* was duly registered with the relevant Government authorities and paid the required taxes. The ban against *Communications Corner PVT. Ltd* added to the large number of other radio stations which had also been banned from airing news and current affairs since 1 February 2005.

652. On 15 June 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning approximately **100 journalists, members of the Federation of Nepalese Journalists (FNJ)**, including **Bishnu Nisthuri** (who was the subject of an urgent appeal sent by the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders on 7 February 2005) and **Mahendra Bista**, FNJ President and General Secretary respectively, as well as human rights activist, **Bashu Devkota**. According to information received, on 13 June 2005 close to a restricted area of the royal palace in Kathmandu, around 100 journalists were arrested by police forces. More than 40 journalists were still being detained at different police station in Kathmandu, including the Janasewa, Dingha Durbar and Kamalpokhari police stations, at the time this communication was sent. The journalists were carrying out a peaceful demonstration protesting against police atrocities and calling upon the King to immediately lift the media restrictions imposed in Nepal four months ago. It is reported that many of the protestors were manhandled and injured by the police while being arrested and taken off in buses. Similar demonstrations were carried out in the neighboring district of Kavre. The demonstrations were also stopped by the police and 52 journalists, lawyers and other citizens were arrested; they were released that same afternoon.

653. On 7 March 2005 the Government informed the Special Rapporteur that Mr. **Bishnu Nisthuri** was released on 25 February 2005 respectively. Mr. Nisthuri had been arrested in accordance with the Security Act of 1990. Mr. **Bashu Devkota** was released two hours the same day he was arrested. Moreover, on 25 October 2005 the Government informed the Special Rapporteur that Mr. **Mahendra Bista** was released after two hours of detention.

654. On 20 June 2005, the Special Rapporteur sent a letter of allegation concerning **several Nepalese journalists**, including **Guru Prasad Gautum**, the secretary for one of the local branches of the *Federation of Nepalese Journalists (FNJ)*, and **Deepak Gyawali**, FNJ district secretary for Rupandehi. According to information received, on 9 June 2005, violent clashes were reported when journalists took to the streets across the country protesting Government restrictions on the media and the detention of more than 50 journalists in Kathmandu. Several journalists were injured as a result of violence used by the police; Guru Prasad Gautum was taken to hospital as a result of having been severely beaten in the stomach by police officers with batons in Kalaiya, Bara district, south of Kathmandu valley. Eight other journalists were similarly injured. Moreover, in Butwal, western Nepal, nine journalists, including Deepak Gyawali, who were also protesting the detention of journalists in Kathmandu, were briefly detained. Six of these journalists were injured as a result of police manhandling.

655. On 26 July 2005, the Special Rapporteur sent a letter of allegation concerning **Gokul Baskota**, executive editor of *Dristi Weekly* published in the capital Kathmandu, has constantly been harassed and received regular death threats in recent months. For instance, on 18 and 19 July, three unknown people followed Baskota, supposedly with the intention to harm him. Concern is also expressed for the critical situation of journalists who face the possibility of kidnappings, torture and arrest on a daily basis. In recent months there have been reports on several incidents of threats, harassment and kidnappings of journalists in the country. Moreover, beyond acts of violent intimidation, a major preoccupation is the prospect of job cuts and widespread censorship. On 24 July, 21 journalists employed by public broadcaster Nepal Television (NTV) were sacked without any specific reason. In effect, this measure could be seen as a punitive action for their involvement in a movement, close to the Federation of Nepalese Journalists (FNJ), which works for the restoration of complete media freedom. Likewise, on 16 June a prominent member of FNJ was officially dismissed from his job as a reporter at NTV.

656. On 8 August 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Gagan Kumar Thapa**, a student leader and former General Secretary of the Nepal Students' Union (NSU), who was arrested by officers of the Anamnagar Ward Police Office on 27 July 2005. According to the information received, along with two friends, Thapa was reportedly on his way to visit six other NSU student leaders who were, at the time this communication was sent, being detained at the Ward Police Office in the Singh Durbar district. After his arrest, the authorities reportedly accused Thapa of protesting against the monarchy during a demonstration in Katmandu on 24 July 2005. A special court first gave permission to

detain him for seven days and, on 3 August 2005, it extended the police remand for five more days. Since April 2005, Thapa had been arrested three times. In May 2005, the Supreme Court intervened twice in order to release him. He was also the subject, among other persons, of a joint urgent appeal sent on 11 February 2005 by the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur.

657. On 8 August 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Ratna Shrestha**, a 53-year old teacher and Western Regional Coordinator and Central Member of Human Rights Organisation of Nepal (HURON), an organization that works in response to the emerging and diverse human rights issues and the strengthening of the democratic process in Nepal. According to the information received, on 27th July 2005, at 11:00 am, Ratna Shrestha allegedly received a call from the Zonal Administration Office in Baglung, Dhaulagiri Zone, to report to them at 12:00 noon for questioning. It is reported that during this questioning by two officials, Ratna Shrestha was asked questions relating to her human rights activities. She was reportedly questioned over allegations such as the money earned from HURON, donations given to the Maoists from businessmen, her involvement in incidents of Maoist attacks, information being passed to the Maoists on security issues of the security units, her meeting with the Maoists area commanders and the levels of Maoists leaders she has been meeting. Ratna Shrestha reportedly denied all of these accusations with the exception of the meeting with Maoist leaders. Ratna Shrestha had been actively working on human rights issues on the ground and at the central level, especially on the disappearances cases in Nepal. She was reportedly involved in the release of the abducted people by the Maoists and had at that time met with Maoist leaders. Ratna Shrestha was reportedly released after 4 hours but asked to report back whenever called on to do so. Concern was expressed that this incident might have been an attempt to intimidate Ratna Shrestha and prevent her from carrying out her human rights work.

658. On 29 August 2005, the Special Rapporteur sent a letter of allegation concerning **Krishnakumar Khanal** and **Bijay Kuswah**, editor and publisher, and managing director, respectively, for Birgunj Report Daily newspaper. According to information received, on 8 August 2005, the Parsa District Officer summoned them to the District Administration Office in relation to an article they published on 5 August 2005. The two journalists were detained for two hours and were forced to sign a statement declaring that they would no longer publish articles critical of the monarchy. They were threatened with imprisonment in the event that they refused to sign the said statement.

659. On 14 September 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning Dr. **Devendra Raj Pandey**, Chairman of the *Rural Self-Reliance Development Centre (RSDC)* and former Finance Minister, Mrs. **Suprabha Ghimire**, teacher, social worker, and former Vice President of the *Nepal University Teachers Association*, Mr. **Padmaratna Tuladhar**, Chairman of the *Forum for the Protection of Human Rights (FOPHUR)* and former mediator in the talks between government and Maoists, Mr. **Charan Prasain**, Chairperson of the *Human Rights Organisation of Nepal (HURON)*, Mr. **Krishna Pahadi**, former President of the **Human Rights and Peace Society (HURPES)** and former Chairman of the **Nepali section of Amnesty International** (subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention

on 11th February 2005), Mr. **Kanak Mani Dixit**, journalist at the *Himal South Asian and Publisher* of the Nepali-fortnightly *Himal Magazine* (subject of an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on 10th March 2005), Mr. **Shyam Shrestha**, Editor of the monthly *Mulyankan*, Mr. **Subhas Pokhrel**, political activist, Mr. **Malla K. Sundar**, Founder and Advisor at *HURON*, Mr. **Sachin Ghimire**, human rights project Manager at the *Nepal Bar Association (NBA)*, Mr. **Padmalal Bishwakarma**, President of the *Society for the Liberation of Oppressed Dalit Castes (SLOC)* in Nepal, Member Secretary of the *National Coalition Against Racial Discrimination (NCARD)* and Executive Member of *FOPHUR*, Mr. **Ananda Dev Bhatta**, senior Academician and President of the *Progressive Writers' Association*, Mr. **Krishna Abiral**, freelance journalist and member of the *Federation of Nepalese Journalists (FNJ)*, Dr. **Aruna Upreti**, women's health and reproductive rights activist, and member of the *Physicians for Social Responsibilities Nepal (PSRN)*, Mr. **Ninu Chapagain**, President of the *Progressive Cultural Society*, Mr. **Badri Khanal**, Executive Director of the *Nepal Red Cross*, **Dr. Bharat Pradhan**, Director of Kathmandu Model Hospital, and member of *PSRN*, Mr. **Tara Lamichhane**, President of the *Nepal Beekeeping Farmers Association (NBFA)*, Mr. **Krishna Bhattarai**, district President of the *Teachers' Union*, Mr. **Sanjaya Santoshi Rai**, Vice-President of *FNJ*, Mr. **Purna Basnet**, executive member of *FNJ*, Mr. **Ashok Karki**, Mr. **Manish Sijapati**, Mr. **Arjun Adhikari**, Mr. **Bikas Khaniya** and Mr. **Narayan Basnet**, all members of civil society organisations. According to information received, on the 25th of July 2005, the above-mentioned human rights defenders were arrested whilst participating in a peaceful rally at Bhotahiti, Kathmandu that was organized by the Citizens' Movement for Democracy and Peace Coordination Committee to demand the restoration of democracy and to protest against the King Gyandendra and the Royal Nepalese Army's seizure of control of all level of powers, the declaration of a state of emergency and the suspension of fundamental constitutional rights. The rally started at 16:00 at Bhotahiti and was to pass through major parts of the city. The police allegedly refused the rally participants entry into Ratna Park, in which demonstrations are prohibited. It is reported that police charged the crowd with hard bamboo sticks. Mr. Sachin Ghimire allegedly sustained head injuries during the police intervention. According to the information received, on the 26th July 2005, at 9:00, all 26 human rights defenders were released without charge.

660. On 7 March 2005 the Government provided information concerning Mr. **Krishna Pahadi**. The Government informed the Special Rapporteur that since 10 February 2005 she was being detained under the Public Security Act by the CDO, Kathmandu.

661. On 26 September 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning **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 neighboring Dadeldhura district. On 19 September 2005, they were allegedly rearrested by the security forces immediately after a court had ordered their release and taken to an undisclosed location. According to the information received, 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 Dhimi 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 an international non-governmental organisation 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 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. 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 another non-governmental organisation 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 is thought that they may be detained. However, the authorities had not confirmed the location of their detention.

662. On 3 October 2005, the Special Rapporteur sent a letter of allegation concerning **87 journalists**, including the chairman of the *Federation of Nepalese Journalists*, **Bishnu Nishthuri**, as well as the chairman of the reporters' club **Rishi Dhamala**. According to information received, on 16 September 2005, in Kathmandu close to a reported forbidden zone near Ratna Park, the journalists were detained while demonstrating for the restoration of press freedom. Around 12 journalists were injured as a result of being hit by the policemen using batons. The journalists were then held at a police station for approximately four hours before being released. All demonstrations had been banned in Kathmandu since King Gyanendra seized power on 1 February 2005. Moreover, on 19 September 2005, **Harihar Singh Rathour**, correspondent for the Kathmandu Post and Kantipur publications, was arrested in Dailekh and was only released two days later. He was accused of collaborating with the Maoists, including

receiving payments from them. Mr. Rathour denied these allegations. On 18 September 2005 he had already been detained together with another 15 independent journalists. They were all released and all left the area out of fear of further harassment. Concern was expressed that Harihar Singh Rathour's arrest and detention were an attempt to silence his reporting, particularly that which concerned the army's activities.

663. On 8 November 2005, the Special Rapporteur sent an urgent appeal concerning the '**Ordinance amending some of the Nepal Acts Related to Media, 2062**'. The Ordinance came into immediate effect on 9 October 2005. According to information received, this Ordinance amended the 'Press and Publications Act 2048 B.S.' the 'Press Council Act 2048 B. S.', the 'National Broadcasting Act 2049 B. S.' and the 'Defamation Act 2016 B. S.' The Ordinance would remain in effect for a period of six months and would then have to be renewed. Concern was expressed that this Ordinance falls short of international norms and standards on the right to freedom of opinion and expression on various counts. For example, the Ordinance had raised the fines for defamation tenfold and terms of imprisonment for defamation remained at two years, if the intention to defame was proven. Criminalisation of defamation had been extended to cover all media, including broadcasts. The Ordinance weakened the right of political parties to disseminate their programs during electoral periods. It expanded former restrictions on the importation of foreign publications. By removing news from the categories of licensed activity, the Ordinance was intended to prohibit the broadcast of news, as demonstrated by the government's subsequent enforcement action against an FM station. The Ordinance extended already broad statutory protections of the King and the Royal Family to include restrictions on any expression deemed to undermine the 'dignity' of members of the Royal Family. Fines for the violation of these restrictions had been significantly increased, and journalists' licenses could be administratively revoked. Broadcast media were limited to informative programs on health, education, weather, road and transport conditions and other similar development subjects.

664. On 21 December 2005, the Government replied to the Special Rapporteur's letter dated 8 November 2005, concerning the '**Ordinance amending some of the Nepal Acts Related to Media, 2062**'. The Government noted that the main objective of the Ordinance was not to control the press but only to regulate it with the aim of saving people from media-bred rumors and misinformation, and to make the media sector more responsible, accountable, dignified, and respected. Moreover, it was stated that the Ordinance was aimed at restricting (not eliminating) news-based information being broadcast by FM radio stations in an attempt to counter-terrorism and maintain law and order, whilst at the same time regulating monopoly of some media houses. Regarding the question of some allegedly ambiguous words found in the law and the potential for their abuse, the Government stated that the words used in the Ordinance were free from any ambiguities, and in any event would be interpreted by the dictates of public conscience, constitutional norms and international legal obligations. Furthermore, the Supreme Court of Nepal was testing the legality and legitimacy of the Ordinance, and the Government had undertaken not to intervene in the broadcasting of news-based information by FM radios pending the Court's verdict in this regard. Finally, the Government stated that the Ordinance did not infringe Nepal's international obligations regarding Article 19 ICCPR, which expressly authorizes States to impose certain restrictions by enacting laws for the protection of national security or of public order or of public health or morals.

665. On 2 December 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning Mr. **Bhagirathi Chowdhary**, President of the Forum for Rural Welfare and Agricultural Reform for Development (FORWARD-Nepal) and member of the Executive Committee of the NGO Federation of Nepal (NFN), Mr. **Durga Kumar Thapa**, President of the Human Rights and Environment Development Centre (HURENDEC) and member of the Executive Committee of the NFN, Mr. **Binod Dev**, NFN Secretary, Mr. **Jung Bahadur Singh**, member of the Setu Community Development Forum, Saptari, Mr. **Dhruv Dev** and Mr. **Sameer Jha**, members of the NGO Save the Saptari, Mr. **Hem Shankar Singh**, a local journalist, Mr. **Dinesh Yadav** and Mr. **Prakash Khatiwada**, both members of the Human Rights and Social Service Centre (HUSEC), a network organization of INSEC, and Mr. **Ghanshyam Jha**, member of the NGO Save the Nepal, based in Saptari district. According to the information received, on 11 November 2005, Bhagawati Chowdhary, Durga Kumar Thapa, Binod Dev, Jung Bahadur Singh, Dhruv Dev, Sameer Jha, Dinesh Yadav, Prakash Khatiwada and Ghanshyam Jha were arrested during a peaceful demonstration in which they were protesting against the NGO Code of Conduct which was adopted by the Social Welfare Council of the Government on 10 November 2005. They were detained at the District Police Office, Rajbiraj, Saptari district and were all released without charge after five hours.

666. On 16 December 2005, the Permanent Mission of the Kingdom of Nepal replied to the Special Rapporteur's letter dated 2 December 2005 concerning the detention of **Mr. Bhagawati Chowdhary, Mr. Durga Kumar Thapa, Mr. Binod Dev, Mr. Jung Bahadur Singh, Mr. Dhruv Dev, Mr. Sameer Jha, Mr. Hem Shankar Singh, Mr. Dinesh Yadav, Mr. Prakash Khatiwada, and Mr. Ghanshyam Jha**, notifying the Special Rapporteur that his letter had been forwarded to the relevant authorities in Kathmandu with a request of information on this case. The Permanent Mission undertook to notify the Special Rapporteur of any future information received in this regard.

667. On 13 December 2005 the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent a letter of allegation concerning **Bharat Shahi**, Chuli Sandesh weekly editor, **Bhimsen Rajbahak**, Communication Corner journalist, **Kamal Pariyar**, Jana Sangharsa weekly journalist, **Rodan Rai**, The Himalayan Times photographer, **Gyanendra Sharma**, Nepal One TV cameraman, **Tilak Mahat**, a reporter for the regional daily Lumbini Dainik and **Suresh Sainju**, a journalist. On 6 September 2005, the five journalists were assaulted by the police at an opposition pro-democracy rally in Kathmandu. Bharat Shahi was hit on the head with batons and kicked by plain-clothed and uniformed policemen. He was detained and later admitted to Bir Hospital. Bhimsen Rajbahak, Kamal Pariyar, Rodan Rai and Gyanendra Sharma were ill-treated and detained but later freed by police. On 13 September 2005, Tilak Mahat and Suresh Sainju were beaten with clubs at a demonstration.

#### **Follow up to previously transmitted communications**

668. On 8 March 2005, the Permanent Mission informed the Special Rapporteur that information concerning the urgent appeal dated 14 August 2003 was still pending.

669. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 16 September 2003, concerning **Shanta Shrestha, Sobhit Yadav, Balaram Sharma** (also known as Poorna Birma), as well as **Ram**, a journalist. The Government informed the Special Rapporteur that Ms. Shrestha was released on 17 September 2003, Mr Yadav was released on 25 March 2004, and Mr. Sharma was released from custody on 12 November 2003. Concerning Mr Hari Chaulagain, The Government noted that they were still awaiting reply on this case.

670. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 23 September 2003, regarding **Shubhashankar Kandel**, who was allegedly arrested on 9 September 2003 by security forces personnel. The Government noted that Mr. Kandel was released on 11 October 2003.

671. On 8 March 2005, the Government, replied to the Special Rapporteur's communication dated 29 September 2003 concerning **Champa Bishwa Karma**, who was reportedly arrested on 30 January 2002 by police in uniform. The Government informed the Special Rapporteur that Ms. **Bishwa Karma** was released on 26 July 2003.

672. On 8 March 2005, the Government, replied to the Special Rapporteur's communication dated 29 September 2003, concerning **Hari Lamsal**, a 24-year-old student of Tribhuvan University, Kirtipur, Kathmandu, who was reportedly arrested on 15 June 2002 by army personnel on suspicion of being a supporter of the Communist Party of Nepal (Maoist). The Government noted that Mr. Lamsal was released on 21 February 2003.

673. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 29 September 2003 concerning **Deepak Pandey**, a journalist. The Government informed the Special Rapporteur that Mr. Pandey was not held in detention by the police.

674. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 1 October 2003, regarding **Dhana Shahi**, aged 25, and **Shanu Shahi** (f), aged 20, both shopkeepers, who were reportedly arrested at their home on 26 September 2003 by a group of about 15 army personnel. The Government informed the Special Rapporteur, that the abovementioned persons were not held in custody.

675. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeals dated 1 October 2003 and 14 October 2004, regarding **Lokendra Dhvaj Khand** and **Ek Nath Chaulagain**, who were reportedly arrested on 27 August 2003 by members of the Royal Nepalese Army. The Government informed the Special Rapporteur that Mr. Khand was released on 16 February 2004 and Mr. Chaulagain was being held under preventive detention in Kathmandu.

676. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 6 October 2003, regarding **Ram Bahadur Limbu**, who was reportedly arrested by security personnel on 26 September 2003. The Government informed the Special Rapporteur that Mr. Limbu was held in preventive detention under TADO.



677. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 20 October 2003 regarding **Ram Hari Kadel**, a 26-year-old resident of Naya Bazaar, Ward 16, Kathmandu, and **R.H Tripathi**, a 16-year-old student who works at the glass shop owned by Ram Hari Kadel. Ram Hari Kadel was reportedly arrested on 12 September 2003 and Ram Prasad Tripathi was arrested on 13 September 2003. The Government informed the Special Rapporteur, that Mr. Kadel was not held under any authority under Nepalese jurisdiction and that Mr. R.H.T, was released on 24 October 2003, and handed to his brother.

678. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 20 October 2003 regarding **Ram Chandra Maharjan**, who was reportedly arrested by about 20 army personnel on 14 October 2003. The Government noted that Mr. Maharjan was released after questioning and handed over to his son on 21 November 2004.

679. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 22 October 2003, regarding **Udaya Raj Gautam**, who was reportedly arrested by four members of the security forces on 29 September 2003 in Kathmandu. The Government stated that Mr. Gautam was not held in custody by any Nepalese authority.

680. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 24 October 2003, concerning the situation of Mr. **Amrit Kadel**, reportedly arrested in Kathmandu, on 11 October 2003, by members of the security forces. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

681. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 13 November 2003 concerning, **Bhagirath Kharel**, **Maha Prasad Angai** and **Naresh Maharjan** reportedly arrested by ten security forces personnel on 6 November 2003. The Government informed the Special Rapporteur, that Mr Kharel has been kept in preventive detention at Kathmandu jail. Regarding **Maha Prasad Angai**, the Permanent Mission noted he was released on 12 September 2004. Reportedly **Naresh Maharjan** committed suicide by taking poison.

682. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dating from 14 November 2003, concerning **Arjun Maharjan**, who was reportedly arrested by three members of the security forces on 29 October 2003. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

683. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 21 November 2003 concerning **Navraj Thapa**, **Resham Bahadur Pun** and **Deependra Panta** whose whereabouts are reportedly unknown since their alleged arrest by members of security forces. The Government noted that **Deependra Panta** was not held in custody by the police; concerning **Navraj Thapa** and **Resham Bahadur Pun** the Permanent Mission informed the Special Rapporteur that they were still awaiting reply on these cases.

684. On 8 March 2005, the Government replied to the Special Rapporteur's communication dating from 21 November 2003, regarding **Dhana Bahadur Magar**, a journalist, member of the Federation of Nepalese Journalists (FNJ). It is reported that Mr. Bahadur Magar who had been missing since 18 November 2003. The Permanent Mission informed the Special Rapporteur that they were still awaiting reply on this case. On 22 March 2005, the Government of the

Kingdom of Nepal, submitted additional information to its 8 March 2005 reply to the Special Rapporteur's urgent appeal dated 21 November 2003, where they noted that **Dhana Bahadur Magar** was in detention since 10 June 2004.

685. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dating from 2 December 2003, concerning the situation of Mr. **Bhumi Chamling, Keshav Singh Thakuri, and Gyanendra Prasad Bidar**. The Government informed the Special Rapporteur, that that they were still awaiting information regarding Mr. **Chamling** and Mr. **Thakuri**. According to the information received, Mr. **Bidary** was released from preventive detention on 23 April 2004. On 22 March 2005, Government additional information to its 8 March 2005 reply to the Special Rapporteur's urgent appeal dated 2 December 2003, where they noted that Mr. **Bhumi Chamling** surrendered after arrest on 8 January 2004.

686. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 8 December 2003, concerning **Tej Narayan Sapkota**, who was reportedly arrested by four security forces personnel on 24 November. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

687. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 9 December 2003, concerning **Kumar Prasad Pant**, who was reportedly arrested on 19 November 2003 by members of the security forces. The Government noted that Mr. Pant was released on bail from CDO office.

688. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 18 December 2003, regarding Mr. **Ram Krishna Adhikari**, a reporter from the weekly *Saghu*, who has reportedly been missing since 10 December 2003. The Government stated that he was released on 18 December 2003, immediately after interrogation.

689. On 8 March 2005, the Government replied to the Special Rapporteur's communication 3 February 2004, concerning **Rakesh and Durga Prasai**, who were reportedly arrested by army personnel in Jhapa district on 24 January 2004. The Government noted that both men were immediately released after interrogation and handed over to their brother in law.

690. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 10 February 2004 concerning **Narendra Maharjan** who was reportedly arrested on 21 January 2004. The Government informed the Special Rapporteur that Mr. Maharjan was released on 24 January 2004.

691. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 13 February 2004, concerning **Lekhnath Sapkota**, who was reportedly arrested in Kathmandu on 4 February 2004. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

692. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 16 February 2004, the Special Rapporteur, jointly with the Special Rapporteur on torture, sent an concerning **Gyan Bahadur Koirala** and **Maheshwar Pahari**, who were reportedly arrested in separate incidents on 2 January 2004. The Government noted that Mr. **Koirala's** case had been clarified.

693. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated On 16 February 2004 concerning **Sho Prasad Khatiwada**, who was reportedly arrested on 3 January 2004 at his place of work by a group identifying themselves as security forces personnel. On 8 March 2005, the Government of the Kingdom of Nepal replied to the Special Rapporteur's communication dated.

694. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal from, 25 February 2004, concerning **Bal Krishana Devkota** and **Dhananjaya Khanal**, reportedly arrested on separate incident on 21 February 2004. Regarding **Bal Krishana Devkota** the Government informed the Special Rapporteur, that they were still awaiting reply on this case. Concerning Mr. **Khanal**, the Government informed the Special Rapporteur that he was released and handed over to his landlord on 25 February 2005.

695. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 26 February 2004 concerning **Chandra Prasad Nepal** and his wife **Sabitri Nepal**, who were reportedly arrested on 17 February 2004 by security forces personnel in plain clothes. The Government informed the Special Rapporteur, that Mr. Nepal was handed over to his sons on 18 April 2004. Regarding Ms. Nepal, the Government informed the Special Rapporteur that they were still awaiting reply on this case.

696. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 26 February 2004 concerning **Mukunda Ghimire** a political worker, and **Keshav Chudal**, who were reportedly arrested on 3 February 2004. Regarding Mr. Chudal, the Government noted that he was released from custody on 14 September 2004. Concerning Mr. Ghimire the Government informed the Special Rapporteur, that they were still awaiting reply on this case. On 22 March 2005, the Government submitted additional information to its 8 March 2005 reply to the Special Rapporteur's urgent appeal dated 26 February 2004 where they noted that **Keshav Chudal**, was being held in detention since 21 March 2004.

697. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal from 27 October 2003, concerning Mr. **Bandhu Dev Pandey** and **Subindra Buda Magar** whose whereabouts are reportedly unknown since their alleged arrest by plain-clothed security personnel on 11 and 16 October 2003. The Government informed the Special Rapporteur, that Mr. Pandey was released on 1 August 2004. Concerning Mr. **Buda Magar**, the Government noted that he was detained at the Sundarijal detention center, since December 2003.

698. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 1 March 2004, concerning the reported arrest by the security forces on 21 February 2004 of journalist **Laxmi Pandey**. The Government noted that Mr. Pandey was kidnapped by the Maoists on 22 February 2004, and subsequently released on 25 February 2004.

699. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal from 2 March 2004, concerning **Arjun Pokhrel Kaushalya Pokhrel**, **Arjun Pokhrel** and **Madhu Mandal** reportedly arrested by security forces personnel, between 26 November and 16 December 2003. The Government informed the Special Rapporteur, that they were still

awaiting reply on this case. On 30 March 2005, the Permanent Mission of the Kingdom of Nepal, submitted additional information to its 8 March 2005 reply to the Special Rapporteur's urgent appeal dated 2 March 2004 concerning **Kaushalya Pokhrel**. The Government noted that Ms. Pokhrel was not under police detention.

700. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 4 March 2004 concerning **Bhimsen Kumar Gautam**, who was reportedly questioned and arrested on 3 March 2004 by a group of men who identified themselves as security forces personnel. The Government informed the Special Rapporteur, that Mr. Gautam was released on May 17 2004 after routine inquiry.

701. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 10 March 2004, **Yamanath Lohani**, who was reportedly 1 March. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

702. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 17 March 2004, regarding **Dhani Ram Tharu** reportedly arrested by uniformed members of the Armed Police Force, allegedly on suspicion of involvement in Maoist activities, on 13 March 2004. The Government noted that Mr. Tharu was released from preventive detention under the TADO on May 22, 2003.

703. On 8 March 2005, the Permanent Mission of the Kingdom of Nepal, replied to the Special Rapporteur's urgent appeal dated 19 March concerning **Chakrapadi Acharya**, who was reportedly arrested by security forces personnel on 8 March 2004. The Government informed the Special Rapporteur that Mr. **Acharya** was released from custody on 24 March 2004.

704. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 24 March 2004 concerning **Tikaram Bishwakarma**, who was reportedly arrested on 26 February 2004 at 8.30 am by two men in civilian clothes, claiming to be security forces personnel, and **Narayan Dhvaj Mahat**, who was arrested at his workplace by two men in plain clothes who allegedly identified themselves as security forces personnel. The Government informed the Special Rapporteur that Mr. **Bishwakarma** was not under police custody and Mr. Mahat was held in preventive detention under TADO.

705. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 April 2004, concerning **Kedar Prasad Bidari** and **Ngadar Bhote**, whose whereabouts were unknown since they were reportedly arrested on 7 and 17 March 2004 respectively. Regarding Mr. Bidari, the Government noted that he was released and handed over to his wife on 1 July 2004. Concerning Mr. Bhote, the Government noted he was held in preventive detention under TADO.

706. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 2 April 2004, concerning the cases of **Sitaram Tamang**, **Samundra Budathoki**, **Man Bahadur Shrestha**, **Surya Bastakoti**, **Tuk Nath Dhungana**, **Govinda Ghimire** and **Achyut Kumar**, all reportedly arrested on suspicion of being involved with the Communist Party of Nepal (CPN) on 2 April 2004. Regarding Mr. Tamang and Mr. Bastakoti the Government noted that they were not being held under police custody. Concerning Mr. Ghimire, the Government noted that he was being held in preventive detention under TADO. With regard

to Mr. Kumar, the Permanent Mission stated that he had been released on 8 September 2004. According to the information received Mr. Dhungana was released on 26 March 2004 after routine interrogation. As regards Mr. Budathoki and Mr. Shretsa the Government informed the Special Rapporteur that they were still awaiting reply.

707. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 2 June 2004, concerning **Khadga Bahadur Swar**, also known by the name of **K.B. Jumli**, a correspondent for the private Kathmandu-based daily "Nepal Samacharpatra", who was reportedly arrested by local authorities in the western Jumla District on 4 April 2004. The Government noted that he was released and handed over to his brother Bikram Bahadur Swar on July 03 2004.

708. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 9 June 2004 concerning **Phulmaya Dahal**, age 19, **Chandra Bahadur Prasai**, age 22, **Debraj Pradhan**, age 35, **Dilliram Rizal**, age 30 and a teacher and **Gangaram Lamitaray** all Bhutanese refugees, allegedly were arrested by the security forces on 2 and 3 June 2004. The Government noted that they were still awaiting reply on this case. On 22 March 2005, the Government submitted additional information to its 8 March 2005 reply to the Special Rapporteur's urgent appeal dated 9 June 2004, where they noted that **Phulmaya Dahal** was released after investigation on 8 June 2004. On 22 March 2005, the Government of the Kingdom of Nepal, submitted additional information to its 8 March 2005 reply to the Special Rapporteur's urgent appeal dated 9 June 2004, where they noted that **Dilliram Rizal** and **Gangaram Lamitaray**, were released after investigation on 8 June 2004. On 22 March 2005, the Permanent Mission of the Kingdom of Nepal, submitted additional information to its 8 March 2005 reply to the Special Rapporteur's urgent appeal dated 9 June 2004, where they noted that **Chandra Bahadur Prasai** and **Debraj Pradhan** was detained under the Public Security Act since 15 December 2004. On 30 March 2005, the Government submitted further additional information to its 8 March 2005, reply to the Special Rapporteur's urgent appeal dated 9 June 2004. The Government noted that **Chandra Bahadur Prasai** and **Debraj Pradhan**, were in detention at Jhapa jail under the TADO.

709. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 11 June 2004 concerning Jetendra **Khadka**, 23 who was reportedly arrested by around 15 security personnel on 18 May 2004. The Government informed the Special Rapporteur that Mr. Khadka was in preventive detention since 31 August 2004, under TADO.

710. On 8 March 2005, the Government replied to the Special Rapporteur's letter dated 7 July 2004, concerning minor **B.B.K** arrested by the police on 11 February 2004. The Government informed the Special Rapporteur that Ms. B.K was a Maoist militia, and who is currently detained at Dillibazar Karagar Shakha. On 22 March 2005, the Government submitted additional information to its 8 March 2005 reply to the Special Rapporteur's urgent appeal dated 7 July 2004, where they noted that **B.B.K** is held in detention in Central Jail Jagannath Dewal, Kathmandu since 24 March 2004.

711. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 13 July 2004, concerning Mr. **Hari Sharan Maharjan**, allegedly arrested by security personnel on 2 July 2004. The Government noted that Mr. **Maharjan** was not arrested by the armed police.

712. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 21 July 2004, regarding journalists **Dil Bahadur Shahi, Rastriya Samachar Samiti, Hari Bishnu Oli**, of Kantipur Publications, **Narayan Shah, Kamal Thapa**, According to information received, they were arrested on 11 July 2004. The Government noted that Mr. **Shahi** was under preventive detention under the Public Security Act, and Mr. **Thapa** was held in detention in Sundarijal Detention Center. Concerning Mr. **Bishnu Oli**, Mr. **Narayan Shah** the Government noted that they were still awaiting reply on this case.

713. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal from 30 July 2004 concerning the arrest of Mr. **Ajaya Shahi** on 19 July 2004, by men who identified themselves as members of the Security forces. The Government informed the Special Rapporteur, that at the time the communication, they were still awaiting a reply from the relevant authorities.

714. On 8 March 2005, the Government replied to the Special Rapporteur's letter of allegation dated 26 August 2004 concerning Mr. **Subid Guragain**, Mr. **Ram Mani Misra**, Mr. **Girija Prasad Koirola**, Ms. **Kamala Pant**, Mr. **Ram Kumar Mahato**, Mr. **Om Bandhu Karki**, Mr. **Ram Prasad Adhikari**, Mr. **Jeevan Dangol**, Mr. **Devendra Niroula**, Mr. **Kudan Kaphley**, and NM, a 16-year-old student. The Permanent Mission noted that they were still awaiting reply on this case. On 22 March 2005, the Government submitted additional information to its 8 March 2005 reply to the Special Rapporteur's urgent appeal dated 26 August 2004, where they noted that Mr. **Subid Guragain** was in detention on 13 October 2004.

715. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 1 September 2004, concerning **Arun Shingania**, publisher of "Janakpur Today" newspaper in Janakpur, Dhanusha district. who reportedly received a series of death threats on 15 August 2004, **Brij Kuman Yadav**, editor of the "Janakpur Today" who was assaulted by an individual at the newspaper's office, **Punya Prasad Poudel**, editor of the daily "Pokaharpatra" in Pokhara, Kaski district, who was threatened by the outgoing vice president of the district development committee for reporting on the vice-president's alleged involvement in misusing Pokhara stadium land for personal business, and **Raju Timilsina**, camera operator of the private television station Kantipur in Nayabaneswor. The Government informed the Special Rapporteur that they were still awaiting reply on these cases.

716. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 15 September 2004 concerning **Hira Lal Khadka**, chairman who was allegedly arrested under the Terrorist and Disruptive Activities (Punishment and Control) Ordinance (TADO) accused of publishing pamphlets written by relatives of members of the Communist Party of Nepal (CPN) (Maoist) who had "disappeared". The Government informed the Special Rapporteur that Mr. Khadka was in preventive detention under TADO since 31 August 2004.

717. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 October 2004, concerning journalists **Bal Ram Baniya, Ghana Shyam Ojha, Ajaya Siwakoti, Rohit Dahal, Sita Ram Parajuli** and **Prabin Dhakal**, who were allegedly was reportedly assaulted by the security forces on 6 January 2004. The Government informed the Special Rapporteur, that they were still awaiting a reply on this case.

718. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 October 2004, concerning journalists **Amar Raj Nakarmi** and **Sankar Raj Nakarmi** who were reportedly assaulted by two student leaders associated with the Nepali Congress Party on 9 February 2004. The Government informed the Special Rapporteur that they were still awaiting reply on this case.

719. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 October 2004, concerning **Amrit Baniya, Janma Dev Jaisi, Dhurba Raimajhi, Subash Pokhrel** who were detained for five hours on 1 May 2004. The Government informed the Special Rapporteur that they were still awaiting a reply on this case.

720. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 October 2004, concerning **Babita Basnet**, who was reportedly, interrogated by the NPA, on 13 November 2003. The Government noted that they were still awaiting reply on this case.

721. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 October 2004, concerning **Ashok Sharma**. The Government noted that they were still awaiting reply on this case.

722. On 8 March the Government replied to the Special Rapporteur's letter dated 14 October 2004, concerning **Dipak Rijal, Lila Raj Khanal, Mukunda Subedi** and **Damodar Dawadi**. The Government informed the Special Rapporteur that they were still awaiting reply on these cases.

723. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 14 October 2004, concerning the arrest by the police of 7 civil servants, namely: **Bhola Dawadi, Sri Narayan Pathak, Tara Koirala, Tilak Khanal, Daya Ram Pandey, Rudra Khanal** and **Milan Dhakal**. The Government noted that they were still awaiting a reply on these cases.

724. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 14 October 2004, concerning the situation of 12 civil servants, namely: **Tara Nath Subedi, Lok Nath Kaphley, Govinda Sahi, Shyam Bahadur Khadka, Dharma Bairagi, Ram Hard Pudasaini, Prasanna Koirala, Ramesh Pokharel, Ms. Sita Giri, Ms. Rajeshwori Pandey, Ms. Durga Thapa** and **Ms. Pabitra Parajuli**), who were allegedly arrested during a peaceful rally in Kathmandu, on 13 May 2004. The Government informed the Special Rapporteur that they were still awaiting reply on this case.

725. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 14 October 2004, concerning **Dinesh Acharya**. The Government informed the Special Rapporteur that they were still awaiting reply on this case.

726. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 14 October 2004, concerning the alleged assaults by police officers on journalists, **Dipendra Kunwar, Jitendra G.C.** and **Dinehsh Pande, Sher Bahadur K.C., Yub Raj Pande, Dipendra Baduwal, Ram Prasad Acharya, Bishnu Prasad Ghimire** and **Bishnu Poudel**. The Government informed the Special Rapporteur that they were still awaiting reply on this case.

727. On 8 March 2005, the Government replied to the Special Rapporteur's communication of 14 October 2004, regarding senior photojournalist **Gopal Chitrakar**, who was reportedly seriously injured by police officers on 21 April 2004. The Government informed the Special Rapporteur that they were still awaiting reply on this case.

728. On 8 March 2005, the Government to the Special Rapporteur's urgent appeal dated 19 December 2003 concerning journalist **Marika Poudel** reportedly arrested by plainclothes security personnel. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

729. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 14 October 2004 concerning journalist **Jagat Nepal**, who was allegedly assaulted on 16 May 2004, by a police officer under the command of an Inspector (whose name is known to the Special Rapporteur) The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

730. On 8 March 2005, the Government replied to the Special Rapporteur's communications dated 9 June 2004 and 14 October 2004 regarding the arrest of lawyer **Jeetaman Basnet**. The Government informed the Special Rapporteur that Mr. Basnet was released and handed over to his brother on 18 October 2004.

731. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 October 2004 concerning reporter **Saroj Adhikari** and computer operators **Kedar Adhikari** and **Ram Krishna Rana** who were reportedly assaulted by police officers after the latter forcefully entered the Kathmandu offices of the weekly *Drishti* and caused damages to the office premises. The Government informed the Special Rapporteur, that they were still awaiting reply on these cases.

732. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 October 2004 concerning **Krishna Lamsal** managing editor of the weekly *Rastriya Janamancha*, who was reportedly assaulted by six unidentified assailants 10 April 2004. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

733. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 October 2004, regarding **Milan Pandey**. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

734. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 14 October 2004 regarding journalist **Pabitra Kumar Khadka**, who was reportedly physically assaulted by customs officials on 5 February 2004. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

735. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 October 2004, regarding **Padma Raj Devkota**, who was reportedly killed by the security forces on 7 February 2004. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.



736. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 October 2004 regarding journalist **Prajaya Shukla**, who was reportedly injured in Kathmandu by police while breaking up a protest rally. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

737. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 14 October 2004, regarding **Punya Bhandari**, 30 April, according to information received, suffered a physical physically assault by a police officer on 30 April 2004. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

738. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 October 2004, regarding **Shahi Man Rai**. Reportedly, on 9 November 2003, security forces reportedly searched Mr. Rai's personal belongings and confiscated documents related to rebel activity. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

739. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 14 October 2004, regarding **Shahi Man Rai**. Reportedly, on 9 November 2003, security forces reportedly searched Mr. Rai's personal belongings and confiscated documents related to rebel activity. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

740. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated 14 October 2004 regarding journalist **Shiva Lamsal**, who according to the information received was verbally abused and harassed on 2 April 2004, by a Police Inspector. The Government informed the Special Rapporteur, that they were still awaiting reply on this case.

741. On 8 March 2005, the Government replied to the Special Rapporteur's communication dated, 14 October 2004, regarding **Umesh Ojha** who was reportedly physically assaulted journalist at the main entrance to Tribhuvan International Airport in Kathmandu. Ojha is associated with the state-owned daily Gorkhapatra. A police Constable pushed the journalist and threw his "press pass" to the ground. The press pass is issued by the government's Department of Communications.

742. On 8 March 2005, the Government replied to the Special Rapporteur's urgent appeal dated 22 November 2004, concerning **Prakash Thapa**, who according to the allegations received, was arrested at home by six security forces personnel on 10 November 2004. The Government informed the Special Rapporteur that Mr. Thapa was held in preventive detention under TADO.

### **Observations**

743. The Special Rapporteur thanks the Government for its replies to his communications dated 26 January 2005, 7 February 2005, 11 February 2005, 17 February 2005, 22 February 2005, 25 February 2005, 7 March 2005, 10 March, 24 March 2005, 3 May 2005, 15 June 2005, 14 September 2005, 8 November 2005, and 2 December 2005 as well as for the replies to his communications submitted in 2004 and 2003. The Special Rapporteur regrets however, not having received a reply to his communications dated 24 January 2005,

18 February 2005, 10 March 2005, 19 and 29 April 2005, 1, 15 and 20 June 2006, 26 July 2006, 8 August 2005, 29 August 2005, 26 September 2005, 3 October 2005, and 13 and 16 December 2005.

744. The Special Rapporteur, whilst thanking the Government for its replies to the aforementioned communications, would like to raise his concerns at, what he deems, the inadequacy of the information provided in these replies, particularly in that they do not thoroughly reply the issues and questions raised by the Special Rapporteur in the communications sent. In particular, the Special Rapporteur emphasizes the need to be provided with, for example, detailed information concerning the facts of the case and the grounds of arrest of the persons concerned in the communications and the compatibility of these grounds with the Government's national and international obligations concerning the right to freedom of opinion and expression pursuant to the International Covenant on Civil and Political Rights. On this basis, the Special Rapporteur would also appreciate receiving information concerning any investigations carried out and any prosecutions in this regard.

745. Moreover, in view of the serious and numerous allegations concerning various cases and forms of violations of the right to freedom of opinion and expression, particularly regarding the press, journalists, human rights defenders and other expressing a political opinion, the Special Rapporteur deems it appropriate to call to the Government's attention to the Commission on Human Rights' concerns as expressed in resolution 2005/38, that violations of the right to freedom of opinion and expression continue to occur, often with impunity, including extrajudicial killings, arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence and of discrimination, including gender-based violence and discrimination, increased abuse of legal provisions on defamation and criminal libel as well as on surveillance, search and seizure, and censorship, against persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers, Internet users and human rights defenders. In this context the Commission defined as unlawful those restrictions to the right to freedom of opinion and expression which are incompatible with paragraph 3 of article 19 of the International Covenant on Civil and Political Rights, including on i. discussions of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups; ii. the free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship; and iii. access to or use of information and communication technologies, including radio, television and the Internet.

746. Furthermore, the Special Rapporteur deems it appropriate to make reference to the fundamental principles enunciated in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote

and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

### Nicaragua

747. El 10 de junio de 2005, el Relator Especial envió un llamamiento urgente en relación con el **Heberto Jarquín Manzanares** corresponsal del diario *La Prensa* en la región del Atlántico Norte. De acuerdo a la información recibida, el 22 de mayo de 2005, cuando el periodista estaba realizando un reportaje en la reserva natural de Bosawa en Atlántico Norte, habría sido amenazado de muerte por un ex comandante del Frente Unido Andrés Castro, una organización paramilitar ahora disuelta. La amenaza la habría hecho a través de un emisario quien le dijo al corresponsal “Tenga cuidado, este hombre no es una persona segura. Se ha reunido con campesinos y la conversación no era nada agradable, para su futuro”. También le habría asegurado que el antemencionado ex comandante había puesto precio a su cabeza. Según lo informado, la amenaza habría sido realizada después de que el corresponsal hubiera publicado un artículo, en el que denunciaba al ex comandante como promotor de las tomas de tierras comunales. Además se informó de que Heberto Jarquín antes habría dedicado varias investigaciones a daños en las reservas naturales, supuestamente causados por la mafia de madera, con la cual según los informes el mencionado ex comandante tendría conexiones. Heberto Jarquín ya habría sido amenazado dos veces por parte de dos personas que trabajan con maderas preciosas. Se teme que la amenaza esté relacionada con la labor periodística que lleva acabo el corresponsal.

748. Por carta con fecha 12 de diciembre de 2005, el Gobierno transmitió la siguiente información en respuesta a la comunicación del 10 de junio de 2005 relativa al periodista **Heberto Jarquín Manzanares**. La Procuraduría general de la República informó que el Sr. Jarquín Manzanares había avisado a las autoridades de las amenazas de muerte recibidas por parte de un ex militar del disuelto Frente Unido Andrés Castro (FUAC). También informó de la denuncia presentada por el ex militar ante el Juzgado Local único de Rosita contra el periodista por el delito de injurias y calumnias a causa de la publicación de los artículos periodísticos. El Juzgado, en sentencia definitiva, declaró no culpable al periodista. El 30 de junio de 2005, el Sr. Jarquín Manzanares presentó una denuncia por los hechos ante la Procuraduría para la defensa de los derechos humanos. También se presentó ante el Director General de la Policía Nacional y ante el Fiscal General del Ministerio Público. Las investigaciones del caso no fueron concluidas. El Sr. Jarquín Manzanares explicó a esta Procuraduría que era debido al hecho de que el Ministerio Público y la Policía del municipio de Rosita estaban trabajando con el ex militar, razón por la cuál fue directamente a encontrarse con autoridades superiores. Las amenazas finalizaron y el Sr. Jarquín fue sido trasladado por “La Prensa” hacia otro municipio de la Región Autónoma del Atlántico Norte.

### Seguimiento de comunicaciones transmitidas previamente

749. Por carta con fecha 21 de febrero de 2005, el Gobierno de Nicaragua transmitió la siguiente información en respuesta a la comunicación del 10 de diciembre de 2004 relativa a la periodista **María José Bravo**. La familia de la víctima interpuso una denuncia ante la Policía

Nacional Civil el 9 de noviembre de 2004. El Ministerio Público dio seguimiento a la denuncia e investigaciones y presentó la acusación el 11 de noviembre de 2004 ante el Juzgado de Distrito de lo Penal del municipio de Juigalpa. El Juzgado emitió una sentencia definitiva de primera instancia donde se resuelva la culpabilidad de la persona procesada con una pena de 25 años de presidio por el delito de asesinato. La defensa interpuso un recurso de apelación, que se encuentra pendiente ante el Tribunal de Apelaciones.

## Observations

750. El Relator Especial agradece al Gobierno sus respuestas a las comunicaciones con fecha 10 de Junio de 2005 y de 10 de Diciembre de 2004. El Relator Especial, apela al Gobierno a que continúe tomando las medidas necesarias para asegurar que los periodistas puedan trabajar y expresarse libremente en un ambiente seguro, de acuerdo con los derechos garantizados entre otros por el Artículo 19 de la Declaración Universal de Derechos Humanos.

## Niger

751. On 7 April 2005, the Special Rapporteur sent a letter of allegation concerning **Gorel Haroun**, a reporter for the weekly newspaper *Le Républicain*. According to the allegations received, on 24 March 2005 the Minister for the Interior and Decentralisation made a press statement on *Tele Sahel*, the Niger state television, warning radio and television stations against broadcasting the contents of an article published in *Le Républicain*, which article called on the people of Niger to pray to God to alleviate the suffering of the population. The Minister likened this call for prayers to a desire to destroy a democratically elected regime. Moreover, on the same day, during a press conference concerning civil society demonstrations against the increase in the prices of various goods, a Minister and spokesperson for the Government, seized **Gorel Haroun's** camera.

752. Le 18 mai 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de **Iguilas Weila**, Président de *Timidria*, une Organisation non gouvernementale basée au Niger travaillant contre l'esclavage partenaire de *Anti-Slavery International* et **Alassane Biga**, Secrétaire Général du bureau de *Timidria* à Tillabery. Iguilas Weila serait également membre de la Commission nationale pour les droits de l'homme et les libertés fondamentales et de l'observatoire nationale pour les élections. Selon les informations reçues, le 28 avril 2005, Iguilas Weila et Alassane Biga auraient été arrêtés avec quatre de leurs collègues. Ils auraient été conduits à un poste de police de Niamey et accusés de « lever des fonds de façon illégale » via *Anti-Slavery International*. L'accusation initiale de « propagation de fausses informations concernant l'esclavage » aurait été abandonnée. Selon les sources, Iguilas Weila et Alassane Biga étaient, au moment que cette communication a été envoyée, détenus dans une prison nationale, leurs 4 collègues auraient été libérés le 11 mai 2005. Des craintes ont été exprimées que l'arrestation et les accusations contre les deux hommes n'auraient été liées à leur activité en faveur des droits de l'homme au Niger, en particulier, à la publication conjointe de *Timidria* et *Anti-Slavery International* de la première enquête nationale sur l'esclavage qui aurait aidé à la codification de l'esclavage en tant que crime en droit interne. Ces craintes sont d'autant plus vives qu' au cours de mois du mars 2005, Alassane Biga aurait

participé à l'organisation d'une cérémonie publique pour la libération de 7,000 esclaves à Atès un village à la frontière avec le Mali. Le gouvernement aurait interdit la cérémonie peu avant sa tenue et aurait intimidé ceux qui auraient voulu y participer.

753. Par lettre datée du 03 Juin 2005, le Gouvernement a répondu à la communication du 18 mai 2005 concernant la situation de **Iguilas Weila** et **Alassane Biga**. Le gouvernement a informé le Rapporteur spcial que le 28 avril 2005, ils étaient été arrêtés à Niamey avec quatre de leurs collègues sous l'accusation de "tentative d'escroquerie" via Anti-Slavery International. Les arrestations ont eu lieu comme résultat d'une Commission d'enquête mise en place par la Commission nationale pour les droits de l'homme et les libertés fondamentales (CNDHLF) pour investiguer l'organisation d'une cérémonie publique pour la libération de 7,000 esclaves par le group nomade Tabahenet d' Inates, une village à la frontière avec le Mali, organisé par *Timidria*, qui avait obtenue de Anti-Slavery International la promesse de 2 milliards de francs CFA, destinées a soutenir un projet de développement économique et social dans la groupement. Suite à sa mission sur le terrain la Commission avait rendu un rapport d'enquête au terme duquel il n'existait pas d'esclaves sur le groupement nomade susnommé. Le rapport d'enquête a été suivi d'une enquête judiciaire. En outre, le gouvernement a souligné que l'inculpation et détention du Messrs. **Weila** et **Biga** n'étaient pas le fait du Gouvernement, mais il s'agissait d'une action intentée contre *Timidria* par le CNDHLF.

754. Le 4 octobre 2005, le Rapporteur spécial a envoyé une lettre d'allégation concernant **Abdoulaye Harouna**, rédacteur en chef de l'hebdomadaire *Echos Express*, qui aurait été condamné à quatre mois de prison ferme, suite à une plainte pour injures publiques déposée par le gouverneur de la ville d'Agadez. Harouna aurait été aussi condamné au paiement de 500 000 francs CFA de dommages et intérêts à verser au gouverneur, ainsi qu'à 20 000 francs CFA d'amende (en tout l'équivalent de 790 euros). Le journaliste, qu'avait comparu devant le tribunal régional d'Agadez le 6 septembre, aurait fait appel de cette décision. Dans l'attente du procès en appel, qui devait, au moment que cette communication a été envoyée, se tenir dans les trois mois, Harouna aurait été mis en liberté étant la peine de prison inférieure à six mois. Les articles d'Abdoulaye Harouna auraient accusé le gouverneur de corruption dans la distribution de l'aide humanitaire dans la région d'Agadez. Ces informations auraient également été diffusées par **Hamed Assaleh Raliou**, directeur de la radio locale *Sahara FM* et pigiste pour *Radio France Internationale*, lui aussi attaqué en justice pour diffamation par le gouverneur.

755. Le 25 novembre 2005, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel concernant la situation de **Salifou Soumaila Abdoukarim**, directeur de la publication de l'hebdomadaire *Le Visionnaire*. Selon les informations reçues, Salifou Soumaila Abdoukarim aurait été arrêté le 12 novembre 2005 et détenu pour cinq jours au commissariat de police de Niamey, à la suite d'une plainte pour "diffamation" déposée contre lui par un haut fonctionnaire de la République du Niger. Le 17 novembre le journaliste été incarcéré à la maison d'arrêt de Niamey en détention préventive, en attente de procès. Le haut fonctionnaire a porté plainte contre le journaliste suite à la publication d'un article alléguant qu'il s'était rendu coupable du détournement de 17 milliards de francs CFA (environ 26 millions d'euros).

## Observations

756. Le Rapporteur spécial regrette de ne pas avoir reçu une réponse à ses communications du 7 avril, 4 octobre et 25 novembre 2005.

757. Dans l'attente d'une réponse à sa communication du 7 avril 2005 mais sans préjuger sur des faits examinés, le Rapporteur spécial souhaiterait attirer l'attention du gouvernement à la Résolution 2005/38 de la Commission des Droits de L'Homme qui a invité tous les États, tout en notant que le paragraphe 3 de l'article 19 du Pacte international relatif aux droits civils et politiques dispose que l'exercice du droit à la liberté d'opinion et d'expression comporte des devoirs spéciaux et des responsabilités spéciales, à ne pas imposer de restrictions incompatibles avec le paragraphe 3 de cet article, notamment ... ii) par des pratiques telles que l'interdiction ou la fermeture de publications ou d'autres médias et le recours abusif à des mesures administratives et à la censure.

758. Dans l'attente d'une réponse à ses communications du 4 octobre et 25 novembre 2005, mais sans préjuger des faits examinés, le Rapporteur spécial souhaiterait appeler l'attention du gouvernement sur le principe de proportionnalité de la peine. A cet égard, des sanctions pénales, en particulier l'emprisonnement pour diffamation, ne semble pas proportionnel à un exercice effectif du droit à la liberté d'opinion et d'expression. Ce principe est réitéré par la Résolution 2005 /38 de la Commission de Droits de l'Homme qui a invité tous les Etats a ... j) ne pas recourir, pour des infractions concernant des médias, à des peines d'emprisonnement ou à des amendes qui sont sans commune mesure avec la gravité de ces infractions et qui violent le droit international relatif aux droits de l'homme.

759. Le Rapporteur spécial remercie le gouvernement pour la réponse à sa communication du 18 mai 2005.

## Nigeria

760. On 23 March 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent a letter of allegation concerning **Ayodele Ale**, a reporter for the weekend edition of *The Saturday Punch*. According to the allegations received, on 4 March 2005, he was detained by the Kick against Indiscipline (KIA) paramilitary brigade in Sabo, Yeba district, Lagos, and taken to the Customary Court in the Akerele district of Surulere. Ayodele Ale was arrested for taking photographs in relation to persons being detained by the KIA for crossing a highway instead of using a pedestrian bridge. Before the court, one of the members of the KIA broke Mr. Ale's camera. He was reportedly also beaten by several KIA members with sticks, and thrown into a cell. He was released several hours later. The following day, *The Saturday Punch* published an article on the arrest and beating of Ayodele Ale with pictures of his injuries. KIA acknowledged the incident, but asserted that the beating took place at the hands of a person who did not belong to their brigade.

761. On 28 December 2005 the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal regarding **Klem Ofu okwu**, station news editor of the privately-owned radio station *Rhythm 93.7 FM*, in Port Harcourt, and **Cleopatra Taiwo**, a news presenter. According to the information received, they were reportedly arrested by agents of the State Security Service (SSS), on 19 December 2005 and

were still being detained at the time this communication was sent. Their arrest was allegedly in response to a report aired on the radio station on 17 December 2005, claiming that the Choba Bridge on the outskirts of the city had collapsed and had trapped seven vehicles. The report, apparently based on telephone calls from unnamed sources, later proved to be incorrect. On the same day, armed policemen and SSS agents shut down the radio station and arrested David Obi, news director, and Loknan Dombim, programme manager, both of whom were detained overnight and released the next day. The station was re-opened hours later. On 23 December 2005, however, Klem Ofuokwu and Cleopatra Taiwo were arraigned before a Port Harcourt High Court on charges of broadcasting "false information" and were remanded in custody until 3 January 2006. In a two-count charge against these two journalists and others, the Government alleged that they had conspired among themselves to publish and disseminate, through the medium of a radio broadcast, false news items with intent to cause fear and alarm to the public or to disturb public peace and thereby committed an offence contrary to Sections 516(A) and 59(1) of the Criminal Code of Rivers State. Each of the counts carries a penalty of three years' imprisonment. After the charges were read to the journalists, their lawyer, Ken Atsuwete, requested that they be granted bail pending their trial. The state's director of public prosecutions opposed the request and asked the judge to remand them in custody. The judge ordered that they should be remanded in custody until 3 January 2006, when he was to decide whether to grant them bail pending their trial.

### Observations

762. The Special Rapporteur regrets that no reply to his communication of 23 March 2005 was received at the time this report was finalized. Pending this reply and without making a determination on the facts of the case, the Special Rapporteur deems it appropriate to make reference to Commission on Human Rights resolution 2005/38 which calls on States to ... (c) ensure that victims of violations of the right to freedom of opinion and expression have an effective remedy, to investigate effectively threats and acts of violence against journalists and to bring to justice those responsible to combat impunity.

763. The Special Rapporteur also looks forward to receiving a reply to his communication of 28 December 2005. Pending this reply and without making a determination on the facts of the case, the Special Rapporteur deems it appropriate to make reference to the Commission on Human Rights Resolution 2005/38 which called upon States to ... (j) refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence and which violate international human rights law.

### Oman

764. On 19 July 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning **Mr. Abdallah Al-Ryami**, a poet and journalist who often took part in arts and culture programmes on Omani Television. According to the information received, he was arrested on 12 July 2005, a few days after he appeared on an Iranian television station, Al-Alam, and expressed his concern for human rights violations in Oman and the strict censorship of writers and journalists by Omani authorities in the past months. According to information received Al-Ryami started having problem with the authorities in July 2004 when he publicly questioned the Government's willingness to undertake democratic reforms. Since he spoke out on Al-Alam, he reportedly

disappeared from TV screens, but he continued to write for various websites dedicated to arts and culture. Moreover, Ms. **Taiba al Mawali**, former Member of Parliament, was reportedly arrested at the beginning of June and, on 13 July, she was sentenced to 18 months' imprisonment by a Court in Muscat in connection with her criticisms of the Government. According to information received, in May 2005 Taiba al Mawali acted as an observer at the trial of 31 prisoners of conscience who were sentenced to severe prison terms and subsequently pardoned by the Sultan of Oman.

765. On 25 October 2005 the Government of Oman replied to the communication of 19 July 2005. At the time this report was finalised, this reply was still in the process of being translated.

### **Follow-up to previously transmitted communications**

766. On 10 January 2005, the Government replied to the Special Rapporteur's letter dated 10 December 2004 concerning the claims by journalists **Mohammad Al Harthi** and **Abdullah Al Riyami**, that they had been prevented from carrying out their work. The Government stated that freedom of opinion and expression is protected and guaranteed by Article 29 of the Basic Statute of State issued by the Royal decree No. 101/96, and reassured the Special Rapporteur of the Sultan's belief in the importance of freedom of expression. The Government stated that press interviews are conducted independently and form part of journalistic work, and consequently, the Government had no authority to intervene in them. The Government informed the Special Rapporteur that the discussions on the writing of Messrs. **Al Harthi** and **Al Riyami**, in the "Al Alam" satellite channel, expressed opinions held by the channel and the Government could not comment on them. The Government stated that the allegations concerned were imprecise and incorrect, and formed part of decisions made by some newspapers and other media organs, and not those belonging to the Government. The Government emphasized the right of any writer or journalist to practice any journalistic or information activity in accordance with the Omani Law on Printing and Publication.

### **Observations**

767. The Special Rapporteur thanks the Government for its reply to his communication of 19 July 2005 and 10 December 2004.

### **Pakistan**

768. On 9 February 2005, the Special Rapporteur sent a letter of allegation concerning **Amir Nowab** (aka **Mir Nawab**), a freelance camera operator for the Associated Press Television News and a reporter for the *Frontier Post newspaper*, and **Allah Noor**, who was working for *Khyber TV* in Peshawar. Nowab and Noor were fatally shot near the town of Wana, South Waziristan, on 7 February 2005. In the same attack, two other journalists, **Anwar Shakir**, a stringer for Agence France-Presse, and **Zardad Khan**, who works for Al-Jazeera, were injured. The journalists were covering the surrender of a suspected tribal militant in Pakistan's areas bordering Afghanistan.



769. On 29 March 2005 the Government replied to the communication of 9 February 2005. The Government stated that investigations into the incidents concerned had been initiated and all efforts were underway to bring the perpetrators to justice.

770. On 20 April 2005, the Special Rapporteur sent a letter of allegation concerning **Kamran Mumtaz**, executive editor for the daily Urdu newspaper *Daily Mashriq*. According to information received, on 14 April 2005, in Quetta, the capital of Balochistan province, five armed men from the regional political party Jamhoori Watan Party (JWP) stormed the offices of Daily Mashriq and assaulted Kamran Mumtaz. One of the attackers wearing brass knuckles hit him in the face and left him severely injured. The assailants ransacked the office and threatened the management that there would be serious repercussions for them if the newspaper did not change its policy towards the JWP. They claimed that Daily Mashriq was biased against the JWP and did not publish their statements and press releases. The Special Rapporteur urged the authorities to carry out thorough investigations and to take all necessary measures to ensure that journalists are able to work freely and independently.

771. On 7 September 2005 the Government replied to the communication of 20 April 2005 concerning **Kamran Mumtaz**. The Government informed the Special Rapporteur that the Director of the Quatta based Regional directorate of Human Rights personally visited the Executive Editor of Mashriq to help gather information about the alleged attack against Mr. Mumtaz. Mr. Mumtaz later stated that he no longer wished the case to be pursued any further.

772. On 3 May 2005, the Special Rapporteur sent a letter of allegation concerning **Malik Munawar**, a journalist for the *Daily Asas Karachi*, **Tasadduk Ghouri**, a journalist for the *Janbaz Karachi daily newspaper* and **Yaseen Jabalpuri**, a journalist for *APNA TV*. According to information received, on 15 April 2005 at the train station in Lahore, police beat them up with clubs and confiscated their cameras, as a result of which they had to be taken to hospital to be treated for their injuries. The journalists had gone to the Karachi railway station to report on the departure of several supporters of the Pakistan People's Party (PPP) for Lahore to welcome Asif Ali Zardari, the PPP Opposition leader, upon his return to Pakistan from Dubai, on 16 April 2005. The police also detained several journalists and confiscated their cameras as well as attacking and injuring several activists and PPP supporters as they attempted to board the train. Furthermore, on 16 April 2005 at Lahore airport, approximately 50 of the journalists who had travelled with Mr. Zardari were surrounded by Punjab/Lahore police as they exited the plane and forced to surrender their camera equipment, audio recorders and mobile phones. Journalists who resisted were beaten and tortured by the police. Mazhar Tufail, a journalist for GEO TV, was beaten by the police and held in custody for two hours. Once the journalists' equipment was returned to them, following several hours of a sit-in protest staged by them at the airport, all of their recordings had been erased and memory sticks removed from their cameras. Police were reportedly acting on official orders.

773. On 18 May 2005, the Special Rapporteur, jointly with the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning the **violent disruption**, by uniformed police from the Punjab police force, as well as plainclothes officers from the police and intelligence agencies, **of a peaceful activity organized in support of women's rights** in Lahore on 14 May 2005. According to information received,

members of human rights organizations, lawyers, trade union members, journalists, teachers and other persons gathered in Lahore on 14 May at 17.00 to participate in a marathon run organized by the Human Rights Commission of Pakistan (HRCP), an NGO, in collaboration with more than 40 civil society organizations to support women's call for freedom from violence.

According to information received, local government authorities were informed 1 week prior to the event, in a letter to the Mayor, of the planned activity, its schedule and its purpose. The event was scheduled to start from the Qadafi Stadium in Lahore. However, police forces reportedly barricaded all entrances to the venue and prevented the participants from gathering there. Police forces also reportedly surrounded the AGHS Legal Aid Cell office of the HRCP Chairperson, **A.J.**, Special Rapporteur on freedom of religion or belief, to prevent her and other lawyers and activists from joining the Marathon. The AGHS second floor office was forcibly locked by the police and everyone inside was confined to the office for one hour. Reportedly, Ms. A.J. and other lawyers present eventually left the second floor office through the fire escape and descended to the street at the rear of the building. They were surrounded immediately by a large contingent of uniformed policemen and women and plainclothes policemen. Ms. A.J., as well as the current Secretary General of the HRCP and other human rights defenders, was reportedly beaten with batons by the police and Ms. A.J. was reportedly dragged along the floor and her clothes were torn. Ms. A.J. and about 15 other defenders were then reportedly forced into a vehicle by the police and taken to the Race Course police station. Meanwhile, the police beat other participants who had gathered outside the AGHS office, including **Mr. Joseph Francis**, **Mr. Waseem Yousaf**, **Ms. AM**, and **Mr. Sohail Samson**, all staff with the Centre for Legal Aid, Assistance and Settlement (CLAAS) and **Mr. Iqbal Haider**, a staff member of the HRCP. Both men and women defenders were reportedly beaten, kicked, punched, slapped and verbally abused by the policemen who then forced them into police vans. Moreover, at this time, **Ms. H. J.**, Special Representative of the Secretary General on human rights defenders and former HRCP Chairperson, arrived at the AGHS office, where she works. Ms. H.J. was arrested along with about 18 other human rights defenders who were then taken to the Model Town police station. In addition to beatings by the police, activists belonging to the Jamaat-e-Islami, a political party, also beat men and women participants in the marathon event. The human rights defenders in both police stations were held for about 4 hours before being released. Moreover, despite repeated requests, they were never informed of the reasons for their arrest and no charges were brought against them. No official statement was issued by the authorities. However, the police are reported to have indicated to the press that the Marathon was stopped because the organizers had not sought permission for the event to take place.

774. On 29 June 2005, the Special Rapporteur, jointly with the Special Rapporteur on violence against women, its causes and consequences, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning **Ms. M. M.**, who had reportedly been prevented from leaving Pakistan in order to speak at an event organized by a human rights group in the United States. According to the information received, in 2002, Ms. M.M., age 18 at the time, was gang raped under the order of a tribal council after her 11 year old brother had been seen alone with a girl from another caste. The former Special Rapporteur on violence against women, its causes and consequences had sent a communication to the Government, a summary of which is provided in E/CN.4/2003/75/Add.2. The case against the perpetrators was brought to court and Ms. M.M. testified against them. As a result of the incident, she was compensated by the government. She used the money received to build schools and hoped to establish a shelter for women victims of violence. It is reported that

Ms. M.M. was invited to the United States to speak about her experiences, but in arranging her trip, she discovered that she had been placed on Pakistan's "exit control list." Ms. M.M. was reportedly prevented from leaving her home while under strict police watch as of 9 June 2005. At a press conference on 14 June, the Government reportedly announced that Ms. M.M. was free to travel wherever she wanted, but that she would be accompanied by a police escort for her own protection. However, Ms. M.M. indicated that she had been put under significant pressure by the Government to withdraw her visa application to visit the United States. It is also reported that the government had taken away her passport, making it impossible for her to travel abroad. Furthermore, it is reported that, on 18 June, the President of Pakistan stated that he placed a travel ban on Ms. M.M. in order to protect Pakistan's image abroad.

775. On 19 September 2005, the Government replied to the communication of 29 June 2005 concerning Ms. MM. The Government clarified that Ms. Mai was not 18 at the time of when she was gang raped, but 33. The Government also denied that Ms. M.M. had been placed on the exit control list and reported that she was free, and had been free, to travel anywhere in the country or abroad. The Government also informed that Ms. M.M. was in possession of her passport, which contained a visa for travel to the United States.

776. On 7 July 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning **Muhammad Ali Shah** (Chairperson), **Sultan Ahmed (alias Sami Memon)**, **Jamal Mustafa Shoro**, **Allah Dino Mallah** and **Muhammad Mallah**, all members of the *Pakistan Fisher Folk Forum*, a national organization for the protection of the rights of the fishing community. According to the information received, on 16 May 2005, they were arrested following a demonstration against the licensing system on inland fishing areas that was adopted by the Government of Sindh. They were held in Nara Jail, Hyderabad, Pakistan. It is reported that despite having been granted bail by a competent court, they were kept in detention under the Maintenance of Public Order Ordinance, a law providing for preventative detention. A petition was filed in the Sindh High Court to challenge this detention. However, on 6 June 2005, the day before the petition was to be heard by the High Court, they were all released.

777. On 18 July 2005 the Government replied to the communication of 7 July 2005 concerning **Muhammad Ali Shah** (Chairperson), **Sultan Ahmed (alias Sami Memon)**, **Jamal Mustafa Shoro**, **Allah Dino Mallah** and **Muhammad Mallah**, all members of the *Pakistan Fisher Folk Forum*. The Government stated that on 16 May 2005 the persons concerned issued threats of dire consequences to Government officers, caused wrongful restraint and formed an unlawful gathering by using different slogans, as a result of which they were detained under section 3.1 of the West Pakistan Public Order Ordinance of 1960. They were subsequently released.

778. On 23 August 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Ali Nawaz**, Mr. **Akhter Nadeem**, Mr. **Allah Nazar**, all members of the *Baloch Students Organization (BSO)*, who were, at the time this communication was sent, being held in a police station in the village of Chandar Maa, Punjab province. According to the allegations received, they were arrested in Karachi on 25 March 2005, along with four others who were later released. On 13 August 2005, after more than 4 months of incommunicado detention, they were taken before a court in the city of

Sadiq Abad in relation to an alleged case of robbery. The men reportedly appeared again in front of the court on 17 August 2005. During their detention all three men were tortured with the use of electric shocks. As a result Dr. Allah Nazar became partially paralysed and unable to speak or recognise anyone. The authorities reportedly denied the men access to medical treatment. The Special Rapporteur had expressed his concern that the persons concerned might have been targeted for their work in relation to the BSO.

779. On 23 August 2005, the Special Rapporteur, jointly with the Special Rapporteur on freedom of religion or belief, sent a letter of allegation concerning **Mohammed Younus Shaikh**. According to the allegations received, on 3 February 2005, he was arrested by police in the city of Kharadar for having distributed copies of his book, "Shaitan Maulvi" (Satanic Cleric), in which he stated that stoning to death (Rajam) as a punishment for adultery was not mentioned in the Quran. He was also accused of insulting four local Imams (religious leaders) by describing them as "Jews". In response, local clerics issued several fatwas declaring that Younus Shaikh should be killed for insulting Islam. On 11 August 2005 he was sentenced to life imprisonment by a special "anti-terrorism" court for writing and distributing books that contained blasphemous and sacrilegious material. He was, at the time this communication was sent, being held in solitary confinement in Karachi Central Prison.

780. On 19 December 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal regarding **Dr. Haneef Shareef** (m), member of the Balochistan Students' Organisation (BSO), a group which is active in defending the plight of the Baloch people. According to the information received, on 18 November 2005, at approximately 19:00, Dr. Haneef Shareef was arrested in the city of Turbat, Balochistan, by five armed men wearing the paramilitary Frontier Corps uniform. According to reports Dr. Haneef Shareef was taken to a nearby Frontier Corps camp but was given no reason for his arrest. State officials had allegedly refused to confirm that he had been arrested. Police at the Turbat city police station refused to accept a complaint being filed by family members of Dr. Haneef Shareef. The Special Rapporteur had expressed his concern that Dr. Shareef might have been targeted for his work in relation to the BSO.

#### **Follow-up to previously transmitted communications**

781. On 27 July 2005, the Government replied to the Special Rapporteur's urgent appeal dated 4 June 2004 concerning **Diwan Hashmat Hayat**. The Government informed the Special Rapporteur that Mr. Hayat was charged with blasphemy under section 295-C of the Pakistan Penal Code, which carries a death sentence for the offence of defiling the Prophet Mohammed, providing, "Whoever by words, either spoken or written or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Mohammed (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to a fine". The Government informed the Special Rapporteur that he would keep the Special Rapporteur informed of any developments in the ongoing criminal cases pending against Mr Hyatt.

782. On 21 March 2005 the Government replied to the communication of 5 October 2004 concerning **Baitullah Masud**. The Government informed the Special Rapporteur that Mr. Masud surrendered to the Political Administration of North Waziristan Agency at Sargodha on 7 February 2005. After the surrender and amnesty ceremony, a mini van carrying certain

journalists was proceeding to Wana, when it was overtaken by a Binjo car which pulled up ahead of the journalists vehicle. Two to three terrorists got off the van and opened fire on the journalists' vehicle, as a result of which, two journalists died while two others were injured (one of them seriously). The incident occurred away from any military Frontier Corps check post and was immediately responded to by Law Enforcing Agencies from Wana. The alleged assailants had, however, managed to escape. The Government further explained that the reasons for the ambush were reportedly personal/tribal enmity. However, the role of terrorists could not be ruled out. Law Enforcement Agencies continued investigations into this incident with a view to bringing those responsible to justice.

783. On 4 April 2005, the Government replied to the Special Rapporteur's letter of 5 October 2004. The Government stated that, in relation to the alleged de facto ban of government advertising in journals belonging to the **Nawa-i-Waqt Group of Publications**, the Pakistani Government denied using government advertisements to leverage or pressurize newspapers. Concerning the alleged prohibition of journalists filming the return of exile politician Shahbaz Sharif to Lahore Airport, the Government informed the Special Rapporteur that Filming/ Photography in sensitive areas within airports is not permitted for security reason. The Government informed the Special Rapporteur that **Syed Moshin Naqvi** was never placed under house arrest, but was prevented from leaving his residence for a short time to protect him from extremist militants.

### **Observations**

784. The Special Rapporteur thanks the Government for its replies to his communications of 9 February, 20 April 2005, 29 June 2005 and 4 June 2004. The Special Rapporteur welcomes the information that steps had been taken by the Government to investigate and bring to justice those responsible. He would appreciate being informed of any developments into these investigations and any prosecutions in this regard.

785. The Special Rapporteur thanks the Government for its replies to his communications of 20 April, 29 June, 7 July 2005 and 5 October 2004.

786. The Special Rapporteur regrets not having received a reply to his communication of 3 May 2005 and 23 August 2005 concerning **Mohammed Younus Shaikh**. Pending a reply to this communication and without making any determination on the facts of the cases, the Special Rapporteur reiterates his concerns and deems it appropriate to make reference to Commission on Human Rights Resolution 2005/38 which provides that States are to review their procedures, practices and legislation, as necessary, to ensure that any limitations on the right to freedom of opinion and expression are only such as are provided by law and are necessary for the respect of the rights and reputations of others, or for the protection of national security or of public order (*ordre public*) or of public health or morals. In so doing, ... (p) while noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, States are to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on discussion of government policies and political debate; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

787. The Special Rapporteur regrets not having received a reply to his communication of 18 May, 23 August and 19 December 2005. In view of the seriousness of these allegations and pending a reply from the Government, the Special Rapporteur deems it appropriate, without making any judgements on the facts of the cases, to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

788. With respect to the communication of 18 May 2005, the Special Rapporteur also deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully. Reference is moreover made to the Convention on the Elimination of all Forms of Discrimination against Women, and specifically to article 7 © of the Convention which expressly provides for the promotion and protection of women in freely participating in public matters - states agreed to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure to women, on equal terms with men, the right (..) to participate in non-governmental organizations and associations concerned with the public and political life of the country (Art.7(c)).

## Panama

### Seguimiento de comunicaciones transmitidas previamente

789. Por carta con fecha 2 de marzo de 2005, el Gobierno transmitió la siguiente información en respuesta a la comunicación del 21 de septiembre de 2004 relativa al periodista **Gustavo Gorriti**. La investigación sobre Gustavo Gorriti y otros dos individuos fue instruida por la Fiscalía Quinta de circuito del primer circuito Judicial y el procesamiento de los responsables está a cargo del Juzgado Décimo de circuito del Primer Circuito judicial. Tanto a Gustavo Gorriti como a los otros implicados se les llamó a responder en juicio criminal mediante resolución con fecha de 19 de enero de 1998. La investigación no llegó a ser concluída. La primera audiencia fue fijada el 24 de abril de 1998 y después el 13 de noviembre de 1998, el 8 de enero, 20 de abril, 11 de junio, 12 de agosto y 14 de octubre de 1999, 1 y 23 de febrero de 2001, 15 de mayo de 2001, 5 de junio, 30 de septiembre, 22 de noviembre y 18 de diciembre de 2002.

## Observaciones

790. El Relator Especial agradece al Gobierno su respuesta a la comunicación con fecha 21 de Septiembre de 2004.

### Paraguay

791. El 17 de agosto de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con el Sr. **José Bordón**, líder comunitario de Naranjito, distrito de General Resquín, departamento de San Pedro, secretario general de la Coordinadora de Lucha por la Reforma Agraria del Departamento de San Pedro y coordinador para el Frente Distrital de General Resquín; así como las Hermanas **Juana Antonia Barua** y **Clara Nimia Insaurrealde**, dos monjas de la Congregación de Nuestra Señora de la Inmaculada Concepción. De acuerdo con la información recibida, los días 4 y 5 de agosto de 2005, José Bordón, Juana Antonia Barua y Clara Nimia Insaurrealde habrían recibido en sus respectivos domicilios unos sobres que contenían amenazas de muerte y cartuchos de escopeta. Los autores de estas amenazas se habrían mantenido en el anonimato. La carta que habrían recibido las monjas decía en jopará “si cuando termine agosto no se han marchado, este será su destino. Dejen de apoyar al Frente”. La carta recibida por José Bordón, también escrita en jopará, llevaría el mensaje siguiente: “déjalo, viejo, deja el trabajo por los sin tierra y los del Frente o este será tu destino”. Estas cartas se habrían enviado cuando se estaba celebrando un seminario para líderes comunitarios sobre el sistema judicial, organizado por organizaciones no-gubernamentales (ONG) de derechos humanos y el Frente Distrital de General Resquín. Efectivamente, juntamente con otras ONG paraguayas, estas tres personas organizan talleres de formación sobre asuntos jurídicos y legales con el fin de diseminar información y proporcionar a aquellos que los necesiten conocimientos sobre la legislación nacional y el sistema judicial paraguayo. Juana Antonia Barua, Clara Nimia Insaurrealde y José Bordón también trabajan en cuestiones relacionadas con la defensa de los derechos económicos, sociales y culturales y de los derechos medioambientales. Según la información recibida, las amenazas estarían relacionadas con su reciente labor de concienciación sobre los derechos de los campesinos, promoción de cultivos alternativos y su preocupación por el uso excesivo de pesticidas agrícolas por parte de los terratenientes. Se habría presentado una denuncia en relación con dichas amenazas ante la comisaría de policía 26 de Naranjito, la Comisión de Derechos Humanos del Senado y el Ministerio Público y se habría solicitado protección policial. Sin embargo, el Relator Especial, en el momento de enviar esta comunicación, no tenía conocimiento de que se hubieran adoptado medidas para garantizar la seguridad de estas personas.

792. Por carta con fecha del 28 de septiembre de 2005, el Gobierno remitió la siguiente información relativa a las Hermanas **Juana Antonia Barua** y **Clara Nimia Ibarrola** y del Sr. **José Bordón** en respuesta a la comunicación del 17 de agosto de 2005. El Gobierno, por medio del departamento de derechos humanos del Ministerio de asuntos exteriores envió el informe de la unidad penal N°1 que investiga los hechos, Causa n°367/05 caratulada “Personas innominadas s/ Amenaza de Muerte en Gral. Resquín”. El 5 de agosto la Unidad penal ingresó la causa presentada por los Sres. Roque Orrego, Rubén Notario, Liberato Bracho, José Bordón, Daniel Romero, Hna, Juana Antonia Barua y Clara Nimia Insaurrealde y comunicó al Juzgado Penal de Garantías el inicio de la investigación en relación al hecho denunciado. Por la misma fecha se recibió otra denuncia remitida por la Policía Nacional de la Colonia Naranjito donde

presentaron su denuncia las Hnas Juana Antonia Barua y Clara Nimia Insauralde. Las diligencias en la causa como la realización de las declaraciones de los testigos estaban en curso de realización. Por otra parte, se practicó la Solicitud de informe a la Comisaría afectada en relación al hecho y a la custodia policial solicitada en donde se informó que las partes no aceptaron la custodia policial pues no era la solución que querían. El Gobierno también transmitió una copia de la denuncia presentada a la Comisión de derechos humanos, una copia de la denuncia presentada a la Comisaría de Naranjito y el informe de la audiencia llevada a cabo por la Comisión de derechos humanos de la Cámara de senadores con el fiscal de Santa Rosa del Araguay y con el sub.-Comandante de la Policía Nacional.

### Observaciones

793. El Relator Especial agradece al Gobierno su respuesta a la comunicación del 17 de Agosto de 2005 sobre el caso de las Hermanas **Juana Antonia Barua, Clara Nimia Ibarrola** y del Sr. **José Bordón**. El Relator Especial teme que las antemencionadas amenazas puedan ser un intento para impedir que las Hermanas Barua e Ibarrola y el Sr. Conde continúen su trabajo de promoción y defensa de los derechos humanos, y reitera los principios enunciados, entre otros por la Comisión de Derechos Humanos en su Resolución **2005/67** en los cuales se *“Exhorta a todos los Estados a que adopten todas las medidas necesarias para garantizar la protección de los defensores de los derechos humanos y creen y mantengan un entorno favorable a la labor de los defensores de los derechos humanos y sus familiares”*. El Relator Especial agradecería recibir por parte del Gobierno información adicional mas detallada sobre el Estado de esta investigación.

### Peru

794. El 15 de abril de 2005, el Relator Especial envió un llamamiento urgente en relación con **Miguel Ángel Carpio Tananta**, reportero del programa televisivo “El Informe” y de Radio Marginal en Tocache, localidad ubicada en el noreste del país. Según las informaciones recibidas, el 5 de abril de 2005, el Sr. Carpio Tananta habría tenido que abandonar la ciudad de Tocache tras recibir amenazas de muerte. Se informó que dichas amenazas se habrían iniciado luego del 27 de febrero de 2005, fecha en la que el Presidente del Consejo de Ministros presentó en conferencia de prensa fragmentos de un video grabado el 14 de noviembre del 2004 por Carpio Tananta durante una audiencia pública, realizada por la agrupación nacional de agricultores de hoja de coca (“cocaleros”). La cinta de video habría ya sido difundida en el programa “El Informe” el 18 de noviembre de 2004. El Presidente del Consejo de Ministros en febrero de 2005 señaló, sin embargo, que el video se habría obtenido gracias a los servicios de inteligencia. Se informó además que en dicho video uno de los líderes de los “cocaleros” habría admitido que parte de la producción de coca se emplea para el narcotráfico. El Relator Especial expresó temore de que los “cocaleros” podrían estar considerando al Sr. Carpio Tananta como el responsable de la entrega o venta de dicho video al Gobierno, por lo que podrían estar detrás de las amenazas.

795. El 10 de junio de 2005, el Relator Especial, juntamente con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias y Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con **Luis Alberto Ramírez Hinojosa**, quien fue víctima de tortura durante la dictadura militar y quien fue uno de los testigos principales ante la Comisión de la Verdad y



Reconciliación del Perú y que iba a testificar en el proceso judicial contra un general retirado acusado de la desaparición forzada de nueve personas en 1991. Su caso ya fue objeto de un llamamiento urgente enviado el 7 de septiembre del 2004 (E/CN.4/2005/62/Add.1. para 1292) por el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, el Relator Especial sobre la tortura, el Relator Especial sobre la independencia de magistrados y abogados, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario-General para los defensores de los derechos humanos. De acuerdo con las nuevas alegaciones recibidas, el 1 de junio del 2005, aproximadamente a las 6:30 de la tarde, habría disparado varias veces a Alberto Ramírez Hinostroza desde un vehículo en movimiento mientras cruzaba por el parque Mariscal Castillo de Lima, acompañado de un guardaespaldas de la policía. El atentado habría ocurrido después de mantener una reunión con sus abogados del Instituto de Defensa Legal (IDL). Debido a la intervención del agente policial asignado para su custodia, ambos habrían salido ilesos de los disparos de arma de fuego. Este último intento de asesinato quesaría el tercer atentado contra la vida del Sr. Ramírez en el transcurso de un poco más de un año. Se expresaron temores de que este nuevo intento de asesinato pudiera estar relacionado con el testimonio previsto de Luís Alberto Ramírez Hinostroza en el juicio contra un general retirado por la desaparición de al menos nueve estudiantes universitarios detenidos en el cuartel militar "9 de Diciembre" de Huancayo. A la luz de estas nuevas alegaciones y a pesar de las medidas cautelares otorgadas por la Comisión Interamericana de Derechos Humanos y el Estado Peruano a favor de Luís Alberto Ramírez Hinostroza y su familia, El Relator Especial expresó su preocupación por la vida e integridad física de dichas personas.

796. El 23 de septiembre de 2005, el Relator Especial envió una carta de alegaciones en relación con **Julia Saldaña Eguren**, periodista del grupo de diarios "*La República*". Según las informaciones recibidas, el 7 de septiembre de 2005 en la ciudad de Iquitos, región Loreto, al oriente del país, la Sra. Julia Saldaña Eguren denunció haber sido amenazada de muerte repetidas veces desde agosto de 2005. Las intimidaciones anónimashabrían sido enviadas como mensajes de texto al teléfono móvil de su padre. Las amenazas le ordenarían irse de la ciudad o en caso contrario, sería asesinada. Además, Saldaña afirmó que el 12 de septiembre una camioneta transitaba cerca de su casa de manera sospechosa. Según la periodista, las intimidaciones sehabrían iniciado desde la publicación de una serie de denuncias que revelaron irregularidades cometidas en algunas instituciones públicas de la región, concretamente el gobierno regional de Loreto, la Municipalidad del distrito de Maquía, y en la construcción del estadio de Iquitos. La periodista habría acudido a la oficina de la División Nacional Criminalística de la región. Sin embargo, le habrían solicitado un récord de llamadas de la empresa de telefonía para poder dar trámite a su denuncia.

797. El 22 de octubre de 2005, el Relator Especial, juntamente con la Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con el Sr. **Salomón Lerner**, ex-presidente de la Comisión Verdad y Reconciliación del Perú (CVR), y actual presidente de la Unión de Universidades de América Latina y del Instituto de Democracia y Derechos Humanos de la Pontificia Universidad Católica del Perú. De acuerdo con las informaciones recibidas, el 8 de septiembre de 2005, una persona no identificada habría llamado por teléfono al Sr. Lerner. Al encontrarse éste en aquel momento fuera del país, la persona habría hablado con su secretaria, dejando el mensaje siguiente: "Dígale a Lerner que se considere muerto". Anteriormente el Sr. Lerner, y otros antiguos miembros de la CVR, habrían recibido varios correos electrónicos insultantes. El Sr. Lerner, que es de origen

judío, habría recibido mensajes antisemitas. Casi todos los correos electrónicos estarían firmados por un grupo “Pachacútec”, del cual no se conocería nada. Se expresaron temores por la seguridad y la integridad física y psicológica del Sr. Lerner y otros antiguos miembros de la CVR, en particular a la luz de que estas amenazas coincidirían con los primeros avances en el esclarecimiento de los casos que la CVR remitió a las instituciones judiciales peruanas y con la publicación del informe de la Comisión. Además, según la información recibida, el Sr. Lerner y todos los ex-comisionados de la CVR enfrentarían nueve procesos judiciales por los delitos de ‘falsedad pública y genérica’, enablados por algunos generales y coroneles retirados (los nombres de los cuales han sido llevados a la atención de la Representante Especial) cuya supuesta implicación en casos de violaciones de derechos humanos habría sido denunciada por la CVR.

## Observaciones

798. El Relator Especial lamenta no haber recibido respuesta del Gobierno a ninguna de sus comunicaciones enviadas durante el 2005.

799. En lo referente a los casos de los periodistas **Miguel Ángel Carpio Tananta, Julia Saldaña Eguren** el Relator Especial, a la espera de respuestas por parte del Gobierno y sin pronunciarse sobre los hechos, insta al Gobierno a adoptar las medidas cautelares, investigativas y judiciales pertinentes para asegurarse que estos, y otros periodistas puedan trabajar libre e independientemente, de acuerdo con los principios enunciados en los artículos 19 de la Declaración Universal de los Derechos Humanos y del Pacto Internacional de Derechos Civiles y Políticos, los cuales establecen que *"Todo individuo tiene derecho a la libertad de opinión y de expresión; este derecho incluye el no ser molestado a causa de sus opiniones, el de investigar y recibir informaciones y opiniones, y el de difundirlas, sin limitación de fronteras, por cualquier medio de expresión"*. El Relator Especial solicita al Gobierno que le informe oportunamente sobre, cualquier acción llevada a cabo para proteger, y garantizar la seguridad e integridad física y psicológica del Sr. Carpio Tananta y la Sra. Saldaña Eguren, (la cual, según informaciones recibidas tras el envío de la comunicación, continúa recibiendo amenazas).

800. En lo concerniente a los casos del Sr. **Luís Alberto Ramírez Hinostroza**, y **Salomón Lerner** a la espera de una respuesta del Gobierno y a pesar de las medidas cautelares, otorgadas por la Comisión Interamericana de Derechos Humanos y el Estado Peruano en el caso del Sr. Ramírez Hinostroza, el Relator Especial (remains) expresa su temor por la vida e integridad física y psicológica de las citada personas. El Relator Especial insta al Gobierno a proteger a todas aquellas víctimas, testigos o expertos que a través de su testimonio colaboren con la Comisión Verdad y Reconciliación del Perú (CVR) y/o participen en juicios contra la impunidad, de acuerdo con los principios enunciados entre otros, en el **Conjunto de principios actualizado para la promoción y protección de los derechos humanos mediante la lucha contra la impunidad (E/CN.4/2005/102/Add.1)**, según el cual se insta a los Estados a adoptar “las medidas adecuadas para proteger la seguridad, el bienestar físico y psicológico y, cuando así se solicite, la vida privada de las víctimas y los testigos que proporcionen información”.

## Philippines

801. On 22 February 2005, the Special Rapporteur, jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, the Special Rapporteur on the independence of judges and lawyers, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **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. On 31 January 2004, he filed an administrative case at the Office of the Ombudsman 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. According to the information received, 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 repeated a similar threat. It is reported that, on 17 February 2005, two vans with tinted windows were carefully observing the UPA office.

802. On 8 March 2005, the Special Rapporteur sent an urgent appeal concerning death threats received by a number of local media practitioners. According to information received, local journalists expressed fear for their lives following numerous death threats they received, reportedly through text messages. It is alleged that the ones to be mainly targeted were journalists who had reported on illegal drug activities in the region. It appears that the Santiago City Police stated that police intelligence had confirmed the existence of a 'hit list' compiled by a suspected powerful drug supplier. The Cagayan Valley police director had, moreover, given his assurances that all death threats would be investigated and that all police units in the region were on the alert. The journalists targeted include **Dodie Banzuela** and **Iring Maranan**, associate publisher and columnist reporter respectively for the San Pablo City weekly '*Deretso Balita*', and **Lito Salatan**, president of the Isabela province press club and the regional police press corps. Moreover, on 28 February 2005 by the roadside in Naic, Cavite Province, south of Manila, journalist **Arnulfo Villanueva**, a columnist for the newspaper *Asian Star Express Balita*, was shot dead, the first journalist to be killed in 2005. The Special Rapporteur urged the authorities to take all necessary measures to ensure the protection of all journalists and to bring to justice those attempting to curb the right to freedom of opinion and expression.

803. On 8 April 2005, the Special Rapporteur sent a letter of allegation concerning **Marlene Garcia-Esperat**, an anti-graft columnist for the *Midland Review*, a newspaper based in the southern island of Mindanao. Marlene Garcia-Esperat previously worked as Ombudsman for the Department of Agriculture, during which time she filed legal actions against several officials accusing them of graft. According to information received, on 28 March 2005, Marlene Garcia-Esperat was killed by an unknown gunman at her home in Tacurong city. Marlene Garcia-Esperat was given police protection after having reported to the police that she had been receiving death threats. Her guards were not with her on this particular day. It is suspected that the attack against her was directly connected to her work as a journalist. The

Philippine National Police were, at the time this communication was sent, carrying out investigations into her death. The Special Rapporteur encouraged the Government to ensure that the investigations are thorough and that the responsible perpetrators are brought to justice and punished accordingly.

804. On 12 April 2005, the Special Rapporteur, sent a letter of allegation concerning **Frank Gupit**, an anchorman for the Manila Broadcasting Corporation affiliate *Radio Natin* and **Raul Antopuesto**, the Radyo Natin manager, who also co-hosts the same radio program. According to information received on 29 March 2005, a Mati municipal trial court charged Frank Gupit with defamation for having accused Mr. X of bribing a columnist for the *Daily Inquirer*. The court ordered Frank Gupit's arrest and set bail at P20,000. Raul Antopuesto was also being sued on the same case. No arrest warrant was issued against him. The Special Rapporteur expressed his concern at what appeared to be the excessive fine imposed.

805. On 6 June 2005 the Government replied to the communication of 12 April 2005 concerning **Frank Gupit**. The Government stated that the claim that Mr. Gupit and Mr. Antopuesto had been charged with libel is true. The other allegations are however inaccurate. The bail set for Mr. Gupit's temporary liberty was 2,000 pesos and not P20,000 as alleged in the communication. Moreover, an arrest warrant had also been issued against Mr. Antopuesto with bail set at 2,000 pesos. Mr. Gupit and Mr. Antopuesto did not submit counter affidavits to the court; the charges against them were therefore not rebutted. No penal or disciplinary sanctions were imposed on Mr. Gupit and Mr. Antopuesto at the time this reply was sent.

806. On 21 April 2005, the Special Rapporteur sent a letter of allegation concerning **Alberto Martinez**, radio broadcaster for *Radio Natin* and pastor for the Church of God World Mission. According to information received, on 12 April 2005, unidentified gunmen shot Mr. Martinez in the back while he was on his way home. He was rushed to hospital and was, at the time this communication was sent, in a stable condition. Police claimed that Mr. Martinez had been receiving death threats and that the attempt to kill him could be in retaliation to his radio broadcasts on anti-corruption. The Special Rapporteur urged the authorities, particularly in light of information that eight journalists had been killed in the Philippines in 2004 and in light of information concerning the recent murder of columnist Marlene Garcia-Esperat in March 2005, to take all necessary measures to ensure that journalists are allowed to work freely and independently in a secure environment. Moreover, that a thorough investigation into the attempted murder of Alberto Martinez is carried out.

807. On 11 May 2005, the Special Rapporteur sent a letter of allegation concerning **Klein Cantoneros**, a local radio broadcaster for *Radio dxAA-FM*. According to information received, at around midnight on 3 May 2005 in Dipolog city, Zamboanga del Norte, he was shot six times by three unidentified gunmen while riding home on his motorcycle. He died less than a day later at the Dipolog Medical Centre. Klein Cantoneros reportedly managed to give the police some information concerning his attackers before he died. Concern was expressed that Klein Cantoneros' murder was directly linked to his work as a radio broadcaster. The Special Rapporteur strongly urged the authorities to take all necessary measures to ensure that persons working for the media are able to work freely and independently in a safe environment.

808. On 28 July 2005 the Government replied to the communication of 11 May 2005. The Government stated that following investigations carried out by Task Force Agustin of PRO 3, a criminal case for murder was filed against three suspects before the Dingalan Municipal Trial Court, docketed as criminal case no. 605. One of the suspects was arrested by NBI agents on 14 May 2005. Other suspects were, at the time this reply was sent, still at large and the authorities were in search for them.

809. On 17 May 2005, the Special Rapporteur sent a letter of allegation concerning **Philip Agustin**, 54, editor and publisher of the local weekly *Starline Times Recorder*. According to information received, on 10 May 2005 in Paltic village, 70 miles northeast of Manila, he was killed by an unknown gunman at his daughter's home. A special edition of the *Starline Times Recorder*, focusing mainly on corruption and illegal logging in the town of Dingalan, was going to be published on 11 May 2005.

810. On 28 July 2005 the Government replied to the communication of 17 May 2005. The Government stated that a criminal case for murder was filed against two suspects before the Office of Chief State Prosecutor docketed as IS No. 2005-513. A witness to the crime was under custody of the DOJ Witness Protection Program, at the time this reply was sent.

811. On 6 July 2005, the Special Rapporteur sent a letter of allegation concerning **Roland Morales**, 43, a radio commentator for Radio Mindanao Network's dxMD and host for Voice of the Barangay radio program. According to information received, on 3 July 2005 along a motorway in General Santos City, southwest Mindanao, he was killed after having been ambushed by eight unidentified gunmen riding motorcycles who shot him 15 times. This took place soon after Mr. Morales had finished his weekly Sunday radio program. Mr. Morales was declared dead immediately upon his arrival at a local hospital. Fear was expressed that Roland Morales was targeted for his work as a journalist, particularly for his public accusations of several Barangay village officials in General Santos City of their involvement in summary executions, and also as a result of making public information he had on illegal drug-related activities.

812. On 19 October 2005 the Government replied to the communication of 6 July 2005 concerning **Roland Morales**. The Government stated that investigators from the Polomolok Police Station recovered 6 pieces of the empty cal. 5.5.6 rifle M-16 cartridges from the scene of the crime and these were given to the 12 RCIDU for Forensic Ballistic Examination. The cadaver of the victim was subjected to autopsy examination. The results disclosed that the victim succumbed to 7 gunshot wounds. Based on statements from witnesses, the authorities concluded that the killing was motivated by revenge; two suspects were identified. A case of murder was as a result filed against the two before the Department of Justice on 1 August 2005 and the case was assigned to the Prosecutor. Preliminary hearings were set on 22, 29 August, and 5 September 2005 at the Department of Justice in Manila.

813. On 25 August 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning the following persons. According to the information received:

- On 15th June 2005, Professor **Castor Gamalo**, President of the *Federation of Teachers Association (FTA)* of Eastern Visayas State University (EVSU) in Tacloban

City and also a member of the *Task Force Detainees of the Philippines (TFDP)*, was shot at by unidentified assailants while walking along Salazar Street in Tacloban City. He was reportedly hit twice and had to undergo an operation due to the extent of the damage to his left eye. It is reported that Castor Gamalo may have been targeted in connection with protest rallies organised by the FTA against the decision of EVSU Administration, to unseat Gamalo, along with other representatives of teachers and students in the EVSU Board of Directors, without due process. Castor Gamalo was shot at on the second day of protesting.

- On 12th of May 2005, at approximately 17:30 pm, three unidentified gunmen shot at **Rev. Edison Lapuz**, a priest and human rights defender, and **Alfredo Malinao**, a peasant leader, killing them in San Isidro, Leyte. It is reported that Rev. Edison Lapuz may have been killed for having publicly expressed his views concerning the killings and harassment of political activists in the area.
- On 14th March 2005, at approximately 18:45, **Fedilito Dacut**, lawyer and regional coordinator of Bayan Muna, was killed by two unidentified perpetrators aboard a single motorcycle in Tacloban City. It is reported that Fedilito Dacut may have been killed due to his work as a human rights, agrarian and labour lawyer. In particular he was reportedly among those who initiated a solidarity mission to Catarman, Northern Samar, to investigate allegations of soldiers harassing Bayan Muna members in the said province.
- On 7th March 2005, **Romeo T. Capulong**, a human rights lawyer and ad litem judge of the UN International Criminal Tribunal for the Former Yugoslavia, was victim of an attempt on his life by fifteen unidentified gunmen travelling in unmarked vehicles without license plates. It is reported that this attempt on the life of Romeo T. Capulong may have been connected to his providing counsel to striking workers at Hacienda Luisita, with regard to the picket line of November 16th, 2005. The workers had reportedly been striking following failed negotiations on, among other things, wage increases.
- On 18th February 2005, at approximately 18:30, **Fr. Allen Caparro**, priest of the Iglesia Filipina Independiente (IFI) and Vice-Chairperson of the Promotion of Church People's Response – Eastern Visayas (PCPR-EV), an ecumenical political organisation of church people involved in promoting and advancing the rights of the disadvantaged, and his wife, **Aileen Caparro**, were victims of an attempt on their lives. According to the information received, Fr. Allen Caparro and Aileen Caparro were shot at by unidentified armed motorcyclists at the vicinity of Brgy. Tagabaca, Abuyog, Leyte. It is reported that they could have been targeted because Fr. Allen Caparro exposed and opposed the militarization in Northern and Western Samar due to reported human rights violations by the military in the area. He had also spearheaded an alliance formation in Calbayog, Western Samar, an alliance of civil society, church and political groups seeking to defend the interests of marginalised or disadvantaged communities and for the protection of the environment against destructive operations such as mining.

814. On 23 November 2005, the Special Rapporteur sent an urgent appeal concerning regarding **Roberto Ramos**, a journalist working for *Katapat*, a newspaper based in Laguna. According to information received, on 20 November 2005, outside the office of his newspaper in Cabuyao, two men on a motorcycle drove past him and shot him twice in the head. Moreover, **Ricardo ‘Ding’ Uy**, a member of the left wing party Bayan Muna, announcer for the radio station dxRS and head of a local reporters’ association, was also killed in Sorsogon City on 18 November 2005 when an armed assailant shot him five times in his head, mouth and torso. Mr. Uy was the second Bayan Mun leader and journalist to be killed in 2005. The Special Rapporteur had expressed his concern at the killing of these two journalists particularly in view of the fact that five journalists had reportedly been killed in 2005. The Special Rapporteur called for a thorough and independent investigation into these killings.

815. On 2 December 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Fr. Rolando de Leon**, Roman Catholic Priest of the Diocese of Malolos, Bulacan and Parish Priest of San Andres Apostol Parish, Norzagaray, and spokesperson for the organizations Alyansa ng Mamamayan para sa Pantaong Karapatan (ALMMA – People’s Alliance for Human Rights), Bulacan Ecumenical Association of Church People Offering Nationalism (BEACON), and the provincial chapter of the Promotion of Church People’s Response (PCPR). Within his roles he holds dialogues with the local government and with the state forces regarding alleged human rights abuses and the widespread military deployment in the province. He also files complaints with the provincial office of the Commission on Human Rights. According to the information received, on 30 October 2005, between approximately 8:30 and 10:00 am, Fr. Rolando de Leon received envelopes containing bullets and threatening messages at the San Andres Apostol parish in San Andres Apostol, Norzagaray, Bulacan, Philippines. Previously, on 16 March 2005, a military agent was reported to have taken pictures of Fr. Rolando de Leon without his consent. The agent was questioned at the time by police but no further action was taken. The military were also reported to have accused Fr. Rolando de Leon of being a supporter of the communist armed group, the New People’s Army. It is reported that the government, in particular the Armed Forces of the Philippines (AFP) had taken no action in this regard.

#### **Follow-up to previously transmitted communications**

816. On 21 July 2005 the Government replied to the communication of 14 October 2004 concerning a number of allegations regarding several individuals:

- Concerning the situation of Mr. **Rhode Sonny Alcantra** who was reportedly killed on 22 August 2002, the Government informed the Special Rapporteur that the case was still under investigation at the time the reply was sent.
- With regards to the case of Mr. **Edmund Sistoso**, who was allegedly abducted by local officials and group of military officers on 23 October 2002, the Government informed the Special Rapporteur that when interviewed, Mr. **Sistoso** had confirmed the abduction but declined to give details or issue a statement.

- As regards the situation of Mr. **Wilson Sato**, the Government informed the Special Rapporteur that the same situation had been the subject of a 1503 procedure, for which the Government had conveyed their reply.
- Concerning the murders of Mr. **Noel Villarante** and Mr. **Rico Ramirez** on 19 and 20 August 2003 respectively, the Government informed the Special Rapporteur that both cases were now considered solved by the Philippine National Police Task Force, after the filing of murder cases against suspects before the courts.
- In relation to the case Mr. **Juan “Jun” Porrás Pala**, reportedly murdered on 6 September 2003, the Government informed the Special Rapporteur that the case was still under investigation at the time the reply was sent.
- Regarding the case of Mr. **Jun Castro**, Mr. **Marlo Lim Roman** and Mr. **Romeo Bote Jr**, the Government informed the Special Rapporteur that Mr. **Castro**, whose real name is **Mr. Alberto Balusa Jr**, was not a member of the media but a technician hired merely to fix the air-conditioner at Radio Natin, and that he was no longer interested in filing a case against the assailants.

817. On 21 July 2005, the Permanent Mission of the Philippines replied to the Special Rapporteur’s letter dated 7 December 2004, concerning the cases of Messrs. **Allan Dizon** and **Stephen Oma-is**. The Permanent Mission informed the Special Rapporteur that both cases were under consideration by another United Nations mechanism at the time this reply was sent, to which the Government had conveyed its reply.

### Observations

818. The Special Rapporteur regrets not having received any replies to his communications of 22 February, 8 March and 8 and 21 April, and 23 November. Pending these replies, the Special Rapporteur reiterates his serious concerns at the insecurity surrounding journalists and those attempting to protect human rights in the Philippines. In this context, he deems it appropriate to make reference to Human Rights Commission Resolution 2005/38 which expressed its continuing concern that (a) Violations of the right to freedom of opinion and expression continue to occur, often with impunity, including threats and acts of violence and of discrimination, including gender-based violence and discrimination, increased abuse of legal provisions on defamation and criminal libel as well as on surveillance, search and seizure, and censorship, against persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers, Internet users and human rights defenders, and calls on States to ... (c) ensure that victims of violations of these rights have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity. In this context, the Special Rapporteur wishes to be kept informed of any developments into these investigations and of any prosecutions in this regard.

819. The Special Rapporteur thanks the Government for its reply to his communication of 12 April 2005.



820. The Special Rapporteur thanks the Government for its reply to his communication of 11 and 17 May, 6 July 2005 and 14 October 2004 and would appreciate being kept updated on the outcome of the investigations carried out.

821. The Special Rapporteur regrets not having received a reply to his communications of 25 August and 2 December 2005. Pending a reply to these communications and without making any determination on the facts of the cases, the Special Rapporteur deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

### **Poland**

822. On 20 May 2005, the Special Rapporteur sent a letter of allegation concerning **Grzegorz Prujczyk**, a student contributor and member of the editorial team to the *Indymedia* Poland website. According to information received, on 16 May 2005, while he was filming an anti-war demonstration in Warsaw (wearing an orange waistcoat with 'Press' marked on it), police officers grabbed him, forced him to lie down in a police van with a police officer kneeling on his back, and took him to the police station. He was detained for 39 hours, during which time the police officers examined the film he had shot. He was, at the time this communication was sent, under police surveillance and was to report to the police once a week since he had been charged under Article 223 of the Criminal Code for assaulting a police officer, a crime which carries 10 years imprisonment. Grzegorz Prujczyk denied the allegations against him, and witnesses at the scene claimed to not having seen him retaliate against the police officers. Moreover, the accusations against him were based on the evidence of a police officer that Grzegorz Prujczyk did not recognise. Furthermore, while in custody, one of the police officers told him that the security officers had been planning to arrest him for some time.

823. On 18 July 2005, the Government replied to the communication of 20 May 2005 concerning **Grzegorz Prujczyk**. The Government stated that, according to the testimony of a police officer, Grzegorz Prujczyk was wearing an orange coat at the beginning of the demonstration with Press marked on it, but towards the end of the demonstration he took it off. The police officer also claimed that at one stage Grzegorz Prujczyk was hiding with some other persons and started throwing objects at policemen wearing uniforms standing on Plac Zamkowy. Grzegorz Prujczyk was later stopped by the police as he was easily recognizable since he had put on his coat again. Grzegorz Prujczyk denies that he had thrown any objects at the police and that he had removed his orange waistcoat. According to the Government, Mr. Prujczyk testified that at one stage he lent his jacket to a colleague and he also used the camera of a colleague as his own battery had gone dead. He could not provide the footage as he did not know his colleague's

name to retrieve the camera. Finally, Mr. Prujszyk could not prove that he was actually a journalist as he had no membership or journalist identity card. Criminal proceedings against him were still pending at the time this reply was sent. In the event that his arrest and detention were to be found unlawful, he could be entitled to compensation.

824. On 7 September 2005, the Special Rapporteur sent an urgent appeal concerning **Maciej Mikolajczyk**, an investigative journalist working for the weekly newspaper *Nie*. According to information received, on 31 August 2005, he was summoned to the Warsaw Prosecutor's office and ordered to hand over his computer hard drive. On 30 June 2005, police went to his home with a warrant from the prosecutor and ordered Mr. Mikolajczyk to give them his computer hard drive. When he refused, they placed the disk in a box and sealed it. It is reported that the police required Mr. Mikolajczyk's hard drive in connection with a judicial investigation into a complaint lodged against him by a European member of Parliament from the Polish populist party Samoobrona. The complaint was lodged on the grounds that Mr. Mikolajczyk had violated the confidentiality of correspondence between him and a journalist since he disclosed the contents of their correspondence in an article he published in *Nie* in December 2004. This article suggested that the European Member of Parliament paid the journalist to write articles which were favourable to him.

825. On 3 November 2005 the Government replied to the communication of 20 May 2005 concerning **Maciej Mikolajczyk**. The Government informed the Special Rapporteur that one of the emails used by a deputy of the European Parliament, in which he had been corresponding with the chief editor of the Panorama Leszczynska newspaper, had been subsequently published in *Nie* weekly. The deputy asked the police to identify and pursue the persons responsible for these acts. Under the Polish Criminal Code, these acts constitute an offence under article 267.1, as a result of which investigations were initiated. After hearing several witnesses, the Warsaw District Prosecutor decided on 9 March 2005 to open a judicial inquiry into the offence prescribed in article 267.1 of the Criminal Code. The IP number of **Maciej Mikolajczyk** was identified as one which had logged on to the deputy's email account. On this basis, the Warsaw District Prosecutor decided to seize his computer, which might have provided evidence of the crime concerned. A search warrant was also issued against two other persons who were found to have also logged into the deputy's email account. Mr. **Maciej Mikolajczyk** refused to hand over his computer hard drive, as a result of which the police had to seize the computer hard drives of both the computers, sealed them in an envelope, which envelope Mr. **Maciej Mikolajczyk** retained. He was, however, instructed that he would have to present them as evidence at the request of the court or the authorities carrying out the proceedings of this case. Mr. **Maciej Mikolajczyk** was requested to appear in court on 24 August, but he did not turn up. The court then ordered that he come to court on 31 August 2005, when the court decided that the hard drives were to be deposited at the Warsaw District Prosecutor's Office and Mr. **Maciej Mikolajczyk** was interrogated. **Maciej Mikolajczyk** lodged an interlocutory appeal against this decision. The appeal was dismissed as groundless. The Government stated that the Prosecutor did not ask the Court to release Mr. **Maciej Mikolajczyk** from his obligation to preserve a professional secret by divulging his sources, as the Prosecutor only wished to examine technical computer data stored on the computer hard drives. The authorities acted in accordance with binding provisions of law and with respect to the civil rights of

**Mr. Maciej Mikolajczyk.** Mr. **Maciej Mikolajczyk** did not appeal the decision against him. The Government concluded by stating that this case was one of interference with the rights of others and that all steps taken by the authorities were necessary in order to secure the respect of the privacy for others.

### **Observations**

826. The Special Rapporteur thanks the Government for its reply to his communication of 20 May 2005. The Special Rapporteur would appreciate being informed of the outcome of the criminal proceedings.

827. The Special Rapporteur thanks the Government for its reply to his communication of 7 September 2005.

## **Republic of Korea**

### **Follow-up to previously transmitted communications**

828. On 18 February 2005, the Government replied to the communication of 2 June 2004 regarding Mr. **Song Yu-Dul**. In its reply, the Government stated that Mr Song was allowed contact with his lawyer at all times even during interrogation. Moreover, ropes and handcuffs were indeed used in the interrogation in order to prevent self-harm, suicide or escape, in accordance with the Criminal Administration Code, and regulations for prison officers. The prosecutors did not demand Mr. Song to demand formally a pledge ideology conversion or swearing an oath of law abidance, in exchange for a suspension of indictment. The regulations establishing this practice were abandoned in July 2003. However, the investigation officer did state that if Mr. Song showed signs of remorse, this would be favourably taken by the Prosecutors in Court, as established by Article 51 of the Penal Code. Finally, the case against Mr. Song was based on strong evidence emanating from the Public Prosecutor's Office's investigations.

829. On 9 February 2005, the Government replied to the Special Rapporteur's letter dated 5 October 2004, concerning the arrest of 21 year-old student Mr. **Kwon Se-il**. The Government informed the Special Rapporteur that Mr. **Kwon Se-il** was arrested by the police on 23 March 2004 for violating the Act on the Election of Public Officials and the Prevention of Election Malpractices ("the Election Act"). He was subsequently charged for the allegation that he had posted parodies slandering a political party and its candidates on 4 internet sites from 12-16 March 2004, prior to the election campaign period starting on 30 March 2004. He was convicted by the Seoul District Court on 26 August 2004, and fined one million Korean won (approximately 950 USD). He did not appeal the sentence, which became final on 3 September 2004.

### **Observations**

830. The Special Rapporteur thanks the Government for its replies to his communications of 2 June 2004 and 5 October 2004.

### Russian Federation

831. On 20 January 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning the **Council of Non-governmental Organizations (SNO)**. According to information received, on 12 January 2005, at around 14:00, several men dressed in camouflage and masks and armed with sub-machine guns and shields, broke into the premises of the **SNO**. They claimed to be members of the Ingush branch of the Federal Security Branch (FSB). It is reported that the FSB men insulted the seven people present - **four staff-members and three visitors, including a minor** - and forced the men to lie down on the floor and the women to stand against a wall while holding them at gunpoint pending the arrival of an investigator. They reportedly searched the office, cut off the office phone's wire and photographed the identification documents of all those present as well as the statute documents of SNO. It is reported that when an investigator from the FSB Directorate for the Republic of Ingushetia arrived at the SNO office, he informed those present that the operation against the Press Center was being carried out on the basis of intelligence information that a group of bandits was occupying the offices concerned. The FSB personnel allegedly seized two computers for examination purposes, and told the Chair of the SNO, Taisa Isaeva, that she could come the following day to the FSB office to take back the computers. According to the information received, no warrant was ever produced in connection with the search and seizing of the office material. On January 13, Taisa Isaeva reportedly received a phone call from the FSB in Magas. She was informed that, pending further investigations, the computers could not yet be handed back to SNO and that she would be informed of any further developments.

832. On 21 June 2005, the Government replied to the communication of 20 January 2005. The Government stated that it had been established that in the course of work on the detection and prevention of the activities of bandit groups, Russia's Federal Security Service (FSB) Department for the Republic of Ingushetia received intelligence that an information centre of a group of bandits was located in apartment 25 at 21, Moskovskaya St., Nazran. Nothing had been known about the location of human rights and other social organizations in this apartment. At around 2 p.m. on 12 January 2005, officers of the internal affairs bodies and FSB of Russia duly carried out passport checks in the aforementioned premises. The persons found in the apartment explained that the premises were rented by the Council of Non-Governmental Organizations (SNO) of the Chechen Republic. With the consent of those present, the constituent documents of SNO were studied and two computer system units belonging to the organization were taken away for inspection, and these were returned to the organisation two days later. In connection with this matter the Nazran city procurator's office conducted an investigation, as a result of which it was decided, on the basis of article 24.1, paragraph 2, of the Code of Criminal Procedure of the Russian Federation (no corpus delicti) not to initiate a criminal case. On 22 April 2005 the Nazran city deputy procurator reversed this decision in view of the incompleteness of the investigative measures taken. Further verification of the materials was entrusted to the military procurator of troop unit No. 04062 after confirmation of the presence of an officer of the FSB Department for the Republic of Ingushetia, in the SNO premises. The Government finally stated that it had been established that the measures carried out by the law-enforcement officers were not related to the human rights activities of the SNO of the Chechen Republic and its publications in the media. No violations of the legislation in force were discovered.

833. On 13 April 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent a letter of allegation concerning **Vladimir Lavrov**, a photographer of the newspaper *Moyo*, Voronezh. According to the allegations received, on 30 March 2005, he was beaten by several uniformed and plainclothes officers, who pushed him, threw him to the ground, punched him several times in the face, and left with his camera's memory card, leaving him almost unconscious. He was taken to hospital, where he was treated for bruises and eye injuries. The next morning, he filed a complaint at the local Interior Ministry office. The assault took place following an incident where he had photographed a group of policemen detaining about 30 young football supporters.

834. On 27 July 2005, the Government replied to the communication of 13 April 2005 concerning the alleged beating of **Vladimir Lavrov**. The Government stated that on 1 April 2005 the procurator's office of the central district of the city of Voronezh received a message from the personal security department of the main internal affairs directorate of Voronezh oblast concerning the excessive application by unknown militia officers of their official powers, involving the use of violence against V.P. Lavrov, a photo correspondent for the *Moye* newspaper. In connection with this incident the above-mentioned procurator's office initiated criminal case No. 05168019 on 4 April 2005 in view of evidence of an offence under article 286.3 (a) of the Criminal Code of the Russian Federation (exceeding official powers). During the preliminary investigation it was established that, at around 7 p.m. on 30 March beside the "Spartak" cinema in the city of Voronezh, V.P. Lavrov filmed the administrative detention of a group of football supporters who had been breaching public order. At that point the photo correspondent was approached by unknown militia officers who, in violation of the Federal Mass Media Act (No. 2124-1 FZ of 27 December 1991) and by forcible means, began to obstruct the filming. As a result, V.P. Lavrov was caused bodily injuries and, in addition, the memory card of his photographic apparatus was seized. V.P. Lavrov was recognized as the victim in the criminal case and was questioned. Inquiries were also made of militia officers who had been carrying out the detention of the football supporters, and a videotape for outdoor observation was seized. The videotape and the memory card of the photographic apparatus once discovered were added to the case file as exhibits. An expert technical examination was arranged to recover the information contained in the camera's memory card. The editor-in-chief of the newspaper *Molodoy kommunar*, and also some of the football supporters detained by the militia officers were questioned, and three militia officers underwent searches. In the course of additional questioning the victim said that he could not identify the persons who had used violence against him. The case investigation was, at the time this reply was received, continuing. It was planned to hold several criminal examinations and other investigative actions. No charge had yet been brought against any militia officers. The course of the investigation was being supervised by the Office of the Procurator General of the Russian Federation.

835. On 26 May 2005, the Special Rapporteur sent a letter of allegation concerning **Dmitry Suryaninov**, general director of the Media-Samara holding company, which owns several news outlets in the Samara region of southern Russia. According to information received, at least two assailants attacked Suryaninov near his home in Samara, on 22 May 2005, beating him on the head numerous times before fleeing. As a result, Suryaninov was hospitalized with serious head injuries and he was expected to stay in the hospital for at least a week. No money was stolen in the attack. Reportedly, Suryaninov's professional activities were suspected as having been the reason for the attack. As general director, he supervises the editorial policy of six newspapers, one magazine, three television stations and two radio stations,

owned by Media-Samara. Moreover, according to information received, Suryaninov had been threatened by unidentified individuals since the business magazine Samarskoye Obozreniye, owned by Media-Samara, published articles in April concerning a leading Russian corporation and its President. The spokesperson of the company denied any involvement in the attack.

836. On 6 October 2005 the Government of Russia replied to the communication of 26 May 2005. The Government informed the Special Rapporteur that at around 1.15 a.m. on 21 May 2005, at 2 Chkalovsky Spusk Street in Samara, three unknown men used metal pipes and baseball bats to inflict bodily harm on the general director of the Media-Samara holding company, Mr. **Dmitry L. Suryaninov**. On the same day, the investigative unit of the Lenin district internal affairs department of Samara, instituted criminal proceedings, on the basis of evidence of an offence contrary to article 213, paragraph 2, of the Criminal Code of the Russian Federation (Hooliganism). The case was subsequently referred to the procurator of Samara, where an investigation team was established to investigate the crime. The actions of the unidentified individuals who carried out the attack on Mr. Suryaninov were reclassified as offences contrary to article 30, paragraph 3, and article 105, paragraph 2 (g), of the Criminal Code of the Russian Federation (Attempted murder committed by a group of persons). In the course of the criminal investigation, several versions of the incident were put forward and were, at the time this reply was sent, being investigated, including the possibility that the crime was connected with Mr. Suryaninov's professional activities.

837. On 7 June 2005, the Special Rapporteur sent a letter of allegation concerning **Mariusz Pilis**, **Marcin Mamon**, both journalists for Poland's leading public TV station, TVP, and cameraman **Tomasz Glowacki**, also working for TVP. According to information received, on 29 May 2005 at their hotel in Nazran, south eastern republic of Ingushetia, they were taken to an Interior Ministry building and interrogated for fourteen hours by members of the Federal Security Bureau (FSB). The three journalists had been in the region for one month preparing a report on the northern Caucasus for TVP. The Russian authorities invited the three journalists to leave Ingushetia on the evening of 31 May 2005, claiming that the journalists did not have all the necessary papers for travelling in Ingushetia. The journalists asserted that their visas and press accreditation were valid for another three weeks following their arrest. It is further reported that 17 videotapes representing most of the video footage the journalists had shot, and which they had left at the premises of a Polish humanitarian aid organisation, was confiscated by plainclothes men, whilst they were being interrogated.

838. On 20 September 2005, the Government replied to the communication of 7 June 2005. The Government stated that on 29 May 2005 at 10 p.m., **Mariusz Pilis**, **Marcin Mamon** and **Tomasz Glowacki**, staff members of Poland's leading television station, TVP, were brought to the Nazran city internal affairs department, where they were questioned by militia officers about the circumstances of their stay in the territory of the Republic of Ingushetia. The journalists left the internal affairs department building at 1.30 a.m. on 30 May 2005. No one had made suggestions as to the need for them to leave the North Caucasus region by 31 May 2005, and no video cassettes or other materials were confiscated from them. The Office of the Procurator of the Republic of Ingushetia had been instructed to check on the reasons for the presence of the above-mentioned persons in the Nazran city internal affairs department and to take measures under the procedure established by the law, in accordance with the results of their investigations.

839. On 9 June 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning **Stanislav Dmitrievsky**, Director of the Nizhny Novgorod-based Russian human rights **NGO Russian Chechen Friendship Society (RCFS)**, and its Deputy Director, **Oksana Chelysheva**. According to information received, on 18 May 2005 at a train station in Nizhny Novgorod, unidentified men attacked Stanislav Dmitrievsky, took his mobile phone, some money, destroyed his passport and his medical insurance certificate. He was later diagnosed with concussion. Since January 2005, other incidents and activities targeting RCFS and its staff were reported. These include the following:

- i. In January and February 2005, agents from the Russian Security Service (FSB) informed Mr. Dmitrievsky and Oksana Chelysheva that criminal investigations had been brought against them on the basis that they had committed acts in violation of anti-extremism laws. The FSB claimed that RCFS' call for peace in Chechnya, as published in the Pravozashchita newsletter in collaboration with the Nizhny Novgorod human rights organisation, amounted to extremist material. Various members of both human rights organisations were questioned in this respect, as a result of which many disassociated themselves from the organisations out of fear for their safety. In the end, no charges were brought against them and investigations were transferred to the office of the prosecutor.
- ii. In February 2005, both the registration and tax bureaus of the Russian Federation began audits of RCFS' activities. All bank accounts of RCFS were consequently seized following an order of the Tax Police.
- iii. On 14 March 2005, Mrs. Chelysheva found a flyer which concerned her on her doorstep. The flyer was reportedly distributed all over her town. It had her home address on it and referred to her as 'shameful and contemptible', 'a beast', and a 'supporter of terrorists'. It also called upon the people to join in a fight against her. Together with RCFS, she filed a complaint with the police; no progress had, at the time this communication had been sent, been made with the investigations.
- iv. From February through April 2005, TV channels including RTR News of Privolzh'e, NTR, Volga and the APN news agency carried out a media campaign against RCFS branding it and its staff as being supporters of terrorism, and also further attempted to create a negative image of RCFS by showing videos of crimes committed by terrorists as a background to the commentaries on RCFS. The newspaper 'The Novoye Delo' also published commentaries made by representatives of the Prosecutor's office of Nizhny Novgorod and the FSB who claimed that RCFS and its staff had committed crimes including incitement to extremist activities and providing support to acts of terror.

840. On 20 June 2005 the Government of Russia replied to the communication of 9 June 2005. At the time this report was finalised, this reply was still in the process of being translated.

841. On 16 June 2005, the Special Rapporteur sent an urgent appeal concerning **Nikolai Goshko**, a journalist for the independent radio station *Radio Vesna*. According to information received, on 6 June 2005, an arbitration court in Smolensk, a city in central Russia, found him guilty of criminal defamation and sentenced him to five years in a prison colony, despite the Prosecution's request for a one year suspended sentence. He was charged with defaming three Smolensk officials in a July 2000 program on *Radio Vesna* when he accused the three officials of masterminding the murder of *Radio Vesna*'s owner and director, Mr. Sergey Novikov. At the time this communication was sent, he was going to file an appeal against this decision within the next ten days.

842. On 20 September 2005 the Government of Russia replied to the communication of 16 June 2005. At the time this report was finalised, this reply was still in the process of being translated.

843. On 21 June 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning the **Association of Soldiers' Mothers of Saint-Petersburg**. According to the information received, in the night of 3 June 2005, the organization's office was broken into and robbed by unknown individuals. It is reported that the perpetrators stole three telephones, one fax machine, two USB-keys, which contained information on monitoring activities, and opened a safe in which they took a video-camera and a digital dictaphone. They did not manage to break open a second safe. It is reported that the perpetrators did not steal any of the valuable objects present in the office. Fear had been expressed that this robbery may have aimed at seizing some of the information and material linked to the human rights work of the organization. This incident followed a case launched on June 14, 2003 against the organization for providing background information for a *Smena* Newspaper article concerning the physical and psychological torture of pupils in the Nachinov Military School which had been the subject of an urgent appeal sent on 25 September 2003 by 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. According to the information received, the lawsuit was still ongoing, at the time this communication was sent, despite the fact that the Admiral of the Russian Fleet had acknowledged that acts of physical and psychological torture had taken place and that the officers responsible for it had been punished. It is reported that the next hearing in this case was due to take place on 22 June 2005, before the Kuibyshev Court of Saint-Petersburg.

844. On 20 September 2005, the Government replied to the communication of 21 June 2005. The Government stated that on 6 June 2005, in connection with a robbery at the office of the non-governmental organization "Association of Soldiers' Mothers of Saint-Petersburg", criminal case No. 158447 was initiated on the basis of evidence of an offence (theft) under article 158 B.2 of the Criminal Code of the Russian Federation. As part of the work undertaken to solve this offence, the Main Department of Internal Affairs of St. Petersburg and Leningrad Oblast carried out a range of operational investigative measures, including the organization of checks on possible places of sale of the property stolen, and the questioning of 19 persons concerning involvement in the offence. On 6 August 2005 the procurator's office of the St. Petersburg central administrative district extended the preliminary investigation into the



criminal case for three months. The investigation was considering all possible motives for the commission of the offence. There were, at the time this reply was sent, no grounds that would confirm the theory that the aim of this robbery was to obtain information and materials related to the organization's human rights activities.

845. On 6 July 2005, the Special Rapporteur sent a letter of allegation concerning **Magomedzarid Varisov**, a political analyst and journalist who was also the director of the *Republican Center of Strategic Initiatives and Political Technologies*. According to information received, on 28 June 2005 at 9:15 p.m. local time on Mayakovskiy street, Makhachkala, Dagestan, unidentified individuals opened fire on his vehicle. Magomedzarid Varisov died immediately; his driver was injured and Magomedzarid Varisov's wife, who was also travelling with him, was not hurt. Police investigations were underway at the time this communication was sent. Concern was expressed that the attack against Magomedzarid Varisov was directly linked to his work as a journalist, particularly to his column, *Political Analysis* for the *Novoye Delo* newspaper, where he strongly criticised the opposition. The last article he wrote before he was killed focused on events in Chechnya, where he argued that the opposition was taking advantage of the prevalent refugee situation in the village of Borozdinovskaya in the region of Shelkovskiy, to instigate national hatred.

846. On 20 September 2005 the Government of Russia replied to the communication of 6 July 2005. At the time this report was finalised, this reply was still in the process of being translated.

847. On 2 September 2005, the Special Rapporteur sent a letter of allegation concerning **Pawel Reska**, a Polish journalist for the Warsaw-based daily *Rzeczpospolite*. Mr. Reska is officially accredited by the Russian Ministry for Foreign Affairs to work as a journalist in Russia. According to information received, during the evening of 11 August 2005, close to *Rzeczpospolite's* office in Moscow, he was attacked by a group of men who threw him to the ground and punched him and kicked him.

848. On 23 November 2005, the Government replied to the communication of 2 September 2005. The Government stated that on the basis of the inquiry conducted into the beating of Pawel Reska, a Polish journalist with the newspaper *Rzeczpospolita*, the Dorogomilov inter-district procurator's office in Moscow opened criminal case No. 337275 on the day when the incident occurred - 11 August 2005 - on the basis of evidence of an offence under article 115, paragraph 2, of the Criminal Code of the Russian Federation (intentional light bodily harm). The preliminary investigation into the incident was entrusted to the investigative department of the internal affairs office for the central administrative district of Moscow. Routine inquiries were conducted by the criminal investigation department of the Central Internal Affairs Authority in Moscow. According to the victim's testimony, he was attacked by three or four unknown men, whose appearance he could not remember and cannot describe. The forensic expert's report revealed that Mr. Reska had sustained a broken nose, bruising and abrasions on his face, back and limbs, and a wound to his left elbow. Eyewitnesses to the crime were questioned, and identikit pictures of the attackers were made on the basis of their testimony. Investigations and inquiries were being carried out among owners and passengers of vehicles that were near the scene of the crime on the evening of 11 August 2005, as well as among members of informal youth organizations and other participants in a protest meeting which had taken place near the Polish Embassy on 2 August 2005. Telephone communications recorded at the location between

6 and 9 p.m. were also being thoroughly analysed and processed at the time this reply was received. At the time this reply was received, in spite of numerous investigative actions and routine inquiries, it had not been possible to establish the identity of the persons responsible and the motives for their acts. The pretrial investigation into the case was ongoing. The progress of the investigation was being monitored by the Office of the Procurator-General of the Russian Federation.

849. On 21 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning Mr. **Bill Bowring** (UA G/SO 214 (67-13) G/SO 214 (107-5), 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. According to information received, 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 travelled 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).

#### **Follow-up to previously transmitted communications**

850. On 13 May 2005 the Government replied to the communication of 24 February 2004. At the time this report was finalized this reply was still in the process of being translated.

851. On 28 February 2005 the Government replied to the communication of 6 December 2004. The Government informed the Special Rapporteur that, during checks conducted by the Achkhoy-Martanov district procurator, it was established that on 4 November 2004, while travelling along the Kavkaz highway towards Sernovodsk in the Chechen Republic, **Ruslan Seidrahmanovich Susaev** and his wife **Susanna Valentinovna Susaeva** were stopped by armed persons wearing camouflage and taken to the Achkhoy-Martanov district internal affairs office. After R. Susaev had been questioned concerning his involvement in the activities of illegal armed groups, the two were released. No physical or psychological pressure had been exerted on them. Upon further questioning during the checking procedure, R.S. Susaev and S.V. Susaeva said that they had not contacted the law enforcement agencies and had no claims to make against anyone. Concerning the information contained in the appeal relating to a search carried out at the Susaevs' home on 28 August 2004, the beating of R.S. Susaev's mother and the arrest of his sons, R.S. Susaev stated that it was true that during the night of 28-29 August, unknown armed persons approached him in civilian clothes, but that they did not carry out any search, did not use physical force against him or the members of his family, and did not arrest his sons. Moreover, R.S. Susaev stated that his mother had died in 1985, and so she could not have been beaten in 2004. The Susaev family had moved house three times. They were, at the time this communication was sent, living in Sernovodsk, Sunzha district. The repeated changes of residence were due to the Susaev family's difficult material circumstances, and not to any alleged pressure on R.S. Susaev to cease his human rights activities. S.V. Susaeva, the wife of R.S. Susaev, provided similar testimony on these matters.

On 28 December 2004, the Achkhoy-Martanov district procurator's office decided under article 24, part 1, paragraph 1, of the Code of Criminal Procedure of the Russian Federation not to institute criminal proceedings, on the grounds that no offence had been committed.

### Observations

852. The Special Rapporteur thanks the Government for its replies to his communications of 20 January, 7 June 2005, 24 February 2004 and 6 December 2004. With reference to reply concerning the communication of 7 June 2005, and with reference to Article 19 of the International Covenant on Civil and political Rights which provides for the protection of the right to freedom of opinion and expression and defines it as including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice, the Special Rapporteur would appreciate receiving information concerning the basis on which the three journalists concerned were being investigated and how this was compatible with the aforementioned Article 19.

853. The Special Rapporteur thanks the Government for its reply to his communication of 13 April 2005, 26 May 2005, 21 June, 6 July and 2 September 2005, and would appreciate receiving updates on the outcome of the investigations and of any prosecutions carried out into these allegations.

854. The Special Rapporteur thanks the Government for its reply to his communication of 9 June 2005. Pending the finalization of its translation and without making any determination on the facts of the case, the Special Rapporteur deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

855. The Special Rapporteur thanks the Government for its reply to his communication of 16 June 2005. The Special Rapporteur welcomes information he received stating that on 19 August 2005, a court in the central Russian city of Smolensk released **Nikolai Goshko**, after the prosecution agreed to change the charges of criminal defamation to the lesser charge of criminal insult. The statute of limitations on this lesser charge is reportedly two years. On August 19, the court ruled that since the broadcast had taken place five years earlier the statute of limitations applied and the judge released Goshko. The Special Rapporteur, nevertheless, deems it appropriate to make reference to the Commission on Human Rights Resolution 2005/38, which provided that States should not resort to criminal laws and punishments for media related offences as these are deemed disproportionate to the gravity of the

offence and violate international human rights law. Media related offences should preferably be dealt with under civil law with punishments being more of a pecuniary nature, so long as this is proportionate.

856. The Special Rapporteur looks forward to receiving a reply to his communication of 21 November 2005, concerning which communication the Special Rapporteur had expressed his concerns that the refusal to allow Bill Bowring to enter the country might have been 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 faces charges under the art. 282.2 (b) of the Russian Criminal Code.

### Rwanda

857. Le 14 septembre 2005, le Rapporteur spécial a envoyé un appel urgent concernant la situation du père **Guy Theunis**, un missionnaire de nationalité belge. Selon les informations reçues, le 5 septembre, le père **Guy Theunis**, un missionnaire de nationalité belge, aurait été arrêté à l'aéroport de Kigali alors qu'il aurait été en train de rentrer dans son pays. Il aurait aussitôt été incarcéré à la prison centrale de Kigali où il devait rester jusqu'à son procès devant un tribunal ordinaire rwandais. Selon les informations reçues, le 10 septembre 2005 à l'issue d'une audience publique, une Gacaca (tribunal populaire) de Kigali, aurait décidé de placer le père Guy Theunis, ancien rédacteur en chef de la revue "Dialogue", parmi les "planificateurs, les organisateurs, les incitateurs, les superviseurs et les encadreurs du crime de génocide". Theunis était accusé d'avoir incité à la haine raciale en publiant dans la revue "Dialogue" des extraits du journal extrémiste "Kangura". Depuis 1994, il se serait rendu à plusieurs reprises au Rwanda, chaque fois avec un visa délivré par les autorités. Le père Theunis risquait la peine de mort. Le Rapporteur spécial avait exprimé des craintes suite à des informations reçues, selon lesquelles les accusations contre le père **Guy Theunis** auraient été motivées par des raisons politiques et personnelles.

858. Par lettre datée du 30 septembre 2005, le ministère des affaires étrangères et de la coopération a répondu à la communication du 15 septembre 2005 concernant **le Père Guy Theunis**. Le gouvernement a informé le Rapporteur spécial que Père Guy Theunis a effectivement été appréhendé à l'aéroport de Kigali le 6 septembre 2005 sur ordre du Parquet Général de la République du Rwanda qui lui reprochait les crimes de génocide et de complicité de génocide, plus particulièrement l'incitation au génocide et la négation de ce dernier. Jusqu'au moment que cette réponse a été envoyée, les instances judiciaires rwandaises n'avaient pas fini de constituer les dossiers pour ces crimes imprescriptibles. Depuis le début des juridictions gacaca sur toute l'étendue du territoire national, des révélations sont en train d'être faites et il n'est pas étonnant que des gens continuent à se voir arrêter et poursuivi. Le Père Guy Theunis est aussi accusé d'avoir incité à la haine raciale et au génocide à travers les media. Son arrestation et son incarcération à la prison centrale de Kigali se passent dans le respect des droits de la personne humaine. Toutes les facilités de visite, d'approvisionnement et d'assistance consulaire au détenu sont garanties.

## Observations

859. Le Rapporteur spécial remercie le gouvernement pour sa réponse de 15 septembre 2005. Selon d'informations reçues par d'autres sources, en vertu d'un accord entre Kigali et Bruxelles, père Guy Theunis, incarcéré à la prison centrale de Kigali depuis le 6 septembre, aurait quitté le Rwanda sans escorte, le 19 novembre, à bord d'un vol commercial à destination de la Belgique. Il serait arrivé le 20 novembre dans la matinée et aurait été aussitôt entendu, dans le cadre d'une information judiciaire ouverte en Belgique.

### Saudi Arabia

860. On 26 January 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Mohamed Al-Raouchan**, editor-in-chief of the weekly *Al-Mouhaid*, who was arrested by security forces in Riyadh on 8 or 9 January 2005 and had not been allowed any 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, he had written articles in the magazine *Al-Mouhaid* urging the Saudi authorities to work harder to secure the release of these detainees.

861. On 12 April 2005, the Special Rapporteur, jointly with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, sent a letter of allegation concerning *Arab News*, an English language daily newspaper published by the state corporation, Saudi Research and Publishing Company. This company owns 18 daily, weekly and monthly newspapers and magazines in the Arab and non-Arab world. According to information received, a cartoon was published in *Arab News* depicting rats wearing Star of David skullcaps. The rats were shown as scurrying backwards and forwards through holes in the wall of an edifice bearing the poster "Palestine House". It is reported that this image replicates a scene taken from the Nazi film 'Jew Sues', which film depicts Jews as vermin to be eradicated by mass extermination. This scene had also been used in the media during Hitler's regime".

862. On 13 May 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on freedom of religion or belief, sent an urgent appeal concerning the arrest of **40 Pakistani Christians** during a meeting for worship in Badeea district, the arrest of **three Egyptian Christians** and a **raid of a house church** in Al-Olaya district, all in Riyadh. According to the information received, on 22 April 2005, 40 workers from Pakistan, resident in Saudi Arabia, were arrested by officials from the independent body ensuring the conformity with religious norms under the religious authorities (muttawa) while meeting for joint Catholic-Protestant prayer. Several muttawa surrounded the house, beat some of the worshippers, and destroyed Christian symbols and confiscated bibles, tapes and other Christian materials. All persons present, including minors, were detained at the Dera police station and later released. The police refused to return the labor cards that foreigners need in order to be able to stay in Saudi Arabia. Moreover, on 24 April 2005, the Saudi Police arrested three Egyptian citizens residing in the Kingdom of Saudi Arabia, **Nabil Nassif Youssef**, 35 years, **Hani Nassif Youssef**, 30 years, **Youssef Nassif Youssef**, 25 years, in Riyadh. They were accused of preaching Christianity because bibles were found in their possession. They were, at the time this communication was sent, being held

incomunicado. It was unclear whether charges had been brought against them. Finally, on 29 April 2005, a muttawa, together with several high-ranking sheiks, broke up a private worship service of 60 Ethiopian and Eritrean Christians in Al-Olaya district. They arrested five of them (**Yemane Gebre Loul** and **Gazai Zarom** from Eritrea and **Msfen Tekle**, **Yonas Tekle**, and **Teklu Mola** from Ethiopia) who were then transferred to prison facilities of the Ministry of Interior, where they were still being held at the time this communication was sent. Police also confiscated the worshippers' bibles.

863. On 30 May 2005 the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Ali al-Domani**, Dr. **Abdullah al-Hamid** and Dr. **Matruk al-Falih** who were already the subject of two urgent appeals of 26 April 2004 sent by the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers, 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 Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on arbitrary detention, the Special Rapporteur on torture and the Special Representative of the Secretary-General on human rights defenders. According to information received, 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-Domani, Dr. Abdullah al-Hamid and Dr. Matruk al-Falih 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-Domani, Dr. Matruk al-Falih and Dr. Abdullah al-Hamid refused to make. Moreover, following their first hearing on 10 August 2004, which hearing was attended by international observers, family and supporters, the judges decided to hold the trial behind closed doors, claiming overcrowding. Finally, on 9 November 2004, one of the defence team lawyers **Abd al-Rahman al-Lahim**, was arrested for having criticized the closed-doors proceedings and was, at the time this communication was sent, being detained at the al-Ha'ir prison in Riyadh. 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.

864. On 16 June 2005, the Government replied to the communication of 30 May 2005 concerning the case of Mr. **Ali ak-Domani**, **Abdullah al-Hamid** and **Matruk sal-Falih**. The Government stated that this case had been considered by the Working group on Arbitrary Detention whose opinion on the case was expressed in November 2004. Moreover, on 18 August 2005, the Government further replied to the Special Rapporteur informing him that Mr. Ali ak-Domani, Abdullah al-Hamid and Matruk sal-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), have been released pursuant to the provisions of a Royal Amnesty proclaimed on 8 August 2005.

865. On 29 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers, 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, sent an urgent appeal concerning Mr. **Muhammad al-Harbi**, a high school chemistry teacher in Qassim Province and Mr. **Muhammad al-Sahimi**, a former Arabic teacher in middle and high school. According to information received, 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 recognised by the Court. Mr. Al-Harbi was, at the time this communication was sent, appealing the decision. Moreover, in March 2004, Mr. Muhammad al-Sahimi was banned from teaching and sentenced to three years imprisonment and to 300 lashes for also 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.

### **Observations**

866. The Special Rapporteur regrets not having received a reply to his communication of 26 January 2005. Pending a reply to this communication and without making any determination on the facts of this case, the Special Rapporteur deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 9 para. 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

867. The Special Rapporteur regrets not having received a reply to his communication of 12 April 2005. Pending a reply to this communication and without making any determination on the facts of this case, the Special Rapporteur deems it appropriate to reiterate his understanding that, whilst recognizing the need to ensure a balance between efforts to combat racism, discrimination, xenophobia and intolerance, on the one hand, and ensuring the protection of the right to freedom of opinion and expression, on the other hand, he underlines as harmful and dangerous all forms of expression which incite or otherwise promote racial hatred, discrimination, violence and intolerance.

868. The Special Rapporteur regrets not having received a reply to his communication of 13 May 2005. Pending a reply to this communication and without making any determination on the facts of this case, the Special Rapporteur deems it appropriate to reiterate his concerns in

accordance with the Commission on Human Rights Resolution 2005/38 which ... (1). *reaffirms* the rights contained in the International Covenant on Civil and Political Rights regarding the right of everyone to hold opinions without interference, as well as the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice, and the intrinsically linked rights to freedom of thought, conscience and religion, peaceful assembly and association and the right to take part in the conduct of public affairs.

869. The Special Rapporteur thanks the Government for its reply to his communication of 30 May 2005 and welcomes the release of Mr. **Ali ak-Domani**, **Abdullah al-Hamid** and **Matruk sal-Falih**.

870. The Special Rapporteur looks forward to receiving a reply to his communication of 29 November 2005.

### **Serbia and Montenegro**

871. On 4 March 2005, the Special Rapporteur sent an urgent appeal concerning **Milan Milinkovic**, former editor for *Podrinski Telegraf*. According to information received, on 10 February 2004, a municipal court in the western city of Sabac sentenced Milan Milinkovic to a one year suspended term of imprisonment and a fine of 100 Euros and 400 Euros in court charges in response to a libel action brought against him by the owner of *Medicom*, a company that distributes Kodak products in Serbia. The libel action was in relation with an article published in March 2002 which article claimed that the company concerned had links with former President Slobodan Milosevic's Socialist Party of Serbia (SPS) and with the Yugoslavian United Left (JUL). The Judge claimed that the use of the word 'relationship' in the article was inappropriate and that the word 'cooperation' should have been used instead. Milan Milinkovic's lawyer claimed that they were going to appeal the decision. This sentence of imprisonment followed the then recent introduction, made public on 19 February 2005, of a new draft Criminal Code which would render libel, that is the revealing of false information which could harm the honour and reputation of those concerned, punishable by up to six months in prison and up to one year imprisonment if it is committed through the media or at a public event. The draft Criminal Code also proposes prison sentences of up to six months for defamation committed through the media or at a public event.

872. On 14 September 2005, the Special Rapporteur sent an urgent appeal concerning **Sasa Stojkovic**, the affairs editor of *Radio OK* in Vranje, **Momcilo Veljkovic**, the coordinator for *Otpor* in Pozarevac, and **Veran Matic**, *RTV B92* director and editor in chief. According to information received, two Serbian Radical Party members of the Vranje Municipal Council, Bratoljub Djordjevic, verbally attacked and threatened Sasa Stojkovic. The previous day, Momcilo Veljkovic and his family had been threatened with death in a letter signed by the Serbian Death Squadron. The same handwriting used in this letter was also used in a letter addressed to Veran Matic, signed by the Serbian Liberation Regiment. The letter contained threats to Mr. Matic, his family and business associates. B92 filed a criminal complaint regarding the letter.



### **Follow-up to previously transmitted communications**

873. On 25 May 2005, the Government replied to the Special Rapporteur's letter dated 31 March 2004 concerning alleged human rights violations against Mr. **Vladan Vlaković**, author of the book "Military Secret". The Government informed the Special Rapporteur that Mr. **Vlaković** was charged under Article 224, (1) and (2), of the Basic Criminal Code (in force since June 7 2004) with the criminal offence of disclosing a military secret. At the time the reply was sent, the Military Court in charge of the prosecution was yet to fix a date for the main hearing. Moreover, the Government informed the Special Rapporteur that on the order of the investigative magistrate, acting under Article 69 of the Basic Criminal Code, **Mr Vlaković** had been subjected to a security measure of seizure of the following items: 472 copies of the book "Military Secret", Part II, 182 copies of the book "Military Secret", Part II, a personal computer with 2 CD-Roms and 2 Floppy disks, 53 graphite plates size B2 and 1 CD ROM compact disc with the written words "Newspaper Copy, Parts I and II". This confiscation had taken place on the premises of the Serbian Helsinki Committee For Human Rights, and on the premises of the "Zagorac" Printing Shop, the printers of the book. The Government informed the Special Rapporteur that appropriate records were made and certificates of the seizure issued.

874. On 25 May, the Government replied to the Special Rapporteur's communication dated 17 May 2004, concerning alleged attacks on journalists working for TV B92. The Government informed the Special Rapporteur that on 4 May 2004, a complaint was filed on the Office of the Second Municipal Public Prosecutor against an unidentified person for the offences of coercion, obstruction of printing and distributing printed matter and broadcasting radio and television programmes and damage to items belonging to other persons, committed against **Masan Lekić**. Following preliminary investigations, two persons were suspected of having caused the aforementioned actions. They were interrogated and one of them made a statement, claiming that the incident had been caused because of Mr. Lekić's behaviour. Mr. Lekić was then called to identify the suspect but failed to do so. Although the suspect had not been identified as a perpetrator, a case was brought against him on 12 May 2004. The police was, at the time this reply was sent, still under instructions to take measures to identify the person who committed these offences.

875. On 3 August 2005 the Government replied to the communication of 28 September 2004 concerning two incidents. The first incident dealt with a series of slurs and offensive remarks purportedly made by a Serbian radical party official, against "**Gradjanski List**" a Novo Sad daily newspaper and its reporters. The second incident was concerned with the alleged threats made by the Serbian Minister of Capital Investment against **Radisav Rodić**, owner of the Belgrade dailies "Glas Javnosti" and "Kurier". The Government informed the Special Rapporteur that the Office of the District Public Prosecutor in Novi Sad had opened a case in connection to the "**Gradjanski List** incident, and, following enquiries by the Novo Sad Police Department, including an interview with the **Editor-in-Chief of Gradjanski List**", Mr. **Miodrag Nikić**, had found that the abovementioned incident satisfied the essential requirements to initiate a prosecution for the criminal offence of insult, under Article 93, para.2, in connection of para.1 of the Criminal Code of the Republic of Serbia. Concerning the complaint made in connection to threats made against Mr. **Radisav Rodić**, the Government

informed the Special Rapporteur that the Office of the Public Prosecutor of Belgrade had referred the case to the Office of the First Municipal Public Prosecutor in Belgrade. At the time the reply was sent, the case was being processed and a decision was pending.

### Observations

876. The Special Rapporteur regrets not having received a reply to his communication of 4 March 2005. Pending a reply to this communication and without making any determination on the facts of the case, the Special Rapporteur reiterates his concerns in accordance with the Commission on Human Rights Resolution 2005/38, which provided that States should not resort to criminal laws and punishments for media related offences as these are deemed disproportionate to the gravity of the offence and violate international human rights law. Media related offences should preferably be dealt with under civil law with punishments being more of a pecuniary nature, so long as this is proportionate.

877. The Special Rapporteur regrets not having received a reply to his communication of 14 September 2005. Pending a reply to this communication and without making any determination on the facts of the case, the Special Rapporteur reiterates his concern in accordance with Human Rights Commission Resolution, 2005/38 which expressed its continuing concern that threats and acts of violence, including killings, attacks and terrorist acts, particularly directed against journalists and other media workers in situations of armed conflict, have increased and are not adequately punished and calls upon states to ... (c) ensure that victims of violations of these rights have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

### Sierra Leone

878. On 10 March 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent a letter of allegation concerning Ms. **Salamatu Turay**, a senior reporter for the *Salone Times*. According to the allegations received, on 1 March 2005, close to the Eastend police roundabout, Freetown, she was reporting on a strike by Fourah Bay College students, which had degenerated into a clash with police, when she was assaulted by police, even after they were informed that she was a journalist. Salamatu Turay was taken to Saterlite Clinic to be treated for her injuries.

879. On 20 May 2005, the Special Rapporteur sent a letter of allegation concerning Mr. **Harry Yansaneh**, acting editor for the daily *For Di People* and five independent newspapers: *The Independent Observer*, *The Pool*, *The African Champion*, *The Pioneer* and *The Progress*. According to information received, on 10 May 2005, two of the sons of parliamentary representative for the Tonkolili Central Constituency, together with three other persons, assaulted Mr. Yansaneh at For Di People's offices and other members of the newspaper's staff were forced out; computers and other office equipment were damaged. The attack was reportedly directed at Mr. Yansaneh for having written negatively about the Government. Moreover, on the same day, the above-mentioned six independent newspapers could not publish for three days following an official order from the same parliamentary representative for the Tonkolili Central Constituency that no generators be used in the newspapers' building; the building belong to her. This

parliamentary representative had also demanded that the six newspapers, who had been working in the same building for the past 10 years, vacate the premises within six months and that they start restricting their working hours to 7.45am to 7.45pm.

880. On 27 May 2005, the Special Rapporteur sent an urgent appeal concerning managing editor **Sydney Pratt** and reporter **Dennis Jones**, of the weekly newspaper *Trumpet*, who were arrested on 25 May 2005 and who were being held at the Criminal Investigation Department (CID) in the capital, Freetown, where the paper is based. According to information received, both journalists had been charged with "seditious libel" under Sierra Leone's 1965 Public Order Act, which is considered by local journalists as an obsolete and repressive law. Reportedly, the charges stemmed from the reaction of President Ahmad Tejan Kabbah to an article published in one of *Trumpet's* issues concerning a bribe scandal allegedly involving high personalities forming part of the Government. Journalist **Paul Kamara**, editor and publisher of *For Di People* newspaper, remained in jail after a condemnation, in October 2004, to a four-year prison sentence under the Public Order Act, because of an article that criticized President Kabbah.

881. On 4 August 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning Mr. **Harry Yansaneh**, former acting editor of the newspaper *For di people*, member of the Sierra Leone office for Amnesty International and of the National League for Human Rights, who died on 28 July 2005. Yansaneh was the subject of an allegation letter sent by the Special Rapporteur on 20 May 2005. According to the information received, on 10 May 2005, Harry Yansaneh was severely beaten and threatened with death in his office in Freetown by unknown persons. The equipment of the newspaper was also vandalized. The attackers were allegedly linked to a Member of Parliament for the ruling Sierra Leone People's Party and a Member of the Parliament of the Economic Community of West African States. Following the attack, Mr. Yansaneh made a formal report to the Central Police Station in Freetown and the Sierra Leone Association of journalists subsequently lodged a formal complaint to the Ombudsman of Sierra Leone who referred the matter to the Speaker of Parliament. In spite of these steps, it is reported that no investigations were commenced by the relevant authorities. On 11 May 2005, Yansaneh received medical treatment but his health continued to deteriorate. In early June he was admitted for eight days at a Freetown hospital and again in July where he died on 28 July 2005. It is reported that the cause of his death was related to kidney dysfunction ensuing from complications from the injuries he sustained from his beating.

882. On 10 August 2005, the Special Rapporteur sent a letter of allegation concerning **Paul Kamara**, editor of newspaper *For Di People* who was refused an application for bail on 25 July 2005. The Appeal Court in Freetown ruled that there were not enough sufficient grounds to grant Kamara, who was serving a two-year prison term for seditious libel, bail. The Appeal Court also excluded that he could be released owing to his health conditions. Earlier applications of Kamara's lawyer, who cited previous rulings by the Appeal Court, also failed. Kamara was sentenced to two years imprisonment on 5 October 2004 on two counts of seditious libel against President Ahmed Tejan Kabbah, following articles he published in *For Di People* in 2003.

## Observations

883. The Special Rapporteur regrets not having received a reply to his communications of 10 March, 20 May, 27 May, 4 August and 10 August 2005. In this context the Special Rapporteur deems it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which appeals to all States to cooperate fully with and assist the Special Rapporteur in the performance of his tasks and to provide all necessary information requested by him.

884. With regards to the communication of 10 March, 20 May and 4 August 2005, pending a reply to this communication and without making any determination on the facts of this case, the Special Rapporteur deems it appropriate to make reference to Commission on Human Rights Resolution 2005/38 which expressed its continuing concern that threats and acts of violence particularly directed against journalists and other media workers, have increased and are not adequately punished and calls upon states to ... (c) ensure that victims of violations of these rights have an effective remedy, to investigate effectively threats and acts of violence against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

885. With regards to the communication of 27 May and 10 August 2005, pending a reply to this communication and without making any determination on the facts of this case, the Special Rapporteur reiterates his concerns in accordance with the Commission on Human Rights Resolution 2005/38, which provided that States should not resort to criminal laws and punishments for media related offences as these are deemed disproportionate to the gravity of the offence and violate international human rights law. Media related offences should preferably be dealt with under civil law with punishments being more of a pecuniary nature, so long as this is proportionate.

## Singapore

886. On 3 May 2005 the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on violence against women, its causes and consequences, sent an urgent appeal concerning Singapore national **NCH** (F) 41, and Chinese national **Ms. CLJ** (F) 37, both Falun Gong practitioners. According to information received, NCH (F) and CLJ (F) were arrested and charged in May 2004 for having participated in an illegal assembly in February 2003 and for having distributed flyers and VCDs at the Esplanade Park in Singapore exposing the persecution against Falun Gong practitioners. On 27 April 2005, the Court 39 of the Subordinate Courts in Singapore sentenced NCH to S\$20,000 and CLJ to S\$24,000 on charges including 'assembly without permit' and 'possession and distribution of illegal VCDs'. They both appealed the decision and refused to pay the fine, as a result of which the fines imposed were converted into prison terms: NCH was sentenced to 20 weeks imprisonment and CLJ to 24 weeks imprisonment. The two women were immediately taken to the Changi Women's Prison and had not, until the moment that this communication was sent, had access to a lawyer or been allowed visitors. NCH, who was not

given the time to make arrangements for her six-month old baby girl whom she was reportedly nursing until then, had also been prohibited from seeing her child in prison. At the time this communication was sent, they had both been on hunger strike, in protest of the court decision against them of 27 April 2005 and prison authorities had reportedly threatened to punish them further if they continued their hunger strike.

887. On 17 May 2005, the Government of Singapore replied to the communication of 3 May 2005. The Government stated that the allegations as stated in the Special Rapporteur's letter were entirely false and that the incident concerned did not fall within the mandates of the Special Rapporteurs concerned. The Government provided that on 23 February 2003, in response to a complaint from a member of the public, the police found several persons in the vicinity of the bridge of the Esplanade Park displaying placards and posters, accosting passers-by and handing out pamphlets to them. These persons did not have the necessary permits, as a result of which, they were in breach of the offence of Participating in an Assembly without a Permit. The police gave them a warning to stop their activities; these warnings were ignored. Both **NCH** and **CLJ** were charged with Participating in an Assembly without a Permit under Rule 5 of the Miscellaneous Offences (Public Order and Nuisance) (Assemblies and Processions) Rules, with being in Possession of Uncertified Films under Section 21.1.b Cap 107 under the Films of Acts and with Distribution of Uncertified Films under Section 21.1.b.Cap 107 of the Films Act. Their trial lasted 15 days over the course of three months, and they were both represented by legal counsel of their own choice. 23 witnesses appeared for the prosecution and all were cross-examined by the defence. The hearings were always open to the public and the media, and in fact the proceedings were heard in a larger court room to accommodate the number of members of the public wishing to attend. Both NCH and CLJ were dealt with in accordance with the due process of the law and the criminal proceedings were conducted fairly and publicly and before an impartial judiciary. On 27 April 2005, they were both found guilty as charged. They were also allowed visits and had access to their lawyer while in detention. Finally, as neither Mme. CLJ, who was the one who had a 6 month old daughter, nor her family members made a request to the prisons for Mme. CL to see her daughter, the request was denied, as no family member was present to verify the identity of the baby girl and her relationship to Mme. CLJ. Prison staff, together with medical staff counselled both NCH and CLJ to eat the meals provided to them, and were also offered glucose water, milk and bread in addition to their usual meals. They were both examined closely by the Prisons medical officers and found to be in good health throughout their incarceration.

888. On 23 May 2005, the Special Rapporteur sent an urgent appeal concerning **Martyn See**, an independent documentary filmmaker. According to information received, on 6 May 2005, the Assistant Superintendent of the Police informed him that investigations had been initiated against him on account of his documentary film 'Singapore Rebel'. The documentary chronicles the civil disobedience of opposition activist Dr. Chee Soon Juan. Mr. See was not informed of the reasons for the investigations against him. Police sources claimed that Mr. See was being investigated under the Singapore's Films Act, which Act prohibits the production or distribution of 'party political' films, a violation which is punishable by a fine of up to \$100,000 or two years in jail. With an aim to avoid an investigation against him, Mr. See withdrew his film from the Singapore International Film Festival after being advised by the director of the festival, who was told by the Board of Film Censors, that Mr. See's film was objectionable under the Singapore Films Act, and that investigations against him would be dropped if he did so. Mr. See reported to the police on 16 May 2005.

889. On 3 June 2005 the Government replied to the communication of 23 May 2005 concerning **Martyn See**. The Government stated that at no point was Mr. See told by the police or the authorities that investigations against him would be dropped if his film was withdrawn from the Singapore International Film Festival (SIFF). The Board of Film Censors received a copy of the film from the SIFF. As the making, distribution, exhibition or importing of a party political film is an offence under the films Act, the BFC lodged a report with the police. The police were investigating the report on this case at the time this reply was sent. The Government explains that the Films Act disallows political films as they are an undesirable medium for political debate in Singapore. The Films Act is applicable to all parties in Singapore. Everyone has the opportunity to express their opinions in the media, such as books, newspapers and websites on the internet, but films can present political issues in a sensational manner evoking emotional rather than rational reactions without affording the opportunity for a meaningful rebuttal or explanation to audience and viewers.

### **Observations**

890. The Special Rapporteur thanks the Government for its reply to the communications of 3 and 23 May 2005. The Special Rapporteur, nevertheless, reiterates his concern at what he deems to be the incompatibility of the actions taken by the authorities vis-à-vis NCH and CL and Mr. See with the international rights to the freedom of opinion and expression, as expressed by Article 19 of the International Covenant on Civil and Political Rights to clearly include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice, and the intrinsically linked rights to freedom of thought, conscience and religion, peaceful assembly and associations.

### **Slovakia**

891. On 25 February 2005, the Special Rapporteur sent an urgent appeal concerning the **draft Criminal Code** which was, at the time this communication was sent, before the Government for review and was to be presented to the Slovak Parliament in March 2005. According to information received, Article 331 provided for a prison sentence of up to one year for insulting or slandering a representative of a state organ, and Article 384 provided for a maximum term of five years for public defamation of an ordinary citizen.

892. On 17 May 2005 the Government replied to the communication of 25 February 2005. The Government stated that at the time this reply was sent, Article 331 of the then draft Criminal Code which provided for up to one year imprisonment for insulting or slandering a representative of a state body, was deleted and was no longer part of the draft. With reference to article 382 concerning defamation, the then draft punished any person who communicated false information about another person likely to damage considerably the respect of fellow citizens for such a person and, in particular, damage his career and business, disturb his family relation or cause him other serious harm, which is compatible with international law. Moreover, although the draft criminal Code provided for a prison sentence for this offence, an alternative punishment such as a pecuniary penalty of compulsory work or other non-imprisonment penalties may be imposed. The principle of proportionality is therefore respected.

## Observations

893. The Special Rapporteur thanks the Government for its reply to his communication of 25 February 2005. The Special Rapporteur welcomes the information that Article 331 no longer exists as described in his communication. Nevertheless, the Special Rapporteur is concerned that the possibility of a term of imprisonment under Article 382 remains. He therefore deems it appropriate to reiterate the principle as referred to by the Commission on Human Rights in its Resolution 2005/38, which provided that States should not resort to criminal laws and punishments for media related offences as these are deemed disproportionate to the gravity of the offence and violate international human rights law. Media related offences should preferably be dealt with under civil law with punishments being more of a pecuniary nature, so long as this is proportionate.

## Somalia

894. On 31 May 2005, the Special Rapporteur sent a letter of allegation concerning **a large number of members of the Gaboye community**. According to information received, on 11 May 2005, police officers shot **Khadar Osman Dhabar**, (m) late 20s, married with three children, member of the Gaboye minority, in the presence of his two friends at Hawl Wadag area, Hargeisa; he died later at the Hargeisa hospital. On 13 May 2005, a large number of members of the Gaboye community took to the streets, heading for the central police station and the President's office, to protest the killing of Khadar Osman Dhabar, and generally calling for justice and respect for human rights of the Gaboye community. The crowd was met by armed police who shot in the air; several hundreds demonstrators were arrested and beaten, including women and children. Furthermore, other Gaboye were later arrested during police raids carried out at Dami village on the outskirts of Hargeisa. Up to a hundred protestors from the Gaboye minority group were held incommunicado without charge, either in the Hargeisa central prison in the capital of Somaliland or in an unauthorised and secret police Criminal Investigation Department detention centre. Reportedly, all demonstrators had, at the time this communication was sent, been released.

## Observations

895. The Special Rapporteur regrets not having received a reply to his communication of 31 May 2004. Pending this reply and without making any determination on the facts of the case, the Special Rapporteur reiterates his serious concerns, in accordance with the article 5 point a) of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully, at the reported manhandling, arrests and detention of the persons concerned, particularly when this was directly linked to the peaceful manifestation of their right to freedom of opinion and expression.

### South Africa

896. On 31 May 2005, the Special Rapporteur sent an urgent appeal concerning the newspaper *Mail and Guardian*. According to information received, the Johannesburg High Court banned the newspaper from publishing more information about the Oilgate scandal, on the basis that such information was a violation of the right to privacy of the persons involved. Articles by the newspaper regarding the Oilgate scandal, which concerned the oil company Imvume and the state oil company Petrosa, alleged that a gift of R11 million of taxpayer's money was given to the fund of the African National Congress (ANC) during the 2004 elections and another R11 million of taxpayer's money was used to make up for the other payment given to the ANC. The newspaper argued that this information was of overwhelming public interest due to the implications that taxpayer's money were misused, and should therefore be allowed to be published in line with the SABC's editorial policies, which state that 'in both news and comment, the press shall exercise exceptional care and consideration in matters involving the private lives of individuals, bearing in mind that any right to privacy may be overridden by a legitimate public interest.

897. On 13 June 2005 the Government replied to the communication of 31 May 2005 concerning allegations that the High Court in Johannesburg prevented the *Mail and Guardian* from publishing certain information. The Government stated that this matter was referred to the Department of Justice and Constitutional Development which had the mandate to report on all matters relating to the ICCPR and related instruments. On 5 August 2005 the Government provided more information on the allegations concerned. The Government stated that the matter was still pending before the courts at the time this reply was sent and was therefore sub judice. It had been established by the court that no judgment appeared to have been given by the court in the matter as to the accuracy of the facts of the alleged Oilgate scandal. It cannot, therefore be said whether the facts in the newspaper are accurate or not. Moreover, since there was no written judgment available setting out the reasons for the interim order, neither can it be said that the Oilgate scandal could be considered as a matter of overwhelming public interest. The legal basis to bar the newspaper concerned from publishing information about the scandal was therefore still unknown.

### Observations

898. The Special Rapporteur thanks the Government for its reply to his communication of 31 May 2005. The Special Rapporteur would appreciate being kept informed on the outcome of the court proceedings on this matter. Pending this, the Special Rapporteur deems it appropriate to underline that the restrictions and limitations allowed under article 19 (3) of the International Covenant on Civil and Political Rights are to be applied exceptionally and on a basis which is necessary, provided by law and proportionate to a legitimate aim intended to be achieved.

### Sri Lanka

899. On 7 January 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders sent an urgent appeal concerning Mr. **Uswatta Liyanage Anthony Joseph Perera**, a member of a human rights organization which is active in combating torture



and child abuse and which provides assistance to victims in obtaining legal advice and medical attention. On 3 December 2004, the Special Rapporteur jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders had already drawn the attention of the Government to death threats received by Mr. U.L.A. Joseph Perera in November 2004, in particular on 22 November 2004. According to allegations received since then, on 16 December 2004, between 5.30 and 5.45 p.m., Mr. Perera was riding home on his motorcycle with his grandson, when two persons stopped him at a location close to his house on the Weligampitiya-Batagama Road. One of the two persons directed a gun towards Mr. Perera and demanded that he stop his human rights work. He reminded Mr. Perera of the previous threats and asked whether he had taken those lightly, advising him that this was the last warning.

900. On 21 February 2005 the Government replied to the communication of 7 January 2005 concerning Mr. **Uswatta Liyanage Anthony Joseph Perera**. The Government stated that the Criminal Investigation Department, following the receipt of this communication, commenced an investigation into the alleged death threats received by him. While investigations were still undergoing at the time this reply was sent, action had already been taken to provide police protection to Mr. Uswatta Liyanage Anthony Joseph Perera including protection at their houses.

901. On 14 March 2005, the Special Rapporteur sent a letter of allegation concerning **Vincent Jeyan**, journalist for the *Lake House Group's Thinakaran newspaper*. According to information received, on 4 March 2005, media personnel were covering a public protest against the Government in Jaffna. It is reported that while security forces were forcefully dispersing the crowds, Vincent Jeyan was allegedly assaulted and seriously injured by the security forces, despite having identified himself as an accredited journalist. He was treated for his injuries at Jaffna hospital. Moreover, the security forces also reportedly smashed the motorcycle of journalist **Ratnam Deyabaran**, of *Thinnakkural*, the Jaffna provincial edition of a national newspaper.

902. On 9 August 2005 the Government replied to the communication of 14 March 2005 concerning **Vincent Jeyan**, and **Ratnam Deyabaran**. The Government stated that with regards to the allegations concerning Mr. Vincent Jeyan, the Special Investigations Unit of Sri Lanka Police commenced investigations into these allegations. Mr. Jeyan stated that there were several army officers when the incident happened and he was unable to identify the officer who assaulted him as his face was masked with a black cloth. The Government therefore concluded that it was impossible to continue with the investigations due to lack of evidence to identify the suspect. Concerning Mr. Deyabaran the police were, at the time this reply was sent, still unable to contact him to take a statement from him as he was traveling in India.

903. On 11 May 2005 the Special Rapporteur sent a letter of allegation concerning **Tharmaratnam Sivaram**, 46, leading Tamil journalist, political columnist and military analyst for the English language Daily Mirror. He was also a founding member and contributor to the Tamilnet. According to information received, on 28 April 2005, in Colombo, Tharmaratnam Sivaram was murdered when at around 10.00 at night, four unidentified gunmen abducted him, as he was leaving a Restaurant directly across from the Bambalapitya police station, gagged and shot him, leaving his body by a marsh close to Parliament.

904. On 9 August 2005 the Government replied to the communication of 11 May 2005 concerning Mr. **Tharmaratnam Sivaram**. The Government stated that the authorities initiated an immediate investigation into the allegations and one suspect was arrested and the SIM card of the mobile phone used by the victim was recovered from his possession. A car suspected of having been used to commit the crime was recovered and further inquiries were being conducted at the time this reply was sent. The facts were reported to the Magistrate court in Kaduwela.

905. On 23 May 2005, the Special Rapporteur sent an urgent appeal concerning **Victor Ivan**, one of the organisers for FMM (The Free Media Movement) and editor for the Sinhala-language tabloid '*Ravaya*', as well as **Sunanda Deshapriya**, FMM spokesman and freelance journalist. According to information received, on 10 May 2005 in Colombo, the two journalists received death threats in a letter signed by Commander Mayadunne on behalf of a Sinhalese extremist group which calls itself 'Theraputtabhaya force'. The same letter was also received by leading figures of the civil society movement, which movement supports a peaceful solution to ethnic conflicts in the country. The letter threatened all 'traitors' that they would soon become 'fertilizer of the motherland' if they continued to betray it. Theraputtabhaya force also claimed responsibility, in the letter, for the then recent murder of Dharmeratnam Sivaram, a veteran Tamil journalist, who was also the subject of an allegation letter sent by the Special Rapporteur on 14 October 2004. FMM appeared to be a target for extremist groups due to its supported calls for a negotiated peace agreement to end Sri Lanka's longstanding civil war. Finally, Oslo-based Tamil journalist **Sethurupan Nadarajah** and program director of the London-based Tamil Broadcasting Corporation, **V. Ramraj**, had also been receiving threats on various web-sites from rival parties of the Tamil community.

906. On 16 September 2005, the Special Rapporteur sent a letter of allegation concerning **Sudaroli**, a newspaper based in Colombo. According to information received, Sudaroli and a number of its journalists had been the subject of attacks in the past two weeks. On 30 August 2005, for example, journalists **V. Puththirasigamani** and **Arumuga Varatharajah** were both attacked at a bus stop after having left work. They sustained minor injuries. On 21 August 2005, a grenade was thrown at Sudaroli's advertising office in the Wellawatta district of Colombo and on 23 August 2005 Sudaroli photo-journalist **Yadarshan Selvarajah** was assaulted when covering a People's Liberation Front (JVP) rally in front of Fort Railway station. Mr. Selvarajah was then handed over to the police on grounds of supporting terrorists. JVP Propaganda Secretary accused Sudaroli at a public rally of being pro-Tamil and abetting terrorists, and on these grounds justified Mr. Selvarajah's handing over to the police. Finally, on 29 August 2005, two grenades were launched at Sudaroli's printing press in Grandpass, Colombo, killing a security guard and injuring a journalist, a proof reader and a visitor.

907. On 27 October 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning the **Human Rights Commission's (HRC)** headquarters in Colombo. The HRC is a national human rights institution that investigates complaints of alleged human rights violations. It is responsible for reviewing legal procedures that are in place, to ensure compliance with the Constitutional guarantees of fundamental rights, and, for advising the Government in the formulation of legislation and the administrative procedures for the protection of fundamental rights. According to the information received, on 12 October 2005, at daybreak, the HRC headquarters were raided and searched by unknown individuals. During the raid it is alleged that

files were destroyed and documents relating to investigations carried out by the organisation were set on fire. It is reported that petrol was also poured throughout the office. Members of the HRC filed a complaint at the nearest police station and the Criminal Investigations Department (CID) was, at the time this communication was sent, reportedly leading the investigation into the incident.

908. On 28 October 2005, the Special Rapporteur sent a letter of allegation concerning the English language weekly newspapers, the *Sunday Leader* and the *Midweek Leader*, as well as the Sinhala language weeklies *Irudina*. According to information received, on 16 October 2005 at around 08:00 p.m. in Ratlmalna, around 10 unidentified men set fire to the printing house of the four newspapers, all of which were critical of the Government. The unidentified men warned the publishing house manager to stop publishing the newspapers. They also beat him, stole his mobile phone and some money. A report was filed with the police. Moreover, on 6 October 2005, a parked van exploded outside the office of *Thinamurasu*, a Tamil-language newspaper associated with the Eelam People's Democratic Party. This explosion took place fifteen minutes after Mr. **Kingsley Weeratana**, a distributor for the newspaper was shot and killed while distributing the newspaper.

909. On 2 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning death threats against **W.R Sanjeewa**, a lawyer representing victims of torture and extrajudicial killings. According to the information received, Mr. W.R. Sanjeewa is a lawyer appearing on behalf of a number of Sri Lankans claiming to be the victims of torture by police officers in cases currently pending before various courts in Sri Lanka. Several police officers accused of torturing Mr. W.R. Sanjeewa's clients had approached him, personally or by phone, requested him to withdraw the torture complaints, and threatened him and his clients. On 22 October 2005, Mr. Sanjeewa lodged a formal complaint which was recorded at the police headquarters in Colombo. He also wrote a formal letter to the Inspector General of police with copies to the Attorney General regarding the threats received. Mr. Sanjeewa's report to the police of 22 October 2005 identified the names of the police officers who had attempted to intimidate him and the names of the cases the threats refer to. However, the police appeared not to have taken any action to investigate the threats or to protect Mr. Sanjeewa. The threats against Mr. Sanjeewa and the alleged inaction by the police in response thereto gave rise to the preoccupation that his life might have been at risk. These concerns were reinforced by the fatal shooting of torture victim Gerald Marvin Perera, who had insisted on legal action against the policemen who tortured him notwithstanding threats aimed at making him desist, and by the then recent arson attack against the Human Rights Commission's headquarters in Colombo.

#### **Follow-up to previously transmitted communications**

910. On 24 March 2005 the Government replied to the Special Rapporteur's letter dated 21 July 2004 concerning Messrs. **Aiyathurai Nadesan** and **Kumaravel Thambiah**. The Government informed the Special Rapporteur that the Criminal Investigations Department and the Batticaloa Police had initiated investigations into both killings. Identification parades had been held in both instances, but none of the witnesses had identified any of the suspects. At the time the reply was sent, further investigations were taking place into both murders. It was presumed that the death of Mr. **Nadesan** was in connection with several articles he had written

condemning the activities of the “Karuna Faction” and the assassination of Lecturer **Kumaravel Thambiah** in the Tamil Newspapers. As regards the murder of Mr. **Thambiah**, the Government noted that there had recently been infighting between groups loyal to LTTE leader V. Prabhakaran and those loyal to former LTTE member Karuna and that the killing of Mr. Thambiah might have been as a result of these conflicts.

911. On 1 March 2005, the Government, replied to the Special Rapporteur’s letter dated 22 November 2004, concerning the alleged assaults by the military on journalists Messrs. **K. Kajidaran, M. Anchelin, and S. Sivaruban** on 15 November 2004. The Government referred to a report by the Senior Superintendent of Police, in charge of the area where the incident took place. The Report mentioned that on 14 November 2004, there had been a traffic accident resulting in the death of a Hindu priest. Reportedly, as a result of the incident a crowd had gathered and attacked the police and army officers present at the scene, who, as a result, had to disperse the crowd using tear gas. The Government noted however, that according to the police, no complaints of assault on three journalists had been made to any of the police Stations in Jaffna Divisions.

912. On 21 February 2005, the Government replied to the Special Rapporteur’s communication dated 3 December 2004, concerning the death threats received by Mr. **Uswatta Liyanage Anthony Joseph Perera**. The Government informed the Special Rapporteur that investigations were still ongoing, and that in the meantime, action had already been taken to provide Mr. **Perera**, and Mr. **Lalith Rajapaksha** with police protection, such as the deployment of round-the-clock police units to protect their houses, and a specially-deployed police team to provide security at the court hearing of the criminal case against Mr. **Rajapaksha**, held on 21 February 2005.

## **Observations**

913. The Special Rapporteur thanks the Government for its reply to his communication of 7 January 2005. The Special Rapporteur welcomes the information provided by the Government and wishes to be kept informed of any developments in the investigations being carried out and of any prosecutions in this regard.

914. The Special Rapporteur thanks the Government for its replies to his communications of 14 March and 11 May 2005. The Special Rapporteur welcomes the information that the authorities initiated immediate investigations into the alleged attacks against the journalists and would appreciate being kept informed of any developments in the investigations being carried out and of any prosecutions in this regard. He, nevertheless, remains seriously concerned, in light of information that those responsible for attacks and killings of another five journalists Mayilvaganam Nimalarajan, Aiyathurai Nadesan, Rohana Kumara, Nadarajah Atputharajah and Anthony Mariyanayagam over the past four years had not yet been apprehended and brought to trial. In this context, the Special Rapporteur deems it appropriate to recall Resolution 2005/38 of the Commission on Human Rights which expressed its continuing concern that threats and acts of violence particularly directed against journalists and other media workers, have increased and are not adequately punished and calls upon states to ... (c) ensure that victims of violations of these rights have an effective remedy, to investigate effectively threats and acts of violence against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

915. The Special Rapporteur regrets not having received a reply to his communications of 23 May, 16 September 2005. Pending a reply to these communications and without making any determination on the facts of this case, the Special Rapporteur strongly encourages the Government to provide the journalists and human rights defenders concerned with the necessary protection and calls on the Government to be thorough in investigating the alleged threats and in bringing to justice those responsible, in line with international human rights norms and standards.

916. The Special Rapporteur regrets not having received a reply to his communications of 27 October 2005 and looks forward to receiving a reply to his communication of 28 October and 2 November 2005. Pending a reply to this communication and without making any determination on the facts of the case, the Special Rapporteur reiterates his concern at the apparent cycle of impunity in this regard, and calls on States, in accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 12 paras 2 and 3, to take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.. The same concerns are voiced with regards to the Special Rapporteur's communication of 28 October 2005.

917. The Special Rapporteur would also thank to thank the Government for its replies to his communications of 21 July, 22 November and 3 December 2004.

### Sudan

918. On 4 February 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture sent an urgent appeal concerning **Abdallah Musa Abdallah**, General Secretary of the Beja Congress, Red Sea State, **Dr. Mahmoud Osman Ibrahim**, aged 45, General Secretary of the Beja Congress, **Aderob Bakkash**, a 22 year-old student, **Khalifa Omar Ohajj**, a 23 year-old student, **Ali Hussein Ali**, aged 40, **Mohamed Samra**, aged 40, **Hussein Adam**, aged 35, residents of Kassala, **Hashem Ali Dura**, and **Abdel Rahim Ali Bur'i**, residents of Port Sudan; all members of the Beja ethnic group. According to the allegations received, between 29 January and 1 February 2005, these men, together with several others were arrested and were, at the time this communication was sent, being held at national security offices in the cities of Port Sudan and Kassala, Red Sea State. Aderob Bakkash and Khalifa Omar Ohajj were reportedly tortured in detention in Kassala. These arrests followed demonstrations on 26 and 29 January 2005 in Port Sudan predominantly by members of the Beja ethnic group, who were calling for equal opportunities and a share of power in the region. Demonstrations on 26 January 2005 were

allegedly peaceful and culminated in a list of demands being presented to the Governor of Red Sea State, who was given 72 hours to respond. On 29 January 2005, armed security forces used live ammunition against a demonstration which had turned violent. They then attacked houses outside the area of the demonstrations, and threw grenades which wounded residents including children. At least 20 people were killed.

919. On 25 February 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Dr. **Mudawi Ibrahim Adam**, a human rights defender and chairman of the Sudan Development Organization (SUDO), who has already been the subject of urgent appeals by the Special Rapporteur jointly with the Special Representative of the Secretary-General on the situation of human rights defenders on 25 January 2005, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders on 12 May 2004 and 23 February 2004 and jointly by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 6 January 2004. According to new information received, on 24 January 2005 Dr. Mudawi Ibrahim Adam was arrested, without charge, at his home in Kondua, North Kordofan state, northern Sudan, by members of the Sudanese National Security and Intelligence Agency. Since 19 February 2005, Dr. Mudawi Ibrahim Adam had been on hunger strike, requesting that he be either charged or released. Other than a brief visit from his wife on 23 February 2005 while Dr. Mudawi Ibrahim Adam was being detained at Kober prison, he was being kept incommunicado at an unknown location in Khartoum, reportedly at a private house in a room with no windows. His relatives had not been provided with any information concerning the reasons for the arrest. He had also reportedly been refused access to medical attention despite the fact that his health had considerably deteriorated because of his hunger strike.

920. On 10 March the Government replied to the communication of 25 February 2005 concerning Dr. **Mudawi Ibrahim Adam**. The Government stated that Dr. Mudawi Ibrahim Adam was arrested and detained on 27 January 2005 as a result of having arranged to establish an illegal movement. He was released on 3 March 2005 after 30 days in accordance with the provisions of the National Security Act since no charge was brought against him. He was allowed visits from his family, doctors and lawyer while in detention.

921. On 22 April 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning the arrest of two students on 10 April 2005 by security forces in Delanj, South Kordofan. According to information received:

1. **Mohamed Mirghani Musa Yousif** (22yrs), belonging to the Barjo tribe originally from Zalingy, West Darfur state, third year student at Delanj University and member of the Student Democratic Front, was arrested on 10 April 2005 by Security forces in Delanj, South Kordofan. Mr. Mohamed was taken to security offices at Qaar Hagar. He was still in detention, at the time this communication was sent, and his family had been denied access to him.

2. **Yousif Dafalla**, third year student at the faculty of accountancy at Delanj University, arrested on 10 April 2005 by Security forces in Delanj, SouthKordofan. Mr. Yousif was taken to the security offices in Delanj where he was being detained at the time this communication was sent.

3. In a separate incident, **Mohammed Hassan Alim** (22 yrs), second year student at Neilien University in Khartoum, Faculty of Engineering, was arrested on 19 April 2005 by National Security Agency (NSA) officers at the entrance of the university. It is reported that during the arrest, Mr. Mohammed was beaten with sticks. The whereabouts of Mr. Mohammed were unknown at the time this communication was sent.

922. According to reports received these students were targeted and were being detained solely for the peaceful expression of their opinion during the demonstrations which took place at Delanj University on 11 April 2005 and at the centre of Khartoum on 13 April 2005 against the conduct of the Students Union Elections. The demonstrators had accused the organizers of vote rigging.

923. On 26 April 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning **Sati' Mohamed Al-Hajj**, a human rights lawyer, **Yusuf Hussein**, **Tariq Ahmed Gasim**, aged 21, and **Fawaz Salah Al-Sayed**, aged 21, all from Khartoum. According to the allegations received, on 21 April 2005, Tariq Ahmed Gasim and Fawaz Salah Al-Sayed were arrested along with four boys aged between 15 and 18. About 35 members of the National Security Forces surrounded the house in which they were meeting to organise an event for 23 April to commemorate their relatives, who were amongst 28 officers executed on 24 April 1990 after being accused of plotting a military coup. After their arrest, the security forces took Tariq Ahmed Gasim and Fawaz Salah Al-Sayed and the four boys to their office in North Khartoum. The four boys were released later the same evening. They claimed that members of the security forces had beaten them and forced them to jump up and down on a hot floor. Sati' Mohamed Al-Hajj and Yusuf Hussein, who had been planning to support the event, were arrested at their homes, and were, at the time this communication was sent, being held at an unknown location. On 22 April at 10am, Tariq Ahmed Gasim and Fawaz Salah Al-Sayed were shown to their families in the reception area of the offices but were then taken back into detention. Their families claimed that they looked as if they had been beaten. On 22 April, the security forces arrested and released other organizers of the event; one was reportedly beaten and given 40 lashes before he was released. There was no information of any charges being brought against Tariq Ahmed Gasim, Fawaz Salah Al-Sayed, Sati' Mohamed Al-Hajj and Yusuf Hussein, and they were, at the time this communication was sent, being held incommunicado.

924. On 1 June 2005 the Special Rapporteur, jointly with the Special Rapporteur on violence against women, its causes and consequences, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Paul Foreman**, country director of Médecins Sans Frontières (MSF)-Holland in Sudan, **Vincent Hoedt**, the coordinator of Médecins Sans Frontières (MSF) Holland in Western Darfur and **two local senior MSF staff**. MSF in Sudan provides medical and other humanitarian assistance to internally displaced persons and other vulnerable groups. According to the information received, on 30 May 2005, Paul Foreman, a British national, was arrested by

security forces, presented to the prosecutor of the crimes against state attorney in Khartoum and charged under articles 66 (Publication of False News), 69 (Disturbance of Public Peace) and 53 (Espionage against the Country) of the 1991 Penal code. It was reported that these charges bear a maximum sentence of death. Mr. Foreman was released on bail but was prohibited from leaving the country. He appeared before the prosecutor for further questioning on Tuesday and Wednesday 31 May and 1 June 2005 respectively. On Tuesday 31 May 2005, Vincent Hoedt was arrested by security services in Nyala, West Darfur and taken to Khartoum for interrogation. He was later released on bail. He had also been charged under articles 66 (Publication of False News), 69 (Disturbance of Public Peace) and 53 (Espionage against the Country) of the 1991 Penal code. Bail for both Paul Foreman and Vincent Hoedt had been set at 1,000,000 Sudanese Dinar (approximately 4,000 US\$). This amount would have to be paid only if they absconded. Moreover, two local senior MSF staff had been made to stand as bond guarantors for Paul Foreman and Vincent Hoedt. The information received indicated that both Paul Foreman and Vincent Hoedt were arrested in response to MSF Holland's publication in March of a briefing paper entitled "The Crushing Burden of Rape: Sexual Violence in Darfur" detailing alleged rape and other sexual violence in Darfur on the occasion of International Women's Day. Reports of widespread and systematic rape and other forms of sexual violence in Sudan have been documented and corroborated by diverse sources, including the United Nations Sudan Commission of Inquiry. Nevertheless, it is alleged that the Government requested MSF-Holland through the Humanitarian Aid Commission (HAC) to refrain from publishing the report on the grounds that the information contained in the report was 'false' and would "damage the image of Sudan". It is also reported that prior to Paul Foreman's arrest, authorities asked MSF-Holland to provide them with the medical documents used in the publication which MSF-Holland refused on the basis of doctor-patient confidentiality.

925. On 20 June 2005, the Special Rapporteur sent a letter of allegation concerning the English-language *Khartoum Monitor*, one of Sudan's three independent daily newspapers. According to information received, on 12 June 2005, Khartoum's High Court decided to withdraw the newspaper's licence. This decision followed the ruling of another court in July 2003 to suspend the newspaper's licence after it had published an interview with a former Minister; the Minister had accused the Government of practicing slavery. This ruling had later been lifted by an appeals court which allowed the newspaper to resume publishing. This decision against *Khartoum Monitor* followed an incident in May 2005 when state security police raided the newspaper's offices demanding the withdrawal of a report and an editorial concerning violent clashes between anti-riot police and civilians from south and western Darfur region in an IDP camp south of the capital. The following day, the police informed the newspaper's staff that they would be monitoring the paper's content everyday before it goes out for publishing.

#### **Follow-up to previously transmitted communications**

926. On 20 October 2005 the Government replied to the communication of 8 January and 17 September 2004 concerning Mr. **Waiel Taha**. The Government informed the Special Rapporteur that Mr. Taha was arrested by the District Attorney following allegations that he had assaulted his supervisor at Khartoum University. He was subsequently charged under Articles 68 (Disturbance of public peace), 77 (Public nuisance), 143 (Criminal force), 143 (Criminal force) and 182 (Criminal mischief) of the 1991 Criminal Act.



927. On 20 October 2005 the Government replied to the communication of 5 February 2004 concerning the arrest of human rights activist Mr. **Salih Mahmoud Osman**. The Government confirmed that Mr. Osman was arrested on 1 February 2004. Following investigations, his involvement in activities aiming to support the rebellion in Darfur was proved. According to the information received, Mr. Osman, was treated humanely while in detention, and visits by his family were guaranteed. He was released on 4 September 2004.

928. On 10 March 2005 the Government replied to the communication of 23 February 2004 regarding Mr. **Mudawi Ibrahim Adam**. The Government informed the Special Rapporteur that Mudawi Ibrahim Adam was detained in Kandawat village, South Kordofan on 27 January 2005. He had been arrested on previous occasions as noted in the Special Rapporteur's 2005 report. On 8 August 2004, the Minister of Justice issued a decision stating the criminal case against him. The ensuing investigations revealed that he had been involved in establishing an unregistered organization, (National Movement for Marginalizes in Kordofan). According to the information received Mr. **Mudawi Ibrahim Adam**, was treated humanely whilst in detention.

929. On 20 October 2005 the Government replied to the communication of 3 June and 12 May 2004 concerning the detention of Mr. **Osman Adam Abdel Mawla**, a member of the Sudan Social Development Organisation (SUDO), who was arrested on 5 May 2004. The Government informed the Special Rapporteur that Mr. Osman Adam Abdel Mawla, was detained for the purpose of inquiries, released after three days detention and reportedly treated humanely whilst under arrest. According to the information received, he was, at the moment this reply was sent, practicing his activities normally.

930. On 20 October 2005 the Government replied to the communication of 3 August 2004 concerning the arrest of journalist Mr. **Aba Zer Ahmed Abu Al Bashir**. The Government informed the Special Rapporteur that Mr. Aba Zer Ahmed Abu Al Bashir was arrested under the National Security Act on 31 July 2004, purportedly for his involvement in the incidents of Darfur. He was released after completion of investigations, and was treated humanely during detention.

## **Observations**

931. The Special Rapporteur regrets not having received a reply to his communication of 4 February 2005, 22 and 26 April 2005. Whilst welcoming information he received from other sources concerning the communication of 4 February 2005 from other sources, that all nine men were released, the Special Rapporteur remains concerned that Dr. **Mahmoud Osman Ibrahim** was only released in April and the remaining others were only released on 30 June, after almost six months of being detained without charge or trial, and reportedly incommunicado. The Special Rapporteur was also informed that all four men concerned in his communication of 26 April 2005 were released without charge on 22 April at around 11 pm. Pending a reply from the Government to these communications and without making any determination on the facts of the cases, the Special Rapporteur reiterates his serious concern at what he deems to be disproportionate action taken by the authorities and deems it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which defined the right to freedom of opinion and expression as including the intrinsically linked rights to peaceful assembly and association and the right to take part in the conduct of public affairs.

932. The Special Rapporteur thanks the Government for its reply to his communication of 25 February 2005. The Special Rapporteur would appreciate receiving more information concerning the 'illegal organization' Dr. **Mudawi Ibrahim Adam** is reported to have arranged to establish. Pending such information, the Special Rapporteur deems it appropriate to make reference to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 1 which states that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

933. The Special Rapporteur regrets not having received a reply to his communication of 1 June 2005. In view of the seriousness of these allegation, and without making any determination on the facts of the case pending a reply to this communication, the Special Rapporteur deems it appropriate to stress the fundamental principle enunciated in the Declaration on Human Rights Defenders, article 6, which provides under points b) and c) that everyone has the right, individually and in association with others, as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

934. The Special Rapporteur also regrets not having received a reply to his communication of 20 June 2005. The Special Rapporteur, pending a reply to this communication and without making any determination on the facts of this case, reiterates his concerns and deems it appropriate to make reference to the fundamental principle that, while noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, States should refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on, the free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship.

935. The Special Rapporteur would like to thank the Government for its replies to his communications of 8 January, 5 and 23 February, 3 June, 3 August and 6 September 2004.

### **Syrian Arab Republic**

936. On 17 January 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Habib 'Isa**, a lawyer, aged 62, and Dr. **'Aref Dalilah**, aged 64. According to the allegations received, Mr. 'Isa was, at the time this communication was sent, suffering from chronic back pain and was in need of a hernia operation. Dr. Dalilah had developed a serious heart condition which required an operation, possibly to fit a pacemaker. They were reportedly, at the time this communication was sent,

and had been for a long time, in solitary detention. Mr. 'Isa and Dr. Dalilah are two of the six men arrested in 2001 and subsequently tried and convicted for their involvement in the pro-democracy and human rights movement known as the "Damascus Spring". Mr. 'Isa was sentenced to five years imprisonment, and Dr. Dalilah to ten years. It is alleged that both Mr. Isa and Dr. Dalilah were beaten severely by prison guards in May 2002. In view of their alleged prolonged detention in solitary confinement, concern was expressed that they might have been at risk of torture or other forms of ill-treatment. Moreover, concern was expressed for their physical and mental integrity if they did not receive prompt and adequate medical treatment.

937. On 19 January 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **'Abd al-Karim Dha'oun**, a trustee of the Committee for the Defence of Democratic Liberties and Human Rights (CDDLHR). According to the information received, Mr. 'Abd al-Karim Dha'oun was arrested on 12 September 2004 in connection with a report on conditions inside a prison in Hama which he had written as a health inspector. He was, at the time this communication was sent, reportedly on trial before the Hama Criminal Court.

938. On 4 November 2005, the Government replied to the communication of 19 January 2005 concerning **Abd al-Karim Dha'oun**. The Government indicated that Mr. Dha'oun committed a number of offences involving activities on behalf of unauthorized associations, the falsification of government documents and the distribution of various publications attacking the political and social integrity of the State. He was also one of the main instigators of the unlawful demonstration that took place outside the People's Assembly on 8 March 2004. Judicial proceedings were instituted against him and he was arrested. After his lawyer had been given every opportunity to defend his client in court, Mr. Dha'oun was convicted and sentenced to two months in prison. He was later released.

939. On 26 May 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Mohamed Ra'adoun**, a lawyer and the head of the Arab Organization for Human Rights in Syria. According to the allegations received, on 22 May 2005 at around 11 a.m., four officers of the Political Security forces arrested Mr. Ra'adoun in his office at Latakia. He was informed that his arrest 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. Ra'adoun 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. Ra'adoun. In the morning of 24 May he was transferred to the Central Political Security Section in Damascus, where he was still being detained at the time 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 might 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.

940. On 21 July 2005 the Government replied to the communication of 26 May 2005 concerning **Mohamed Ra`doun**. The Government stated that Mohammed Hussein Ra`doun 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`doun was arrested under articles 286 and 288 of the Criminal Code. On 30 December 2005, the Government sent further information regarding the Special Rapporteur's communication of 26 May 2005. This reply was however still in the process of being translated at the time this report was finalized.

941. On 8 June 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning Mr. **Habib Salih** (m), aged 55. According to the information received, Mr. Habib Salih was arrested in his home town of Tartus, on the coast north of the capital, Damascus on 29 May 2005 and was reportedly held by Military Intelligence there. At the time this communication was sent, he was being held incommunicado without charge. Mr. Habib Salih had written highly critical open letters addressed to the ruling Ba'ath party, which were published on Arabic-language internet sites including the Syrian pro-democracy discussion forum [www.rezgar.com](http://www.rezgar.com) and the Damascus Center for Theoretical and Civil Rights Studies website, [www.dctcrs.org](http://www.dctcrs.org) in advance of the party congress, the first for five years, which began on 6 June 2005. Mr. Habib Salih had also been an active participant in debates organized by Syria's main pro-democracy discussion groups, the *Jamal al-Atassi Forum* and the *National Dialogue Forum*. He is the founder of the Tartus branch of the *National Dialogue Forum*. He had in the past been sentenced to three years' imprisonment by the Supreme State Security Court (SSSC) on charges including "inciting racial and sectarian strife", but had been released in September 2004. Concern was expressed that Mr. Habib Salih may have been arrested in connection with his publications.

942. On 1 July 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Muhammad Ra'dun**, 56, lawyer and Head of the Arab Organization for Human Rights (AOHR-S) and **Nizar Ristnawi**, human rights defender and founding member of the same organization. Muhammad Ra'dun was also the subject of a communication sent on 26th May 2005 by the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders. According to the allegations received, on 18th April 2004, Nizar Ristnawi was arrested. His family was not informed of his arrest until two weeks later when the Military Security informed them. At the time this communication was sent, he was being held incommunicado and without charge at the Military Security branch of Hama. Muhammad Ra'dun was then transferred to 'Adra Prison, near Damascus, where he was held in solitary confinement and was awaiting trial before the Supreme State Security Court on charges of "disseminating false information" and with "involvement in an illegal organization of an international nature". If convicted he faced more than three years' imprisonment. Fears had been expressed that the detention of both Muhammad Ra'dun and Nizar Ristnawi might have been linked to their activities as human rights defenders and in particular to their role in defending detainees in Syria.

943. On 22 July 2005, the Government replied to the communication of 1 July 2005 concerning **Mohammed Ra'dun** and **Nizar Ristnawi**. The Government stated that Mohammed Ra'dun 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. Rad'un was arrested under articles 286 and 288 of the Criminal Code. With regard to Nizar Mohamed Ristnawi, he was arrested on 18 April 2005 for writing and publishing negative material on the Internet. On 30 December 2005, the Government sent further information regarding the Special Rapporteur's communication of 1 July 2005. This reply was however still in the process of being translated at the time this report was finalized.

944. On 6 July 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Ali al - Abdullah**, 55, a journalist and member of Jamal al-Atassi Forum, of the Committees for the Revival of Civil Society and of the Human Rights Association of Syria. According to the allegations received, Ali al-Abdullah was, at the time this communication was sent, being held in solitary confinement in 'Adra Prison near Damascus where he was awaiting trial which was due to take place before the Supreme State Security Court on 30th October 2005. He had already been in custody for over six weeks, mainly held incommunicado. He was arrested on the night of 15th May 2005, a week after reading a statement on behalf of the exiled leader of the Muslim Brotherhood (MB) at the Jamal al-Atassi Forum political discussion group, in which he reiterated the MB's opposition to violence, rejected the accusation that it calls for a theocratic state in Syria, and called for political reforms in the country to allow respect for the rights of individuals. He is charged with "promoting an illegal organization," believed to be the MB. If convicted, he faced over three years in prison.

945. On 29 December 2005, the Government replied to the communication of 6 July concerning **Ali al - Abdullah**. The Government stated that the competent authorities in the Syrian Arab Republic released Ali al Abdullah pursuant to an amnesty issued by the President of the Republic in 2005. He was one of 190 political prisoners released under a presidential amnesty to mark the Muslim 'Eid' holiday.

946. On 4 August 2005, the Special Rapportuer, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Yassin al-Hamwi**, 60 years old, shopkeeper, and **Muhammad 'Ali al-'Abdullah**, law student, both founding members of the newly established Committee of the Families of Prisoners of Opinion and Conscience, Darya. According to the allegations received, Yassin al-Hamwi and Muhammad 'Ali al-'Abdullah were arrested by security forces on 26th and 27th July 2005, respectively, in the town of Darya, near Damascus. The arrests came within days of holding the first meeting of the Committee of the Families of Prisoners of Opinion and Conscience on 25th July. Yassin al-Hamwi was arrested at his shop in Darya. The Committee meeting had been held at his house and he had apparently been summoned for questioning by the Darya police one hour after the meeting ended. Muhammad 'Ali al-'Abdullah was arrested at his home in Qatana, near Damascus. Both men were, at the time this communication was sent, being held incommunicado.

947. On 2 December 2005 the Government of Syria replied to the communication of 4 August 2005 concerning **Yassin al-Hamwi** and **Muhammad Ali al-Abdullah**. The Government informed the Special Rapporteur that they were both arrested by the competent Syrian authorities for: forming a secret society; organizing meetings breaching public security; disseminating ideas likely to cause strife among different groups in society; and using the home of Muhammad Yassin al-Hamwi in the Dariaya Maqra' district for these activities. They were brought before the competent court on 2 August 2005. Their case was still, at the time this reply was sent, being reviewed by the courts.

948. On 5 September 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **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. According to the allegations received, on 4 June 2005, Riad Drar al-Hamood 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 Mr. Al-Hammood's house and confiscated books and copies of his lectures. Riad Drar al-Hamood was, at the time this communication was sent, being held incommunicado in solitary confinement at 'Adra prison, near the capital, Damascus and had been charged with "inciting sectarian strife". 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.

949. On 11 November 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Kamal Labwani**, head of the Liberal Democratic Party in the Syrian Arab Republic and member of the Administration Board of the Committees for the Defense of Human Rights, who had also actively worked for the respect of freedoms of opinion and expression in Syria. According to the information received, he was arrested upon arrival to Damascus airport on 8 November 2005. It is alleged that Mr. Labwani was seen escorted by scores of security personnel wearing civilian clothes. Mr. Labwani had arrived in Washington DC, USA, in late October 2005, at the behest of the US State Department Visitor's Program. Initially, he met with NGO's and human rights organizations. Later, he was allegedly introduced to some officials in the State Department and the White House and eventually this led to a meeting with a high-level U.S. Government official. Mr. Labwani had been imprisoned in 2001 for three years for voicing his opinion against the Syrian Government.

950. On 2 December 2005 the Government of Syria replied to the communication of 11 November 2005 concerning **Kamal Labwani**. The Government informed the Special Rapporteur that Mr. Labwani was arrested by the Syrian civilian police at Damascus International Airport because he was wanted by the Syrian judicial authorities. He was brought before an investigating judge of the civil court after having been charged under article 287 of the Syrian Criminal Code with making contact with foreign agencies for the purpose of denigrating the State.

951. On 23 December 2005 the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning lawyer and human rights defender and well known Kurdish figure Mr. **Mahmoud Jamil**, aged 43 years old. According to the allegations, 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 reportedly 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. He was kept in an overcrowded cell on the first day of his detention, and was then interrogated and tortured from noon until 22:00 in Ras El Ein. He was allegedly punched by a superior officer in his right eye, causing it to bleed, kicked and punched in the spine by five men, beaten with a baton whilst lying naked in a rubber tyre in a foetal position, electrocuted by wires attached to his toes then to his genitals until he lost consciousness. He was also anally aggressed with a bottle. He was subsequently moved to Qamishli prison, where he was beaten and punched during the first five days, deprived of food and prevented from using the toilet more than twice a day. He was subsequently released, after his wounds had healed. 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. During pre-trial detention he was kept in solitary confinement in a cell of 170x180cm for 50 days. The guards often stole the food and money delivered to him by his relatives. According to the information received, a number of advocates 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 arrested by ten men at 3:00 a.m and beaten, punched and kicked before being forced into a car, blindfolded. At the detention facility, he was beaten and the superior officer kicked him in the stomach. He was stripped to his underwear, blindfolded with plastic, put in a tyre, beaten with sticks and whipped with metal cables for about one and a half hours. He was then put in a small room, denied water and prevented from sleeping. At 7:00a.m. on 9 April 2004, he was taken to Hassakeh prison with eight others and kept in underground rooms. He and seven others were lined up naked against a wall and sprayed with water from a hose. He was then taken to a room, pushed into a tyre and beaten with cables and sticks. He was interrogated and treated in this manner for a period of five days. He was subsequently taken to Damascus **with 85 other people**. They were transported in three military trucks, blindfolded and had their hands tied behind their backs. The officers insulted them throughout the journey and threatened that they would not see their homes again because they were going to die. Upon arrival at Saidnaya military prison on 10 April 2004 they were all beaten by a large number of military police for over five hours. Mr. Jamil was then detained with about 30 people in a cell measuring 6 x 6 meters. At 20:00, ten persons entered the cell and began beating and kicking the detainees. This treatment occurred four to six times a day for the next six days. The detainees were also forced to imitate dogs and donkeys. After six days, he and the other detainees were interrogated for the next month, and were regularly subjected to similar ill-treatment. During the period from 13 April to 26 June 2004, Mr. Jamil was taken to Adra Prison, which is also known as the Central Prison of Damascus. 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.

### **Follow-up to previously transmitted communications**

952. On 11 January 2005 the Government replied to the communication of 14 October 2004. With regard to **Muhannad Qutaysh, Haythan Qutaysh** and **Yahia al-Aws**, the Government informed the Special Rapporteur that they were found to be involved in acts of espionage, to have contacts with foreign agencies and to have disseminated false information about Syria. On 25 July 2004, the first two men were each sentenced to three years in prison with hard labour and the third was given a four-year prison sentence. With regard to **Fateh Jamus, Safwan Akkash, Abd al-Ghani Bakri, Hazim Ajaj al Aghra'i, Muhammad Deeb Kor, Abd al-Jawwad al-Saleh, Hashim al-Hashim, Yasser Qaddur, Zaradesht Muhammad, Rashid Sha`ban, Fuad Bawadqji, Ghazi Mustafa, Najib Dedem** and **Samir Abd al-Karim Nashar**, they were arrested on 22 August 2003 and charged with belonging to a secret society and committing acts which could incite factional conflict within the nation. They were released a few hours after their arrest. Fateh Jamus was sentenced to one year in prison and a fine of 250 Syrian pounds. The others were each sentenced to three months in prison and a fine of 50 Syrian pounds. These sentences could still be, at the time this reply was received, challenged at appeal. With regard to **Mas`oud Hamid**, the Government stated that he had been arrested for committing an offence which is punishable by law, for being a member of a proscribed Kurdish party (Yakiti), for disseminating inflammatory propaganda, and for publishing articles, under a pseudonym, in an unlicensed magazine called "DEM". The magazine, several copies of which Mr. Hamid had distributed on the university campus, advocated racist ideas. Mr. Hamid had also printed 1,000 copies of a calendar containing a map of what purports to be Kurdistan and was planning to hand it out to Kurdish students at Damascus University. He also sought to stir up racial tensions, undermine national unity and malign the State through his participation in demonstrations which had not been authorized by the competent authorities. It is for these reasons that he was brought before the judicial authorities. He was still awaiting trial, at the time this reply was sent. With regard to **Abd al-Rahman al-Shaghuri**, the Government stated that, his arrest was carried out in strict compliance with the due process of law and he given the opportunity to freely choose his own lawyer. All the examination procedures were carried out in the presence of his lawyer, who was afforded every legal and other facility to enable him to defend his client. Prisons are subject to constant medical surveillance and are fully equipped so as to protect prisoners' rights and provide them with medical care.

953. On 2 January 2005 the Government replied to the communication of 27 October 2004 concerning the rejection of an application for registration filed by the Syrian Organization for Human Rights and about torture in Syrian prisons. The Government stated that the application from the above-mentioned organization was rejected on the grounds that it did not satisfy the conditions set out in the Private Associations and Institutions Act No. 93 of 1958 and its implementing regulation No. 1330 of 1958. The founders did not complete all the legal paperwork required for the establishment of the association, in accordance with article 3 of the Private Associations and Institutions Act, as a result of which the Ministry's decision to reject the application was proper, legal and valid. With regard to torture in prisons, article 52, paragraph 11, subparagraph (h), of the rules of procedure of the Ministry of Social Affairs and Labour, published in issue No. 9 of the 1990 Official Gazette, states: "The Social Defence Agency shall oversee the welfare of prisoners and their families and shall provide them with



appropriate work.” The task of guaranteeing the welfare of prisoners is entrusted to private associations throughout Syria which review conditions in prisons and provide prisoners and their families with all the forms of welfare which they require. The competent authorities (the Ministry of Social Affairs and Labour) had not received any complaints about improper practices or torture in Syrian prisons. As for the authorities being responsible for investigating allegations, if any are made, the Department of Public Prosecutions is vested with competence for this task in accordance with the law and established judicial practice.

954. Moreover on 1 February 2005, the Government sent a further reply to the communication of 27 October 2004 stating that with regard to the allegation about the use of torture in Syrian prisons and detention centres, the Syrian Constitution and prevailing Syrian laws do not allow anyone to inflict physical or mental torture or degrading treatment on prisoners, and prescribe penalties of from three months to three years in prison for the commission of such acts. The Syrian courts apply the principle that confessions must be freely made and that a confession obtained by coercion lacks any legal validity. Moreover, anyone subjected to physical or mental coercion is entitled to apply to the competent court for compensation for any harm suffered. The Attorney-General and the competent departments of the Ministry of Justice oversee the system of justice, while the judiciary, the Department of Public Prosecutions and the Ministry of the Interior monitor places of detention and imprisonment in order to make sure that they apply the law and treat prisoners and detainees with respect. With regard to the registration of the self-proclaimed Syrian Organization for Human Rights, its application was rejected because it had not completed all the registration procedures required under the Syrian Associations Act. It failed to disclose its sources of income and how that income was used and spent (it appears that it receives funding from abroad), its founding members include persons who have been stripped of the exercise of their political rights for committing criminal offences, for which they were convicted under final court judgements, and the Organization has links with unregistered political parties.

### **Observations**

955. The Special Rapporteur regrets not having received a reply to his communications of 17 January 2005, 8 June 2005, 6 July 2005, 5 September 2005 and 23 December 2005.

956. Concerning his communication of 17 January 2005, pending a reply from the Government and without making any determination on the facts of the case, the Special Rapporteur deems it necessary to make reference to article 22 of the Standard Minimum Rules for the Treatment of Prisoners.

957. The Special Rapporteur thanks the Government for its reply to his communication of 19 January 2005, 14 October and 27 October 2004.

958. The Special Rapporteur thanks the Government for its reply to his communication of 26 May 2005. The Special Rapporteur expresses his concern in light of information he received indicating that Mr. **Mohamed Ra`doun**'s health had deteriorated severely since he was detained on 22 May 2005. He suffered from a chronic inflammation of the trachea which could have caused him to choke in his sleep. He had lost more than 15 kg of weight. The prison doctor had stated that the circumstances of his detention contributed to the worsening of Muhamad Ra`dun's state of health, but the prison authorities had reportedly refused calls by his

lawyer for him to be moved to a hospital. The Special Rapporteur welcomes the information that Mr. Muhamad Ra'dun was released on 3 November 2005 together with another 190 political prisoners pursuant to a presidential pardon.

959. The Special Rapporteur thanks the Government for its reply to his communication of 1 July 2005. The Special Rapporteur, nevertheless, deems it appropriate to make reference to the Commission on Human Rights Resolution 2005/38, which provided that States should not resort to criminal laws and punishments for media related offences as these are deemed disproportionate to the gravity of the offence and violate international human rights law. Media related offences should preferably be dealt with under civil law with punishments being more of a pecuniary nature, so long as this is proportionate.

960. The Special Rapporteur thanks the Government for its replies to his communications of 26 May 2005, 1 July 2005, 4 August 2005 and 11 November. With regards to the communication of 4 August 2005, the Special Rapporteur received further information from one of its sources that both **Yassin al-Hamwi** and **Muhammad 'Ali al-'Abdullah** were found not guilty of "establishing and belonging to a secret society" by the Military Court on 27 September, but guilty of "defamation of the public administration". They were reportedly sentenced to 10 days' imprisonment, which they had already spent in custody, and released immediately. They had been free on bail since 16 August.

961. In view of the nature of the allegations, the Special Rapporteur deems it appropriate to generally make reference to Article 19 of the International Covenant on Civil and Political Rights as it is further defined in Resolution 2005/38 of the Commission on Human Rights, and to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

### **Tajikistan**

962. On 9 June 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning Mr. **Jumaboy Tolibov**, an independent journalist based in northern Tajikistan. According to the information received, Mr. Tolibov was arrested on 25 April 2005 and was held incommunicado in the Aininski District Pre-trial Detention Centre. He had been charged with "hooliganism" and with "obstructing an official". It is reported that the arrest and detention of Mr. Tolibov was initiated by the Aininski district prosecutor. Mr. Tolibov had previously criticized the district prosecutor in articles he had published in late 2004. Mr. Tolibov is also head of the legal department of the Aininski district administration. In this capacity, he had gone to the offices of the Aininski district prosecutor, to

ask about crime figures for the first half of 2004 and information on measures being taken to curb the apparent growth in crime. It is reported that the district prosecutor became extremely angry, used insulting language and then beat him. Mr. Tolibov filed a complaint against the district prosecutor but when no legal action was initiated, he wrote two articles, published in August and November, in *Minbari Halk*, the newspaper of the National Democratic Party of Tajikistan, and another one which was published in September in the parliamentary newspaper. The articles questioned why no action had been taken to investigate and prosecute the district prosecutor for the attack.

963. On 12 December 2005, the Special Rapporteur sent a letter of allegation concerning the **registration of electronic and print media**. According to information received, amongst many other media organisations, local group **FIDES** had its application to register its new independent television channel 'Markaz' turned down by the Justice Ministry authorities, on the basis that some required documents were missing. Another media NGO, **the Media Alliance**, also had its application with the Justice Ministry authorities rejected months ago. The authorities informed them that the documents they provided did not comply with the rules and norms of the regulations on registration of legal entities. The independent newspaper *Imruz Today* had not been able to obtain registration for over a year. Each time their application was rejected on the basis that some documents are missing.

### **Observations**

964. The Special Rapporteur regrets not having received a reply to his communication of 9 June 2005. According to new information received, **Jumaboy Tolibov** was released following a decision of 11 October 2005 of the Supreme Court to this effect. The Prosecutor General's Office in Dushanbe appealed the decision of the Supreme Court, and suspended Mr. Tolibov's release. However, when the Supreme Court upheld the release order on November 28, authorities in the Istarafshan detention center would not implement the ruling until they had received an official copy of the order in the regular mail. Under the Tajik Code of Criminal Procedure the Prosecutor General's Office can suspend the implementation of a Supreme Court decision by filing an appeal. On October 11, the Supreme Court had reduced Tolibov's punishment from two years in prison to one year of corrective labor and ordered his release after accepting the six months imprisonment already served as the equivalent of a year of corrective labor.

965. The Special Rapporteur looks forward to receiving a reply to his communication of 12 December 2005. Pending a reply from the Government to the latter communication, and without making any determination on the facts of this case, the Special Rapporteur reiterates his concerns that, on the basis of information received, the rejection and postponement of registration of both electronic and print media might not have been transparent and justified and could therefore be argued to be an attempt at hindering independent media from functioning in Tajikistan.

### Thailand

966. On 7 September 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Ms. **Angkhana Neelapaijit**, wife of Somchai Neelapaijit, Chairman of the Muslim Lawyers Association and human rights defenders, who had reportedly been missing since 11 March 2004 and who had already been the subject of an urgent appeal sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 17th March 2004, and an urgent appeal sent by the Special Rapporteur jointly with the the Special Rapporteur on torture and the Special Representative of the Secretary-General on the situation of human rights defenders on the 25th June 2004. According to the new information received, on 18 April 2005, the same day as an Asian Human Rights Commission (AHRC) statement was read at the United Nations Commission on Human Rights on behalf of Ms. Angkhana Neelapaijit, she received a phone-call from a member of the Police Intelligence Special Unit enquiring as to whether she would make any submissions to the UN and whether she had contacted any NGOs for assistance. She was also asked if she would like to meet with the Prime Minister. Ms. Angkhana Neelapaijit felt threatened by these inquiries. On 12 July 2005, Ms. Angkhana Neelapaijit reportedly received a phone-call from an unknown person who contacted her on a number of occasions in relation to the disappearance of her husband and to warn her that she may be in danger. In this call the person allegedly warned her that she could be shot. Ms. Angkhana Neelapaijit reportedly told the caller that the phone lines could be tapped and the caller informed her that he had nothing to fear from the police. Moreover, on 15 July 2005, the day that Ms. Angkhana Neelapaijit was to leave for Geneva to attend the UN Human Rights Committee meeting on Thailand, she received a visit to her home from four government officers from the Ministry of Social Development and Human Security. They allegedly offered to provide her and her children with assistance and they enquired as to whether she was receiving any assistance from NGOs. According to the information received, between April and May 2005, Ms. Angkhana Neelapaijit was under the Ministry of Justice's witness protection program and received 24-hour security surveillance from the Department of Special Investigation armed officers. Ms. Angkhana Neelapaijit then requested to be removed from this protection program. Concern was expressed that the intimidation as reported by Ms. Angkhana Neelapaijit was in direct connection with her activities in seeking justice over the disappearance of her husband on 11 March 2004.

967. On 7 October 2005, the Special Rapporteur sent an urgent appeal concerning **Sondhi Limthongkul**, owner of *ThaiDay dot.com* which produces the English daily newspaper *ThaiDay*, distributed inside the International Herald Tribune. Mr. Limthongkul is also chairman of the editorial board of *ThaiDay*. According to information received, on 30 September 2005, the Thai Prime Minister filed a criminal and civil lawsuit against M. Limthongkul and **Sarocho Pornudomsak**, host of the TV programme *Thailand Weekly*, demanding 500 million baht (approximately US\$ 12 million) in damages for slander for comments made during the banned talk show '*Thailand Weekly*' previously broadcast on Channel 9. During the programme of 9 September 2005, Mr. Limthongkul and Mr. Pornudomsak cited an article implying that the Prime Minister was "stubborn" and "arrogant" and was in competition with the King. The civil

law suit was scheduled for March 2006, whereas the criminal law suit which carries a possible two year sentence of imprisonment was scheduled for 26 December 2005. Mr. Limthongkul had, in the past, criticized the Government for encroaching on the power of the monarchy, particularly in the English daily Thai Day.

968. On 10 November 2005, the Special Rapporteur sent a letter of allegation concerning **Santi Lammaneevil**, 38, a local newspaper editor and reporter for Channel 7 television and the national dailies *Khao Sod* and *Khom Chad Luek* based in the southern resort city of Pattaya. According to information received, on 2 November 2005, after having been kidnapped by three unidentified men the day before, he was found dead in his car with three gunshot wounds to his head. Concern was expressed that he might have been killed in relation to his reporting of a prostitution ring in Pattaya hotels implicating a number of police officials, and as a result of which article, five police officials were transferred.

### **Follow-up to previously transmitted communications**

969. On 18 January 2005, the Government replied to the communication of 1 November 2004, regarding the incident in **Tak Bai** District. Pursuant to an earlier letter sent on 4 November 2004, the Government forwarded a copy of the summary of the findings and recommendations of the independent fact finding commission, established pursuant to Order No. 335/2547. The independent fact-finding Commission was mandated to determine whether the exercise of state authority in taking control of the situation and maintaining public order, the dispersal of demonstrators who were resisting the exercise of state authority, the custody of demonstrators and the transportation of those held in custody, including measures which resulted in subsequent injuries and deaths, were conducted in conformity with laws, regulations, principles or standards for custody and transportation of persons in such situations. It was also mandated to determine who should bear responsibility if these actions were indeed not in conformity with the aforesaid laws, regulations, principles or standards; and to submit its views on future preventive measures and on the provision of appropriate remedies to alleviate the damage caused to the families of those who died. In its assessment, the Commission found *inter alia* that there were errors of planning and implementation during the transportation of the demonstrators into custody, and that these errors led to the 78 reported deaths; and that state authorities acted irresponsibly when they failed to take any steps to minimize the number of casualties. Moreover, The Commission established that there was a serious dereliction of duty on the part of senior military officials. In its recommendations the Commission laid out a number of guidelines and preventive measures in order to avoid similar incidents in the future, as well as a number of remedial measures for the families of the deceased, those who sustained, and those in custody. The Commission also made recommendations on future administrative measures to be used in the region concerned, enforcement of the relevant law in the present situation, and recommended the participation of Thai government agencies in future regional or international Islamic organizations.

970. On 31 January 2005, the Government replied to the communication of 1 November 2004 and informed the Special Rapporteur of further developments in the investigation of the Tai Bak incident. The Government informed the Special Rapporteur that the Commission's Report had been considered by the Cabinet on 28 December 2004, which had in turn made the following recommendations; (i) the Ministry of Defence should initiate the military disciplinary process against the 3 commanding officers identified in the report as having failed in the discharge of

their duties; (ii) the competent police authorities should investigate the incident under the provisions of the Criminal Procedure Code so as to bring those responsible to justice under due process (where wrongdoers serve in the military and are under the jurisdiction of the Military Court, the Military Penal Code and the Statute of the Military Court shall apply);(iii) A commission shall be established to provide assistance and remedies to the families of those who died, were injured, are still missing or in respect of any property damaged or lost in the course of the incident; (iv) The Royal Thai Army, the Royal Thai Police, and the Ministries of Interior and Justice shall jointly undertake a study of both the Independent Fact-Finding Commission on the Tai Bak Incident's report and the Independent Commission on the Krue Sec incident's report, and submit their recommendations to the Prime Minister and Cabinet on how to manage similar scenarios, should they arise.

### Observations

971. The Special Rapporteur thanks the Government for its replies to his communications of 1 November 2004. He, however, regrets not having received any reply to his communication of 7 September 2005, and 7 October 2005. He looks forward to receiving a reply to his communication of 10 November 2005.

972. With respect to the communication of 7 September 2005, pending a reply to this communication and without making any determination on the facts, the Special Rapporteur deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

973. With respect to the communication of 7 October 2005, pending a reply to this communication and without making any determination on the facts, the Special Rapporteur deems it appropriate to make reference to Commission on Human Rights Resolution 2005/38, which provided that States should not resort to criminal laws and punishments for media related offences as these are deemed disproportionate to the gravity of the offence and violate international human rights law. Media related offences should preferably be dealt with under civil law with punishments being more of a pecuniary nature, so long as this is proportionate.

974. With respect to the communication of 10 November 2005, pending a reply to this communication and without making any determination on the facts, the Special Rapporteur deems it appropriate to make reference to Commission on Human Rights resolution 2005/38 which calls on States to ... (c) investigate effectively threats and acts of violence against journalists and to bring to justice those responsible to combat impunity.

### Togo

975. Le 15 février 2005, le Rapporteur Spécial a envoyé un appel urgent concernant la situation de *Radio Nana FM*, *Radio Nostalgie*, *Radio Kanal FM* et de la chaîne télévisée *TV7*. Selon les informations reçues, le 11 février, elles auraient été fermées pour un mois par les autorités togolaises pour incitation à la désobéissance civile et à la révolte, quelques heures après

que leurs locaux auraient été mis sous scellés, officiellement pour raisons fiscales. Les médias auraient été fermés sur ordre du tribunal de première instance de Lomé, saisi par l'Haute Autorité de l'audiovisuel et de la communication (HAAC), qui est supposée surveiller et protéger les médias. La requête de la HAAC expliquait que ces quatre médias privés continuaient à diffuser des communiqués appelant la population à des manifestations publiques. De plus, le 10 février les autorités auraient fermé Radio Lumière dans le village d'Aného, 50 kilomètres à l'Est de la capitale, après avoir confisqué l'équipement technique, pour avoir diffusé des programmes très critiques envers le nouveau président, qui incitaient à la révolte. Le 12 février, à Lomé, des heurts se seraient déroulés entre les forces de l'ordre et les manifestants, qui auraient répondu à l'appel des partis de l'opposition togolaise à descendre dans la rue. Deux personnes auraient été tuées par les gendarmes lors de ces affrontements et plusieurs autres blessées. Selon les informations reçues, des gendarmes encerclés par des manifestants auraient été obligés de procéder à des tirs de sommation à balles réelles pour éviter d'être lynchés par la foule. Ces coups de feu auraient atteint et tué deux personnes qui se trouvaient à proximité.

976. Par lettre datée du 1 Mars 2005, le Gouvernement a répondu à la communication du 15 février 2005. Le Gouvernement a informé le Rapporteur Spécial que bien que le cadre juridique togolais reconnaît la liberté d'expression et de la presse, il ne donne pas licence aux médias d'appeler à la désobéissance civile, à des manifestations publiques, ou à la guerre civile, et conséquemment la fermeture des *Radio Nana FM*, *Radio Nostalgie*, *Radio Kanal FM* et de la chaîne télévisée *TV7* a eu lieu en conformité avec la loi et les instruments juridiques internationaux. En outre, le gouvernement a informé le Rapporteur Spécial que, paradoxalement, les médias mentionnés dans sa communication ont été fermés aussi par décision de l'Autorité de Réglementation des Postes et Télécommunications pour non paiement d'arriérés de redevances annuelles.

977. Le 26 mai 2005, le Rapporteur Spécial, conjointement avec le Rapporteur Spécial sur la torture, a envoyé une lettre d'allégation concernant **les manifestants, les membres de la presse et les médias** dont les activités et les actions auraient été entravées pendant et après le déroulement du processus électoral. Ces personnes auraient fait l'objet de menaces mettant en danger leur intégrité physique et psychologique. Selon les informations reçues depuis le dimanche 24 avril 2005, les forces de l'ordre auraient empêché des membres d'organisations de défense des droits de l'homme et des médias de travailler. Des bureaux de médias indépendants auraient été fermés sur ordre des autorités nationales. Des membres de la presse internationale auraient été également refoulés du territoire. La Radio lumière aurait été saccagée par les militaires. Il semblerait également que les réseaux de téléphones portables et fixes, de même que les liaisons Internet, auraient été coupés au Togo, dans l'après-midi du 24 avril 2005, peu avant le début des opérations de dépouillement des votes. Par ailleurs, des affrontements violents se seraient produits entre les forces de l'ordre et des manifestants depuis l'annonce officielle par la Commission électorale nationale indépendante (CENI) de la victoire aux élections présidentielles, du candidat du Rassemblement du peuple togolais (RPT). Les manifestants auraient contesté la validité des résultats dans les rues de Lomé. Le 27 février 2005, une marche organisée par des organisations de femmes se serait également terminée par des affrontements entre les forces de sécurité et plusieurs manifestants. Le lendemain, cinq corps, dont celui d'un enfant âgé d'une dizaine d'années, auraient été retrouvés dans la Lagune de Bè. Des rapports estimerait qu'il y aurait eu 50 morts et cent blessés, dont la plupart par balles. De plus, d'autres affrontements entre les partisans de l'opposition et les forces de sécurité se seraient déroulés les 26 et 27 avril 2005, à Lomé, dans les quartiers de Bè, Kodjoviakopé, Baguida et

Adjiodogomé. Des barricades auraient été dressées par les manifestants, des pneus brûlés et des trous creusés. Divers moyens de répression auraient été utilisés par les forces de sécurité, notamment les armes, les grenades et les gourdins qui auraient servi à frapper les jeunes garçons et les hommes dans les rues et dans les maisons. Des affrontements se seraient aussi produits entre des jeunes et des militaires du camp Compagnie Maritime, le 26 et 27 avril 2005, à Aneho. Près de 11 morts et 100 blessés par balles auraient été recensés. D'autres affrontements violents entre les partisans de l'opposition et les militaires auraient eu lieu à Tsévie et à Atakpamé (les militaires du camp Landja). Ces violences auraient fait 1 mort et 21 blessés par balles à Tsévie et 16 morts, et 64 blessés (dont certains par balles explosives) à Atakpamé. Enfin, des affrontements opposant les partisans de l'opposition et ceux du RPT à Sokodé auraient été principalement localisés à Tchaouada, Kolondè et Salindè et auraient fait près de 3 morts et plusieurs blessés graves, dont un policier.

978. Par lettre datée du 12 août 2005, le Gouvernement a répondu à la communication du 26 mai 2005 concernant les allégations de violations des droits de l'Homme qui seraient survenues avant, pendant et après l'élection présidentielle du 24 avril 2005. Le gouvernement a informé le Rapporteur Spécial que les allégations faisant état de la fermeture des bureaux des médias indépendants sur ordre des autorités nationales ne reflètent pas la réalité. Les radios privées Nana FM, Kanal FM, Nostalgie et la Télévision Privée TV7 ont continué à diffuser les communiqués appelant la population à la révolte malgré les mises en demeure du Président de la Haute Autorité de l'audiovisuel et de la communication. En application des dispositions de la loi organique 2004-021 du 15 décembre 2004, le Président de la Haute Autorité a saisi le Président du Tribunal de Première instance de Lomé par requête en date du 11 février 2005 aux fins d'ordonner la suspension de l'autorisation d'installation et d'exploitation accordée à ces radios et télévisions. Par ordonnance n°0210/2005 du 11 février 2005, le Tribunal a ordonné la suspension pour une durée d'un mois de ces médias. La suspension a été levée dès le retour à la normale et ces médias étaient, au moment où cette réponse a été reçue, libres de suivre leurs activités. Le processus de l'élection présidentielle a été émaillé d'actes de violence et de vandalisme, d'exactions, de saccages et d'agressions contre les personnes et de destruction de biens publics et privés dans certains quartiers de la ville de Lomé et dans certaines localités. Selon les informations recueillies au Ministère de la Justice, aucune plainte n'a été déposée auprès des instances judiciaires. Dans le cadre des mesures d'apaisement, les personnes interpellées, poursuivies et inculpées ont été mises en liberté le 16 juillet 2005. Le gouvernement dénombre 171 personnes libérées. Le Ministère des droits de l'Homme, de la démocratie et de la réconciliation a été saisi de requêtes relatives aux allégations de cas de violations des droits de l'Homme. Ces requêtes étaient transmises soit à la Commission nationale spéciale d'enquête indépendante créée le 25 mai 2005, soit au Haut Commissariat aux Rapatriés et à l'Action Humanitaire pour examen. L'une des missions de la Commission est de diligenter les investigations en vue de déterminer les circonstances des actions faites de violence et de vandalisme. Dans le cadre de ses activités, elle a émis des communiqués de presse invitant les personnes qui s'estiment victimes à venir déposer leurs plaintes et sillonne le pays pour recueillir et enregistrer les plaintes. Le Gouvernement attendait, au moment où cette réponse a été reçue, les conclusions et recommandations de la Commission et de la Mission d'Etablissement des faits de l'ONU, accueillie en juin 2005. Il est à noter en ce qui concerne les informations relatives aux examens médicaux, que ces deux organes comportent en leur sein un médecin.



979. Le 22 juin 2005, le Rapporteur Spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé une lettre d'allégation concernant des **membres de la Ligue togolaise des droits de l'homme (LTDH)**, une organisation affiliée de la Fédération des Ligues des droits de l'homme (FIDH). Selon les informations reçues, le 13 mai 2005, une conférence de presse organisée par la LTDH pour présenter son rapport, «Stratégie de la terreur au Togo (II) – Un règne aussi court que sanglant », aurait été interrompue par l'entrée en force dans les locaux d'un délégué national des jeunes du Rassemblement du Peuple Togolais (RPT), du secrétaire général du Mouvement Togolais de défense des droits de l'homme, une organisation proche au pouvoir, et d'une cinquantaine de personnes ayant l'apparence de miliciens. Au même moment, un véhicule des Forces Armées Togolaise (FAT) aurait effectué des patrouilles à l'extérieur. Selon les informations reçues, le délégué du RPT aurait frappé le Vice-président de la LTDH, **Estri Clumson-Eklu** et l'aurait menacé en disant que la LTDH « sera[it]bientôt attaquée ». Les intrus seraient restés plus de deux heures dans les locaux de l'organisation empêchant la tenue de la conférence de presse. Cet incident aurait survenu après que les 3 et 4 mai 2005, des employés de la LTDH auraient vu l'accès de leur bureau entravé par la présence d'une dizaine des militaires armés qui l'aurait encerclé et que le 28 avril 2005, plusieurs miliciens armés se seraient présentés devant le domicile du Président de la LTDH, **Adote Akwei** apparemment pour l'intimider. Des sérieuses craintes ont été exprimées concernant le fait que ce harcèlement des membres de la Ligue togolaise des droits de l'homme n'aurait visé à l'empêcher de mener ses activités en faveur de la défense des droits de l'homme, en particulier celle de dénoncer des abus qui auraient été commis dans le contexte des événements de février 2005 et de l'élection présidentielle du 24 avril 2005.

980. Le 22 août 2005, le Gouvernement du Togo a répondu à la communication envoyée le 22 juin 2005 concernant le cas de la Ligue togolaise des droits de l'homme (LTDH). Le Gouvernement a informé la Représentante que le vendredi 13 mai 2005 la ligue avait organisé une conférence de presse à son siège pour rendre publique leur rapport sur les violations des droits de l'homme avant, pendant et après le scrutin présidentiel et indiqué qu'au cours de cet événement une série d'affrontement se serait produite entre les membres de la LTDH et les jeunes partisans du pouvoir. Le gouvernement a précisé que les dernières élections avaient donné lieu à des violations provenant de partisans du pouvoir et de l'opposition. Il a souligné que le LTDH en tant qu'organisation des droits de l'homme se devait de rester non-partisane et que tout manquement à ce principe entamait nécessairement sa crédibilité. Il a également condamné le fait que des partisans du pouvoir se soit permis d'empêcher la ligue de tenir sa conférence de presse. Il a indiqué qu'une Commission nationale spéciale d'enquête indépendante avait été créé ainsi qu'une Mission d'établissement des faits par l'ONU à la suite des événements parvenus au moment des élections. Il a indiqué que l'une des missions de la Commission nationale était de déterminer les circonstances des actions faites de violence et de vandalisme et que par conséquent, le gouvernement attendait ses conclusions et recommandations ainsi que celles de la mission de l'ONU pour diligenter les investigations judiciaires nécessaires. Le Gouvernement a mentionné qu'à sa connaissance aucune plainte n'avait été déposée par la LTDH et par conséquent aucune suite ne pouvait être donnée à l'affaire.

981. Le 17 octobre 2005, le Rapporteur Spécial, conjointement avec la Représentante Spéciale du Secrétaire Général sur la situation des défenseurs des droits de l'homme, a envoyé une lettre d'allégation concernant la situation de **Jean-Baptiste Dzilan** alias **Dimas Dzikodo**, rédacteur en

chef de l'hebdomadaire *Forum de la semaine*, et membre actif de la Ligue Togolaise des droits de l'homme. Selon les informations reçues, **Dimas Dzikodo** aurait été sévèrement agressé le 9 octobre 2005 alors qu'il se dirigeait, en compagnie d'un de ses frères, vers le quartier de Gbonvié au nord de Lomé. Sa moto aurait été renversée par une autre et plusieurs hommes se seraient lancés sur le journaliste en le rouant des coups et l'aspergeant avec un produit chimique. Les hommes auraient quitté le lieu après que des habitants du quartier auraient répondu aux appels au secours du journaliste, emportant avec eux la clé de son ordinateur et son téléphone portable. Selon les informations reçues, un pistolet automatique et des matraques auraient été retrouvés sur le lieu de l'agression et des gendarmes en civil auraient été reconnus en surveillance dans un bar devant la rédaction du journal de Dimas Dzikodo. Ces mêmes gendarmes l'auraient suivi. Cette attaque contre Dimas Dzikodo est survenue une semaine après qu'il aurait rencontré une délégation de la Fédération Internationale des droits de l'homme pour discuter notamment de la situation des défenseurs des droits de l'homme. Il a été aussi arrêté par les forces de sécurité en Juin 2003 et il aurait été détenu pendant 40 jours. Dimas Dzikodo, également secrétaire général de l'Organisation des éditeurs de la presse indépendante (OREPI), aurait aussi déjà fait l'objet de menaces de mort et aurait été, par ailleurs, interpellé plusieurs fois sous le régime précédent.

### Observations

982. Le Rapporteur Spécial remercie le gouvernement pour sa réponse à la communication du 15 février 2005.

983. Le Rapporteur Spécial remercie le gouvernement pour la réponse à sa communication du 26 mai 2005. Dans l'attente de plus amples informations sur les résultats de la Commission nationale spéciale d'enquête indépendante, et vu la gravité des allégations concernées et les conclusions de La mission Onusienne du 29 août 2005 d'établissement des faits chargée de faire la lumière sur les violences et les allégations de violations des droits de l'homme survenues au Togo avant, pendant et après l'élection présidentielle du 24 avril 2005, le Rapporteur spécial souhaiterait réitérer les craintes soulignées par la Commission des Droits de l'Homme dans sa Résolution 2005/38. La Commission s'est déclarée toujours préoccupée par le fait que, tout en notant que le paragraphe 3 de l'article 19 du Pacte international relatif aux droits civils et politiques dispose que l'exercice du droit à la liberté d'opinion et d'expression comporte des devoirs spéciaux et des responsabilités spéciales, elle appelle les Etats à ne pas imposer de restrictions incompatibles avec le paragraphe 3 de cet article, notamment ... i) à la participation à des campagnes électorales. De plus, et sans préjuger les faits concernés, la Commission a réitéré sa préoccupation concernant le fait que des violations des droits à l'opinion et la liberté d'expression continuent de se produire, souvent dans l'impunité, notamment des exécutions extrajudiciaires, des détentions arbitraires, des actes de torture, d'intimidation, de persécution et de harcèlement, des menaces et des actes de violence et de discrimination, notamment de violence et de discrimination fondées sur le sexe, des recours abusifs accrus aux dispositions législatives concernant la diffamation et la calomnie, la surveillance, la perquisition et la saisie, ainsi que la censure, visant des personnes qui exercent, cherchent à promouvoir ou défendent ces droits, notamment les journalistes et autres professionnels des médias, les écrivains, les utilisateurs de l'Internet et les défenseurs des droits de l'homme.

984. Le Rapporteur Spécial remercie le gouvernement pour la réponse à sa communication du 22 juin 2005.

985. Le Rapporteur Spécial souhaiterait bientôt recevoir une réponse à sa communication du 17 octobre 2005. Dans l'attente de cette réponse mais sans préjuger des faits examinés, le Rapporteur Spécial souhaiterait attirer l'attention du Gouvernement sur la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnues, et en particulier l'article 12 para. 2 et 3 qui stipule que l'État prend toutes les mesures nécessaires pour assurer que les autorités compétentes protègent toute personne, individuellement ou en association avec d'autres, de toute violence, menace, représailles, discrimination de facto ou de jure, pression ou autre action arbitraire dans le cadre de l'exercice légitime des droits visés dans la présente Déclaration. À cet égard, chacun a le droit, individuellement ou en association avec d'autres, d'être efficacement protégé par la législation nationale quand il réagit par des moyens pacifiques contre des activités et actes, y compris ceux résultant d'omissions, imputables à l'État et ayant entraîné des violations des droits de l'homme et des libertés fondamentales, ainsi que contre des actes de violence perpétrés par des groupes ou individus qui entravent l'exercice des droits de l'homme et des libertés fondamentales.

### Tunisia

986. Le 25 janvier 2005, le Rapporteur spécial, conjointement avec le Rapporteur Spécial sur l'indépendance des juges et des avocats et la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant le **Conseil national pour les libertés en Tunisie** (CNLT) et un de ses membres, **M. 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. Selon les informations reçues:

- i. 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 M. Ayadi.
- ii. Le 18 janvier 2005, Me Raouf 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 (FDTL, parti d'opposition), dans laquelle il défendait le secrétaire général du FDTL.
- iii. Me Raouf Ayadi aurait déjà fait l'objet de menaces et d'actes de harcèlement répétés : ses déplacements et son cabinet aurait été surveillés, et sa clientèle aurait été 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. Au jour que cette communication était envoyée, Me Ayadi serait toujours menacé d'expulsion.

- iv. Selon les informations reçues, le 16 janvier 2005, le siège du CNLT, situé dans 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.
- v. 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 auraient 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 concernant le fait que ces attaques ne visaient à empêcher le CNLT et ses membres de poursuivre leur action en faveur de la défense des droits de l'homme. Ces craintes étaient 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.

987. Le 14 novembre 2005 le gouvernement a répondu à la communication du 25 janvier 2005. Le gouvernement a affirmé 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. S'agissant du « Conseil National pour les Libertés en Tunisie » (CNLT), il est à préciser que cette formation 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 suivait son cours au moment où cette réponse a été envoyée. 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 l'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 « CNTL », il est à souligner que M. 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, M. Ayadi n'a introduit aucune plainte auprès du dit Commissariat concernant les prétendues « insultes et menaces » qui auraient été proférées à son encontre par un « délinquant ». Il en est, d'ailleurs, de même concernant le supposé « appel anonyme le menaçant de mort » et les allégations « de menaces et d'actes d'harcèlement répétés » dont il est fait état dans votre courrier, et 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. Ayadi » par une compagnie d'assurance, il est évident que cette question relève du ressort de la justice, seule habilitée à se prononcer sur ce litige d'ordre strictement privé. En outre, il convient de souligner que Me. Ayadi, juriste et avocat, n'ait pas engagé d'actions en justice concernant les faits qu'il a avancés. S'agissant des allégations se rapportant à M. Mongi Ben Salah, il est à préciser que sa plainte a été enrôlée sous le No. 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 suivait son cours au moment où cette réponse a été envoyée.

988. Le 25 février 2005, le Rapporteur Spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de **Abdallah Zouari**, un journaliste qui aurait déjà fait l'objet d'une lettre d'allégation envoyée par le Rapporteur Spécial sur la promotion et la protection à la liberté d'opinion et d'expression et la Représentante spéciale du Secrétaire Général sur les défenseurs des droits de l'homme le 13 octobre 2003. (G/SO 214 (67-11) G/SO 214 (107-3). Selon les nouvelles informations reçues, depuis sa libération en septembre 2004, les autorités continueraient à confiner Mr. Abdallah Zouari à Zarzis, une ville se trouvant en milieu rural dans la province de Medenine, à 500 kilomètres de distance de sa famille. Le 22 janvier 2005, le chef de sécurité de Zarzis aurait interdit l'accès de Mr. Abdallah Zouari aux quatre cafés Internet de la ville. Le 23 janvier 2005, Mr. Zouari aurait entamé une grève de la faim pour protester contre l'interdiction émanant des autorités de le laisser recevoir des visites et communiquer avec sa famille et ses amis. Des officiers de police entoureraient sa maison depuis le commencement de sa grève de la faim sans le laisser recevoir aucune visite. De plus, l'état de santé de Mr. Abdallah Zouari aurait nécessité son transfert d'urgence au service de cardiologie de l'hôpital de Zarzis en province de et, selon les informations reçues, les autorités auraient exercé des pressions sur le corps médical de l'hôpital afin d'empêcher son hospitalisation. En conséquence il aurait du rejoindre son domicile malgré ses souffrances et son état précaire. De sérieuses craintes ont été exprimées quant à l'état de santé de Mr. Zouari.

989. Le 14 novembre 2005 le gouvernement a répondu à la communication du 25 février 2005. Le gouvernement a affirmé que M. **Abdallah Zouari** a été impliqué dans une affaire criminelle liée à ses activités au sein du mouvement intégriste et terroriste « Ennadha », et ce, pour complicité dans la préparation d'une conspiration ayant pour but de changer la forme de gouvernement ainsi que pour appartenance à une organisation illégale, planifiant des actes d'agression contre les personnes et les biens. Se basant sur les aveux de l'intéressé et sur les résultats des enquêtes menées, établissant sa complicité dans la préparation et le commencement d'exécution du plan terroriste précité, le tribunal compétent l'a condamné, le 27 août 1992, à 11 ans d'emprisonnement et à 5 ans de contrôle administratif pour les chefs d'inculpation retenus contre lui, en application des articles 32 et 72 du Code pénal et de la loi no. 1959-154 du 7 novembre 1959. M. Abdallah Zouari a eu droit, tout au long de la procédure, à toutes les garanties nécessaires d'un procès équitable telles que prévues par la loi en vigueur. Après la libération de l'intéressé, le 6 juin 2002, l'autorité administrative compétente a fixé, par arrêté en date du 15 juillet 2002 et conformément au jugement du 27 août 1992, le lieu de résidence de M. Abdallah Zouari à la région de «Kassiba Hassi Jerbi » à Zarzis, dont il est originaire et lieu de sa résidence initiale qu'il a déclaré lui-même au moment de son arrestation, et ce, pour toute la période du contrôle administratif. Il ressort, par ailleurs, des éléments recueillis à ce sujet que M. Abdallah Zouari n'a jamais présenté de demande aux autorités

compétentes en vue de changer le lieu de sa résidence de « Kassiba Hassi Jerbi » à Zarzis, vers Tunis. Face au refus répétitif de l'intéressé de se conformer à l'arrêté en question, le juge cantonal de Zarzis l'a condamné, dans deux affaires distinctes, à 8 mois et à 9 mois d'emprisonnement, et ce, conformément à l'article 150 du Code pénal. Il y a lieu de noter que M. Abdallah Zouari a bénéficié, quant à sa première condamnation, d'une mesure de libération conditionnelle et ce, pour des raisons humanitaires. Aussi, et contrairement aux allégations qui vous sont parvenues, M. Abdallah Zouari n'a jamais été journaliste, et n'a jamais eu la carte professionnelle de journaliste, comme il n'a jamais exercé véritablement cette profession. Il a tout simplement publié quelques articles dans le journal « El Fajr », organe du mouvement « Ennahdha ». Il s'attribue cette qualité professionnelle afin de profiter du soutien d'un corps auquel il n'a jamais appartenu. Enfin, il est établi que M. Abdallah Zouari n'a jamais été empêché de recevoir ou de rencontrer ses amis ou les membres de sa famille.

990. Le 9 mars 2005, le Rapporteur Spécial, conjointement avec le Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur Spécial sur l'indépendance des juges et des avocats, et la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de M. **Mohammed Abou**, un avocat et défenseur des droits de l'homme. Selon les informations 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 Iraq et l'absence de critique à l'égard de la torture en Tunisie. Selon les informations reçues, Me Abou aurait été 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 aurait été 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 concernant le fait que cette arrestation ne représentait 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.

991. Le 29 aout 2005 le gouvernement a répondu à la communication de 9 mars 2005. Le gouvernement a informé le Rapporteur Spécial 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 déclenchée par le Parquet de Tunis sur la base d'une plainte déposée à son encontre par l'une de ses consœurs pour violences caractérisées ayant occasionné des préjudices corporels nécessitant l'admission de celle-ci aux urgences médicales et un arrêt de travail pendant un mois. Il a été également mis en examen pour diffamation des autorités judiciaires et incitant de la population à enfreindre les lois. 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 consœur 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. Il convient de souligner que la procédure judiciaire, ayant abouti à la condamnation de Me Abbou, s'est déroulée conformément aux règles de procédures en vigueur et au plein respect des garanties de défense. Par ailleurs, l'intéressé a bénéficié depuis son incarcération de toutes les garanties légales, dont notamment les droits à être soumis à un examen médical, à s'entretenir régulièrement avec ses avocats et à recevoir la visite de ses proches.

992. Le 17 mars 2005, le Rapporteur Spécial a envoyé un appel urgent concernant Maître **Muhammad Abu**, membre fondateur de l'*Association Internationale de Soutien aux Prisonniers Politiques*, et directeur du comité de l'*Association des Jeunes Avocats*. Selon les informations reçues, Maître Muhammad Abu aurait été arrêté le 1er mars 2005 après avoir publié un article sur Internet qui aurait critiqué la décision du Président Bin Ali d'inviter le Premier Ministre israélien, Ariel Sharon, pour la prochaine réunion du Sommet Mondial de la Société de l'Information (SMSI). De plus, plusieurs personnes, y compris des avocats notamment le doyen **Abdessatar Moussa**, **Samir Dikou**, **Tarek Ennouri**, **Fatma Hamdi** et **Khled Krichi** et la femme de Maître Muhammad Abu auraient été agressés et refoulés par les forces de police à l'extérieur du Palais de la Justice pendant qu'ils essayaient d'aider Maître Muhammad Abu lors de son passage devant le juge d'instruction. En outre, des manifestations organisées dans les différentes régions de la Tunisie pour protester contre cette même décision, auraient été interdites et réprimées par les forces de l'ordre. De plus le 28 février 2005, plusieurs étudiants auraient été arrêtés à Sfax et torturés:

- Mlle **Thouraya Hidouri**, étudiante à la Faculté des Lettres de Sfax, originaire de Bir Ali.
- Mlle **Nejiba Trabelsi**, étudiante en 3eme cycle à la Faculté des Lettres de Sfax.
- M. **Chawki Al Fourat**, étudiant en 4eme année à la Faculté des Lettres de Sfax.
- M. **Khaled Hidouri**, étudiant à la Faculté des Sciences de Sfax.
- M. **Hassan ben Salem**, étudiant en 3eme année d'histoire à la Faculté des Lettres et des Sciences humaines de Sfax.

Le 10 mars 2005, Mlle Thouraya Hidouri, Mlle Nejiba Trabelsi, Chawki Al Fourat et M. Khaled Hidouri auraient été condamnés à trois mois de prison avec sursis pour atteinte à la propriété publique et violence à l'encontre de fonctionnaire.

993. D'autres manifestations organisées par des partis politiques et des associations de la société civile auraient également été interdites par les autorités. Le 4 mars 2005, des affrontements entre les forces de l'ordre et les manifestants auraient eu lieu. Les policiers sur place auraient utilisés la violence et l'agressivité, en rouant de coups des manifestants. Le Rapporteur Spécial avait exprimé son inquiétude et encouragé les autorités à mener des investigations sur les faits présumés et à amener en justice les responsables pour les diverses violations de droits de l'homme mises en cause.

994. Le 30 septembre 2005 le gouvernement a répondu à la communication du 17 mars 2005. Le Gouvernement a informés le Rapporteur que, s'agissant des cinq étudiants de l'Université de Sfax, il y a lieu d'indiquer que ceux-ci ont été arrêtés en flagrant délit de participation à des troubles (jets de pierres au cours d'une manifestation organisée le 28 février 2005), ayant occasionné des dégâts à des propriétés publiques et privées ainsi que des préjudices corporels légers à des agents de la police et à certains perturbateurs nécessitant l'admission de ceux-ci à l'hôpital. Les intéressés ont été, ensuite, mis en état de détention, conformément aux dispositions de la loi. Un procès verbal a été dressé à ce sujet et transmis au procureur de la République auprès du Tribunal de première instance de Sfax. Traduits devant ledit Tribunal

pour atteinte à la propriété d'autrui et violence légère à l'encontre d'un fonctionnaire public dans l'exercice de ses fonctions, les intéressés ont été condamnés à 3 mois d'emprisonnement avec sursis. Deux parmi les cinq prévenus ont interjeté appel de ce jugement. Pour ce qui est de la prétendue « torture » dont les intéressés auraient fait l'objet, il convient de préciser que le Procureur de la République saisi de l'affaire a procédé à l'audition des intéressés au sujet des conditions de leur détention et n'a relevé, par la même occasion, aucun signe de violence apparent. Par conséquent, il a décidé le classement des plaintes déposées à ce propos, pour insuffisance de preuves et ce, en application de l'article 30 du Code de procédure Pénale. Il est à observer, toutefois, qu'à la suite de cette décision, les inculpés n'ont pas jugé nécessaire d'user du recours qu'offre l'article 36 du Code de Procédure Pénale, en l'occurrence la mise en mouvement de l'action publique sous leur propre responsabilité. Quant aux manifestations du 4 mars 2005, il convient d'indiquer que certains éléments appartenant à des formations n'ayant aucune existence légale ont tenté d'organiser une manifestation non autorisée, en se rassemblant dans l'artère principale de la capitale et en y bloquant la circulation et ce, pour protester contre l'invitation du Premier ministre israélien au Sommet Mondial sur la Société de l'Information (SMSI). En dépit des tentatives des agents des forces de l'ordre de les convaincre de l'illégalité de leur rassemblement et de la nécessité de quitter les lieux dans un laps de temps approprié, les manifestants ont refusé d'obtempérer et s'étaient adonnés délibérément à des attitudes provocatrices. En outre, certains étudiants perturbateurs ont empêché le déroulement normal des cours dans certaines universités, en usant, parfois, de la violence contre les étudiants non acquis à leurs thèses et obligeant ces derniers à se rassembler sur la voie publique et à bloquer la circulation et ce, dans le but de porter atteinte à l'ordre public. Il est à préciser que l'intervention des agents des forces de l'ordre pour disperser les dites manifestations illégales, s'est déroulée d'une manière pacifique et dans le cadre de la légalité.

995. Le 26 avril 2005, le Rapporteur Spécial a envoyé un appel urgent sur la situation de **M. Hamadi Jebali**, au sujet duquel une communication avait déjà été envoyée (E/CN.4/2004/56/Add.1, para. 1688), pour laquelle aucune réponse n'a été reçue au moment où cette communication a été envoyée. Selon les informations reçues, M. Hamadi Jebali aurait entamé une grève de la faim le 9 avril 2005 dans la prison de Sfax, pour dénoncer le manque de soins médicaux et les conditions inhumaines de détention des prisonniers. Son état de santé se serait sensiblement dégradé depuis. M. Hamadi Jebali aurait été arrêté en 1991 et condamné à Tunis à une peine d'emprisonnement d'un an pour diffamation. En 1992, toujours en prison, il aurait été condamné par un autre tribunal à 16 ans de prison pour « complot visant à renverser le régime ». Des craintes ont été exprimées quant à sa vie et sa santé s'il ne reçoit pas rapidement un traitement médical approprié. Des craintes ont été exprimées quant au fait qu'il pourrait être victime de torture ou de mauvais traitements.

996. Le 26 août 2005, le gouvernement a répondu à la communication de 26 avril 2005. Le gouvernement a informé le Rapporteur Spécial que **M. Hamadi Jebali**, membre fondateur et dirigeant du mouvement extrémiste clandestin « Ennahdha », a joué, dans le cadre d'un plan visant à renverser le gouvernement en place par la violence, un rôle de premier ordre dans la perpétration d'actes terroristes, qui se sont traduits, le 2 août 1987, par des explosions de bombes dans certains établissements touristiques à Sousse et Monastir, occasionnant de graves blessures à plusieurs employés et touristes et engendrant de sérieux dégâts matériels. Traduit devant la Cour de sûreté de l'Etat, il a été condamné, le 27 septembre 1987, à la peine capitale, pour attentat ayant pour but de changer la forme du gouvernement, en usant de la violence. Le 7 novembre 1987, l'intéressé a été gracié. Ayant retrouvé sa liberté, M. Jebali a continué un



rôle de premier plan au sein de cette mouvance extrémiste. Il a, notamment, assumé la direction du journal « El Fajr », organe de cette tendance. Ce journal est vite devenu la tribune de l'extrémiste et des appels fréquents à la violence et à l'anarchie. En effet, et à titre d'illustration, M. Jebali a publié dans « El Fajr » un article dont le contenu incitait la population à enfreindre des lois du pays. Le Tribunal de première instance de Tunis, en vertu de l'article 44 du Code de la Presse, l'a condamné, le 6 octobre 1990, en tant que directeur responsable de ladite publication, à 6 mois d'emprisonnement avec sursis et à une amende. Le 17 octobre 1990, « El Fajr » a publié un article diffamatoire à l'égard de la justice. Le Parquet auprès du Tribunal Militaire à Tunis a ouvert une information contre M. Jebali, directeur responsable de la publication, pour diffamation d'une cour de Justice, en vertu des articles 50, 51, 68 et 69 du Code de la Presse. L'intéressé a comparu, en état de liberté, devant le Tribunal Militaire de Tunis le 10 janvier 1991. Après plusieurs audiences, le Tribunal militaire de Tunis a prononcé son verdict le 31 janvier 1991, en condamnant M. Jebali à un an d'emprisonnement et à une amende. L'intéressé s'est pourvu en cassation. La Cour de Cassation a confirmé le jugement. M. Jebali n'a pas été condamné pour avoir critiqué l'existence des tribunaux militaires, mais parce qu'il diffamait des magistrats en s'en prenant à leur honneur et à leur personne. Par ailleurs, en menant ses investigations dans l'affaire concernant le complot contre la sûreté intérieure de l'Etat, dans lequel plusieurs éléments du mouvement dit « Ennahdha », étaient impliqués, le Juge d'instruction auprès du Tribunal Militaire de Tunis a découvert que M. Jebali y était impliqué. En effet, parallèlement à ses activités publiques, en tant que directeur du journal « El Fajr », M. Jebali est demeuré membre du Bureau exécutif secret du mouvement dit « Ennahdha ». Il a participé à la mise en œuvre du plan de subversion établi par le dit mouvement. Aussi, M. Jebali a-t-il créé des entreprises commerciales que constituaient des réseaux de financement du mouvement dit « Ennahdha », et une couverture pour ses activités et ses desseins subversifs. Le Juge d'instruction auprès du Tribunal Militaire de Tunis, chargé de l'enquête, estimant qu'il y avait des présomptions sérieuses de la culpabilité de M. Jebali, a émis à son encontre un mandat de dépôt en date du 20 août 1991, en vertu de l'article 84 du Code de Procédure Pénale. Le 28 août 1992, l'intéressé a été condamné par le Tribunal Militaire, seule instance compétente en la matière au regard de la législation tunisienne, à 15 ans d'emprisonnement pour complicité dans l'attentat ayant pour but de changer la forme du gouvernement, en usant de la violence, une année d'emprisonnement pour appartenance à une organisation illégale et à une peine complémentaire de 5 ans de surveillance administrative. Il convient d'indiquer que, tout au long des procédures judiciaires ayant abouti à sa condamnation, M. Jebali a bénéficié de toutes les garanties d'un procès équitable. Il purge actuellement sa peine à la prison civile de Mahdia, non loin de sa famille (qui habite à Sousse), et dans des conditions normales telles que prévues par la loi en vigueur, qui est d'ailleurs en parfaite harmonie avec les normes internationales en la matière. Celles-ci prévoient, entre autres, un suivi médical régulier au profit des détenus, lequel devient quotidien en cas d'annonce éventuelle d'une « grève de la faim ». Il y a lieu de souligner que M. Jebali n'est pas en « grève de la faim », s'alimentant aussi bien de la nourriture servie par l'administration pénitentiaire, que par celle fournie par sa famille. Il sied de rappeler que dans le cadre de son engagement en faveur du respect des droits de personnes privées de libertés, le Gouvernement Tunisien a décidé d'autoriser le Comité International de la Croix-Rouge (CICR) à visiter les établissements pénitentiaires, toutes les unités de détention provisoire et tous les lieux de garde à vue. A cet effet, un accord entre le Gouvernement Tunisien et le CICR a été signé, avec effet immédiat, le 26 avril 2005. A ce jour, le CICR a effectué des visites à plusieurs unités pénitentiaires dans différentes régions du territoire tunisien.

997. Le 12 mai 2005, le Rapporteur Spécial, conjointement avec le Rapporteur Spécial sur l'indépendance des juges et des avocats, et la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de Me **Mohammed Abbou**, avocat et membre de l'Association internationale de soutien aux prisonniers politiques (AISPP) au 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 concernant la situation des défenseurs des droits de l'homme), Me **Najib Hosni**, Me **Sonia Ben Amor**, Me **Ousama Thalja**, Me **Radhia Nasraoui** au sujet d'une lettre d'allégation envoyée le 22 novembre 2004 par 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 et d'une lettre d'allégation datée du 11 juin 2004 envoyée par le Rapporteur Spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et le Rapporteur Spécial sur la Torture), 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 concernant 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 reçues, le 29 avril 2005, suite à un procès qui n'aurait pas réuni toutes les garanties pour 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 détentions 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 été entravés dans l'exercice de la défense de leur client, Me Mohammed Abbou, lors de leur visite à la prison de Kef. Alors que Me Najib Hosni n'aurait pas été autorisé à voir son client, Me Sonia Ben Amor aurait pu le voir 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 événements, 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 par un des gardiens, accusations pour lesquelles elle devait 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 risquaient 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, auraient vu leurs vêtements déchirés et leurs lunettes arrachées. A la lumière de ces événements, le Rapporteur a exprimé sa vive préoccupation face aux allégations de ces actes de violence et d'intimidation qui semblent être dirigés à empêcher les avocats tunisiens d'exercer leur travail en défense de droits de leur clients ainsi que leur liberté d'expression.

998. Le 19 mai 2005, le Rapporteur spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de **Lotfi Hajji**, Président du Syndicat indépendant des Journalistes Tunisiens (SJT), créé en mai 2004. Selon les informations reçues, depuis le 25 avril 2005 M. Hajji a été convoqué par la Police à plusieurs reprises et s'est vu confisquer plusieurs livres au retour d'un voyage au Maroc. Le 4 mai, la Police lui aurait signifié que son syndicat ne disposait pas du statut légal lui permettant de publier un rapport sur les droits des médias et il aurait été à nouveau convoqué le 7 mai 2005. Malgré cela, le SJT a décidé de rendre public son rapport sur l'indépendance des médias dans le pays. Le 9 mai, dans les locaux de la police, M. Hajji a été informé que le SJT était considéré comme illégal et on lui a fermement conseillé de ne plus diffuser de communiqués de presse ou de rapport au nom du syndicat. Selon les informations reçues par le Rapporteur Spécial, d'après le Code du Travail de 1965 qui régit la vie syndicale en Tunisie, la création d'un syndicat ne nécessite pas d'autorisation de la part des autorités tunisiennes. Il faut noter également que les autorités tunisiennes avaient refusé, en 2004, l'accréditation de M. Hajji en tant que correspondant local d'Al Jazeera, la chaîne en langue arabe basée au Qatar.

999. Le 16 juin 2005, le Rapporteur Spécial, conjointement avec le Rapporteur Spécial sur l'indépendance des juges et des avocats, et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé une lettre d'allégation concernant la situation de **Mohammed Abbou**, avocat, qui a vu sa peine 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'agression physique sur l'une de ses consœurs 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 sur l'indépendance des juges et des avocats, le Rapporteur Spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme le 12 mai 2005 et d'un appel urgent envoyé 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 concernant la situation des défenseurs des droits de l'homme envoyé 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 été 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 aurait été autorisé uniquement à répondre oui ou non aux deux questions posées par le juge, sans pouvoir fournir la moindre explication. Le Rapporteur Spécial avait exprimé sa 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. Il craint que la condamnation de Mohammed Abbou soit liée à la publication sur Internet de certains articles concernant l'utilisation de la torture en Tunisie, l'invitation faite au premier ministre d'Israël Ariel Sharon d'assister au prochain sommet mondial sur la société de l'information SMSI ainsi que des considérations sur la famille du Président Ben Ali.

1000. Le 5 septembre 2005 le gouvernement a répondu à la communication du 16 juin 2005. Le gouvernement a informé le Rapporteur Spécial que M. Abbou a fait l'objet d'une instruction déclenchée par le Parquet de Tunis sur la base d'une plainte déposée à son encontre par l'une de ses consœurs pour violences caractérisées ayant occasionné des préjudices corporels nécessitant l'admission de celle-ci aux urgences médicales et un arrêt de travail pendant un mois. Il a été également mis en examen pour diffamation des autorités judiciaires et incitation à enfreindre les lois du pays. L'intéressé a comparu, le 2 mars 2005, en présence d'un nombre important d'avocats, devant le juge d'instruction près le Tribunal de première instance de Tunis qui a donné suite favorable à la demande de report formulée par le prévenu pour permettre à ses avocats de mieux préparer sa défense. M. Abbou a comparu de nouveau, le 16 mars 2005, devant le juge d'instruction qui a autorisé, pour les besoins du bon déroulement de l'instruction, et en application des prérogatives qui lui sont reconnues par la loi, à 17 de ses avocats d'assister à l'interrogatoire. Cette décision a été contestée par le prévenu qui avait refusé, dans le but de perturber le bon déroulement de l'instruction, de se soumettre à l'interrogatoire sous prétexte que tous ses avocats n'étaient pas présents. Devant l'impossibilité matérielle d'accueillir tous les avocats de la défense et devant le refus de l'intéressé de ne répondre qu'en présence de l'ensemble des avocats constitués dans l'affaire, 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, l'un des avocats présents s'était opposé à la présence de la représentante du Ministère public à l'interrogatoire; opposition formulée par l'avocat en question en méconnaissance des dispositions de l'article 73 du code de Procédure Pénale qui permet expressément au Procureur de la République d'assister aux interrogatoires et confrontations de l'inculpé. Le 23 avril 2005, le juge d'instruction a décidé la clôture de l'instruction et le renvoi du prévenu, sur la base des éléments du dossier, devant la Chambre correctionnelle près du Tribunal de première instance de Tunis pour coups et blessures suivis d'une incapacité partielle et permanente dont le taux ne dépasse pas 20%. Dans le cadre de la deuxième affaire, le juge d'instruction s'est heurté au refus catégorique de M. Abbou, qui, par ses écrits et son attitude s'est rendu coupable de diffusion de fausses nouvelles et diffamation des autorités judiciaires. Traduit devant la dite Chambre, le 28 avril 2005, l'intéressé a été condamné à deux ans de prison ferme pour violences caractérisées sur sa consœur ayant entraîné une incapacité permanente dont le taux ne dépasse pas 20% et à 18 mois de prison pour diffamation des autorités judiciaires, diffusion de fausses nouvelles et incitation de la population à enfreindre les lois. L'intéressé a interjeté appel de ce jugement. Il a comparu, le 10 juin 2005, en état d'arrestation, devant la Chambre correctionnelle près de la Cour d'appel de Tunis. Lors de l'examen de la première affaire, l'accusé a refusé de répondre à la Cour. La présidente de l'audience a dû, en application de l'article 148 du Code de Procédure Pénale, passer outre son silence et donné la parole à l'un des avocats de la défense qui a plaidé au profit de son client. Par la suite, la présidente de

l'audience a voulu donner la parole à un autre avocat de la défense. Néanmoins, l'un des confrères de ce dernier s'y était opposé, perturbant ainsi le cours normal de l'audience; chaque avocat voulant être le premier à plaider. Devant ce désaccord et le chahut qui s'en est suivi, la présidente de l'audience a décidé, sur la demande du parquet, la levée momentanée de l'audience jusqu'à ce que l'ordre soit établi. Dès le retour au calme, l'audience a repris en présence des avocats de l'intéressé qui ont présenté certaines demandes formelles. Leurs demandes rejetées, les avocats de la défense ont décidé de se retirer ; deux d'entre eux seulement et quelques observateurs étaient demeurés dans la salle. La Cour a, par la suite, procédé à l'examen de la deuxième affaire. L'accusé a reconnu la diffusion de l'écrit objet des poursuites. Quant aux deux avocats qui étaient demeurés à ses côtés, ils ont refusé de présenter leurs plaidoiries. Après délibération, la Cour a confirmé le jugement rendu par le Tribunal de première instance de Tunis, tant sur le plan civil que pénal ; arrêt devenu par ailleurs, définitif en l'absence de pourvoi de la part de prévenu ou du Procureur général près la Cour d'appel de Tunis. Il ressort de ce qui précède que la détention de M. Abbou n'est point 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 plein respect des garanties de défense. Par ailleurs, l'intéressé bénéficie, depuis son incarcération, de toutes les garanties légales, dont notamment les droits à être soumis à un examen médical, à s'entretenir régulièrement avec ses avocats et à recevoir la visite de ses proches ».

1001. Le 2 septembre 2005, le Rapporteur Spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de la **Ligue tunisienne des droits de l'Homme** (LTDH). Selon les informations reçues, le 1er septembre 2005, le comité directeur de la LTDH aurait reçu une assignation visant à l'annulation de la tenue de son 6ème Congrès national, prévu pour les 9, 10 et 11 septembre 2005 à Tunis. L'audience de référé aurait pour but de suspendre « la tenue du 6ème Congrès de la LTDH [...] pour mettre un terme à toute action et à toute initiative préparatoires à ce congrès ou ayant un rapport avec sa mise en œuvre à la date prévue ou à toute autre date ultérieure en n'importe quel lieu, qu'il s'agisse d'un espace public ou d'un local privé ». Selon les informations reçues, cette assignation résulterait d'une initiative de 22 personnes alléguant de leur appartenance à la LTDH mais connues pour être affiliées au Rassemblement constitutionnel démocratique (RCD, parti au pouvoir). L'audience en référé qui devait se tenir le 2 septembre à 9h00 devant le tribunal de première instance de Tunis a été reportée au 5 septembre à la demande de la défense. Maître Poulain, avocate au barreau de Paris qui avait été mandatée par l'Observatoire pour la protection des défenseurs des droits de l'homme pour assister à l'audience n'aurait par ailleurs pas été autorisée à accéder au tribunal sous prétexte qu'elle est étrangère et les membres du comité directeur de la LTDH auraient subi le même refus. D'autre part, selon les informations reçues, une requête au fond aurait été déposée devant la chambre civile de 1ère instance de Tunis par les mêmes personnes demandant l'annulation de la convocation par le comité directeur au Congrès de la LTDH, ainsi que de tout ce qui peut en découler comme travaux, décisions et instances. Ces faits interviennent après que le 30 août, une partie des membres du Conseil ainsi que des invités auraient été empêchés d'entrer dans les locaux du siège de la LTDH pour la tenue de son Conseil national par la police.

Des craintes ont été exprimées concernant le fait que cette action en justice ne vise à empêcher la tenue du Congrès de la LTDH et à faire obstacle à son bon fonctionnement. Elle intervient dans un contexte de harcèlement à l'encontre de la LTDH, notamment après que les fonds de la LTDH aient été gelés par les autorités tunisiennes en novembre 2003, ce qui avait déjà été l'objet de deux communications par la Représentante Spéciale en date du 7 mai 2004 et du 5 novembre 2003.

1002. Le 2 septembre 2005, le Rapporteur Spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation du **Syndicat Indépendant des Journalistes Tunisiens (SJT)** à Tunis. Selon les informations reçues, le 24 août 2005, **Lotfi Hajji**, le Président du SJT aurait été convoqué par la police de Tunis et interrogé pendant 4 heures. Les autorités l'auraient informé de la décision d'empêcher la tenue du Congrès constitutif du SJT prévu pour le 7 septembre prochain à Tunis ainsi que la tenue du séminaire sur les syndicats de journalistes du Maghreb prévu pendant le congrès. M. Lotfi Hajji a déjà fait l'objet d'un appel urgent envoyé le 19 mai 2005 par le Rapporteur Spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme. Les autorités auraient par ailleurs refusé de signifier ces interdictions par écrit à l'avocat du syndicat et n'auraient fourni aucune base légale fondant cette interdiction. La police aurait insisté sur le fait que le SJT serait considéré comme une organisation illégale et ceci malgré le fait que le SJT aurait respecté toutes les procédures légales en vigueur depuis sa création en mai 2004. Des craintes ont été exprimées concernant le fait que cette interdiction ne vise à empêcher le SJT de fonctionner. Ces craintes sont d'autant plus vives que Mr. Hajji, aurait déjà été convoqué par la police à plusieurs reprises et brièvement détenu, les autorités lui auraient aussi confisqué des livres et l'aurait menacé de le poursuivre en justice alors que le rapport de son syndicat sur la répression des médias en Tunisie était sur le point d'être rendu public. Le 9 mai 2005 au cours d'un autre interrogatoire, les autorités lui auraient aussi demandé la liste des 160 membres du Syndicat ce qu'il avait refusé de leur communiquer.

1003. Le 6 septembre 2005, le Rapporteur Spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la suspension de la tenue du congrès national de la **Ligue Tunisienne pour les Droits de l'Homme** qui avait déjà fait l'objet d'un appel urgent par le Rapporteur Spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme le 2 septembre 2005. Selon de nouvelles informations, Lundi 5 septembre 2005, le tribunal de première instance de Tunis statuant en référé aurait décidé de suspendre la tenue du congrès de la LTDH prévu pour les 9,10 et 11 septembre 2005 ainsi que tous les travaux préparatoires visant à la tenue de cet événement à cette date ou à toute autre date jusqu'à ce qu'un jugement définitif au fond soit rendu dans l'affaire. Les mesures provisoires décidées par le tribunal étaient à exécution immédiate.

1004. Le 7 septembre 2005, le Rapporteur Spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de la **Ligue Tunisienne des Droits de l'Homme** qui avait déjà fait l'objet d'appels urgents en date du 2 septembre 2005 et du 6 septembre 2005. Selon les nouvelles informations reçues, le 7 septembre au matin, de nombreuses forces de

police en uniforme et en civil auraient encerclé le siège de la LTDH empêchant la libre entrée du bureau. Les forces de police seraient munies de listes en fonction desquelles elles autoriseraient ou non les entrées. Des barrages auraient également été mis en place dans les rues avoisinantes afin de contrôler l'accès à la ligue. D'après les informations reçues, à la demande des auteurs de la plainte déposée à l'encontre de la LTDH un huissier se serait présenté par deux fois dans la journée à 9 heures 45 et à 13 heures afin de vérifier que la LTDH ne continue pas les préparatifs pour son congrès annuel. Des craintes ont été exprimées concernant le fait que cette action ne vise à la fermeture de la Ligue et à mettre fin à ses activités en faveur de la défense des droits de l'homme.

1005. Le 23 septembre 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 torture, a envoyé un appel urgent concernant la situation de la **Ligue Tunisienne des Droits de l'Homme** (LTDH) qui avait déjà fait l'objet d'appels urgents les 2, 6 et 7 septembre 2005. Selon de nouvelles informations, les comités de section de la LTDH auraient décidé en concertation avec le comité directeur d'organiser des réunions d'information pour les adhérents dans les différentes sections locales. Cependant, les 16, 17 et 18 septembre 2005, les réunions prévues à Jendouba, Mahdia, Sousse, Bizerte, Gafsa et Monastir auraient été empêchées par les forces de polices qui auraient encerclé les locaux de ces sections et filtré l'accès interdisant aux militants y compris les membres des comités de sections et les membres du comité directeur ayant fait le déplacement de s'approcher. Les comités de sections de Mateur, de Kébili et de Gabès auraient également été empêchés de tenir leurs réunions ordinaires dans leurs locaux. Le lundi 19 septembre, alors que les responsables de la section de Mahdia allaient se réunir, l'encerclement de leur local par les policiers en civil aurait interdit l'accès à leur lieu légal de réunion. Devant l'insistance des membres de la LTDH, les forces de police, menées par le vice-président du district de police auraient isolé le président de la section, Mohamed Ataya, et l'auraient agressé. En particulier, il aurait été frappé à la gorge ce qui aurait provoqué une asphyxie et engendré une violente tachycardie. Suite à cette agression, M. Ataya aurait dû être transporté en urgence à l'hôpital, où il était encore le jour où cette communication a été envoyée sous observation médicale.

1006. Le 4 octobre 2005, le Rapporteur Spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé une lettre d'allégation concernant la situation des défenseurs des droits de l'homme en Tunisie. Selon les informations reçues, il semblerait qu'au cours des semaines précédent le moment où cette communication a été envoyée, les organisations de défense des droits de l'homme ainsi que leurs membres ne fassent l'objet d'un harcèlement continu de la part des autorités visant à mettre un terme à leurs activités de promotion et protection des droits de l'homme. Les Rapporteurs étaient profondément préoccupés par les obstructions à la liberté d'association auxquelles semblent se heurter les défenseurs des droits de l'homme. Selon les informations, la liberté d'association est reconnue par l'article 8 de la Constitution tunisienne et régie par la loi du 7 novembre 1959 modifiée le 2 août 1988 et 2 avril 1992. La création d'une association est en théorie soumise à un régime de déclaration contre laquelle le ministère de l'intérieur délivrerait un récépissé permettant la publication au journal officiel. Il semblerait néanmoins, qu'en pratique, les autorités se comportent comme si les associations étaient soumises à un régime d'autorisation préalable, ce qui aurait pour effet de contraindre les défenseurs à fonctionner dans l'illégalité afin de pouvoir poursuivre leur travail. En particulier, les informations qui sont parvenu faisaient état de nombreux cas d'organisations non

gouvernementales (ONG) travaillant à la défense des droits de l'homme qui se verraient contraintes d'opérer dans l'illégalité, alors même qu'elles auraient fait les démarches nécessaires selon la loi en vigueur pour se constituer en associations. De nombreuses associations auraient physiquement été empêchées par les forces de l'ordre de déposer leurs statuts, se seraient vu refuser la délivrance du récépissé confirmant leur déclaration ou le dépôt de leurs statuts serait resté sans réponse. Il nous a été rapporté qu'à de nombreuses reprises l'absence de reconnaissance légale des organisations de défense de droits de l'homme a été utilisée par les autorités pour leur refuser certains droits, notamment la publication de rapports ou la tenue de réunions. De telles pratiques, si elles étaient avérées, représenteraient une violation de l'article 5 (b) de la Déclaration des défenseurs qui reprend l'article 22 du Pacte International sur les libertés civiles et politiques et qui garantit le droit fondamental à la liberté d'association, tout particulièrement quand celle-ci a pour but la défense de droits internationalement reconnus. Nos informations font également état de tentatives d'interférence dans la gestion interne des associations visant à bloquer leur fonctionnement. En particulier, des membres effectifs ou fictifs des dites associations proches du gouvernement tenteraient de discréditer les organes directeurs pourtant dûment élus par des communiqués de presse diffamatoires, des appels à de nouvelles élections internes ou des actions en justice. Par ailleurs, les Rapporteurs étaient profondément préoccupés par les entraves à la liberté de réunion qui semblent être imposées aux défenseurs des droits de l'homme. Selon les informations reçues, la liberté de réunion en Tunisie est garantie par la Constitution et régie par la loi du 24 Janvier 1969 qui stipule que seul un préavis de l'autorité compétente est nécessaire. Il semblerait cependant que les ONG des droits de l'homme se verraient fréquemment empêchées de tenir leurs réunions, assemblées générales, congrès annuels ou séminaires. Les Rapporteurs avaient notamment 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 des membres aux réunions. Les Rapporteurs ont exprimé leur plus vive inquiétude à l'égard des informations qu'ils ont reçues concernant les violences physiques perpétrées par les forces de l'ordre contre les défenseurs lors de ces incidents. Il semblerait par ailleurs que les forces de sécurité exercent une surveillance permanente des associations et de leurs membres, notamment en postant des policiers en civil aux alentours, ce qui a pu être constaté lors du passage en Tunisie de la Représentante Spéciale au printemps dernier. Les Rapporteurs ont également souligné leur plus vive inquiétude devant les restrictions qui semblent être imposées à la liberté d'expression en Tunisie. Depuis début 2002, les Rapporteurs ont en effet suivi quelques 14 cas concernant la mise à l'amende, la mutation forcée, l'arrestation, et l'emprisonnement de nombre de journalistes, d'avocats et de magistrats pour avoir soulevé publiquement des questions de droits de l'homme. Il semblerait, en particulier, que les journalistes fassent face à une criminalisation grandissante de leur activité. Dans le cadre de leurs mandats, les Rapporteurs ont reçu de nombreux cas de journalistes faisant l'objet de poursuites judiciaires pour « diffamation », « propagation de fausses nouvelles de nature à troubler l'ordre public », « outrage » aux autorités pour avoir publiquement dénoncé des violations des droits de l'homme. Dans ce cadre, nous tenons à rappeler au Gouvernement de votre Excellence les provisions des articles 5 (c), 6 et 7 de la Déclaration sur les défenseurs des droits de l'homme qui reprennent l'essence de l'article 19 du Pacte sur les libertés civiles et politiques et garantissent la liberté d'expression, en particulier dans le cadre de la promotion et protection des droits de l'homme. Il semblerait en outre que certains défenseurs des droits de



l'homme soient victimes de fausses accusations motivées par une volonté de nuire à leur travail et réputation qui conduiraient à leur condamnation au cours de procédures judiciaires ne respectant pas les droits de la défense. Les Rapporteurs ont également attiré l'attention du Gouvernement sur les difficultés rencontrées par certaines ONG de défense de droits de l'homme pour accéder aux fonds étrangers destinés à leur activité. Ils ont salué l'issue favorable qui a pu être trouvée à la situation de l'Institut arabe des droits de l'homme. Ils sont restés néanmoins préoccupés par la situation de certaines autres associations confrontées aux mêmes difficultés. Il semblerait que les restrictions soient, en partie, fondées sur la législation mise en place pour combattre le terrorisme. Quoiqu'ils aient reconnu pleinement l'importance pour le Gouvernement tunisien de combattre ce fléau, ils ont souhaité souligner que la capacité des défenseurs des droits de l'homme de mener à bien leurs activités repose sur leur aptitude à accéder aux financements, notamment en provenance de l'étranger. Ce droit ne saurait être remis en question dans le cadre de la lutte contre le terrorisme en particulier lorsque et les bénéficiaires et les bailleurs de fonds représentent des entités connues et transparentes dont l'activité de défense des droits de l'homme est clairement reconnue ainsi que stipulé par l'article 13 de la Déclaration.

1007. Le 6 octobre 2005, le Rapporteur Spécial a envoyé un appel urgent concernant l'état de santé du journaliste **Hamadi Jebali**, détenu depuis 1991 et qui a entamé une grève de la faim le 15 septembre 2005. Hamadi Jebali a déjà fait l'objet d'un appel urgent par le Rapporteur Spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Rapporteur Spécial sur la torture le 26 avril 2005. Selon les informations reçues, son épouse, Wahida Jebali, lui aurait rendu visite pour la dernière fois le 20 septembre. Depuis, elle s'est vu refuser, selon les informations reçues, son droit de visite le 27 septembre et le 4 octobre. Jebali, ancien directeur de l'hebdomadaire *Al Fajr*, organe du mouvement islamiste An Nahda, avait été arrêté le 31 janvier 1991, et condamné immédiatement à un an de prison pour « diffamation » après la publication d'un article demandant la suppression des tribunaux militaires. Le 28 août 1992, Jebali avait été condamné à seize ans de prison pour « appartenance à une organisation illégale » et « volonté de changer la nature de l'Etat ». Détenu donc depuis 1991, il devrait être libéré en 2007. Le 9 avril 2005, le journaliste avait déjà commencé une grève de la faim pour protester contre le fait qu'il était détenu à 250 kilomètres de sa famille. Jebali avait interrompu la grève de la faim le 25 avril, après son transfert à la prison de Mahdia, proche au lieu de résidence de sa famille.

1008. Par lettre datée du 22 décembre 2005, le gouvernement a répondu à la communication urgente du 6 octobre 2005 concernant **Monsieur Hamadi Jebali**. Le gouvernement a informé le Rapporteur Spécial que le 17 octobre 1990, le journal « El Fajr » a publié un article diffamatoire à l'égard de la justice. Le parquet auprès du Tribunal militaire à Tunis a ouvert une information contre M. Jebali, directeur responsable de la publication, condamné à un an d'emprisonnement et à une amende pour diffamation d'une Cour de Justice et non pour avoir critiqué l'existence des tribunaux militaires. Parallèlement à ses activités en tant que directeur de journal. M. Jebali est demeuré membre du Bureau exécutif secret du mouvement dit « Ennahdha » Il a été condamné par le Tribunal Militaire le 28 août 1992 à 15 ans de réclusion pour complicité dans l'attentat ayant pour but de changer la forme du gouvernement en usant de la violence, une année d'emprisonnement pour appartenance à une organisation illégale et 5 ans de surveillance administrative. Tout au long des procédures judiciaires, M. Jebali a bénéficié de toutes les garanties d'un procès équitable. Il purge sa peine de prison à la prison civile de Mahdia, non loin de sa famille et dans des conditions normales telles que prévues par la loi. Il existe un suivi

médical régulier lequel devient quotidien en cas d'annonce d'une grève de la faim. M. Jebali ne se trouve pas en grève de la faim. Il observe de temps en temps un jeûne au cours des périodes habituelles d'abstention de nourriture pour les musulmans pratiquants.

1009. Le 19 octobre 2005, le Rapporteur Spécial, conjointement avec le Rapporteur Spécial sur la torture et la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant le président de la section de la Ligue Tunisienne des droits de l'homme, **Mohamed Attia**, qui, le 19 Septembre à Mahdia, aurait été violemment pris à partie par la police devant le local de la section. A la suite de cette altercation, il aurait dû être hospitalisé. La police aurait exercé des pressions sur le personnel médical pour qu'il ne soit pas gardé en soins à l'hôpital. De plus, le 2 octobre à Kairouan, à l'occasion d'une tentative de réunion au local de la Ligue Tunisienne des droits de l'homme, **Zakia Dhifaoui** aurait été agressée par 5 agents de police, qui l'auraient frappée et traînée sur plusieurs centaines de mètres jusqu'au commissariat où elle aurait été insultée, frappée et maintenue à genoux plus d'une heure, puis interrogée par le chef du district et menacée de poursuites pour agression sur des agents dans l'exercice de leur fonctions. Après sa libération, elle se serait rendue à l'hôpital régional pour se soigner. Elle y aurait trouvé les mêmes agents de police qui l'y auraient précédée. Le médecin de garde ne lui aurait pas délivré un certificat médical, ce ne serait que le lendemain que le chef du service des urgences lui aurait délivré un certificat de 4 jours après s'être excusé des pressions et des coups de téléphone reçus de la police du district. Le 16 Octobre 2005, **Mokhtar Trifi**, Président de la Ligue Tunisienne des droits de l'homme, aurait été empêché d'arriver au local de la section de Bizerte par la police alors qu'il comptait tenir une réunion avec les adhérents. A Kairouan, **Messaoud Romdhani**, président de la Section de la Ligue Tunisienne des droits de l'homme aurait été agressé par des agents de police en civil qui auraient déchiré ses vêtements et l'auraient insulté puis conduit au commissariat et menacé de poursuites. D'autres membres de la LTDH auraient également été agressés dont **Taoufik Gueddah**, **Makki Ayadi**, **Mouldi Romdhani** ainsi que des syndicalistes dont **Naceur Ajili**, **Abdellaziz Sebri** et **Fathi Letaief**, secrétaires généraux adjoints de l'union régionale du travail de Kairouan. A Mateur, à l'occasion d'une tentative de réunion de la section, des policiers en civil auraient usé de violences contre **Mohamed Salah Nehdi**, président de la Section, ainsi que les membres du comité dont **Chadhli Maghraoui**, **Abderrahmane Marsani** et **Fethi Maghraoui**. Quand ils se seraient rendus au commissariat, les agents auraient refusé d'enregistrer leur plainte. A Nafta le président de la section, **Chokri Dhouibi** aurait lui aussi été agressé par la police qui aurait suivi les membres de la Ligue jusque dans les cafés, leur interdisant de s'attabler. **Abdellatif Bouhjila**, qui purge une peine de 11 ans depuis 1998, avait entamé une grève de la faim depuis le 15 août pour exiger son droit à bénéficier des soins prescrits par le médecin et que l'administration carcérale lui refuse arbitrairement, sachant que Bouhjila souffre d'asthme et d'insuffisance rénale. Il aurait été battu par les gardiens et placé en isolement pour avoir refusé de s'alimenter. Le 7 octobre, **Naceur Bejaoui**, qui purge actuellement une peine 19 ans et 3 mois de prison depuis 1991 aurait été violemment battu par le directeur de la prison de Borg Erroumi, Imed Ajmi, juste après la visite hebdomadaire qui aurait été brutalement interrompue par le gardien Rachid, au moment où Naceur Bejaoui demandait à son père de prendre contact avec des ONG de droits humains pour les informer de sa situation. Il aurait été par la suite enchaîné et placé en isolement au cachot. Naceur Bejoui avait entamé une grève de la faim le 16 septembre pour exiger son droit à bénéficier du principe de l'autorité de la chose jugée, parce qu'il avait été condamné deux fois pour les mêmes faits.

1010. Le 21 octobre 2005, le Rapporteur Spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé une lettre d'allégation concernant Le 18 octobre 2005, Me **Ahmed Néjib Chebbi** Secrétaire général du Parti démocratique progressiste (PDP), **Hamma Hammami**, Porte-parole du Parti communiste ouvrier tunisien (PCOT), Me **Abderraouf Ayadi**, vice-Président du Parti du congrès pour la république (CPR), **Mokhtar Yahyaoui**, magistrat et Président du Centre pour l'indépendance de la justice (CIJ), Me **Mohamed Nouri**, Président de l'Association internationale de soutien aux prisonniers politiques (AISPP), Me **Ayachi Hammami**, Président du Comité de soutien de l'avocat Me Abbou et **Lotfi Hajji**, Président du Syndicat indépendant des journalistes tunisiens, rejoints par Me **Samir Deilou**, membre de l'AISPP, qui, le 18 octobre 2005, auront entamé une grève de la faim dans le bureau de Me Ayachi Hammami à Tunis, auraient été assiégés, depuis la tenue d'une conférence de presse qu'ils auront donné sur les raisons de cette grève, par un dispositif policier démesuré qui aurait empêché tout contact avec l'extérieur. La police aurait par ailleurs agressé des délégations d'étudiants, de syndicalistes, de journalistes, des opposants politiques et des défenseurs de droits humains venus exprimer leur soutien et leur solidarité avec les grévistes de la faim. M. Hajji a déjà fait l'objet de deux communications du Rapporteur Spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et de la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme le 19 mai 2005 et le 2 septembre 2005. M. Ayadi a déjà fait l'objet de deux communications envoyées par le Rapporteur Spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, le Rapporteur Spécial sur l'indépendance des juges et des avocats et la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme en date du 25 janvier 2005 et du 12 mai 2005.

1011. Le 27 octobre 2005, le Rapporteur Spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de Me **Hédi Menai**, membre de la section régionale du Conseil de l'ordre des avocats, membre fondateur et ancien dirigeant du CNLT, membre du bureau de la section de Jendouba de la Ligue tunisienne des droits de l'Homme (LTDH) et coordinateur de la Fédération de Jendouba du Forum démocratique pour le travail et les libertés (FDTL). Selon les informations reçues, le 16 septembre 2005, des agents de police en civils auraient encerclé le cabinet de Me Hédi Menai, lui en interdisant l'accès alors qu'il était accompagné d'un notaire et de clients. Le procureur de la République du Tribunal de Jendouba appelé par Me Mena, aurait refusé d'intervenir et d'enregistrer sa plainte, lui recommandant de s'adresser au commissaire de police de Jendouba responsable de l'encerclement du cabinet. Le 18 septembre 2005, le chauffeur de Me Hédi Menai, M. **Fethi Taboui**, aurait été arrêté. Après que Me Menai aurait apporté la preuve que M. Taboui ne pouvait être impliqué dans l'affaire dont il était accusé, la police aurait invoqué d'autres affaires. Il aurait finalement été libéré le 21 septembre 2005. Une plainte déposée pour détention arbitraire aurait été classée par le Parquet. Des craintes ont été exprimées concernant la possibilité que cette arrestation n'ait visé à immobiliser Me Menai qui se trouve dans l'impossibilité de conduire à cause d'un handicap à la jambe. En outre, depuis près de cinq mois, Mme **Leila Ayadi**, secrétaire de Me Menai, serait régulièrement abordée par les agents de police qui insisteraient pour qu'elle quitte son emploi dans ce cabinet. Selon l'information reçue, des policiers en civil ainsi que des agents officiels du commissariat de Jendouba auraient encerclés le siège du cabinet de Me Menai, afin de dissuader ses clients d'avoir recours à son conseil. De vives craintes ont été

exprimées concernant la possibilité que ces actes ne visent à empêcher Me Menai d'exercer son activité de défenseur des droits de l'homme. En particulier, selon les informations reçues, ces actes d'intimidation auraient pris une nouvelle ampleur depuis que Me Menai se serait constitué comme avocat de la famille de M. Moncef Louhichi, mort en détention à Tabarka, le 16 juin 2005. En particulier, en juin 2005, le Gouverneur de Jendouba ainsi que le Maire de Tabarka seraient intervenus auprès de la famille de M. Louhichi pour l'inciter à retirer l'affaire à Me Menai. Malgré ces pressions, la famille aurait maintenu le choix de son avocat.

1012. Le 11 novembre 2005, le Rapporteur Spécial, conjointement avec le Rapporteur Spécial sur la torture et la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de Me **Mokhtar Trifi**, président de la Ligue tunisienne des droits de l'Homme (LTDH), Me **Mohamed Jmour**, membre du Conseil national de l'Ordre des avocats, et Me **Khémaïs Chammari**, ancien vice-président de la FIDH et la répression, le 8 novembre 2005, d'un rassemblement en soutien à l'action des grévistes de la faim dits « du 18 octobre 2005 ». Selon les informations reçues, les policiers en civil et en uniforme présents auraient violemment pris à partie les manifestants. En particulier, Me Mokhtar Trifi aurait été traîné sur le sol et frappé au niveau des yeux, devant sa femme et sa fille. Me Mohamed Jmour, qui tentait de venir en aide à son confrère, aurait également été agressé et un journaliste français, présent sur les lieux et qui filmait les actes des policiers, se serait fait arracher son sac et sa caméra. MM. **Mounir Fallah**, **Chawki Laarif** et **Salah Belhouichet**, militants de l'Union générale des étudiants de Tunisie (UGET) auraient aussi été agressés, arrêtés et brièvement détenus. Selon les rapports nous étant parvenus, vers 11h00, un huissier de justice, se serait présenté à l'étude de Me **Ayachi Hammami**, président du Comité de soutien à Me **Mohamed Abbou** et secrétaire général de la section de Tunis de la LTDH, afin de lui remettre la demande de la propriétaire de quitter les locaux dans les 24 heures, au motif que l'usage actuel qui en est fait ne correspond pas à celui inscrit dans son bail. Cette notification qui n'émanerait pas d'une décision judiciaire et ne présenterait aucune valeur légale, exigerait également la « cessation immédiate de toute activité non conforme à la nature du bail, sous 24 heures ». Le bureau de Me Hammami tiendrait lieu de siège à Me Ayachi Hammami lui-même, MM. **Ahmed Néjib Chabbi**, secrétaire général du Parti démocratique progressiste (PDP), **Abderraouf Ayadi**, secrétaire général du parti du Congrès pour la République (CPR), **Hamma Hammami**, porte-parole du Parti communiste ouvrier tunisien (PCOT), **Mohamed Nouri**, président de l'Association internationale de soutien aux prisonniers politiques (AISPP), **Samir Dilou**, membre du bureau de l'AISPP et du Comité de défense de Me Abbou, **Mokhtar Yahyaoui**, magistrat et président du Centre pour l'indépendance de la justice (CIJ) et **Lofti Hajji**, président du Syndicat des journalistes tunisiens (SJT), tous en grève de la faim depuis le 18 octobre 2005. Ces derniers protesteraient contre la détérioration de l'état des libertés en Tunisie et revendiqueraient, entre autres, le respect du droit de réunion et d'association, la reconnaissance de tous les partis politiques, le respect des droits d'opinion, d'information, de communication, ainsi que la libération de l'ensemble des prisonniers politiques.

1013. Le 14 novembre 2005, le Rapporteur Spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de M. **Christophe Boltanski**, envoyé spécial du quotidien français *Libération*. Selon les informations reçues, le 11 novembre 2005 dans la soirée, M. Christophe Boltanski aurait été agressé et poignardé, à proximité de son hôtel, par

quatre inconnus dans le quartier des ambassades de Tunis. Les quatre hommes l'auraient aspergé d'un gaz lacrymogène, frappé notamment au visage et lui auraient donné un coup de couteau dans le dos. Les agresseurs auraient emporté ses affaires, notamment ses carnets de notes, son téléphone et sa clef USB. M. Boltanski aurait appelé au secours mais les nombreux policiers en faction devant l'hôtel et les ambassades à proximité ne seraient pas intervenus. Malgré le fait que le quartier ait été quadrillé par la police, les agresseurs auraient aisément disparu. Le reporter français, très choqué, aurait été soigné pour de multiples contusions et une plaie dans le dos et serait rentré en France. Une plainte aurait été déposée au commissariat. Des craintes ont été exprimées concernant le fait que cette attaque ne soit liée avec le travail en la faveur des droits de l'homme du journaliste. Christophe Boltanski enquêtait sur les droits de l'homme en Tunisie à la veille du sommet sur l'information qui se tient à Tunis la semaine prochaine. Le matin même, il avait publié un article concernant l'intervention musclée de la police qui avait attaqué un groupe des défenseurs des droits de l'homme qui soutenaient les huit personnalités de l'opposition et activistes des droits de l'homme qui, depuis le 18 octobre, observent une grève de la faim. Ces craintes sont d'autant plus vives que ces événements surviennent dans un contexte d'attaques répétées contre la liberté de la presse et les activistes des droits de l'homme.

1014. Le 14 novembre 2005, le Rapporteur Spécial, la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme a envoyé un appel urgent concernant la situation de M. **Robert Ménard**, Secrétaire général de Reporters sans Frontières, une organisation qui dispose du statut consultatif auprès du Conseil économique et social des Nations unies. Selon les informations reçues, le 10 novembre 2005, Robert Ménard se serait vu notifié la décision des autorités tunisiennes d'interdire son entrée dans le pays pour participer au Sommet mondial sur la société de l'information. Les autorités tunisiennes argueraient qu'en raison de l'instruction d'une plainte à son encontre déposée auprès du Procureur de la République à Tunis, sous le numéro 7062269/2002, en date du 9 juillet 2002, M. Ménard ne pourrait prétendre entrer en Tunisie qu'à la convocation de l'instance judiciaire en charge de cette affaire. Les Rapporteurs ont exprimé leurs plus vive préoccupation devant cette décision qui risquerait de porter atteinte au libre accès de M. Ménard et des représentants de Reporters sans Frontières au SMSI devant se tenir du 16 au 18 Novembre 2005. Les Rapporteurs ont demandé aux autorités tunisiennes de prendre toutes les mesures nécessaires pour assurer que la liberté d'expression et de réunion soient garantie en Tunisie, en particulier en garantissant l'accès des médias et de la société civile tunisiennes et internationales au Sommet qui va s'ouvrir Mercredi 16 novembre 2005 à Tunis.

1015. Le 18 novembre 2005, le Rapporteur Spécial, conjointement avec la Représentante Spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé une lettre d'allégation concernant l'obstruction à la tenue de la réunion parallèle au Sommet mondial pour la société de l'information (SMSI) organisée par la société civile. Selon les informations reçues, le 14 novembre 2005 à Tunis, des douzaines de policiers en civil auraient entouré l'Institut Goethe, centre culturel Allemand, et auraient empêché, parfois par la force, la société civile nationale et internationale d'organiser une réunion parallèle au SMSI et d'entrer dans le bâtiment en question. Les forces de sécurité auraient en particulier empêché **Marianne Klaric** et **Jean-Jacques Mathi**, reporters de la télévision belge, ainsi que l'avocate tunisienne militante des droits de l'Homme **Radia Nasraoui**, de se rendre à la réunion en

encerclant leur voiture. Les policiers auraient tapé contre la voiture et crié des insultes à Mme Nasraoui. Alors que l'un des journalistes était en train de filmer, des officiers de sécurité habillés en civils lui auraient arraché sa caméra devant la salle de la réunion, avant de confisquer une cassette vidéo contenant un certain nombre de reportages qui avaient été tournés auparavant. Les deux journalistes préparaient un reportage pour la télévision de service public belge RTBF.

### **Suivi des communications envoyées l'année passée**

1016. Le 6 janvier 2005, le Gouvernement a répondu à la communication envoyée le 5 mars 2004 concernant **Abdellatif Makki** et **Jalel Ayyed**. Le Gouvernement a informé le Rapporteur Spécial que le Conseil scientifique de la Faculté de Médecine de Tunis, réuni le 29 juin 2004, s'était prononcé en faveur de la réintégration de Messrs. Makki et Ayyed à la Faculté de Médecine de Tunis. Cette mesure est assortie de deux mesures d'ordre pédagogique visant à leur permettre de se remettre au niveau des exigences du cursus des études médicales et ce, compte tenu de la très longue interruption de leurs études.

1017. Le 30 décembre 2005, le Gouvernement a répondu à la communication envoyée le 11 mars 2004. Le Gouvernement a informé le Rapporteur Spécial que les étudiants et membres de l'**Union Générale des Etudiants de Tunisie (UGET)** cités dans la communication, ont fait l'objet de décisions disciplinaires émanant de leurs Institutions universitaires respectives suite à des infractions aux règlements intérieurs en vigueur. Les infractions n'avaient aucun rapport avec les activités syndicales des étudiants nommés. S'agissant de **Zied Kacem**, le Gouvernement a indiqué qu'il avait continué à enfreindre le règlement intérieur de sa Faculté, en organisant des assemblées non autorisées et en incitant les étudiants à entrer en grève. Par conséquent, le Conseil de discipline universitaire a décidé de son renvoi.

1018. Par lettre datée du 15 avril 2005, la mission permanente de Tunisie auprès des organisations internationales a répondu à la communication urgente du 22 avril 2004 relative à Monsieur **Hamza Mahrouk, Amor Farouk Chelandi, Amor Rached, Abdel-Ghaffar Guiza, Aymen Mecharek, Ridha Hadj Brahim, Ayoub Sfaxi, Tahar Guémir et Abderrazak Bourguiba**. Les investigations préliminaires initiées suite à la découverte début février 2003 de documents compromettants imprimés de divers sites d'Internet incitant au « Jihad islamique » ont permis d'orienter les soupçons vers un groupe d'étudiants de Zarzis et de procéder à l'arrestation le 26 février de M. **Omar Farouk Chalandi**, en possession de plusieurs documents. Ces documents étaient relatifs aux procédés de fabrication et d'utilisation d'explosifs et d'autres informations utiles à la réalisation d'attentats. Le prévenu a reconnu être membre actif d'un groupe dirigé par **Tahar Kemir** dont l'action repose sur le Jihad islamique qui a débuté à partir de 2001 qui compte parmi ses membres **Aïmen M'Charek, Ayoub Sfaxi, Abderrazek Bourguiba, Hamza Mahroug, Omar Rached, Ridha Belhaj Ibrahim et Abdelghaffar Guiza**. Il a également reconnu que le groupe s'apprêtait à fabriquer des explosifs, à mettre le feu dans un lycée secondaire et à commettre un attentat contre le poste de la Garde nationale de Zarzis. Certains des membres se seraient rendus à l'étranger, tels que **Tahar Semir** dans le but de contacter des dirigeants du réseau terroriste « Al-Qaida » et de rapporter des armes. Il a été établi sur la base de leurs propres aveux et des pièces à conviction que les intéressés projetaient de porter atteinte à la sécurité des personnes et des biens et agissaient en connexion avec une organisation terroriste internationale. Au terme des investigations, l'affaire a été déférée le 3 mars 2003 au Ministère public près le Tribunal de première instance de Tunis qui a ouvert une information judiciaire contre les personnes mentionnées pour association de

malfaiteurs ayant pour but de préparer et de commettre un attentat contre les personnes et les biens, par l'intimidation ou la terreur, fourniture d'un lieu de réunion, tenue de réunions non autorisées, vol, fabrication, transfert et stockage de matières explosives, possession d'outils et de matières destinés à la fabrication d'explosifs sans autorisation, tentative de vol et complicité. Le 16 avril 2004, la Chambre criminelle du tribunal de première instance de Tunis a condamné Omar Chalandi, Hamza Mahroug, Omar Rached, Ridha Belhaj Ibrahim et Abdelghaffar Guiza et Aïmen M'Charek à 19 ans et trois mois d'emprisonnement et à 5 ans de contrôle administratif. Ayoub Sfaxi a été condamné par contumace à la même peine. Tahar Kemir a été également condamné par contumace à 26 ans et trois mois de prison pour son rôle de dirigeant du groupe. Abderrazek Bourguiba a été jugé et condamné à 5 ans d'emprisonnement par le tribunal des enfants. Ses conditions de détention sont conformes aux dispositions relatives à la classification des détenus. Le ministère public et les condamnés, à l'exception des deux condamnés par contumace, ont fait appel. Par deux arrêts rendus les 6 et 7 juillet 2004, la Cour d'Appel de Tunis a confirmé les jugements de première instance en atténuant les peines qui ont été ramenées à deux ans et un mois pour le mineur et 13 ans de prison et 5 ans de contrôle administratif pour les autres prévenus. Omar Chalandi, Omar Chared et Ridhas Belhaj Brahim ont intenté en pourvoi en cassation qui a été rejeté quant au fond le 8 décembre 2004 par la Cour de cassation. La plainte a été déposée par les avocats de la défense le 17 mars 2003 comme le certifient les registres du Ministère public près le Tribunal de première instance de Tunis. Les allégations faisant état de tortures ou mauvais traitements sont sans fondement. Aucune plainte n'a été introduite ni devant le juge d'instruction ni auprès du Ministère public. Aucune demande d'examen médical n'a été formulée par les prévenus. La détention, comme les poursuites et les condamnations se sont déroulées normalement, conformément à la loi.

1019. Le 15 avril 2005 le gouvernement a répondu à la communication envoyé le 11 juin 2004 concernant Mme **Radia Nasraoui**, M. **Ali Ben Salem** et M. **Ridha Barkati**. Les allégations sont dénuées de tout fondement. Le 8 juin, **Radia Nasraoui**, **Ali Ben Salem** et **Ridha Barkati** se sont présentés le 8 juin 2004 au bureau d'accueil du Gouvernorat de Tunis sollicitant de rencontrer le Gouverneur. L'agent d'accueil leur ayant indiqué qu'il était absent, leur a demandé l'objet de leur démarche pour les orienter vers un fonctionnaire habilité à les recevoir. Mme Nasraoui a refusé et s'est emportée en s'attaquant verbalement aux symboles de la Tunisie et aux membres du Gouvernement devant l'institution créant un attroupement. L'agent responsable est intervenu pour rappeler les intéressés à l'ordre. Mme Nasraoui a fait fi des injonctions et s'est même refusée à quitter les lieux alors que le travail avait pris fin amenant le personnel à intervenir de nouveau.

1020. Par lettre datée du 15 avril 2005, le Gouvernement a répondu à la communication du 22 novembre 2004 concernant Mme **Radhia Nasraoui**. Le Gouvernement précise que « l'association de lutte contre la torture en Tunisie » et le « comité de défense de Jalel et Néjib Zoghلامي et Lumbaba Mohsni » n'ont aucune existence légale en Tunisie. Par conséquent, toute personne entreprenant des activités en leur nom est en infraction avec la loi et passible de poursuites judiciaires. Les personnes en faveur desquelles le Comité de défense a été créé, sont impliquées en justice dans des affaires de droit commun qui suivent leur cours normalement. Concernant l'organisation d'une réunion de ce « comité » au domicile de Mme Nasraoui, des voisins ce sont plaints le 17 novembre 2004 auprès des services de police de certaines nuisances ayant perturbé leur tranquillité. Il s'est avéré par la suite, que Mme Nasraoui avait mis à disposition son domicile pour une réunion non autorisée. Il a par conséquent été demandé à Mme Nasraoui de respecter les règles de cohabitation entre colocataires en attirant

son attention sur le fait que la mise à disposition de son domicile pour ce cas est passible de poursuites judiciaires. En ce qui concerne le vol de son téléphone portable, Mme Nasraoui a déposé une plainte contre X le 25 octobre auprès du Commissariat de police et sa déposition a été consignée dans un procès verbal. La plainte a été transmise à la police judiciaire qui poursuit ses investigations à ce propos. Les allégations « d'harcèlement ou de surveillance » sont dénuées de tout fondement. Mme Nasraoui exerce sa profession de façon normale, se déplace librement à l'étranger et s'exprime en toute liberté avec les représentants de la presse tunisienne et étrangère.

## Observations

1021. Le Rapporteur Spécial remercie le gouvernement pour la réponse à sa communication du 25 janvier 2005. Le Rapporteur souhaiterait être tenu au courant du processus légal en ce qui concerne la demande de permis par la **CNLT**. De plus, le Rapporteur souhaiterait être informé du progrès fait à l'égard du processus concernant M. **Mongi Ben Salah**.

1022. Le Rapporteur Spécial remercie le gouvernement pour la réponse à sa communication du 25 février 2005. Le Rapporteur Spécial souhaiterait recevoir plus d'information concernant les allégations selon lesquels le chef de sécurité de Zarzis aurait interdit l'accès de M. **Abdallah Zouari** aux quatre cafés Internet de la ville. De plus le Rapporteur Spécial aimerait recevoir des informations concernant les allégations stipulant que les autorités auraient exercé des pressions sur le corps médical de l'hôpital de Zarzis afin d'empêcher son hospitalisation et que par conséquent il aurait du rejoindre son domicile malgré ses souffrances et son état précaire.

1023. Le Rapporteur Spécial remercie le gouvernement pour les réponses à ses communications de 9 mars, 17 mars, 26 avril, et 16 juin 2005. **Concernant M. Abu**, le Rapporteur Spécial a reçu des informations par d'autres sources selon lesquels le 29 avril 2005, Me Mohammed Abbou aurait été condamné à 3 ans et demi de prison, à la suite d'un procès qui aurait été entaché de nombreuses irrégularités. De plus, depuis le 3 mai 2005, Me Abbou aurait observé une "grève de la faim illimitée" à la prison du Kef (nord-ouest de la Tunisie), afin de protester contre sa détention, la façon dont son procès se serait déroulé et les entraves que ses avocats auraient rencontrée lorsqu'ils voulaient lui rendre visite. A la suite de ces nouvelles informations mais sans préjuger des faits concernés et dans l'attente d'une réponse du gouvernement, le Rapporteur Spécial reste inquiet et souhaiterait recevoir des informations concernant le déroulement du procès concernant M. Abu et de ses conditions de détention. **Concernant M. Hamadi Jebali**, le Rapporteur Spécial souhaiterait recevoir plus d'information sur les enquêtes menés, notamment, sur les conditions de détentions de M. Hamadi Jebali, suite a des informations inquiétantes à cet égard que le Rapporteur Spécial a reçues par d'autres sources.

1024. Le Rapporteur Spécial regrette de ne pas avoir reçu de réponse à sa communication du 11 mai 2005. Dans l'attente de cette réponse mais sans préjuger des faits concernés, le Rapporteur Spécial reste inquiet et souhaiterait attirer l'attention du gouvernement sur les principes fondamentaux énoncés dans la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et



les libertés fondamentales universellement reconnus, et en particulier l'article 9 para. 1 qui établit que dans l'exercice des droits de l'homme et des libertés fondamentales, y compris le droit de promouvoir et protéger les droits de l'homme visés dans la Déclaration, chacun a le droit, individuellement ou en association avec d'autres, de disposer d'un recours effectif et de bénéficier à une protection en cas de violation de ces droits.

1025. Le Rapporteur Spécial regrette de ne pas avoir reçu de réponse à sa communication du 19 mai 2005. Dans l'attente de cette réponse mais sans préjuger des allégations concernées, le Rapporteur Spécial reste inquiet et souhaiterait attirer l'attention du gouvernement sur la Résolution 2005 /38 de la Commission de Droits de l'Homme où la Commission s'est déclarée toujours préoccupée par le fait que, tout en notant que le paragraphe 3 de l'article 19 du Pacte international relatif aux droits civils et politiques dispose que l'exercice du droit à la liberté d'opinion et d'expression comporte des devoirs spéciaux et des responsabilités spéciales, et a appelé à tous les Etats à ne pas imposer de restrictions incompatibles avec le paragraphe 3 de cet article, notamment ... À la libre circulation de l'information et des idées, notamment par des pratiques telles que l'interdiction ou la fermeture de publications ou d'autres médias et le recours abusif à des mesures administratives et à la censure.

1026. Le Rapporteur Spécial regrette de ne pas avoir reçu de réponse à ses communications du 2 septembre, 2 septembre, 6 septembre, 7 septembre, 23 septembre, 4 octobre, 19 octobre, et 21 octobre 2005.

1027. Le Rapporteur Spécial remercie le gouvernement pour la réponse à sa communication du 6 octobre 2005. Le Rapporteur Spécial, tout en prenant note de la réponse du gouvernement, reste inquiet et souhaiterait attirer l'attention du gouvernement sur le principe de proportionnalité de la peine. A cet égard, des sanctions pénales, en particulier l'emprisonnement pour diffamation, ne semblent pas proportionnelles à un exercice effectif du droit à la liberté d'opinion et d'expression. Ce principe est réitéré par la Résolution 2005 /38 de la Commission de Droits de l'Homme qui a invité tous les Etats à ... j) ne pas recourir, pour des infractions concernant des médias, à des peines d'emprisonnement ou à des amendes qui sont sans commune mesure avec la gravité de ces infractions et qui violent le droit international relatif aux droits de l'homme.

1028. Le Rapporteur Spécial souhaiterait bientôt recevoir une réponse à ses communications du 11 novembre, 14 novembre et 14 novembre 2005.

1029. Le Rapporteur Spécial souhaiterait réitérer ses préoccupations soulignées dans le communiqué de presse de 16 novembre 2005 où, conjointement avec la Représentante spéciale sur la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur l'indépendance des juges et des avocats, il a exprimé sa profonde préoccupation 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. Le Rapporteur Spécial relance son appel au gouvernement 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, 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.

## Turkey

1030. On 4 March 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Sandra Bakutz**, an Austrian journalist for *Radio Orange 94.0* and *Junge Welt*, a German newspaper. According to information received, Sandra Bakutz, in her capacity as a journalist for *Radio Orange 94.0*, travelled to Turkey as part of a delegation organized by the International Platform Against Isolation (IPAI), to attend the trial of activists who were arrested on 1 April 2004 in an international police operation carried out against the DHKP-C (Revolutionary People's Liberation Party-Front), a far-left movement classified as a terrorist organization by the United States and the European Union. IPAI is an international organization which defends Turkish political prisoners. It is reported that on 10 February 2005, as Sandra Bakutz disembarked from her flight from Vienna at Atatürk International Airport in Istanbul, she was immediately arrested on charges of belonging to an illegal organization, the DHKP-C. On 11 February 2005, Sandra Bakutz was brought for indictment before the Court for Heavy Penalties (formerly the Second State Security Court which was responsible for trying Turkish political prisoners and which had also reportedly issued, in September 2001, an arrest warrant for Sandra Bakutz). It is alleged that, on 16 February 2005, she was taken to the Pasakapisi detention centre and was subsequently transferred to a prison in Gebze, 50 km south of Istanbul, in a cell awaiting trial with ten other political prisoners without the right to make phone calls and with no contact with the outside world. On 28 February 2005, the Austrian Ambassador and the Austrian Consul General went to visit her in prison; The Austrian Consul General was not allowed to see her. Moreover, it is reported that her hearing before a Judge has been postponed twice, without any official explanation given for this extended police custody. Her alleged membership of the DHKP-C had not, at the time this communication was sent, been proven. Concern was expressed that Sandra Bakutz's arrest and detention were directed at preventing her from investigating and reporting on a controversial aspect of the human rights situation in Turkey.

1031. On 22 March 2005 the Government replied to the communication of 4 March 2005 concerning Ms. **Sandra Bakutz**. The Government stated that The Office of the Reserve Judge of the Ankara State Security Court No.2 issued an arrest warrant in absentia against Ms. Bakutz on the grounds that she was a member of the DHKP/C terrorist organization. In accordance with the arrest warrant and article 104 of the Code of Criminal Procedure she was detained upon entering Turkey on 10 February 2005 at the Istanbul Ataturk Airport. She was referred to the Istanbul Heavy Penal Court No. 9 on 11 February 2005. During the hearing, the arrest warrant was read to Ms. Kabutz and she acknowledged the warrant. Neither did she nor her attorney at law make any comments. The Court ruled for her arrest and she was sent to Istanbul Pasakapisi Prison. On 16 February she was transferred to the M-type Close prison in Gebze. On 18 February 2005 she filed an appeal at the Ankara Heavy Penal Court No. 11 for the arrest warrant to be revoked. The Court decided to maintain her arrest warrant. On 25 February 2005 the Ankara Public prosecutor's Office presented an indictment addressed to the Ankara Heavy penal Court No.11 asking that Ms. Kabutz be convicted for being a member of the said armed terrorist organization and participation in a protest action against the former Turkish Foreign Minister. The Government stated that she was amongst the persons who were carrying the banners and posters of the terrorist organization and threatened the Foreign Minister to death. The Prosecutor requested that she be sentenced in accordance with article 168.2, 31, and 33 of

the Turkish Penal Code. The request by the Ambassador of Austria and the Consul General of Austria to visit Ms. Kabutz in prison was refused as it was deemed inappropriate. In the meantime she was transferred to the m-Type prison in Ankara on 1 March 2005.

On 4 March 2005 the Austrian Ambassador in Turkey was allowed to visit Ms. Kabutz. The hearing of Ms. Kabutz was scheduled, at the time this reply was sent, for 30 March 2005 at the Ankara Heavy Penal Court No. 11. The Austrian Embassy was informed.

1032. On 23 March 2005, the Special Rapporteur sent a letter of allegation concerning **Orhan Pamuk**, a novelist, who had received death threats. According to information received, on 6 February 2005 a Swiss newspaper published an interview given by Orhan Pamuk. In the interview, the novelist spoke about the alleged Armenian genocide and massacre of thousands of Kurds in Turkey. This statement triggered a harsh campaign against him by the Turkish media. It is reported that Pamuk then started receiving death threats.

1033. On 29 June 2005 the Government replied to the communication of 23 March 2005 concerning Mr. **Pamuk**. The Government stated that in his interview to the Swiss daily *Tags Anzeiger* on 5 February 2005, Mr. Pamuk referred to the so called Armenian genocide and alleged that Kurds were massacred in Turkey, which remarks triggered a public reaction in Turkey. An investigation was initiated by the relevant office of the Public Prosecutor against him on the grounds of article 159 of the Turkish Penal Code. The investigations were concluded with a decision of non-prosecution. Meanwhile, in a separate incident, the Kaymakam of Sutcule, arbitrarily ordered that the books of Mr. Pamuk be removed. However the Ministry of the Interior initiated an administrative investigation against the official concerned and an administrative penalty of condemnation was handed down to him.

1034. On 7 April 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning the alleged excessive use of force against *a group of approximately 500 individuals*, including NGO members, syndicate leaders and political activists, who participated in a demonstration organised by the Proletarian Women's Platform to mark International Women's day. According to the information received, on 6 March 2005, these individuals had gathered in Sarachane and Beyazit quarters of Istanbul, where they were calling for equal pay for women and equal treatment of women within Turkish society. Reportedly, the police intervened in the demonstration, allegedly due to the fact that the demonstration had not been authorised, using truncheons, pepper gas and physical force to disperse the group. Information indicates that approximately 60 individuals were arrested and that at least three people were hospitalized.

1035. On 31 May 2005, the Special Rapporteur sent an urgent appeal concerning certain provisions of the **proposed criminal code**, which law was to come in force on 1 June 2005. According to information received, despite certain positive amendments to the law having been made, various provisions, which appeared inclined to prejudicing freedom of the media, remained. Article 301, for example, entitled 'Humiliation of Turkish identity, the Republic, state institutions and bodies', which replaced Article 159 used in the past to severely punish all criticisms of Parliament, the justice system or the security forces, provided for terms of imprisonment of six months to three years. Moreover, a prison term of six months to two years was provided for anyone who attacked the Government, the justice system or the security forces. Finally, the proposed Article 277 concerning defamation of the press with the aim of exposing

someone to judicial investigation provides for terms of imprisonment of one to four years. Concern was expressed that certain provisions of the proposed text might lead to media professionals being tried before criminal courts and subject to criminal sanctions.

1036. On 14 June 2005 the Government replied to the communication of 31 May 2005. The Government stated that the new **Criminal Code** was adopted by Parliament on 26 September 2004 and entered into force on 1 June 2005. The Government further stated that in preparing the draft of the Code, Turkey's international obligations under the international agreements to which Turkey is a party and the expectations of the wider Turkish public opinion had been taken into account. Expert opinion from national and international organizations was also received.

1037. On 22 June 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent a letter of allegation concerning **Mehmet Tarhan**, who was, at the time this communication was sent, being detained in Sivas Military Prison. According to the allegations received, on 8 April 2005 in the early morning, he was arrested and brought to a military unit in Tokat, and later transferred to the military prison in Sivas. A declared conscientious objector to compulsory military service, Mehmet Tarhan was charged under Article 88 Turkish Military Penal Code for insubordination. In the Sivas Military Prison, according to his lawyer, he faced threats and abuse by fellow detainees, without any intervention in this regard from the prison staff. On his arrival, a staff sergeant threatened Mehmet Tarhan with transfer to "Common Cell No. 2", where the "wildest" prisoners are imprisoned. Later he was ordered to enter a darkened "Common Cell No. 1" where the inmates threatened him with death for being a traitor and beat him and pulled his hair. He was later transferred to a single cell, where he continued to be subjected to threats, beatings, and demands for money and clothes from fellow prisoners. He sustained injuries to his lips, bruises to his chin, neck, body, knee, legs and feet. As a result of his injuries he experienced breathing pains, hair loss, and difficulty standing. Despite informing the prison staff, they did not prevent further attacks, but rather encouraged other prisoners to beat him. Following the requests from his lawyer, the prison authorities recorded his abuse and undertook to ensure his safety. However no information concerning any investigations carried out was available at the time this communication was sent. Mehmet Tarhan had reportedly undergone a hungerstrike to protest his treatment in detention.

1038. On 7 October 2005, the Government replied to the communication of 22 June 2005 concerning **Mehmet Tarhan**. The Government stated that Mr. Tarhan was being charged for failing to report for military service when he was caught on 10 April 2004 in Izmir. He was later transferred to Mendered Recruitment Office in Izmir and then to his military unit where he did not obey instructions given to him, declaring his refusal to perform military service on grounds of conscientious objection. He was transferred to Military Prison after being arrested on 11 April 2005. Mr. Tarhan was released on 9 June 2005 during his trial on the charge of insubordination to avoid military service under article 88 of the Military penal Code. However, he committed the same offence after his release and returned to the military unit. A second investigation was commenced against him and he was later arrested following a Military Court conviction against him of insubordination and sentenced him to a total of 4 years imprisonment. Mr. Tarhan went on hunger strike between 25 May and 29 June 2005 during which time he

refused any assistance including food and drink and consumed only sugar and vitamin pills. The Government informed the Special Rapporteur that, according to article 72 of the Turkish Constitution, it is not possible to be exempted from military service on grounds of conscientious objection and there is no alternative service provided. An inquiry into Mr. Tarhan's allegations of ill-treatment in prison was launched by the Military Prosecution Office. As a result of the investigations, an indictment was issued on 26 October 2005 charging an officer and a non-commissioner officer in the military prison administration with neglecting official duty and charging two soldiers in custody among the inmates with looting. The public trial against the four accused was underway on 2 December 2005 before the Military Court of the 5<sup>th</sup> Infantry Training Brigade Command.

### **Follow up to previously transmitted communications**

1039. On 20 July 2005, the Permanent Mission of Turkey replied to the Special Rapporteur's urgent appeal dated 14 January 2004, concerning the situation of **Sabri Ejder Öziç**, who was sentenced, to a one-year jail sentence on 30 December 2003 for "insulting and mocking Parliament" in the course of a radio speech on 24 February 2003. The Permanent Mission confirmed both that Sabri Ejder Öziç had been sentenced for the abovementioned offence in accordance of Article 159 of the Turkish Penal Code, and that he had appealed the verdict on 16 March 2004. According to the information received the review of the case was still underway at the time the communication was sent.

### **Observations**

1040. The Special Rapporteur thanks the Government for its reply to his communication of 4 March 2005. The Special Rapporteur welcomes information he received from other sources to the effect that on 30 March, Ms. Bakutz was released from police custody and allowed to return to Austria pending the 1 June hearing, and that on 1 June 2005, Ankara's Court for Heavy Penalties, acquitted Austrian freelance journalist Sandra Bakutz on grounds of insufficient evidence.

1041. The Special Rapporteur thanks the Government for its reply to his communication of 23 March 2005 and welcomes the decision to overturn the order of the Kaymakam of Sutcule to have Mr. Pamuk's books removed. The Special Rapporteur would however appreciate receiving information concerning any investigations carried out into the threats received by Mr. Pamuk and into any protection provided to him in this respect.

1042. The Special Rapporteur regrets that the Government had not, at the time this report was finalized, replied to his communication of 7 April 2005. The Special Rapporteur welcomes information that the Government immediately opened an investigation into the incident. He, however, remains deeply concerned by the alleged excessive use of force by members of the police. The Special Rapporteur would appreciate being kept informed on the developments of the investigations into this event.

1043. The Special Rapporteur thanks the Government for its reply to his communication of 31 May 2005. Whilst taking note of the Government's reply the Special Rapporteur nevertheless deems it necessary to make reference to Commission on Human Rights Resolution 2005/38, which provides that States should not resort to criminal laws and

punishments for media related offences as these are deemed disproportionate to the gravity of the offence and violate international human rights law. Media related offences should preferably be dealt with under civil law with punishments being more of a pecuniary nature, so long as this is proportionate.

1044. The Special Rapporteur thanks the Government for its reply to his communication of 22 June 2005. The Special Rapporteur welcomes the information concerning the investigations carried out into the reported maltreatment and threats against Mr. Tarhan's and the trial underway against the persons responsible in this regard. The Special Rapporteur would appreciate being informed on the outcome of this trial.

1045. The Special Rapporteur thanks the Government for its reply to his communication of 14 January 2004 concerning Mr. **Sabri Ejder Öziç**. The Special Rapporteur would appreciate being kept informed as to the outcome of the trial against him.

### Uganda

1046. On 5 August 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Victor Juliet Mukasa**, Chairperson of Sexual Minorities Uganda (SMUG), a non-profit, non-governmental organization that works towards achieving full legal and social equality for lesbian, gay, bisexual, transgender people in Uganda. According to the information received, on 20 July 2005, Victor Juliet Mukasa's home, in a suburb of the capital city Kampala, was allegedly raided during the night by local government officials. They reportedly entered his house, and in his absence, seized documents and other material relating to the activities of SMUG.

1047. On 5 December 2005, the Special Rapporteur sent a letter of allegation concerning **Kizza Besigye**, the main opposition presidential candidate for the political party the Forum for Democratic Change (FDC), in the then forthcoming elections. According to information received, on 14 November 2005, following his arrest, the Government reportedly intimidated journalists and the press editors from reporting on Besigye's upcoming trials, where Mr. Besigye and his co-defendants were facing charges of treason, terrorism and rape. Proceedings before the military tribunal were going ahead despite a High Court order staying those military proceedings. According to information received, on 23 November, the Information Minister threatened to withdraw the licenses of media outlets that commented on the trial being brought against Besigye and his twenty-two co-defendants. The Minister claimed that media debates could prejudice the court proceedings against Besigye. Moreover, police reportedly harassed staff members of the daily *The Monitor* and impeded its circulation after it published a paid advertisement soliciting contributions for a fund to assist the legal defence of the Kizza Besigye and the other co-defendants.

### Observations

1048. The Special Rapporteur regrets not having received a reply to his communication of 5 August 2005. Pending a reply to this communication and without making any determination on the facts of this case, he deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect

Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

1049. The Special Rapporteur looks forward to receiving a reply to his communication of 5 December 2005.

### Ukraine

1050. On 24 March 2005, the Special Rapporteur sent an urgent appeal concerning **Angelika Nesterchuk**, host of the “*Jitomir News*” programme of the state broadcaster’s regional station, *Gosudarstvennoe radio 1 Televidenie* in the city of Jitomir. According to information received, on 16 March 2005, Angelika Nesterchuk, was threatened to death by an individual who warned her not to talk about ‘Merkuri or you will be buried under its foundations’. The journalist has been working on reports concerning allegations of corruption involving the mayor and a construction company. Nesterchuk had reportedly prepared to expose the construction company.

1051. On 18 May 2005 the Government replied to the communication of 24 March 2005 concerning Ms. **Angelika Mikhailovna Nesterchuk**. The Government informed the Special Rapporteur that, following investigations it transpired that, on 16 March 2005, at approximately 7.25 p.m., at the entrance to the apartment building situated at 26 Moskovskaya Street in Zhitomir, an unidentified individual grabbed Ms. Nesterchuk by her clothes and threatened her. When Ms. Nesterchuk resisted, the assailant fled. Ms. Nesterchuk was not physically harmed. In her statement, Ms. Nesterchuk said that she believed that the incident was related to her professional activities as a journalist since, at the time, she was working on a number of sensitive broadcasts and also prepared a videotape, which was broadcast by the programme “News of the Zhitomir region” on 17 February 2005 in relation to a certain Mr. K. The authorities questioned Mr. K, but he said that he had not made any threats against Ms. Nesterchuk and that he was not personally acquainted with her. Ms. Nesterchuk also confirmed that she had not received any threats from Mr. K. She also stated that she could not recall what her assailant looked like. The information contained in the letter of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the United Nations Commission on Human Rights was verified and no objective link was established between the aforementioned incident and Ms. Nesterchuk’s work as a journalist. On 30 March 2005, the Zhitomir procurator’s office also decided not to institute criminal proceedings pursuant to article 6, paragraph 2, of the Code of Criminal Procedure, since there was no evidence that the acts of the unidentified individual constituted an offence under article 171 of the Criminal Code. On 28 April 2005, the Office of the Procurator-General of Ukraine overturned the aforementioned decision. The case was referred to the procurator of Zhitomir oblast for further investigation, which was, at the time this reply was received, being monitored.

1052. On 14 October 2005, the Special Rapporteur sent an urgent appeal concerning **Natalia Vlassova**, a journalist of *Kanal 34 television*. According to the information received, on 4 October 2005, Natalia Vlassova was reportedly beaten by an unknown individual in the city

of Dnipropetrovsk. Ms. Vlassova was subsequently taken to the city's hospital where she was expected to stay for several days in order to recover from injuries and to undergo a number of medical exams due to the brutality of the attack. According to information received, Natalia Vlassova was investigating cases of corruption within the regional branch of the Batkivschina Party. Some local party officials had accused the management of the regional branch of giving out strategic posts in regional and municipal councils in exchange for sums of money. The journalist had received telephone threats, before and after the aggression, in which she was told to stop interfering in the affairs of the Batkivschina party. It was reported that police protection was provided to Natalia Vlassova and a criminal investigation had been opened into her case.

1053. On 21 November 2005, the Government replied to the communication of 14 October 2005 concerning the case of **N.F. Vlasova**. The Government stated that the Ministry of Internal Affairs of Ukraine had conducted an inquiry into the beating of the journalist from the Channel 34 television company, Natalya Fedorovna Vlasova (born 1976), who had been investigating cases of corruption in the oblast branch of the Batkivschina (Fatherland) party. In the course of the internal inquiry it was established that, on 4 October 2005, at around 9 p.m., on Komsomolskaya Street in Dnepropetrovsk, an unidentified person inflicted bodily harm on Ms. Vlasova. Neither Ms. Vlasova nor her colleague, Ms. N.M. Khvorostina (born 1982), could remember what the assailant looked like. On the same day, the investigative unit of the Kirov district office of the Dnepropetrovsk internal affairs authority opened a criminal case on the basis of evidence of an offence under article 296, paragraph 1, of the Criminal Code of Ukraine (Criminal mischief). Regrettably, despite the immediate blockade of the surrounding areas and door-to-door searches, it was not possible to identify and arrest the culprit, as no one had witnessed the incident. According to the evidence collected, on the evening before the attack Ms. Vlasova had received telephone calls from an unidentified male, who had threatened her with violence if she continued her investigation of the oblast branch of the Batkivschina party. In this connection, the investigative task force set up in the Kirov district office of the Dnepropetrovsk internal affairs authority conducted further inquiries to identify persons whose interests might have been adversely affected by the victim's journalistic activities. As a result of the inquiries, two persons were singled out as suspects in the crime, and further steps were, at the moment this reply was received, being taken to collect evidence concerning their involvement in the beating of Ms. Vlasova. The investigation into the criminal case was being conducted under the supervision and guidance of the Ministry of Internal Affairs and the Office of the Procurator-General of Ukraine.

### **Observations**

1054. The Special Rapporteur thanks the Government for its reply to his communication of 24 March 2005 and 6 October 2005 and welcomes the decision of the authorities to carry out immediate investigations into the two cases. The Special Rapporteur looks forward to being updated on the outcome of these investigations and of any prosecutions in this regard.

### **United Arab Emirates**

1055. On 19 August 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning Mr. **Abdallah Sultan Sbeehat**, 45, Director of the



Agriculture Zone of Ajman, resident of Ajman, Mr. **Mohammad Ahmad Seef Al-Gafly**, 44, Director of the Technical Institute, Electricity Department, resident of Sharjah, and Mr. **Saeed Ali Hameed Al-Katby**, 45, working with a member of the Royal Family, Abu Dhabi. These persons are all members of the Reform Society, a welfare NGO based in the UAE. According to the information received, on 2 August 2005, each of these three persons was reportedly arrested by ten security officers from their homes. The security officers did not present a warrant of arrest. The officers searched their homes and confiscated books and documents. None of the three persons concerned had, at the time this communication was sent, been charged with any offense. It is alleged that these persons were arrested solely due to their reform activities. Such activities included calling, through petitions submitted to the Government, for the implementation of certain provisions of the UAE's Constitution, particularly the prohibition of arbitrary detention; requesting the authorities to ensure the protection of the right to freedom of assembly; and advocating for more accession of the UAE to international human rights treaties, including the International Covenant on Civil and Political Rights. Given the fact that the above-mentioned persons were reportedly being held incommunicado, concern was expressed that they might have been at risk of torture or other cruel and inhuman treatment.

### **Observations**

1056. The Special Rapporteur regrets not having received a reply to his communication of 19 August 2005. He welcomes information he received attesting to the fact that Mr. **Abdallah Sultan Sbeehat**, Mr. **Mohammad Ahmad Seef Al-Gafly** and Mr. **Saeed Ali Hameed Al-Katby** were released without charge by the authorities in Abu Dhabi on 25 October. The source also reiterated that they had been held incommunicado by the Amn al-Dawla (State Security) since their arrest on 2 August, but that it was not known whether they were tortured or ill-treated in detention. Pending a reply to this communication and without making any determination on the facts of this case, the Special Rapporteur deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

### **United Kingdom of Great Britain and Northern Ireland**

1057. On 25 April 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning **HJ**, a 35 year-old student and national of the People's Republic of China, residing in Manchester. According to the allegations received, he was, at the time this communication was sent, being detained at Harmondsworth Immigration Removal Centre and was at risk of

imminent forcible return to China, following the rejection of his asylum application. On 10 September 2003 around 2am, while on vacation in China, he was arrested together with another person, **ZZ**, in Jinxi City, Liaoning, by officers of the Jinxi City Lianshan District Police. At the time of their arrest, they were distributing Falun Gong-related flyers in a residential area. They were brought to separate interrogation rooms on the second floor of the station and interrogated about their activities. **ZZ** was beaten, including with handcuffs. **HJ** was slapped, beaten and kicked by three police officers, and lost a tooth. The two men were later held together in a room, from which **HJ** escaped through a window. He reportedly remained in hiding for ten days in Taiyuan City, Shanxi, before boarding a flight back to the United Kingdom on 21 September 2003. He had also been involved with Falun Gong activities prior to his arrival as a student in the UK, for which his family has been threatened. Moreover, he continued to be involved in such activities, including in protests against the persecution of Falun Gong practitioners, including before the Chinese consulate in Manchester. In view of allegations of ill-treatment of **HJ** and threats related to his practice of Falun Gong in China, concern was expressed that he might have been at risk of torture or other forms of ill-treatment should he be returned.

1058. On 30 August 2005 the Government replied to the communication of 25 April 2005 concerning **HJ**. The Government stated that Mr. **HJ** was detained on 18 April 2005. On 21 April he made a claim for asylum which was rejected on 23 April 2005 without a right to appeal and he was scheduled to return to China on 26 April. This decision was however deferred as Mr. **HJ** applied for judicial review to the Administrative Court. Mr **HJ** was granted bail by an Adjudicator on 14 June 2005. The Adjudicator found however that upon an analysis of the situation he did not find that if the appellant were to be returned to China he should not do so in safety, as he had already left China before and returned without any problems. The adjudicator therefore concluded that after having considered all the evidence the appellant was not persecuted in China and did not risk being persecuted if returned. Mr. **HJ**'s application for permission to appeal against the Adjudicator's decision to the Immigration Appeal Tribunal was refused on 25 June 2004. The Government was satisfied that Mr. **HJ** benefited of a fair hearing and that the UK's international obligations were respected.

## **Observations**

1059. The Special Rapporteur thanks the Government for its reply to his communication of 25 April 2005.

## **United States of America**

1060. On 15 July 2005, the Special Rapporteur sent a letter of allegation concerning **Judith Miller**, a Canadian journalist for the New York Times. According to information received, on 28 June 2005, a district court in Washington DC sentenced her to imprisonment until October 2005, or until she revealed the sources to some journalistic investigations she had carried out. The court found her in contempt of court for refusing to disclose her sources concerning the identity of government officials who may have been connected with the leaking of the identity of a covert CIA operative. Judith Miller had not written any articles on the leak, but had carried out interviews concerning it. The Supreme Court rejected her appeal.

1061. On 2 September 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning **Abraham Al-Mashadani**, a 36-year old Iraqi freelance cameraman and photographer working for Reuters in Ramadi. According to information received, on 8 August 2005, he was arrested by US marines after images of US troops were found on his videos, cameras and desktop computer. The spokesman for the US detainee operations in Iraq stated that Mr. Abraham Al-Mashadani would not be able to receive visitors for the first 60 days of his detention, including from family or a lawyer. No justification for his arrest had been provided. Mr. Abraham Al-Mashadani was, at the time this communication was sent, being detained at Abu Ghraib. In view of his incommunicado detention, concern was expressed that Mr. Abraham Al-Mashadani risked being subjected to torture or other forms of ill-treatment.

1062. On 12 September 2005, the Special Rapporteur sent a letter of allegation concerning journalist **Tim Harper** and photographer **Lucas Oleniuk** for the *Toronto Star*, as well as **Gordon Russell** of the New Orleans-based daily *Times Picayune*. According to information received, on 1 September 2005, police threatened them several times at gunpoint when they realised that they both were covering a clash between the police and looters. When the police realised that the journalists had taken pictures of the police hitting the looters, they threw Lucas Oleniuk to the ground, grabbed his two cameras and removed the memory cards from them. The police refused to give him the memory cards back. Moreover, police detained Gordon Russell and smashed all of his equipment when they realised that he was covering a shoot-out between them and local residents near the convention centre where hurricane victims were awaiting evacuation.

1063. On 16 September 2005, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent a letter of allegation concerning the fatal shooting of **Waleed Khaled**, a 24-year old TV soundman working for Reuters, based in Samawa. According to information received, on 28 August 2005 a Reuters TV crew consisting of Waleed Khaled and the cameraman Haider Khadem went to the site of a terrorist attack that had resulted in the death of two Iraqi policemen in the Hay-al-Adil district of West Baghdad. Upon arrival at the scene, a United States military sniper standing on the roof of a shopping centre opened fire on him, hitting him fatally once in the head and four times in the chest. Mr. Khadem was slightly wounded and immediately arrested by U.S. forces. A U.S. military statement said that "U.S. Task Force Baghdad units responded to a terrorist attack on an Iraqi Police convoy. (...) One civilian was killed and another was wounded by small-arms fire during the attack."

1064. On 27 September 2005, the Special Rapporteur sent a letter of allegation concerning Iraqi citizen **Firas Maadidi**, 40, chief for the Mosul bureau for the newspaper *As-Saffir* and chief editor of the local daily *Al-Masar*. According to information received, on Tuesday 20 September 2005 in the al-Noor neighbourhood of Slayhe Jowiree in Mosul, Mr. Maadidi was killed outside his home by unidentified gunmen. He was immediately taken to hospital where he died four hours later. The death of Mr. Maadidi brings to three the number of journalists killed in Iraq in the four days preceding the sending of this communication, two of whom were both affiliated with the newspaper *As-Saffir*. *As-Saffir*, which is based in Baghdad, has a strong pro-democracy editorial position and runs a campaign to educate Iraqis on the importance of the new constitution and the then upcoming general elections. It is also critical

of insurgent attacks against Iraqi civilians, calling them terrorist operations. Moreover, on Saturday 17 September 2005, Ms. **Hind Ismail**, a 28-year-old reporter for *As-Saffir*, was killed in Mosul's southern suburb of al-Muthana. Her body was found with a single bullet wound to the head. **Fakher Haider**, an Iraqi journalist who worked for *The New York Times*, was abducted last Sunday 18 September 2005 from his home in Basra. His body was found on Monday in Basra's southwestern al-Kiblah neighborhood with at least one gunshot to the head and his hands tied behind his back. Concern was expressed that the three journalists were targeted because of their work.

1065. On 30 September 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning **violence against women and girls, women human rights defenders and female political leaders**. According to information received, female political leaders and women campaigning to protect women's rights had been threatened and killed by members of armed group identifying themselves, on many occasions, as Islamic extremists targeting women for their activities in defence of women's rights. In January and February 2004, Mrs. **Y.M.** the Chairperson for the **Organisation of Women's Freedom in Iraq**, OWFI received death threats by e-mail from an Islamist group known as the army of Sahaba. Similarly, **A.S.**, the manager for the US-funded women's centre in Karbala, resigned as a result of repeated death threats against her. On 9 March 2004, US lawyer and civilian employee of the Coalition Provisional Authority (CPA) **F.H.** as well as **S.O.**, her Iraqi assistant, were both killed in an armed attack. Mrs. Holland was very active in supporting US-funded women's rights projects in the governorates of Babil, Karbala and Najaf. She was also involved in setting up women's centres in Hilla and Karbala. Furthermore, on 20 November 2004, **A.M.**, a women's rights activist, co-founder of the Advisory Committee for Women's Affairs in Iraq and the Independent Iraqi Women's Assembly as well as adviser at the Ministry of Municipalities and Public Affairs, was killed together with her secretary, bodyguard and driver in Baghdad. Moreover, **A.H.**, who was one of the three female members in the Iraqi Governing Council (IGC) was killed in September 2003. Her attackers were reportedly armed men opposed to the US-led occupation. **R.K.**, another IGC member received death threats for opposing proposed amendments to the Personal Status Law. Moreover, on 29 March 2004, former Minister of Public Works, **N.M.B.**, who was also the only woman in the cabinet, was attacked. She survived the attack, but two of her body guards were killed. Finally, **L.A.K.**, a member of former Prime Minister Iyad Allawi's political party, was killed upon returning home following a meeting of the National Assembly. Moreover, women and girls, including non-Muslims, are increasingly under pressure, often violent such as being subjected to acid attacks, to wear a veil or headscarf and to wear the traditional abaya. Justification for these attacks is based on the reasoning that when a woman or a girl does not wear a veil or the abaya, she is going against Muslim traditions and should be punished. This has led to a reduction in the number of girls and women attending schools and universities. The Ministry of Higher Education and Scientific Research has reportedly been informed of 3000 cases of women and girls who had requested a postponement of their studies as a result of the security situation linked to this matter. This, together with the general increase in insecurity in the country, has also drastically led to the restriction of women's freedom of movement and their ability or willingness to participate in public life, particularly in education, employment and political decision-making. The prohibition of

deciding about one's choice of clothes also leads to a violation of the right to freedom of expression. Women and girls have also reportedly been subjected to sexual threats by members of the US forces, including at check points and during house searches, for example. Moreover, women and girls have allegedly been beaten, subjected to humiliating treatment, held for long periods in solitary confinements, and sexually abused while in detention by US forces. Rape and killing by criminal gangs, extremist religious groups and armed opposition groups has also increased. Domestic violence continued to be very common and according to article 41.1 of the Penal Code of 1969, which was still in force at the time this communication was sent, a husband who 'disciplines' his wife was exempt from criminal liability. Moreover, most victims of domestic violence have no access to medical treatment. Such violence, including forced marriages and sexual abuse, has also led to the increase in suicides and self-immolations, as well as killings. In northern Iraq, the practices of Jin be Jin (exchanging one woman for another) had contributed to the high incidence of forced marriages. Honour killings and mutilations are also condoned in Iraqi legislation. The law allows the mitigation of punishment for perpetrators found guilty of these crimes. Finally, the continued use of female genital mutilation continues to be reported in the northern region of Iraq. Gender discrimination in Iraq's laws further exacerbates and entrenches the persistence of violence against women.

### **Observations**

1066. The Special Rapporteur regrets that no replies to his communication were received at the date this report was finalized.

1067. Pending a reply from the Government and without making any determinations on the facts of the case, with reference to the communication of 15 July 2005, the Special Rapporteur would like to call the Government's attention to the principle that criminal law should not be used or abused to stifle public awareness and suppress discussion of matters of general or specific interest. Reference is also made to Resolution 2005/38 of the Commission on Human Rights which calls upon states to refrain from the use of imprisonment for offences relating to the media, as it is disproportionate to the gravity of the offence and violates international human rights law.

1068. Pending a reply from the Government and without making any determinations on the facts of the case, with reference to the communication of 2 September 2005, the Special Rapporteur expresses his concern with respect to the actions adopted vis-à-vis Mr. Abraham Al-Mashadani and the repercussions that such procedures might have on the work of journalists in Iraq and the freedom necessary for them to carry out their work effectively. The Special Rapporteur, whilst taking note of the Security Council resolution 1546 endorsing the Multi National Forces (MNF) in Iraq's right to carry out activities under 'imperative reasons of security', encourages the authorities to ensure that these measures are resorted to only in exceptional and unambiguous situations not allowing for arbitrary actions. Moreover, the Special Rapporteur deems it appropriate to make reference to Principle 3 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, E/CN.4/1996/39 of 1996, which provides that, in time of public emergency which threatens the

life of the country and the existence of which is officially and lawfully proclaimed in accordance with both national and international law, a state may impose restrictions on freedom of expression and information but only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law.

1069. With respect to the communication of 12 and 27 September 2005, pending a reply to this communication and without making any determination on the facts of the case, the Special Rapporteur deems it appropriate to make reference to Commission on Human Rights resolution 2005/38 which calls on States to ... (c) investigate effectively threats and acts of violence against journalists and to bring to justice those responsible to combat impunity.

1070. With reference to his communication of 30 September 2005, in light of reports documenting serious allegations of violence being perpetrated against women in Iraq, the Special Rapporteur encourages the Government to work with the Iraqi authorities to establish a safer climate which allows women to be able to participate freely in public life, and in so doing to have their rights and freedoms equally respected. The Special Rapporteur, moreover, encourages the Government to work closely with the Iraqi authorities in exercising due diligence in investigating and punishing those responsible for carrying out acts of violence against women and in preventing the recurrence of these acts in compliance with, amongst others, the Declaration on the Elimination of Discrimination against Women. The Special Rapporteur also deems it appropriate to make reference to article 7 © of the Convention on the Elimination of all Forms of Discrimination against Women which explicitly provides for the promotion and protection of women in freely participating in public matters -states agreed to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure to women, on equal terms with men, the right (..) to participate in non-governmental organizations and associations concerned with the public and political life of the country.

1071. On the same lines, and with reference to Security Council Resolution 1546 of 2004 which provides that the MNF have a mandate to assist the Iraqi people and government to ... (iii) promote the protection of human rights, national reconciliation, and judicial and legal reform in order to strengthen the rule of law in Iraq, and stressing the importance of the protection of the right to freedom of opinion and expression in this regard, the Special Rapporteur encourages the Government to work closely with the Iraqi authorities to ensure journalists a safer climate in which to be able to work freely and independently, by, inter alia, investigating and punishing all acts of violence against them and taking all necessary measures to prevent the recurrence of such violence against them.

### Uruguay

1072. El 8 de abril de 2005, el Relator Especial envió un llamamiento urgente en relación con **Pablo Fernández**, colaborador de radio 41 y del diario *Primera Hora*. Según la información recibida, el 18 de marzo de 2005, en la redacción de "Primera Hora", en la ciudad San José, un desconocido habría advertido a Pablo Fernández de que corría un grave e inminente riesgo de ser asesinado. A tenor de los informes, desde hace dos años, el periodista habría sido objeto de intentos de intimidación, presuntamente por sus investigaciones sobre la presunta corrupción de funcionarios locales. Se informa de que en noviembre de 2002, una investigación administrativa

y judicial puso de manifiesto la existencia de un desvío de fondos públicos en beneficio de funcionarios locales. Se expresó temor que uno de los funcionarios, suspendido y sancionado como resultado de dicha investigación, pudiera estar detrás de las amenazas contra el periodista. Dicho funcionario habría intentado interrumpir un programa de televisión, al cual fue invitado el periodista para hablar de las investigaciones. El periodista habría presentado una denuncia ante las autoridades, cuyo contenido habría sido mencionado por el mismo sujeto que lo había advertido el 18 de marzo sobre el riesgo de ser objeto de un atentado contra su integridad física. El Relator Especial instó al Gobierno a llevar a cabo una investigación e iniciar causas en los tribunales contra los autores materiales de tales amenazas.

1073. Por carta con fecha 28 de octubre de 2005, el Gobierno transmitió la siguiente información en relación con la comunicación del 8 de abril de 2005 sobre el caso del periodista **Sr. Pablo Fernández Acheriteguy**. La Dirección de Investigaciones de la Jefatura de Policía del Departamento de San José inició un procedimiento indagatorio con base a la denuncia presentada por el Sr. Fernández Acheriteguy a cargo de la Directora del Servicio. La denuncia penal N°369/153/05 presentada por el Sr. Fernández Acheriteguy en el Juzgado Letrado de Primer Turno de San José se encuentra en el proceso de presuntorio, lo cuál impide por el momento tener acceso a mayores detalles. Tras consultas directas, el Dr. Pablo Pucheu, asesor letrado del Sr. Fernández Acheriteguy hizo llegar al Ministerio de relaciones exteriores una nota manifestando su satisfacción por la forma en que se está tratando el caso.

### **Observaciones**

1074. El Relator Especial agradece al Gobierno su respuesta a la comunicación con fecha 8 de Abril de 2005. El Relator Especial apreciaría que se le mantuviese informado sobre cualquier avance o desarrollo en esta investigación.

### **Uzbekistan**

1075. On 9 February 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders sent an urgent appeal concerning *Ezgulik*, a non-governmental human rights organization that deals, inter alia, with the rights of prisoners, and **Vasila Inoiatova**, the chair of the organization. According to the information received, on 2 February 2005, the Ministry of Justice summoned Vasila Inoiatova. The Deputy Minister of Justice, who oversees non-governmental organizations, allegedly reprimanded Inoiatova for *Ezgulik*'s activities and issued an official warning letter against the organization. The letter alleged that *Ezgulik* violated the terms of its charter and the law on the freedom of information by reporting on the death in prison of Samandar Umarov on 2 January 2005. *Ezgulik* had allegedly reported that the authorities who brought the body home pressured Umarov's relatives not to open the casket and bury him quickly, without washing the body in accordance with Muslim custom. The organization also reported that Umarov's body showed marks that could have resulted from ill-treatment. Information received indicated that the official warning letter stated that in the event of a second offence, the Ministry of Justice would "take all measures" against *Ezgulik*. It is reported that the letter did not specify which measures were being contemplated. The letter further stated that members of *Ezgulik* had exceeded their authority by collecting signatures for the Birlik (Unity) party and that, in one case, an *Ezgulik* member collected false signatures.

1076. On 21 May 2005 the Government replied to the communication of 9 February 2005. The Government stated that detainee **Samandar Umarov** was serving his sentence in facility UYa No. 29 (Navoi). During his stay in the penal institution S. Umarov received medical attention on several occasions. On 2 January 2005, at around 3.30 a.m., S. Umarov began to complain of an acute and persistent headache, and was vomiting blood. He was taken to the medical unit of facility UYa 64/29 in the city of Navoi. Despite the medical aid provided, the convict's condition did not improve and it was consequently decided to transfer him urgently to the reanimation ward of the Navoi branch of the republican scientific centre for emergency medical care, where he arrived at 5.10 a.m. the same day. The intensive medical emergency measures that were taken did not bring about a positive result, and Mr. Umarov was pronounced dead at 8.45 a.m. The diagnosis reads: "Acute disturbance of cerebral blood circulation. Haemorrhagic insult. Third stage hypertonic disease. Coma." The accompanying diagnosis indicated: "Kidney disease not excluded. Pulmonary oedema. Chronic hepatitis." According to the preliminary forensic examination, the death of S. Umarov occurred following "an acute disturbance of cerebral blood circulation, of a hypertonic type, and a haemorrhagic insult as a result of the rupture of blood vessels in the brain. The examination which was conducted also established that there were no physical injuries on S. Umarov's body". With regards to the NGO "**Ezgulik**", the Government stated that it had contravened its statutes and had disseminated unobjective and unsubstantiated information about the death of S. Umarov. With a view to clarifying the real reasons for the death of S. Umarov, the Office of the Procurator-General of the Republic of Uzbekistan set up an ad hoc commission and invited participation in it by relevant specialists, including an independent forensic expert from the United States of America and an independent expert in the field of criminal law from Slovenia, representatives of the diplomatic corps and international human rights organizations in Tashkent, as well as local independent human rights defenders. In the course of the independent investigation (conducted from 12 to 17 January 2005), extensive work was undertaken involving specialists at various levels, additional histological studies were performed, and requests were made for all medical documents covering the period of S. Umarov's detention that might have been of interest for the inquiries. The independent investigation excluded the possibility of the application of any kind of physical pressure that could have led to S. Umarov's death. It was confirmed that the reason for his death was an acute disturbance of cerebral blood circulation and a cerebral haemorrhage. No physical injuries of any kind were found. In the days preceding his death, no exceptional occurrences were noted that might have threatened the life of the detainee. Moreover, he was informed of a decision being taken for his pardon. During the provision of necessary treatment, no intentional unlawful actions were taken, either at the place of his detention in medical division 64/29, or at the place of his subsequent stay at the hospital in Navoi. No instances of a lack of conscientiousness in the performance of their official duties were noted on the part of staff of the colony or the city hospital during the treatment and provision of medical care for S. Umarov. All the above-mentioned facts demonstrate that the actions of "Ezgulik" to look into what happened have entirely contravened the statutes of the organization and the provisions of the applicable legislation of the Republic of Uzbekistan. Thus, more specifically, article 7 of the Freedom of Information (Principles and Guarantees) Act of the Republic of Uzbekistan states that the "distortion or falsification of information is prohibited. The mass media, together with the source and author of the information, bear responsibility under the statutory procedure for the authenticity of the information being disseminated". Furthermore, "Ezgulik" representatives issued no apology for the false information disseminated by them concerning the death of S. Umarov. In this connection, on 2 February 2005 the Ministry of Justice of the Republic of



Uzbekistan sent a letter to the organization concerning the need to observe the requirements of the legislation concerning the objectivity and veracity of information and reports that are disseminated. The communication of the Ministry of Justice contained no attempts to restrict the activities of the "Ezgulik" Human Rights Society and did not contravene the applicable legislation or the norms of international law in this sphere. The statements of the "Ezgulik" leader V. Inoyatova about pressure allegedly being exerted on her are unfounded and do not correspond to the reality. Concerning the attempts of the Birlik party's initiative group to falsify the collection of signatures from citizens, on 22 September 2003 the Ministry of Justice received an application from an initiative group for the registration of the Birlik popular movement as a party. A study of the founding documents showed a number of contraventions of the applicable legislation. In particular, sections 5.2 and 5.3 of the statutes of the party provided for collective membership, which is contrary to article 4 of the Political Parties Act. Under that article of the said Act political parties are to have a fixed individual membership. In addition, the party's programme provides for the right to acquire a second citizenship, which is contrary to articles 21 and 23 of the Constitution of the Republic of Uzbekistan. On this account, and in accordance with the Public Associations Act, the Non-State Non Commercial Organizations Act, the Political Parties Act and paragraph 2.3 of the Rules governing the consideration of applications for registration of the statutes of public associations in the territory of the Republic of Uzbekistan, the application for the registration of the Birlik popular movement as a party was dismissed on 22 October 2003. On 24 November 2003 the Ministry of Justice received a second application from the initiative group. An examination of the founding documents established that the materials presented by the party failed in a number of respects to meet the requirements of the Public Associations Act and the Political Parties Act. For example, in contravention of article 6 of the Political Parties Act, a list of the initiators of the Karakalpak division of the party was not made available. According to this article, the establishment of a political party would require the collection of at least 5,000 signatures from citizens residing in at least eight territorial entities (oblasts), including the Republic of Karakalpakstan and the city of Tashkent. The lists submitted for the Fergana and Kashkadarya oblast divisions include signatures from underage citizens, contrary to article 9 of the Public Associations Act, article 18 of the Non-State Non-Commercial Organizations Act and paragraph 4.1 of the party statutes. Paragraphs 5.1 and 5.2 of the statutes had again provided for collective membership, which is contrary to article 4 of the Political Parties Act. Furthermore, the fact that Vasilya Inoyatova, the general secretary of the party, is at the same time the chair of the "Ezgulik" Human Rights Society of Uzbekistan, is in violation of paragraph 2 of the Regulations approved by Uzbekistan Cabinet of Ministers decision No. 132 of 12 March 1993, according to which a member of the governing body of one public association cannot at the same time be a member of the governing body of another public association. Consequently, on 24 December 2003 the Birlik party's application for registration was dismissed. On 27 January 2004 the Ministry of Justice received another application from the party. In the records submitted by the Syrdarya, Khorezm, Fergana and Namangan oblasts and the city of Tashkent, 329 of the 448 signatures sampled and checked had been falsified. Thus, in conversations with citizens indicated in the lists of proponents of the establishment of the Birlik party it was established that their signatures had been collected for other reasons and they did not know about the creation of the party. Accordingly, on 26 February 2004 the application for registration was dismissed and a written reply was given to the applicants. By a decision of 7 May 2004 the Supreme Court of the Republic of Uzbekistan refused to accept an application for the party's registration. The judicial panel of the Supreme Court upheld this decision on 24 June 2004. On 23 December 2004 the Birlik party again sent

the Ministry of Justice of the Republic of Uzbekistan an application for its registration. Out of a sample of 4,479 signatures of citizens checked only 531 citizens had expressed the wish to join the Birlik party. That figure represents 11.8 per cent of citizens' signatures. The signatures of the remaining 3,948 citizens, or 88.2 per cent of the total, had been collected for various other reasons. Consequently, on 24 January 2005 the application for the registration of the Birlik party was dismissed. The Government furthermore stated that the process of establishing non-governmental organizations and their participation in government decision-making conducive to the democratization of society was actively developing in Uzbekistan. The Republic had registered more than 300 republican and international non-governmental organizations and over 3,000 local public associations. Of these the Ministry of Justice has registered more than 80 international non-governmental organizations, and the Ministry of Internal Affairs had registered 11 international organizations and 17 intergovernmental organizations. Non-governmental human rights organizations were also developing. As is known, the first independent Uzbek human rights organization, the Society for Human Rights of Uzbekistan, was registered in the country in February 2002, a second human rights organization, namely "Ezgulik", was registered in March 2003, and these were joined in 2004 by the Institute for Democracy and Human Rights. In October 2002 one of the oldest human rights organizations of the United States of America, Freedom House, opened an office in Tashkent. At the time this reply was received, Freedom House conducted training sessions on the protection of human rights, organizes trips by Uzbek human rights defenders to foreign countries in order to exchange experience, and cooperates closely with law enforcement bodies with a view to strengthening the observance of human rights and ensuring transparency in the activities of the law enforcement structures. Three Freedom House resource and information centres were, at the time this reply was received, in operation (in Tashkent, Namangan and Samarkand) to assist people dealing with human rights in Uzbekistan. The activities of NGOs and also trade unions, national cultural centres, foundations and other public organizations attest to the fact that the growing NGO network in the Republic reflects a balance of interests in society and facilitates the resolution of many issues.

1077. On 26 April 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning **Sabir Yakubov**, 22, a journalist for the state-run *Hurriyat* newspaper. According to information received, on 11 April 2005, he was arrested at his home in Tashkent and on 14 April 2005 he was formally charged, under Article 159 of the Criminal Code, with attempting to overthrow the constitutional order and belonging to an extremist organization. If convicted he faced a prison sentence of up to 20 years. An official of the Ministry of Internal Affairs stated that Sabir Yakubov was detained because of his affiliations to an illegal religious organization and that on 21 April 2005 he had to be transferred from the Ministry of Internal Affairs in Tashkent to Tashkent Prison. It is reported that Sabir Yakubov published numerous articles in the *Hurriyat* entitled 'A Journey to Dreamland' concerning his pilgrimage to Mecca. In these articles, he spoke about the dangers of Islamic fundamentalism.

1078. On 31 May 2005, the Government replied to the communication of 26 April 2005 concerning the case of **Sabirzhan Yakubov**. The Government stated that Sabirzhan Salimovich Yakubov, an Uzbek citizen, is a correspondent for the newspaper *Hurriyat* (Freedom). He had no previous convictions. The Government stated that Mr. Yakubov's participation in activities to overthrow the constitutional order were established in the course of the investigation of a criminal case involving another person, Mr. X., which investigation was carried out by the

investigation department of the Tashkent central internal affairs administration. Mr. X was indicted under article 159 (Crime against the constitutional order of the Republic of Uzbekistan), paragraph 3, and article 228 (Manufacture, counterfeiting, sale or use of documents, stamps, seals or forms), paragraph 2 (b), of the Criminal Code. The Government claims that Mr. X, who is a member of a terrorist organization, went to Pakistan in 2003 for military training with a view to participating in acts intended to overthrow the constitutional order of Uzbekistan. On 4 April 2005, Mr. X was arrested by Uzbek law enforcement agencies at a State Vehicle Inspection post as he was driving into Tashkent. On 5 April 2005, the investigation department of the Tashkent central internal affairs administration instituted criminal proceedings against Mr. X on the basis of evidence of an offence contrary to article 228, paragraph 2 (b), of the Criminal Code. During the pre-trial investigation of Mr. X's case, it was established that in 2003 Sabirzhan Yakubov, while living in the student dormitory of the National University, had been recruited by Mr. X as a member of the religious extremist organization Vakhobi (Wahhabi); Mr. X and Yakubov were students together at the National University. Mr. Yakubov agreed to cooperate in the religious extremist movement, which sought to overthrow the constitutional order in Uzbekistan and establish an Islamic State, the Caliphate. Mr. Yakubov, using information that he received in a number of Internet cafes, printed various appeals for the overthrow of the constitutional order in Uzbekistan by means of an "armed jihad" and gave them to Mr. X for further dissemination. On 11 April 2005, on the basis of Mr. X's testimony, Mr. Yakubov was arrested by Uzbek law enforcement officers. From the moment of his arrest, Mr. Yakubov was allowed to exercise all his legal rights, including his right to a lawyer. On the basis of the accumulated evidence, on 14 April 2005, Mr. Yakubov was formally indicted under article 159 (Crime against the constitutional order of the Republic of Uzbekistan), paragraph 3 (b). As a preventive measure, he was remanded in custody. The investigation of the case of Sabirzhan Yakubov was, at the time this reply was received, proceeding in accordance with the Code of Criminal Procedure of Uzbekistan. The Government finally stated that the criminal prosecution of Mr. Yakubov was not related to his activities as a journalist.

1079. On 19 May 2005, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent a letter of allegation concerning the **obstruction, harassment and arrests of various members of the media, as well as the deaths of hundreds of people** after government troops violently dispersed a peaceful demonstration on 13 May in Andijan. According to the information received, a peaceful crowd of protesters numbering as many as 10,000 on the town's main square, had gathered to call for justice and for an end to the economic hardship felt by many in the region. Reports indicated that the demonstration was sparked by a smaller protest against the ongoing trial of 23 local businessmen charged with religious extremism. Without any prior warning, troops reportedly opened fire on the crowd from armoured personnel carriers, shooting indiscriminately at men, women and children as they fled from the main square in panic. Moreover, US, Russian and British cable channels, CNN, NTV and BBC were all reportedly stopped from broadcasting throughout Uzbekistan on 13 May 2005, national news reports were replaced with culture programmes and music clips, and Russian independent websites, *www.lenta.ru*, *www.gazeta.ru* and *www.fergana.ru*, as well as several other Uzbek websites were all blocked within Uzbekistan. Furthermore, on 14 May 2005, administration officials confiscated documents belonging to reporter and cameraman for the Russian-based *Ren TV*, **Dmitry Yasminov** and **Vikrot Muzalevsky** respectively, and did not allow them to enter Andijan to prepare a report for their news program Nedelya. They were released several hours later and escorted back to

Tashkent. In the outskirts of Andijan, that same day, police officers also detained a crew from the Russian television channel NTV, confiscating their papers and demanding that they leave the city. They were also escorted to Tashkent and their identity documents were only returned to them five hours later. Furthermore, **Shamil Baygin**, a Reuters correspondent and **Galima Bukharbayeva**, a correspondent for the London-based Institute for War and Peace Reporting, were detained by Andijan police officers on Friday 13 May 2005 and released on Saturday 14 May 2005, when they left Andijan out of fear of reprisal from the authorities.

1080. On 1 July 2005 the Government replied to the communication of 19 May 2005 concerning “**the obstruction, harassment and arrests of various members of the media, as well as the deaths of hundreds of people after government troops violently dispersed a peaceful demonstration**”. The Government stated that the information provided to the Special Rapporteurs did not correspond to the real facts. Investigations into the May events concluded the following. In reality, the representatives of the media who were at the scene of the events were advised to leave Andijan in the interest of their personal safety. Certain media and human rights defenders considered this measure by the authorities to be a restriction of their rights. There was an armed terrorists’ attacks on a prison and military units in Andijan. The terrorists, who also released a number of prisoners who then joined forces with the terrorists, seized a large quantity of weapons and ammunition and killed several prison staff and servicemen. 65 persons were taken hostage, of whom 14 were later killed. After this, the terrorists occupied the Andijan Oblast administration building, the vicinities to which were blocked by burning vehicles that had been set on fire during the attacks. Once inside the building, the terrorists telephoned their relatives and friends and urged them to come to the main square. They also used their weapons to threaten passers-by and people living in the neighbourhood and forced them onto the main square. As a result, some 300 to 400 people gathered in the square. In their presence, the terrorists called for the violent seizure of power and the creation of a caliphate. The terrorists later used civilians and hostages as human shields when they left Andijan for Kyrgyzstan. The Government argued that the nature and course of events in Andijan confirmed that they were the result of subversive activities carried out by extremist groups and their sponsors living abroad. The organizers of these events made use of methods typical of terrorist and extremist organizations:

- Use of weapons during attacks.
- Release of convicts from prison.
- Hostage-taking and occupation of local administration buildings.
- The nature of the attackers’ demands (release prisoners convicted for terrorist activities).
- Use of civilians - old people, women and children - as human shields. Using these human shields, the attackers were the first to open fire with more than 300 firearms, with which they killed 45 civilians and 37 law enforcement officers.

During the terrorist acts, 73 vehicles were set on fire or damaged, and damages amounting to over 3 billion sum were caused to more than 20 buildings. The Government further stated that the events in Andijan were in no way related to the trial of 23 so-called “businessmen”. The

individuals referred to as businessmen were being criminally prosecuted in accordance with Uzbek law for crimes against the constitutional system of the Republic of Uzbekistan. The picketing outside the courthouse in Andijan, where the criminal case of the 23 members of the Akramiya movement was being tried, was staged. The organizers recruited known terrorists from Kyrgyzstan and Uzbekistan, who were provided with suits that had been specially acquired for the occasion, to take part in the picketing. The troops did not open fire on men, women and children fleeing from the square in panic, as alleged in the information provided to the Special Rapporteurs. The Uzbek authorities took all the necessary measures to avoid the use of force and made serious compromises: they agreed to release six detained extremists and offered to provide buses to transport the terrorists, together with their weapons, to the district to which they wanted to go. However, the terrorists kept setting more and more unfeasible conditions. In particular, they demanded the release of a number of imprisoned leaders of religious extremist organizations and their transport by plane to Andijan. The Government also denies that journalists and media were prohibited from covering the events and stated that Uzbekistan places no restrictions whatsoever on the population's access to the media, including the Internet. This is demonstrated by the large number of Internet cafes and Internet providers active in Uzbekistan (since the beginning of 2005, the number of Internet users has risen to 675,000, representing a 137 per cent increase in Internet use). Moreover, Khalima Bukharbayeva - and the Russian television channel NTV, did not complain to the relevant bodies concerning their detention or the confiscation of their documents, which demonstrates that the allegations are unfounded. The Government further claimed that the authorities took all the necessary measures to conduct thorough investigations. To date, 102 persons had been detained for involvement in terrorist activities. In the course of a thorough investigation conducted by the investigative authorities, half of those persons were released from custody and subjected to other preventive measures. The investigations were being conducted openly:

- A working group to monitor the investigation of the tragic events in Andijan had been established. It is composed of representatives of the diplomatic corps in Tashkent. At the time this reply was received, the working group had held three meetings to discuss the preliminary results of the investigation and to examine material evidence, including documentary photographs.
- Press conferences were held by the President of Uzbekistan, Mr. Islam Karimov, on 14 and 17 May 2005, for local and foreign media and representatives of the diplomatic corps in Tashkent.
- A briefing was held by the Procurator General of Uzbekistan, Mr. R.K. Kadyrov, on 17 May 2005, as well as a briefing by the chief of the press service of the Office of the Procurator General on 27 May 2005.

1081. On 26 May 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning several cases of human rights defenders being targeted by authorities, in particular, concerning **Saidjahon Zainabidinov**, Chairman of the *Andijan human rights group Apellatsia* ("Appeal"), an organization working on religious and political persecution; **Ulugbek Bakirov** and **Fazliddin Gafurov**, two members of the human rights organization *Ezgulik* ("Goodness"), an organization also working on religious and political persecution; **Bakhtior Hamroev** and

**Mamuljon Azimov**, two members of the *Human Rights Society of Uzbekistan* (HRSU); and **Utkam Pardiev**, a member of the Independent *Human Rights Society of Uzbekistan* (IHRSOU). According to the information received, on 21 May 2005, Saidjahon Zainabiddinov was arrested by Uzbek authorities in Andijan. He was reportedly held incommunicado for two days before being permitted to telephone a relative on 23 May. Reports indicated that he was, at the time this communication was sent, detained at the Andizhan Regional Department of the Uzbek Ministry of Internal Affairs. The charges against him were unknown at this time. Fears were expressed that he might have been at risk of torture. Concerns were moreover expressed that Zainabiddinov's arrest may have been linked to his activities in the defense of human rights, in particular his descriptions of the May events in Andijan and of the general human rights situation in Uzbekistan which appeared in the press. He may also have been targeted as a result of his work on cases of individuals accused of "religious extremism" for their apparent affiliation with Akramia. On 20 May, Ulugbek Bakirov and Fazliddin Gafurov, two members of the human rights organization *Ezgulik* ("Goodness"), who were on their way to interview witnesses of the Andijan demonstrations and relatives of those killed, were stopped by three men in plain clothes who had followed them in a car without a license plate. It is reported that the men got out of their car and asked Bakirov and Gafurov where they were going. One of the men grabbed Bakirov and began hitting him. Gafurov intervened and was also beaten by the men, reportedly suffering a concussion and an injury to his left shoulder. On 23 May, at approximately 11:30 p.m. a local police officer reportedly appeared at the home of Bakhtior Hamroev, a member of the Human Rights Society of Uzbekistan (HRSU), with a summons for him to appear at the prosecutor's office at 7:00 a.m. the next day. The summons, however, did not indicate any reason for the meeting. On the same day, Utkam Pardiev, a member of the Independent Human Rights Society of Uzbekistan (IHRSOU) and Mamuljon Azimov, a member of HRSU, both reportedly also received calls to report to local prosecutors' offices.

1082. On 29 June 2005 the Government replied to the communication of 26 May 2005 concerning the case of **S. Zainabiddinov**. The Government stated that on 14 October 2004 the Andizhan city procurator's office opened a criminal case on the basis of indications of an offence (defamation) under article 139, paragraph 3 (d), of the Criminal Code of the Republic of Uzbekistan in respect of S. Zainabiddinov. The criminal case was suspended on 9 December 2004 on the basis of article 84, paragraph 5 (1), of the Code of Criminal Procedure of the Republic of Uzbekistan (grounds for the suspension of a criminal case without a resolution of the question of guilt). On 19 April 2005 the Andizhan city procurator's office opened a new criminal case on the basis of indications of an offence under article 139, paragraph 2, of the Criminal Code of the Republic of Uzbekistan. Despite the initiation of a new criminal case, S. Zainabiddinov did not cease his unlawful actions. Instances were recorded on 13 May 2005 of the dissemination by S. Zainabiddinov to representatives of the foreign mass media of defamation about the events that were taking place at that time in Andizhan. S. Zainabiddinov's reports were aimed at creating panic among the population and forming a negative attitude towards the authorities and the constitutional system in Uzbekistan. The aims pursued by S. Zainabiddinov were confirmed on the basis of audio materials collected, as well as by expert judicial psychological, philosophical, and religious and philological evaluations. On 21 May 2005, materials prohibited for reproduction and distribution and presenting a threat to public order and security in the country were discovered in S. Zainabiddinov's possession and

taken from him in the presence of official witnesses during a customs inspection at the Dustlik checkpoint on the state border crossing between Uzbekistan and Kyrgyzstan. After this on 22 May 2005 the Andizhan city procurator's office revoked the decision concerning the suspension of the first criminal case. The two cases were combined in one proceeding and the investigation was entrusted to the Andizhan oblast department of internal affairs. On 23 May 2005 S. Zainabiddinov was recognized as a suspect in the case under article 139 of the Criminal Code of the Republic of Uzbekistan, and on the same day he was allowed access to the lawyer of his own choosing and was informed of his rights. On 24 May 2005, S. Zainabiddinov was charged under article 139, paragraph 3 (a) and (d), and article 244-1, paragraph 3 (c), of the Criminal Code (preparation or dissemination of materials containing a threat to public security and public order) and with the approval of the procurator the preventive measure chosen in his respect was detention in custody. The investigation with respect to S. Zainabiddinov was ongoing and all the rights provided for him by the law were being fully ensured. The Government further stated that there had been no instances of the use of unlawful methods of treatment against the detainee. Concerning citizens **U. Bakirov** and **F. Gafurov**, the Government stated that officers of the law-enforcement bodies had no connection with the incident involving the beating of members of the Ezgulik organization that reportedly took place on 20 May 2005 in the city of Andizhan. No statements had been received by the internal affairs authorities from U. Bakirov and F. Gafurov concerning the infliction of bodily injuries upon them by unknown persons. Moreover, these persons were not summoned to the Andizhan oblast department of internal affairs and did not figure in criminal proceedings. On 25 April 2005 **U. Khaidarov** filed a statement with the Dzhizak municipal internal affairs division to the effect that on 23 April 2005 he was assaulted and beaten by an unknown individual. In this connection, on 25 April 2005 the Dzhizak oblast internal affairs department initiated a criminal case on the basis of indications of an offence under article 227, paragraph 2 (a), of the Criminal Code of the Republic of Uzbekistan (seizure, destruction, damage or concealment of documents, stamps, seals or forms), and a thorough investigation was, at the time this reply was received, being conducted. Mr. Khaidarov did not, however, recall the exact identity of the offender, and there were no eyewitnesses. He was shown more than 80 photographs of persons answering the approximate description of the offender, but he was not able to identify any one of them. Investigative operations relating to this case were, at the time this reply was received, undergoing, and no complaints or petitions had been received from the victim.

1083. On 10 June 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning **Tulkin Karayev**, a correspondent for the London-based Institute for War and Peace Reporting (IWPR). According to information received, on 4 June 2005, in the southern city of Karshi, he was arrested, detained and sentenced to ten days imprisonment on charges of hooliganism. It is reported that on June 4 2005 an unknown woman assaulted him and Gaybulla Djalilov, a human rights activist. Upon arriving at the police station, where he had intended to report the incident, he found that the same woman was at the police station herself filing a report to the effect that she was the victim of the assault. The Police immediately arrested Tulkin Karayev. At the time this communication was sent, he was being detained in a prison in Karshi. Tulkin Karayev was one of the few independent journalists who succeeded in covering the events of 13 May 2005 in Andijan. Since 13 May 2005, Uzbek state media had reportedly severely criticized independent journalists. On 25 May 2005, for example, the Uzbek-state newspaper *Pravda Vostoka*, in an article entitled 'In defence of the national sovereignty of the Uzbek people', called IWPR

correspondents in Uzbekistan ‘enemies of the state’ and called for the dissemination of their names and photos on national television. Tulkin Karayev had, since 31 May 2005 reported increased surveillance of his apartment by security services.

1084. On 1 July 2005 the Government of Uzbekistan replied to the communication of 10 June 2005. At the time this report was finalised, this reply was still in the process of being translated.

1085. On 7 July 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning the following persons. According to the information received:

1. On 22 May 2005, in Jizzakh, 70 people, some of whom are allegedly officials from various government agencies, forcibly entered the home of **Bakhtior Kamroev**, chairman of the Jizzakh province branch of the Human Rights Society of Uzbekistan, an organization that supports human rights, freedom and democracy in Uzbekistan. It is reported that they verbally harassed Bakhtior Kamroev for passing information to Western organizations and human rights groups and accused him of being a traitor and a terrorist. He was ordered to leave Jizzakh and death threats were made against him and his family. On 23 May 2005, it is reported that he was taken to the city prosecutor’s office for questioning, during which he was warned not to organize protests or carry out any human rights work. It is reported that he was still under surveillance at the time this communication was sent.

2. On 26 May 2005, a member of the police in Jizzakh came to the home of **Tatiana Dovlatova**, an activist with the Society for Human Rights and Freedoms of the Citizens of Uzbekistan, and demanded that she accompany him to the prosecutor’s office. She refused to go unless provided with an official summons. It is reported that she was subsequently placed under armed house arrest and threatened with being committed to a psychiatric hospital.

3. On 28 May 2005, in Andjijan, the police arrested **Muhammadqodir Otakhonov**, of the Uzbek branch of the International Human Rights Society (IDEM), **Dilmurod Muhiddinov** and **Musozhon Bobozhonov**, respectively chairman and member of the Markhamat district branch of Ezgulik, an organization working on religious and political persecution. It is reported that they searched their house and seized human rights materials and copies of a statement by the unregistered opposition party Birlik about the events in Andjijan. The three men were reportedly still in detention, at the time this communication was sent, and were being questioned without the presence of a lawyer. They were also charged with “infringement of the constitutional order,” “forming a criminal group,” and “preparation and distribution of materials containing threats to public order and security.”

4. On 28 May 2005, **Kholiqnazar Ganiyev**, head of the Samarkand province offices of both Ezgulik and Birlik, was arrested by local police in Samarkand. He was charged with “hooliganism” and sentenced to 15 days of administrative arrest. In a separate incident, on 27 May 2005, a group of women, suspected to have close links with the government, attacked Ganiyev’s house and then brought charges against him when he asked them to leave.



5. On 29 May 2005, 17 members of the Fergana Valley branch of Ezgulik, who were participating in a seminar in Tashkent and who had come from several regions of Uzbekistan, were detained and forcibly returned to their place of origin by 30 armed policemen who referred to them as, "Andijani terrorists." At approximately 2 a.m. on the night of the 30 May, Vasila Inoyatova, head of Ezgulik and a senior member of Birlik, who had organized the seminar, was detained by police, together with her husband, at Sobir-Rakhimov district police department. They were released the next day.

6. On 30 May, at approximately 6 a.m. **Sotvoldi Abdullaev**, member of the Uzbek branch of the International Human Rights Society (IDEM), was assaulted outside his house in Tashkent by two unknown, plainclothes men. As a result of the attack he had to be hospitalized. It is reported that Sotvoldi Abdullaev's house had been under surveillance for several days before the attack.

7. On 2 June 2005, police conducted a search of the home of **Mizaffarmizo Iskhakov**, head of the Andijan branch of the human rights group Ezgulik, during which they seized a number of human rights documents and a computer. On 3 June, Mizaffarmizo Iskhakov was arrested by police and detained at the Markhamat district police department. He was released on 6 June, but police confiscated his passport and ordered him not to leave the city.

8. On 2 June 2005, **Nurmukhammad Azizov** and **Akbar Oripov** of the Andijan branch of Birlik were arrested by district police, and their homes were searched by officers of the District Department of Internal Affairs of Markhamat who confiscated human rights publications and computers containing a copy of the Birlik statement about the events in Andijan. Both men were charged with 'public insulting or slandering against the President', 'intention to overthrow the constitutional order', 'preparation and distribution of materials containing threats to public order and security' and 'forming, heading or participating in religious extremist, fundamentalist, separatist or other banned organisations'.

9. On 5 June 2005, **Norboy Kholjigitov**, a member of the Human Rights Society of Uzbekistan HRSU, was arrested by Uzbek security agents in the village of Bobur near Samarkand. He was allegedly detained on charges of corruption. His whereabouts were, at the time this communication was sent, unknown.

10. On 7 June 2005, **Hamdam Sulaimonov**, deputy chairman of the Fergana Valley branch of Birlik was arrested by local police at his home in Andijan. Police carried out a raid at his house, during which his computer was seized. He was later interrogated about the distribution of a statement by the Birlik party chairman, Abdurakhim Polat, during a U.S. Helsinki Commission briefing on Uzbekistan in Washington on May 19. Hamdam Sulaimonov was then released on bail, but it is reported that he was later summoned again for interrogation.

11. On 15 June 2005, at approximately 10 p.m., near Andijan, **Tolib Yakubov**, chair of the Human Rights Society of Uzbekistan, **Eliza Murzaeva**, IHF Secretariat, **Eldar Zeynalov**, Chairman of the Human Rights Centre of Azerbaijan, and **Dmitri Markushevski**, Belarusian Helsinki Committee, all members of the delegation from the International Helsinki Federation, were followed by two unmarked cars. Shortly afterwards, their car was stopped by two police cars blocking the road and ordered them to drive to a local police station. They were informed

that they were suspects in a car accident which had reportedly occurred earlier in the day at a nearby mountain pass between Andijan and Tashkent. The police confiscated the driver's license and car registration documents. The delegation, accompanied by two police cars, was ordered to drive to the place where the accident had allegedly happened. At approximately 2 a.m. the delegation reached a checkpoint on the road leading from Andijan to Tashkent. The police returned the driver's documents, but copies of the delegation's passports were made. They were informed that police would meet them at the next checkpoint. At the second checkpoint, copies of their passports were made again.

Concern was expressed that the intimidation and harassment of human rights defenders concerned in Uzbekistan was part of a pattern of targeted violations by State authorities against them and intended to discourage them from carrying out their human rights activities, especially in the wake of the events in Andijan.

1086. On 25 July 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders sent a letter of allegation concerning a reported pattern of harassment of human rights defenders in Uzbekistan, many of whom had reportedly been arrested, put under house arrests and surveillance, prosecuted in connection to their human rights activities, and were being threatened. In particular, the Special Rapporteur received allegations concerning the following:

1. On 15 May 2005, **Ulugbek Bakirov** and **Fazliddin Gafurov**, members of Ezgulik, an organization working on religious and political rights, were beaten in the Dzhalakuduk district by three policemen in plain clothes as they were trying to investigate the events of 13 May and interview relatives of victims. Mr. Gafurov suffered from a concussion and injury to his left shoulder and their cameras were confiscated.
2. On 22 May 2005, **Sobitkhon Ustabaev**, a member of the human rights organization "zashchita" who had been denied access to the city of Andijan stood in the Namangan city center with a poster fixed to his chest denouncing the events in Andijan. He was reportedly arrested by the police and detained for 15 days in the Namangan police department. Additionally, on 15 June, a Helsinki Federation Delegation invited Ustabaev to a meeting which he failed to attend due to the fact that while travelling to the meeting point he was being followed. It is reported that he later received a phone call on his cell phone from the chief of the city department of international affairs who advised him not to attend meetings with the delegation.
3. On 26 May 2005, top officials of the region of Djizak together with leaders of regional community organizations (Makhallas) took part in a public protest demanding the eviction of human rights defenders from the region. The protesters first went to the house of **Momir Azimov**, chairman of the Djizak branch of HRSU but he was absent. On the same day at 11 a.m., protesters burst into the house of **Bakhtior Kamroev** calling him a "traitor" and a "terrorist". It is reported that the protesters rode in two buses which were escorted by the Council of National Security.

4. On 27 May 2005, **Anatoly Volkov** and **Tatiana Dovletova** both members of the SHRFCU were arrested by the police as they were visiting Shoira Sobiqbekova, another SHRFCU member, at the hospital. They were taken to the police station and compelled to sign statements confessing to being terrorists.

5. From 27 to 30 May 2005, **Mamaradzhah Nazarov**, an Ezgulik member, in the Zarbor District of the Djizak region was put under house arrest. On 30 May, a mob harassed him and his family and ordered them to leave town.

6. On 29 May 2005, 17 members of the Fergana Valley branch of Ezgulik, who were participating in a seminar in Tashkent and who had come from several regions of Uzbekistan, were detained and forcibly returned to their place of origin by 30 armed policemen who referred to them as, "Andijani terrorists." At approximately 2 a.m. on the night of the 30 May, **Vasila Inoyatova**, head of Ezgulik and a senior member of Birlik, and who had organized the seminar, was detained by police, together with her husband, at Sobir-Rakhimov district police department. They were released the next day.

7. On 29 May 2005, **Zulfikor Mirzakulov**, chairman for the Kahskardaya branch of Ezgulik, was beaten by the police at his house. It is reported that he was planning to attend a demonstration in Tashkent the next day which the police had reportedly attempted to dissuade him from attending. The police reportedly drove him 100 kilometers from Karshi and drove away.

8. On 30 May 2005 in Bukhara, **Ilkom Ashurov**, and **Vakhid Karimov**, members of the Humanitarian Legal Center were detained by the police for three hours and urged not to leave town.

9. On the same day **Nabibulla Norbutaev**, chief of the Tashkent branch of Ezgulik, was arrested and taken to the Shaikhantaur police station.

1087. On 26 July 2005, the Special Rapporteur sent a letter of allegation concerning the following persons:

- On 1 July, Ms. **Lobar Qaynarova** correspondent for *Ozodlik Radio* for the region of Syrdarya, was severely beaten near her house in the town of Gulistan. Three unidentified persons, two women and one man, attacked the journalist in the doorway of her house, beat her and took her recorder. Qaynarova, who was four months pregnant, was taken to the regional hospital where, according to doctors' diagnosis, half of her face was swelled up and her nose was broken. Reportedly, the attack was linked to her interviews to some members of the opposition.
- On 27 June, a correspondent of *Vecherniy Tashkent*, **Maxim Chernogaev**, was cruelly beaten up in the centre of the capital Tashkent by unknown people. He was forced to the ground and kicked; his face and eyes were badly injured.
- On 4 June, police in the city of Karshi arrested and detained for 10 days Mr. **Tulkin Karaev**, a well-known Uzbek journalist. Apparently, Karaev had previously been under National Security Service's surveillance for several weeks and

his lawyer could not meet him during his detention. On 16 June, Karaev was stopped at a check-point in the region of Kashkadarya and taken back to the Karshi City police department. Without any apparent reason, police asked him not to leave the Karshi district and confiscated his passport.

- On 27 May, **Gafur Yuldashev**, a journalist of *Radio Ozodlik* was shown the location of a mass grave at Bogi Shamol, nearby Andijan, by a man who was resident in the area. The next day this man was stabbed by unknown persons not far from his home. As a result, Yuldashev decided to move out of Andijan with his family.
- On 25 May, the newspaper “*Pravda Vostoka*” published an article entitled “*For the Defense of the National Sovereignty of the Uzbek People*”, where the British Broadcasting Corporation (BBC) was blamed for lack of “impartiality, independence, objectivity and balance”. On 28 May, the newspaper “*O‘zbekiston ovozi*” condemned the BBC for misinterpretation of events and lack of impartiality during the events in Andijan. In particular, the BBC was condemned for naming the gathering of people as a “demonstration” and that “fire had been opened on the demonstrators”, contrary to official media reporting “that the acts of terror had been carried out by a group of armed religious extremists”. Following those articles, the correspondent for *BBC World Service* **Monica Whitlock** left the country out of fear of reprisals against her.
- On 14 May, **Galima Buharbaeva**, a correspondent for the London-based *Institute for War and Peace Reporting* was temporarily detained by Andijan police and released the next day. Her footage of the manifestations of 13 May was confiscated and reportedly destroyed. Galima Bukharbaeva was orally warned by the police and, as a result, left the country for security reasons.

1088. On 28 November 2005 the Government of Russia replied to the communication of 26 July 2005. The Government stated that the proceedings instituted against **Tulkin Karaev** were administrative, not criminal. This case was examined in court on the basis of article 183 of the Code of Administrative Liability of the Republic of Uzbekistan (Minor hooliganism). Administrative proceedings were also instituted against Ms. Yulduz Sherova in connection with this case. Pursuant to an order issued by the criminal court of the city of Karshi in Kashka Darya Oblast, administrative proceedings were instituted on 4 June 2005 against Mr. Karaev, who was sentenced to 10 days’ imprisonment for violating article 183 of the Code of Administrative Liability. It has been established that, on 4 June 2005, a quarrel arose between Ms. Sherova and Mr. Karaev, near the market in Karshi. The quarrel was accompanied by mutual insults and acts that grossly violated the norms of behaviour in public places. In this connection, both offenders were taken to a police station to clarify the circumstances, after which it was decided to refer the case to the courts. The court hearing against them, which took place on 4 June 2005, was fully in compliance with the Uzbek legislation currently in force. Mr. Karaev’s lawyer, Mr. H. Normurodov, participated in the proceedings. On 9 June 2005, the Karshi Criminal Court re examined the administrative case against Mr. Karaev on the basis of an appeal lodged by Mr. Normurodov and Mr. B. Shokhnazarov. Mr. Karaev’s lawyers, Mr. Normurodov and Mr. Shokhnazarov, were present at the hearing of the appeal, and this was reflected in the court records. On the basis of the materials of the case, the chairman of Karshi City Court decided to uphold the previous decision, namely that Mr. Karaev should be sentenced to 10 days’

imprisonment for an offence contrary to article 183 of the Code of Administrative Liability. As can be seen from the case materials, the legal measures taken against Mr. Karaev were in no way related to his work as a journalist.

1089. On 12 August 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary General on the situation of human rights defenders, Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning **Igor Rotar**, Forum 18's Central Asia correspondent. According to information received, on 11 August 2005, Igor Rotar was arrested by Uzbek authorities upon his arrival at Tashkent airport, from Bishkek in Kyrgyzstan. His arrest was carried out by the Immigration Service and Border Guards upon the instructions of the National Security Service secret police. He was, at the time this communication was sent, being kept in incommunicado detention and had been asked to buy his own deportation ticket. The Special Rapporteur had expressed his concern that Igor Rotar might have been detained in connection with his work as a journalist, in particular in connection with his articles concerning freedom of religion during and in the aftermath of the May events in Andizhan.

1090. On 29 November 2005 the Government replied to the communication of 12 August 2005. The Government informed the Special Rapporteur that on 11 August 2005, at Tashkent-1 airport, **Igor Vladimirovich Rotar**, a citizen of the Russian Federation and a correspondent for the Norwegian human rights organization Forum 18, who had arrived on flight HY-782 from Bishkek, Kyrgyzstan, was refused entry into the territory of Uzbekistan. The reason for not admitting Mr. Rotar into the territory of Uzbekistan was his repeated violation of Uzbek legislation currently in force. The violations involved Mr. Rotar's work as a journalist without appropriate accreditation from the Ministry of Internal Affairs of Uzbekistan. The information received by the Special Rapporteur is unfounded. It should be pointed out that no measures of a procedural nature were taken against Mr. Rotar. In particular, he was not arrested, detained or placed in special facilities intended for lawbreakers and criminals. During the entire time that Mr. Rotar was at the airport, he was in the building for transit passengers, where he moved about freely and had an opportunity to buy food, refreshments and other consumer goods. On 12 August 2005, on his own initiative, Mr. Rotar took flight HY-601 to Moscow.

1091. On 6 September 2005, the Special Rapporteur, jointly 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 independence of judges and lawyers, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning Ms. **Elena Urlaeva**, member of the opposition party, "Ozod Dehkonlar", and 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 reportedly disseminating leaflets containing cartoons of the state emblem of Uzbekistan. According to the information received, Ms. Urlaeva was, at the time this communication was sent, being detained in a psychiatric clinic. Her lawyer had not been able to see her and 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 also had no access to her lawyer since her arrest and was reportedly coerced to sign a document in which she was to admit that she had tried to overthrow the political system of Uzbekistan. The Special Rapporteur had expressed his concern that

Ms. Elena Urlaeva was being targeted for her human rights work since she had allegedly already been targeted for her human rights activities. She had reportedly been 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. There had been previous allegations of mistreatment while in custody and fear was expressed that there was a high risk that Mrs. Elena Urlaeva could have been mistreated again while in psychiatric detention.

1092. On 29 November 2005 the Government sent a reply to the communication of 6 September 2005. The Government informed the Special Rapporteur 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, pursuant to the above-mentioned article and on the basis of the material gathered, the Tashkent procurator initiated a criminal investigation of Ms. Urlaeva as a suspect. It should be pointed out that Ms. Urlaeva had been prosecuted in the past for the commission of similar acts. Bearing in mind that Ms. Urlaeva had been mentally ill in the past, 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. Under national legislation, a person suffering from mental illness may not be prosecuted in criminal proceedings. Accordingly, the investigating authorities decided, on the basis of the conclusion of the psychiatric examination and pursuant to articles 265 and 266 of the Code of Criminal Procedure, to place Ms. Urlaeva in a mental institution. Following the investigation, the criminal case concerning Ms. Urlaeva 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. It should be pointed out that the investigation was carried out in strict conformity with national legislation and that Ms. Urlaeva has now been discharged from the hospital.

1093. On 20 September the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Internews**, an international media development organisation 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 grassroots organisation working towards the improvement of education, facilitating student exchanges, expanding internet access and supporting community development initiatives; IREX is also funded by the United States Agency for International Development (USAID). According to information received, on 9 September 2005, a court in Tashkent ordered Internews to close down its offices in Uzbekistan and to 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 is 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 planned to appeal the verdict. Moreover, on 4 August 2005 Mrs. **Khalida Anarbayeva**, current 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 it was 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. IREX planned to appeal this decision. The Special Rapporteur had expressed his concern that the actions taken against Internews and IREX were unfounded and were aimed at silencing and bringing an end to their news reporting activities.

1094. On 29 November 2005 the Government replied to the communication of 20 September 2005. The Government informed the Special Rapporteur that with regards to **Internews Network**, in September 2004 the Ministry of Justice of Uzbekistan conducted checks on the activity of the representative office of the non-governmental organization Internews Network in the Republic. Those checks uncovered significant violations of the statutes of Internews Network's representative office and of national legislative provisions, in particular in connection with the conclusion by the representative office's management in the person of Ms. K. Anarbayeva and its accountant Ms. O. Narmuradova of agreements with private publishers and television channels, the printing and dissemination of information materials, etc. The Press and Informatization Agency of Uzbekistan found that the activities of Internews Network were contrary to article 14 of the Mass Media Act of 26 December 1997 and article 30 of the Non-governmental, Non-profit Organizations Act of 14 April 1999. The activities of the managing director of the Internews Network representative office, Ms. Anarbayeva, and its accountant, Ms. Narmuradova, are characterized under domestic legislation as violations of article 190, paragraph 2 (b) of the Criminal Code (Engaging in an activity which requires a licence without obtaining special permission, by prior conspiracy involving a group of individuals). At a hearing on 4 August 2005 in the Yakkasaray district criminal court in Tashkent, the gross violation of the legislation by the management of the representative office was fully demonstrated. Ms. Anarbayeva's and Ms. Narmuradova's guilt was also proved by testimony from more than 10 individuals. It should be noted that the trial was conducted in accordance with the legislation on criminal procedure, i.e. in full compliance with the right to a defence and to access to the services of a lawyer. The lawyers of the accused, Ms. L. Zulunova and Mr. K. Makhbubov, participated in the trial without impediment. The court also found that the law enforcement bodies had acted properly in the pretrial investigations of the activities of the aforementioned managers of the representative office of Internews Network. Although the court found Ms. Anarbayeva and Ms. Narmuradova guilty, it did not hand down any punishment,

in view of the Presidential decree of 1 December 2004 declaring an amnesty on the occasion of the twelfth anniversary of the adoption of the Constitution. The appeals chamber of the Tashkent city criminal court confirmed the validity of the court's verdict, which it upheld without change. When the verdict of the courts in the aforementioned criminal case had become enforceable, the Procurator for the city of Tashkent sent a communication to the Tashkent city civil court requesting the suspension of the activities of the representative office of Internews Network in Uzbekistan. At a hearing on 9 September 2005, the Tashkent city civil court approved that request on the basis of material received from the Procurator and the Ministry of Justice. That ruling was upheld without change by the court of appeal on 11 October 2005. Concerning the **The International Research and Exchange Board (IREX)**, in April 2005, the Ministry of Justice conducted checks on the activity of the representative office of IREX in Uzbekistan. Those checks revealed that the representative office was engaged in activity that was not in accordance with its statutes, in violation of national legislation, without regard for the requirements of the Ministry of Justice and others. It was also established that an American organization, the International Centre for Not for-Profit Law (ICNL), had been operating under the aegis of IREX for more than 18 months, in violation of an intergovernmental agreement between Uzbekistan and the United States of America of 1 March 1994 regarding cooperation with a view to facilitating assistance and Memorandum No. 1 to that agreement. The activities of ICNL were being carried out in Uzbekistan without the appropriate State registration and in violation of the aforementioned intergovernmental agreement between Uzbekistan and the United States of America. Consequently, on 12 July 2005 the Ministry of Justice informed the IREX office of the need to put an end to these violations within 30 days. However, it was established from the representative office's reply of 12 August 2005 that not all the requirements of the Ministry of Justice had been fulfilled. Accordingly, the Ministry of Justice lodged an application with the Tashkent city civil court. On 12 September 2005, at a public hearing in which the director of the IREX office in Uzbekistan, M. Abdurazzakova, the IREX lawyer, R. Akhmedshina, and the legal advisers Z. Bekova and S. Nurmatova all participated, the Tashkent city civil court confirmed the violations committed by the IREX office, and suspended the activities of IREX in Uzbekistan for a period of six months (from 12 March 2005 to 12 September 2006 [sic]). The court decisions to shut down the Internews Network representative office and suspend the activities of the IREX office in Uzbekistan have been found to be valid. The judicial proceedings were conducted in accordance with the domestic legislation of Uzbekistan.

1095. On 12 October 2005, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture, sent a letter of allegation concerning Mr. **Shavkat Komiljanovich Madumarov**, 27 years, imam of the Mosque "Ismoil Ota" in Utra-Chirchik District of Tashkent region. According to the allegations received, Shavkat Makhmudov was arrested on 16 February 2005 by the Ministry of Interior officials. He was charged with "Wahhabism" under article 244-1 – preparing and distributing materials presenting a threat to public security. After the arrest he was severely ill-treated. In August 2005, during the trial at Tashkent city court, Shavkat Madumarov was unable to stand on his own and he informed the court that he had regularly been given injections without being informed of the reason for the injections. He claimed that, because of the injections, he was unable to move and he had headaches and a high temperature. The court did not respond to these allegations. His condition further deteriorated



and in the beginning of September he had to be carried into the court building. Three days after having been sentenced to 6 years of imprisonment, he died on 14 September 2005. His body was taken to his parents' home from the investigation isolator SI-1 "Tashturma". That day their house was surrounded by around 40 military policemen. His relatives were not allowed to open the shroud in which Shavkat Makhmudov's body was wrapped and were forced to bury him immediately at the closest cemetery.

1096. On 28 November 2005 the Government replied to the communication of 12 October 2005. The reply was, at the time this report was finalized, still in the process of being translated.

1097. On 28 October 2005, the Special Rapporteur sent an urgent appeal concerning the **BBC** in Uzbekistan. According to information received, BBC staff in Uzbekistan had been subjected to a campaign of harassment and intimidation by the authorities, making it very difficult for them to continue with their work. Consequently BBC had been forced to close its offices for at least six months, pending a long term decision on the matter. BBC had operated in Uzbekistan for over ten years and was the only major independent international broadcaster to maintain permanent offices in Tashkent.

1098. On 29 November 2005 the Government replied to the communication of 28 October 2005. The Government stated that the British Broadcasting Corporation opened its office in Tashkent over 10 years ago. Over these years, the Uzbek authorities have provided the office with all kinds of assistance and have never once harassed or intimidated BBC journalists. The Government stated that on 25 October 2005, the BBC issued a press release concerning its decision to close 10 offices in Eastern Europe, Kazakhstan and Thailand as a financial measure. On 26 October 2005, it issued another press release concerning the Corporation's decision to suspend the activities of its office in Tashkent. These decisions were purely of an economic nature and were not motivated by "security concerns". Moreover, the information contained in the Corporation's press release of 26 October 2005, to the effect that the Uzbek authorities put pressure on the correspondent Monica Whitlock, is groundless. Her departure from Uzbekistan was related to other reasons, mainly personally in nature. It should be noted that on no occasion did the BBC present the Uzbek authorities with specific facts concerning the harassment and intimidation of its correspondents. The Embassy of the Republic of Uzbekistan in the United Kingdom of Great Britain and Northern Ireland tried to obtain information about specific problems relating to the operation of the Corporation's office in Tashkent; however, all it managed to obtain from BBC directors was general remarks about the difficulties of working in Uzbekistan. In view of the lack of concrete information about the harassment and intimidation of BBC correspondents, the Uzbek authorities had no reason to conduct investigations. The legal situation and professional activities of foreign correspondents accredited in Uzbekistan are strictly regulated by the Constitution of Uzbekistan, the Mass Media Act, the Protection of the Professional Activities of Journalists Act, the Freedom and Guarantees of Access to Information Act and other enactments, as well as the provisions of international instruments to which Uzbekistan is a party.

1099. On 3 November 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning **Sanjar Umarov**, leader of the opposition political movement "Sunshine Coalition",

which has close ties with the Ozod Dekhkon ("Free Peasants") opposition party. According to the information received, 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. The Special Rapporteur had expressed concern 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, Mr. Umarov had only some time before this communication was sent, returned 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 had written 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.

1100. On 28 November 2005 the Government replied to the communication of 3 November 2005. The Government informed the Special Rapporteur that The Economic Crimes and Corruption Department of the General Procurator's Office is investigating in connection with the criminal proceedings instituted against the brothers **Sanjar and Abror Umarov**. In the course of the investigation it has been established that the Umarov brothers, who have a petroleum business in Uzbekistan, have committed a series of economic crimes over a long period of time. Thus, in exchange for the transport services of the Umarov enterprise, the brothers received petroleum products from the national holding company Uzbekneftegaz and, when exporting them abroad, embezzled property, including by not properly filling vehicle tanks with petroleum products from private networks of service stations in a number of towns in Uzbekistan. It has also been determined that the Umarov brothers committed forgery, bribed officials and engaged in tax evasion on a particularly wide scale. To cover up their criminal activities, they created private foreign firms with bank accounts in offshore zones. In view of the danger to society of the above-mentioned crimes, upon the opening of the investigation it was decided to remand Sanjar Umarov in custody as a preventive measure. During the authorized search of the office of the branch establishment Buyuk Siimolar, carried out as part of the criminal investigation of its director N. Khidoyatova and its accountant Kolesnikova, Sanjar Umarov, who was also found to be present in the office, tried to obstruct the official activities. When Mr. Umarov's identity was established, he was arrested by the law enforcement officers. After Mr. Umarov was read the indictment, the investigating authorities explained to the accused his rights and obligations as set out in the national legislation on criminal procedure. Mr. Umarov stated that he was not guilty of the charges levelled against him and therefore did not need a defence counsel. He was then informed that he had the right at any time to request the services of a lawyer to defend his interests. On 25 October 2005, in a communication to the investigating authorities, Mr. V.L. Krasilovsky, a lawyer of the firm Versari, stated that he had been Mr. Umarov's lawyer for the past year and a half. The same day, the investigator and Mr. Krasilovsky went to the holding facility where the accused was being detained. Officers at the holding facility informed them of the unsuitable behaviour of Mr. Umarov who, in their opinion, simulating mental illness, had undressed and thrown objects out of the cell window and was not following the regulations. In the course of Mr. Krasilovsky's

meeting with Mr. Umarov, an attempt was made to explain to him the desirability of having a defence counsel; Mr. Umarov stated that he did not know Mr. Krasilovsky and asked that lawyers not be invited without his request. On 25 October 2005, upon the decision of the investigating authorities, a specialist of the Office of Forensic Medicine of the Tashkent Central Department of Health examined Mr. Umarov in the presence of official witnesses. Mr. Umarov was not found to have any physical injury. Following a request by Mr. Krasilovsky and also the spreading of allegations that Mr. Umarov was ill and that lawyers were not permitted to take part in the case, on 2 November 2005 Mr. Krasilovsky and another lawyer, Ms. M. Burnasheva, were invited to the General Procurator's Office, where the rules for admitting defence counsel to the case were explained to them. The same day, an understanding was reached with Mr. Umarov's family on admitting Mr. Krasilovsky and Ms. M. Burnasheva to the case, and on 3 November 2005 they were introduced to Mr. Umarov. The accused gave his consent to their participation in the criminal proceedings to defend his interests. Mr. Umarov met with his lawyers alone. On further questioning of the accused, which was conducted following the meeting on 3 November 2005, Mr. Umarov stated that no illegal methods involving physical or psychological coercion or psychotropic substances had been used on him since the start of his detention. 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. The investigation of Mr. Umarov and others as part of criminal proceedings is being conducted in connection with his commission of economic crimes as part of an organized group. In view of the gravity of the charges, Mr. Umarov was placed under arrest. In that connection, there is no substance to the reports received by the United Nations Special Rapporteurs alleging that Mr. Umarov's arrest was linked to his political activities in the Sunshine Coalition, his open criticism of corruption and bureaucracy in Uzbekistan and the fact that he had recently returned from a trip to the United States and Russia, where he had discussed economic reforms aimed at introducing a free-market economy in the country. The preliminary investigation under the criminal proceedings is continuing, and the circle of individuals involved as an organized group in the commission of economic crimes is being identified. All procedural measures taken are within the framework of the provisions of the legislation on criminal procedure. On the basis of the results, a decision will be taken in keeping with the law.

1101. On 16 November 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary General on the situation of human rights defenders, sent an urgent appeal concerning **Aleksei Volosevich**, an ethnic Russian correspondent for the independent website *www.fergana.ru* who had extensively reported on the Andijan events of May 2005 and who had also been critical of the Government. According to information received, on 7 November 2005, in Tashkent, an unidentified man informed Mr. Volosevich over the phone that he had some information which would be of interest to him. Upon meeting at the place agreed to with the man in question, five men attacked Mr. Volosevich and threw several buckets of indelible paint over him. Before they left they told him that 'you won't sell out your country anymore'. Upon returning home, he found that the entrance to the door of his apartment was also covered in paint and graffiti with phrases including 'sell-out journalist' and 'Jew'. The graffiti also stated that Mr. Volosevich did not understand Islam. Two weeks earlier, an article on a government-controlled newspaper criticized Mr. Volosevich and his public criticism of the Supreme Court trial brought against the 15 persons accused of organizing the Andijan events in

May 2005. Moreover, for several days, Mr. Volosevich could not access the website *www.fergana.ru* from his home computer. Every time he attempted to access the website, an article concerning journalist Ruslan Sharipov, an outspoken government critic who had been arrested, kept coming up. The head of the press service at the National Security Service (NSS) denied having had anything to do with the attack against Mr. Volosevich, and claimed that Mr. Volosevich might have set up the attack himself, as anti-Semitism did not exist in Uzbekistan. This, despite the fact that the NSS had a mandate to investigate the crime committed against Mr. Volosevich. Concern was expressed for the safety of Mr. Volosevich.

## **Observations**

1102. The Special Rapporteur thanks the Government for its replies to his communications and looks forward to receiving a reply to those still pending.

1103. Nevertheless, in view of the numerous reports received on the worrying human rights situation relating to the right to freedom of opinion and expression in Uzbekistan since 13 May 2005, while taking note of the Government's replies, the Special Rapporteur remains concerned, reiterates his concerns as raised with the Governments in his communications and, in this context, deems it appropriate to bring again to the attention of the Government the concerns raised by the High Commissioner for human Rights in her press statement of 18 May 2005. Mrs. Arbour pointed to disturbing reports from the region telling of indiscriminate and excessive use of force by law enforcement officials, followed by the imposition of restrictions on local and foreign media. The High Commissioner urged the authorities to adhere strictly to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and to guarantee the rights Uzbekistan has pledged to uphold under international law, including the freedoms of assembly and expression.

1104. Moreover, reference is made to the Human Rights Committees' concluding observations in its report of 26 April 2005, CCPR/CO/83/UZB, in which the Committee stated its concern about persistent reports that journalists have been harassed in the exercise of their profession and recommended that Uzbekistan should adopt appropriate measures to prevent any harassment or intimidation of journalists and ensure that its legislation and practice give full effect to the requirements of article 19 of the Covenant. Moreover the Committee remained concerned about the legal provisions and their application that restrict the registration of political parties and public associations by the Ministry of Justice and urged the Government to bring its law, regulations and practice governing the registration of political parties into line with the provisions of articles 19, 22 and 25 of the Covenant. Finally, the Committee noted that the provisions of the Freedom of Conscience and Religious Organizations Act require religious organizations and associations to be registered in order to be able to manifest their religion or belief. It expressed concern about de facto limitations on the right to freedom of religion or belief and about the use of criminal law to penalize the apparently peaceful exercise of religious freedom and the fact that a large number of individuals have been charged, detained and sentenced and that, while a majority of them were subsequently released, several hundred remained in prison.

1105. Moreover, in view of the nature of the allegations, the Special Rapporteur deems it appropriate to generally make reference to Article 19 of the International Covenant on Civil and Political Rights as it is further defined and reflected in Resolution 2005/38 of the Commission on Human Rights, and to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

### **Venezuela (Bolivarian Republic of)**

#### **Seguimiento de comunicaciones transmitidas previamente**

1106. Por carta con fecha 1 de septiembre de 2005, el Gobierno transmitió la siguiente información en respuesta a la comunicación del 24 de mayo de 2004 relativa a **Gustavo Cisneros, Napoleón Bravo, Marta Colomina, Norberto Maza y Robert Alonso**. La Dirección de protección de Derechos fundamentales del Ministerio Público informó que una vez realizadas las gestiones ante la Consultoría Jurídica del Ministerio del Interior y de Justicia, se obtuvo como respuesta que no cursa ningún planteamiento u opinión jurídica en relación al caso planteado. No existe ningún procedimiento legal, de tipo penal o administrativo, que tenga como objeto despojar de la nacionalidad venezolana a los ciudadanos indicados. Los miembros de la Asamblea Nacional, en el ejercicio de sus funciones, son libres de expresarse según su conciencia.

1107. Por carta con fecha 1 de marzo de 2005, el Gobierno transmitió la siguiente información en respuesta a la comunicación del 22 de octubre de 2004 relativa al periodista **Nelso Bocaranda Sardi**. El Ministerio Público designó al Fiscal Sexagésimo Octavo de la Circunscripción Judicial del Área Metropolitana de Caracas, quien inició la investigación el 3 de noviembre de 2004. Tras haber recolectado la información y entrevistado a los testigos y a la víctima, el proceso se encontraba en fase preparatoria. Se remitirá la información referente al caso cuando se encuentre disponible.

#### **Observaciones**

1108. El Relator Especial agradece al Gobierno su respuesta a las comunicaciones con fecha 24 de Mayo de 2004 y 22 de Octubre de 2004, si bien lamenta no haber recibido respuesta a su comunicación del 31 de Mayo de 2005.

1109. En lo relativo al caso de la emisora **Radio Alternativa de Caracas 94.9 FM**, el Relator Especial, a la espera de una respuesta del Gobierno y sin pronunciarse sobre los hechos del caso, reitera los principios enunciados, entre otros por la Comisión de Derechos Humanos en su Resolución **2005/38** en la cual se insta a todos los estados a que “*Respeten la libertad de*

*expresión en los medios de comunicación y en las emisiones de radio y televisión y, en particular, respeten la independencia editorial de los medios de comunicación”, e insta a las autoridades a tomar las medidas necesarias para asegurar que la prensa pueda trabajar libre e independiente en un ambiente seguro.*

### Viet Nam

1110. On 8 August 2005, the Special Rapporteur sent a letter of allegation concerning **Pham Hong Son**, an on-line writer, who was jailed in March 2002 and subsequently sentenced to 13 years in prison by the Hanoi People's Court in June 2003. On appeal, the sentence was reduced to five years. Son was condemned for having posted online the translation of an essay on the essence of democracy. Pham Hong Son had already been the subject of a joint urgent appeal sent by the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture on 21 September 2004, to which the Government responded by letter dated 15 October 2004. Previously, a joint urgent appeal was also sent on his case by the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention on 25 August 2002, and a second one by the Special Rapporteur on 25 August 2003. According to new information received, Son's health was, at the time this communication was sent, rapidly deteriorating and he required immediate medical treatment. Son remained, at the time this communication was sent, incarcerated, as well as two other on-line writers **Nguyen Khac Toan** and **Nguyen Vu Binh**, despite several amnesties of political prisoners. Nguyen Vu Binh, also a journalist, was the subject of urgent appeals sent on 24 July 2002 on behalf of the Special Rapporteur jointly with the Special Rapporteur on torture and on 2 October 2002 by the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on arbitrary detention, to which the Government responded by letter dated 13 November 2002, and on 29 September 2003 by the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on arbitrary detention. Reportedly, the Public Security Ministry and the Ministry of Culture and Information issued a directive on 30 July 2005 requesting, inter alia, cyber-café owners to check the identity of their customers, prevent them to access “subversive” web-sites and keep a record of the presences.

1111. On 23 September 2005 the Government replied to the communication of 8 August 2005 concerning **Pham Hong Son, Nguyen Khac Toan** and **Nguyen Vu Binh**. The Government stated that Mr. Pham Hong Son was charged with having committed acts in violation of the law. On 18 June 2003 Mr. Son was brought to trial, and sentenced by the Court of First instance to 13 years imprisonment for the crime of espionage in accordance with article 80.1 of the Penal Code. On 26 August 2003 the Ha Noi appeal court tried Mr. Son again due to his good behaviour of cooperation and repentance and reduced his sentence to 5 years imprisonment. Mr. Son was in prison at the time this reply was sent and fully enjoyed the right to medical care and his health conditions were normal. Mr. Toan was arrested on charges of having committed espionage. On 20 November 2002 he was put on trial of first instance and sentenced to 12 years imprisonment and 3 years of administrative probation following completion of his jail term, in accordance with article 80 of the Penal Code. Mr. Toan was, at the time this reply was sent, serving his jail term in Nam Ha camp and was in good health. Mr. Binh was also charged under Article 80 of the Penal Code and was sentenced to seven years' imprisonment and 3 years administrative probation. On 5 May 2004 his sentence was upheld in an open appeal trial, during which trial Mr. Binh confessed his unlawful acts of having received money from abroad

to provide distorted and slanderous information on so called human rights violations committed by the state, as well as for having written documents calling on outside forces to interfere with the internal affairs of Viet Nam. He was also accused of having contacted and instigated families of offenders to cause public disorder. He was, at the time this reply was sent in good health.

1112. On 29 November 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Hoang Minh Chinh**, former Dean of the Hanoi Institute of Marxist-Leninist Philosophy and a vocal advocate of democratic reform. According to the information received, on 13 November 2005, Hoang Minh Chinh returned to Vietnam following treatment in the United States (US) for prostate cancer. While in the US he testified before the Congressional International Relations Committee, spoke at Harvard University and made a number of declarations about the lack of democratic freedom in Vietnam. The Vietnamese official media had widely denounced these declarations. Upon his return to Vietnam, Hoang Minh Chinh and his wife were staying with their daughter in Saigon prior to returning to Hanoi. They received a temporary residence permit, valid until 23 November 2005. According to reports, on 19 November 2005, a local security agent warned Hoang Minh Chinh's daughter that his presence was problematic in the neighbourhood as he was a "traitor and an enemy of the state", that he would not receive police protection if violence broke out and that he should return to Hanoi. On 21 November 2005, 50 people reportedly gathered outside his daughter's home and menacingly waving their knives and also threw eggs at his son-in-law's car. A neighbour allegedly threw buckets of water with sulphuric acid through the front door. Later that day, 10 young men banged on the door and shouted threats against Hoang Minh Chinh. The police reportedly denied him protection and further refused his request for an extension of the temporary residence permit on grounds of ill-health. On 31 October 2005 he filed a formal libel suit against seven official newspapers in Vietnam.

### **Observations**

1113. The Special Rapporteur thanks the Government for its reply to his communication of 8 August 2005 and looks forward to receiving a reply to his communication of 29 November 2005.

1114. With respect to the communication of 8 August 2005, the Special Rapporteur remains concerned, particularly in light of the principle enunciated in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice. Concern is moreover expressed on the basis of article 13 (b) and (c) of this Declaration which stipulates that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of

promoting and protecting human rights and fundamental freedom, through peaceful means. On this basis, the Special Rapporteur would appreciate receiving more information on the basis of the charges brought against the persons concerned and how these charges are compatible with the latter Declaration and with the right to freedom of opinion and expression.

### Yemen

1115. On 9 March 2005, the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal concerning **Abdulkareem Al-Khaiwani**, editor of the opposition weekly *Al-Shoura*, who was already the subject of another urgent appeal sent by the Special Rapporteur 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 his 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. The Special Rapporteur had expressed concern that the trial of Mr. Al-Khaiwani did not meet international fair trial standards. According to the information received, on 1 March 2005 there was an appeal hearing of Mr. Al-Khaiwani's conviction on 1 March 2005 and during this hearing his defence lawyers were reportedly beaten by security forces after being forcibly removed from the courtroom following a disagreement with the presiding judge. The appeal hearing was postponed to 22 March 2005.

1116. On 27 April 2005 the Government replied to the communication of 9 March 2005 concerning Mr. **Abdulkareem Al-Khaiwani**. The Government stated that the President of the Republic of Yemen issued a decision to grant him amnesty. Mr. Abdulkareem Al-Khaiwani was released from prison on 24 March 2005. This decision came as a result of the appeal of the Secretariat of the Capital in its meeting dated 22 March 2005 and its approval of the verdict issued by the court of first Instance last September. The Government concluded by stating that this amnesty could be taken as a first step to guide Parliament and the Government to abolish prison sentences for journalists and to examine the possibility of amending related laws.

1117. On 2 September 2005, the Special Rapporteur sent a letter of allegation concerning **Jamal Amer**, editor in chief for the independent weekly newspaper *Al-Wasat*. According to information received, on 23 August 2005 in the early morning, armed assailants in plainclothes blindfolded him and forced him into a vehicle. The vehicle had military licence plates. The assailants took him to a remote area of the capital, Sana'a, where they beat him and threatened to kill him and his family if he did not stop his investigative reporting or if he reported his abduction to the authorities. They condemned him specifically for writing about corruption within the government and asked him about other writers and editors of *Al-Wasat*, as well as the newspaper's sources and connections to foreign embassies.

1118. On 29 September 2005, the Special Rapporteur sent an urgent appeal concerning **Ahmed al-Haji**, an Associated Press journalist, and **Sami Ghalib**, a journalist working for *al-Nidaa* newspaper. According to information received, on 24 August 2005, six members of the security forces raided Mr. al-Haji's office, confiscating his files and two of his computers. The office's security guard, a Somali national, was arrested and was, at the time this



communication was sent, being detained at the Political Security Prison in Sana's. Furthermore, on 25 August 2005, security forces also raided the offices of Mr. Ghalib and seized his files and computers. Finally *Women Reporters Without Borders* had its licence revoked after having published reports on demonstrations which had taken place on 20 July 2005.

1119. On 27 October 2005, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning the reported incommunicado detention of and imposition of the death sentence against **Mr. Yahya Al-Daylami**. According to the allegations received, 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 an abduction rather than an arrest. Mr. Al-Daylami was then 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, at the time this communication was sent, awaiting execution, as a death sentence requires the approval of the President of Yemen, which was still, at the time this communication was sent, pending. Mr. Al-Daylami's trial reportedly 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 lacked independence, as it is 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 states: "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 is alleged that the actual reason for the charges against him were related to 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.

1120. On 24 December 2005 the Government replied to the communication of 27 October 2005. The Government stated that all the procedures of arrest with regards to Mr. Al-Daylami were carried out in a legal way and under the supervision of the Attorney General.

1121. On 10 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent a letter of allegation concerning **Moujib Soueileh**, a camera operator working for Al-Arabiya, an Arabic-language satellite TV news station. According to information received, on 20 October 2005, in Sanaa, police officers beat him, insulted him and detained him for questioning for several hours at a police station in the Habra neighbourhood of Sana'a, for filming a demonstration staged by textile factory workers demanding payment for wage arrears. Mr. Soueileh suffered from internal bleeding, three broken ribs and bruises on one leg.

#### **Follow-up to previously transmitted communications**

1122. On 27 April 2005 the Government replied to the communication of 8 January 2004. The Government informed the Special Rapporteur that the President of the Republic of Yemen issued amnesty to **Abdulkarim Alkhiwani**; he was released on March 24th 2005.

#### **Observations**

1123. The Special Rapporteur thanks the Government for its reply to his communication of 9 March 2005. The Special Rapporteur welcomes the decision to release Mr. Al-Khaiwani and the intention of the Government to work towards abolishing criminal punishments for media related offences. The Special Rapporteur would however encourage the Government to carry out investigations into the alleged beatings of Mr. Al-Khaiwani's lawyers and would appreciate being kept informed of any developments in this regard.

1124. The Special Rapporteur regrets not having received any replies to his communications of 2 and 29 September and 10 November 2005. Pending the Government's response to these communications and without making any determination on the facts of these cases, the Special Rapporteur expresses serious concern that the attacks referred to tend to fall within a reported pattern of attacks by security forces on journalists in an attempt to silence their criticism of the Government, in violation of the right to freedom of opinion and expression. The Special Rapporteur deems it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights, which stated that, apart from the right to freedom of opinion and expression being an important indicator of the level of protection of other human rights and freedoms, it is deeply concerned that violations of the right to freedom of opinion and expression continue to occur, including increased attacks directed against, and killings of, journalists and media workers, and stressed the need to ensure greater protection for all media professionals and for journalistic sources. The Special Rapporteur calls on the Government to investigate effectively threats and acts of violence against journalists and to bring to justice those responsible to combat impunity.

1125. The Special Rapporteur thanks the Government for its reply to his communication of 27 October 2005. The Special Rapporteur remains concerned and deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

## Zambia

1126. On 21 April 2005, the Special Rapporteur sent a letter of allegation concerning **Johnathan Mukuka**, reporter for the Zambia Information Service. According to information received, on 7 April 2005 at approximately 2030, senior armed police officers from the Nakonde Police Station stormed into his house and started beating him. Mr. Mukuka managed to escape. This incident followed a report that was published on Zambia's Daily Mail and which was also broadcasted on the Zambia National Broadcasting Corporation radio news, where Mr. Mukuka addressed the complaints of the residents of Nakonde who accused the police of being corrupt, particularly with regards to the release from custody without charge of murder suspects.

1127. On 17 June 2005 the Government replied to the communication of 21 April 2005 concerning **Johnathan Mukuka**. The Government stated that, at the time this reply was sent, it was still investigating the alleged harassment of Mr. Mukuka.

## Observations

1128. The Special Rapporteur thanks the Government for its reply to his communication of 21 April 2005. The Special Rapporteur would appreciate being kept informed of any developments and outcome into the investigations, including any prosecutions and punishments in this regard.

## Zimbabwe

1129. On 15 February 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning the following members of the **Zimbabwe Congress of Trade Unions (ZCTU)**, a non-governmental organization that works to promote, protect and advance the rights of workers: Mr. **Wellington Chibebe**, Secretary-General, Ms. **Lucia Matibenga**, Vice President, Mr. **Timothy Kondo**, Central Region Vice Chairperson, and Mr. **Sam Machinda**, Advocacy Coordinator. Mr. Chibebe was already the subject of an urgent appeal sent by the Special Rapporteur jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary General on the situation of human rights defenders on 9 October 2003, to which a reply was received, and of a letter of allegation sent by the Special Rapporteur jointly with the Special Representative of the Secretary General on the situation of human rights defenders on 26 November 2003. According to the information received, on 5 August 2004, the police arrested the above-mentioned persons in Gweru, Harare while attending a ZCTU workshop on inter alia the impact of high taxation levels on workers, HIV/AIDS and the National Social Security Authority (NSSA). They were reportedly arrested for having organised the workshop without police clearance. Allegedly, trade unions are exempted from requesting such police clearance in accordance with section 46 (j) of the Public Order and Security Act (POSA). The information received indicated that, on 6 August 2004, these four persons were released after having paid Z\$200,000 bail following a short hearing before the Gweru court. On 8 September 2004, the Gweru court reportedly accused them with contravening section 19, subsection 1B of the POSA on the grounds of conducting a riot, disorder or intolerance by "uttering words likely to cause despondence and encourage the overthrow of the government". It was furthermore alleged that, in a hearing on 3 November 2004, the charges against Mr. Matibenga, Mr. Kondo and Mr. Machinda were

dropped. According to information, the case against Mr. Chibebe was, at the time this communication was sent, pending and the next hearing was scheduled for 1 March 2005. Concern was expressed that the reported arrest, charges and trial of Mr. Wellington Chibebe, Ms. Lucia Matibenga, Mr. Timothy Kondo and Mr. Sam Machinda might have been in retaliation for their activity in defence of the rights of workers, in particular the organization of a ZCTU workshop on 5 August 2004.

1130. On 22 February 2005, the Special Rapporteur sent a letter of allegation concerning **Jan Raath**, a correspondent for the *Deutsche Presse-Agentur*, freelance photographer **Tsvangirai Mkwazhi**, **Angus Shaw** of *Associated Press* and **Brian Latham** for *Bloomber Economic News*, all four journalists working at the Associated Press Office in Harare. According to information received, on 14 February 2005 police officers carried out an intensive search of the Associated Press Office without providing any official documentation to warrant the search. The police questioned the journalists for two hours, accused them of 'spying' and of being 'hostile' to the Government of Zimbabwe and threatened them with arrest and with having their work material, including satellite communication equipment which the police officers claimed could interfere with state security transmissions, confiscated. It was moreover reported that earlier that same day, two men tried to force their way into Mr. Raath's residence. Due to fear of being arrested, Mr. Raath left the country. Moreover, **Cornelius Nduna**, a Zimbabwean correspondent for foreign news media outlets, had reportedly gone into hiding out of fear of being arrested following information that the Zimbabwe Central Intelligence Organisation was looking for him to retrieve video footage in his possession, which footage was thought to contain sensitive material. With only six weeks to go before Parliamentary elections were to take place in Zimbabwe, concern was expressed that the raid on the Associated Press office and the reported pressure on various journalists jeopardised the democratic process necessary for transparent elections to take place.

1131. On 6 April 2005, the Special Rapporteur sent an urgent appeal concerning **Toby Harnden**, chief foreign correspondent for the "*Sunday Telegraph*" and **Julian Simmonds**, photographer. According to information received, on 31 March 2005, they were arrested in the town of Norton, near the capital Harare, while covering the country's parliamentary elections. Harnden and Simmonds were charged with covering the elections without State accreditation, required under the Access to Information and Protection of Privacy Act, a charge that carries a punishment of two years of imprisonment. At a hearing on 4 April 2005, a magistrate reportedly set bail at one million Zimbabwe dollars (approx. US\$ 165) each for Harnden and Simmonds. As a consequence, prosecutors immediately invoked a section of Zimbabwe's Criminal Procedure and Evidence Act, which overrode the magistrate's order and gave the Government seven days to appeal against bail. On the same day, a lawyer representing the journalists filed an application with the High Court for their release, based on the fact that the 48 hours within which they should have been brought to court had expired. It is reported that, at the time this communication had been sent, the two journalists had been sent to a Harare prison.

1132. On 11 and 13 April 2005 the Government replied to the communication of 6 April 2005. The Government stated that Mr. Harnden and Mr. Simmonds overstayed their tourists' visas which was only available for seven days and which expired on 20 March 2005. They also covered the Zimbabwe elections without such a visa and without having recognized journalists' accreditation for Zimbabwe. At the time this reply was sent, the two journalists were brought before the Magistrates court at Norton and charged for contravening section 83 (1) as read

with subsection 3 of the Access to Information and protection of Privacy Act and of contravening 29 (1) as read with section 36.1 of the Immigration Act. They were granted one million dollars bail. The Prosecutor appealed this decision to grant them bail.

1133. On 20 May 2005, the Special Rapporteur, jointly with the Special Rapporteur on violence against women, its causes and consequences, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning several hundred protestors, including, **JW**, **MM** and other members of *Women of Zimbabwe Arise* (WOZA), a grassroots organization working to promote and protect women's activism, whose members had already been the subject of previous communications by the Special Rapporteurs on 29 September 2004 and 26 September 2003. According to new information received, on the evening of 31 March 2005, in Africa Unity Square, in Harare, police arrested approximately 260 women at a peaceful post-election prayer vigil. It had been reported that not all those arrested were participating in the demonstration. Some of the women were elderly, or were accompanied by small children. Several of the women were allegedly beaten by members of the police during their arrest. Some were forced to lie on the ground and were beaten on the buttocks by police officers. Others were beaten while trying to get out of police vehicles. As a result, several were injured, and at least three of them, seriously injured. They were reportedly denied any access to medical treatment. The women were detained at Harare Central Police Station, where they were allegedly detained overnight in overcrowded conditions, which led to many of them spending the night in an open-air courtyard. The women were denied access to their lawyers. The following day, 1 April 2005, the police reportedly informed the detainees that they could either plead guilty to offences under the Road Traffic Act, pay a fine and be released, or remain in detention over the weekend until the court reopened on 4 April, after which they would face charges under the repressive Public Order and Security Act (POSA). Over the course of 1 April, all the women elected to pay the fines and were released.

1134. On 30 August 2005 the Government replied to the communication of 20 May 2005. The Government stated that on 18 June 2005 29 women were arrested for a prima facie case under the Miscellaneous Offences Act. They were released on bail.

1135. On 24 May 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning **Frank Chikowore**, a freelance journalist accredited to work as a journalist in Zimbabwe by the AIPPA (Access to Information and Protection of Privacy Act). According to information received, on 18 May 2005 at Harare's central business district, he was arrested and detained by police officers as he was filming police removing street vendors off the district. He was not provided with any reasons for his arrest and no charges were, at the time this communication was sent, brought against him. His video camera and two notebooks were confiscated and was injured as a result of having been mistreated by the police. The Special Rapporteur had expressed his concern that Frank Chikowore was arrested and was being detained solely for carrying out his professional activities as a journalist.

1136. On 28 June 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **29 members of the Women of Zimbabwe**

**Arise** (WOZA). According to information received, on 20 June 2005 at around 11:00 in Bulawayo, 100 women carrying placards and banners started a peaceful demonstration against alleged forced evictions of thousands of people in the context of Operation Murambatsvina (Drive out the rubbish). Soon after, police officers blocked their way and the women sat down in protest. Twenty-nine women were arrested. They were all detained for 48 hours before appearing in court to face charges of blocking the traffic in violation of the Miscellaneous Offences Act. They were all released on bail. The first trial hearing before the Provincial Magistrate's Court was, at the time this communication was sent, scheduled for 11 July 2005. Many of the arrested women were themselves vendors who had lost their homes as a result of Operation Murambatsvina. It was moreover reported that the conditions of detention were inadequate and that the women were kept in small, dirty cells, without food and with only two blankets for them to share. While in detention, some of the women were assaulted. Sipiwe Maseko, for example, was indiscriminately picked out from the women and beaten with a baton on her back and on her feet by plain clothes officers. The officers tried to force her to give them names of the leaders and funding partners of WOZA.

1137. By letter dated 30 August 2005, the Government responded to the communication of 28 June 2005 **concerning the detention of 29 members of WOZA**. The Government clarified that the incident took place on 18 June 2005 rather than 20 June 2005. The Government confirmed that the women concerned were blocking traffic, that they were detained and charged under the Miscellaneous Offences Act, and that they were released on bail. According to the Government, no complaint had been filed by S.M. concerning the alleged abuse she suffered, and the Government expressed its commitment to investigating the case if a claim was filed.

1138. On 26 July 2005, the Special Rapporteur sent a letter of allegation concerning **The Daily News**, which was banned in September 2003. In spite of a Supreme Court ruling dated 14 March 2005, overturning a ban on the newspaper, the Media and Information Commission (MIC) - a Government-appointed regulatory body - reportedly refused on 18 July to grant The Daily News a new license. The MIC apparently claimed that the Associated Newspapers of Zimbabwe, the company that publishes The Daily News, breached various sections of the 2002 Access to Information and Protection of Privacy Act concerning the accreditation of journalists and the publication of a newspaper without a license. The Act makes it obligatory for news media and journalists to register with the commission, and those which do not comply can be imprisoned. Consequently, the forty-five journalists employed by the newspaper faced the possibility of two-year prison sentences for charges of working without official accreditation. Mr. Samuel Sipepa Nkomo, the company's chairman, reportedly stated that the MIC refused to give The Daily News a license in order to reopen legal proceedings that would delay the newspaper's reappearance indefinitely. At the time this communication was sent, he had stated his intention of appealing against the decision before an administrative court.

1139. On 10 August 2005, the Special Rapporteur sent a letter of allegation concerning **Desmond Kwande**, chief photographer for the *Daily Mirror*. According to information received, on 4 August 2005 in Harare, he was arrested and had his camera and press card confiscated by municipal policemen for taking pictures of people being rounded up in the city center. Mr. Kwande had identified himself to the police as a journalist, and had been given prior authorization to take the pictures. He was released three hours later after paying an admission of guilt fine.

1140. On 22 August 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mr. **Lovemore Madhuku**, Chairman of the *National Constitutional Assembly (NCA)*, a non-governmental organisation grouping individual Zimbabwean citizens and civic organisations including, labour movements, student and youth groups, women groups, churches, business groups and human rights organisations, and Mr. **Bright Chibvuri**, a journalist at *The Worker*, a newspaper published by the country's largest labour movement, the Zimbabwe Congress of Trade Unions (ZCTU). Mr. Lovemore Madhuku was the subject of an allegation letter sent by the Special Rapporteur on 13 October 2004 and an allegation letter sent by the Special Rapporteur jointly with the Special Rapporteur on the question of torture on 11 October 2004. Mr. Bright Chibvuri was also the subject of an allegation letter sent by the Special Rapporteur jointly with the Special Rapporteur on the question of torture on 11 October 2004. According to the new information received, on 4 August 2005, Mr. Lovemore Madhuku and Mr. Bright Chibvuri were arrested by members of the riot squad who were called by police to monitor a public protest, organized by NCA, in favour of a new constitution. Mr. Lovemore Madhuku and Mr. Bright Chibvuri were allegedly charged under section 19 of the Public Order and Security Act (POSA) before being released on bail of Z\$250,000 on 5 August 2005. Concern was expressed that their arrest might have constituted an attempt to prevent them from further carrying out their human rights activities and promotion of democracy and the rule of law in Zimbabwe.

1141. On 3 November 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning Mr. **Officen Nyaungwe**, Mr. **Claris Madhuku**, Mr. **Sozwaphi Masunungure**, Mr. **Isiah Makatura**, and Mr. **Wilson Shonhiwa**, field officers for the Mass Public Opinion Institute, Harare. The Institute works at promoting and strengthening democratic governance through research, publishing and facilitating discussion of public opinion on topical issues, in order to achieve interaction between policy makers and the citizens they serve. They also promote and encourage the institutionalisation of democracy in Zimbabwe. According to information received, on 25 October 2005, at approximately 16:00, Officen Nyaungwe, Claris Madhuku, Sozwaphi Masunungure, Isiah Makatura and Wilson Shonhiwa were abducted from a farming community, near Harare, which is under the auspices of Ushewokunze Cooperative, where they had been conducting research. They were allegedly severely beaten by a group who call themselves "war veterans". The field officers were allegedly accused of acting against national interests and were then beaten by the "war veterans" and a soldier from the Zimbabwe National Army, who was in full military apparel, before the local community of over 100 people. During the beating the "war veterans" and the soldier reportedly demanded identification cards from the five field officers. Upon production of these cards it was established that Claris Madhuku is related to Mr. Lovemore Madhuku (see communications dated 22 August 2005, 13 October 2004 and 11 October 2004), Chairperson of the National Constitutional Assembly (NCA). Claris Madhuku reportedly received a further beating "for the sins of his brother". The assaults allegedly lasted for three hours before they were released at approximately 19:00 after the assailants confiscated all the research materials including the questionnaires that had been filled out, and took details of their addresses and personal particulars. The assailants then reportedly gave the five researchers back their car keys and ordered them to leave the community. They were admitted to the Avenues Clinic, where

three were treated and two were hospitalised and kept in overnight for monitoring as they sustained severe injuries. Concern was expressed that Officen Nyaungwe, Claris Madhuku, Sozwaphi Masunungure, Isiah Makatura and Wilson Shonhiwa were targeted due to research they were conducting relating into perceptions and notions of democracy in Africa and Zimbabwe on behalf of the Mass Public Opinion Institute of Harare.

1142. On 16 November 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Mrs. NM, Coordinator of the Women's Coalition, an umbrella body of women's rights groups in Zimbabwe. According to the information received, on 8 November 2005, NM was arrested and detained, allegedly for convening a meeting under the name of 'Women Peacemakers International'. The meeting was a workshop aimed at training women in the use of non-violent means as a tool for dispute resolution. On 10 November 2005, NM was charged with contravening section 24 (6) of the Public Order and Security Act (POSA), that is, organizing a political meeting without informing a regulatory authority. She was released on the same day but had been warned by the police that she would be summoned to appear in court once they had completed their investigations.

### **Observations**

1143. The Special Rapporteur regrets not having received a reply to his communications of 15, 22 February and 22 August 2005. Pending a reply to these communications and without making any determination on the facts of the case, the Special Rapporteur deems it appropriate to make reference to Commission on Human Rights Resolution 2005/38 which defines the right to freedom of opinion and expression as being intrinsically linked to the right to peaceful assembly and association. The Commission goes on to express its concern that violations of this right continues to occur, often with impunity, including arbitrary detention, intimidation, persecution and harassment, against persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers, as well as human rights defenders.

1144. The Special Rapporteur thanks the Government for its reply to his communication of 6 April. The Special Rapporteur received further information on this communication informing him that on 14 April 2005, both Julian Simmonds and Toby Harnden were acquitted of charges of practicing journalism in Zimbabwe without accreditation under the Access to Information and Protection of Privacy Act (AIPPA), on the grounds that the state failed to prove its case against the two journalists. The magistrate, however, ruled that Simmonds and Harnden should be put on trial for charges of violating the Immigration Act by overstaying the time period specified by the visas granted to them as tourists.

1145. Whilst recognizing the State's right to require accreditation for all journalists working in Zimbabwe, the Special Rapporteur reiterates the principle enunciated, inter alia, by the Commission on Human Rights in its Resolution 2005/38, that the authorities should not resort to criminal laws and punishment for media related offences as these are deemed disproportionate to the gravity of the offence and violate international human rights law. Media related offences should preferably be dealt with under civil law. The Special Rapporteur would also be interested in receiving information on the requirements and procedures necessary for journalists to obtain journalists' accreditation, including any existing restrictions and limitations imposed in this regard.



1146. The Special Rapporteur thanks the Government for its reply to his communication of 20 May 2005. The Special Rapporteur would nevertheless appreciate receiving more information on the issues raised by the allegations concerned and he deems it appropriate in this regard to make reference to the internationally recognized international norms concerning the minimum standards required vis-a-vis women being kept under any form of detention or imprisonment, as provided for inter alia under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Special Rapporteur would also like to make reference to the report, E/CN.4/1999/64, which provided that any real consideration of how to ensure the realization of all human rights for all women necessarily includes consideration of the rights to opinion, expression, participation, information, association and assembly. There can be no doubt that in the absence of these rights, *de jure* or *de facto* or both, women will remain underrepresented and societies will continue to ignore not only their rights and needs but the creative contribution they can make towards a general improvement of societies. It is therefore imperative that real, qualitative and quantitative measures be taken to ensure women's participation, as equal partners, in private and public life.

1147. On the same lines, the Special Rapporteur, whilst expressing his regret at not having received any reply to his communication of 24 May 2005 and 10 August 2005, would appreciate receiving information on the basis of the decision to disallow Mr. Frank Chikowore and Desmond Kwande, both accredited journalists in Zimbabwe, from carrying out their work as journalists, and how this is compatible with the right to freedom of opinion and expression.

1148. With reference to the communication of 28 June 2005 the Special Rapporteur reiterates the concerns he, jointly with the Special Rapporteur on Violence Against Women, the Independent Expert on Liberia, the Special Rapporteur on the Highest Attainable Standard of Physical and Mental Health, the Special Rapporteur on the Right to Education, the Special Rapporteur on Torture, the Special Rapporteur on Indigenous People, the Special Representative of the Secretary-General on Human Rights Defenders, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the Special Rapporteur on Migrants, stated in a press release on 24 June which expressed serious concerns at the mentioned mass forced evictions, as well as at the disruption by the police on 18 June 2005 of a peaceful demonstration against the evictions, organized by Women of Zimbabwe Arise, particularly in light of several years of reports of widespread violations against human rights defenders, including beatings, arbitrary arrests and detention, violations of the rights to freedom of association, assembly and expression.

1149. The Special Rapporteur also regrets not having received any reply to his communication of 26 July 2005. Pending a reply to this communication and without making any determination on the facts of the case, the Special Rapporteur would appreciate being informed of the basis on which the MIC refused to provide the Daily News with a new licence and the reason for not implementing the decision of the Supreme Court. Concern is again expressed at recourse to criminal law and punishment for media related offences.

1150. The Special Rapporteur looks forward to receiving a reply to his communication of 2 and 16 November 2005.

### UNMIK (Kosovo)

1151. On 4 July 2005, the Special Rapporteur sent a letter of allegation concerning **Bardhyl Ajeti**, a reporter for the Albanian-language daily *Bota Sot* (World Today), a newspaper which supports the political party, the *Democratic League of Kosovo*. According to information received, on 3 June 2005, when he was driving from Pristina to the eastern town of Gnjilane, unidentified assailants shot him from another car. He died in a hospital in Milan, Italy on 25 June 2005. It is reported that a police task force was created to investigate this case; one man was detained for questioning and subsequently released. In view of the fact that Bardhyl Ajeti often criticised opposition party figures in his editorials, concern was expressed that the attack against him might have been politically motivated and that he might have been targeted for his work as a journalist.

1152. On 23 August 2005 the UNMIK replied to the communication of 4 July 2005 concerning **Bardhyl Ajeti**. UNMIK stated that UNMIK police had launched an investigation into Mr. Ajeti's murder which investigations were being supervised by the Police Task Force. The investigations into this killing were being treated as a high priority case at the time this reply was sent. Moreover, UNMIK stated that, in order to avoid compromising the investigation, much of the operative information could not be released. Police were looking into several possible leads and were in the process of analyzing Mr. Ajeti's activities over an expanded period that might have any connection to his murder.

### Observations

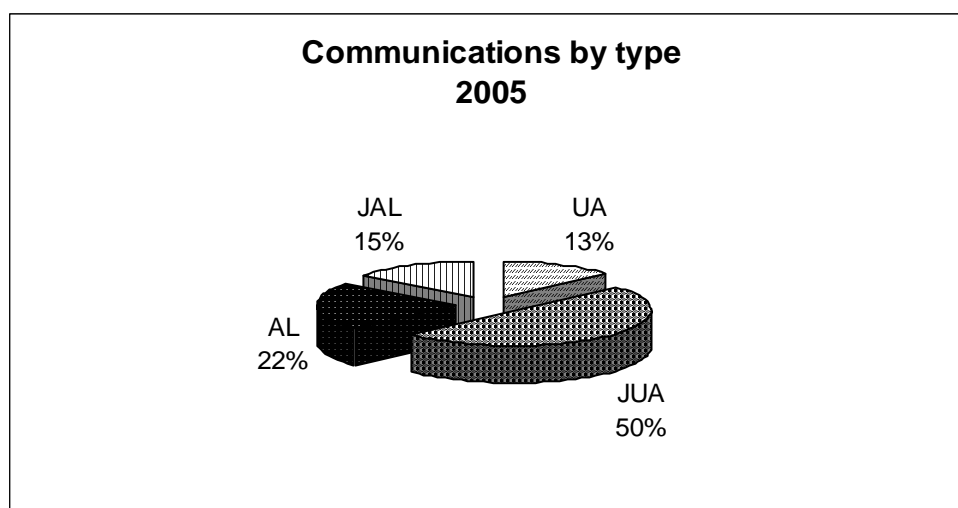
1153. The Special Rapporteur thanks UNMIK for its reply to his communication of 4 July 2005 and looks forward to receiving information on the developments and outcome of the investigations, including any possible prosecutions and punishments against the alleged perpetrators.

**Annex**

**COMMUNICATIONS SENT BY THE SPECIAL RAPPORTEUR  
ON THE PROMOTION AND PROTECTION OF THE RIGHT  
TO FREEDOM OF OPINION AND EXPRESSION**

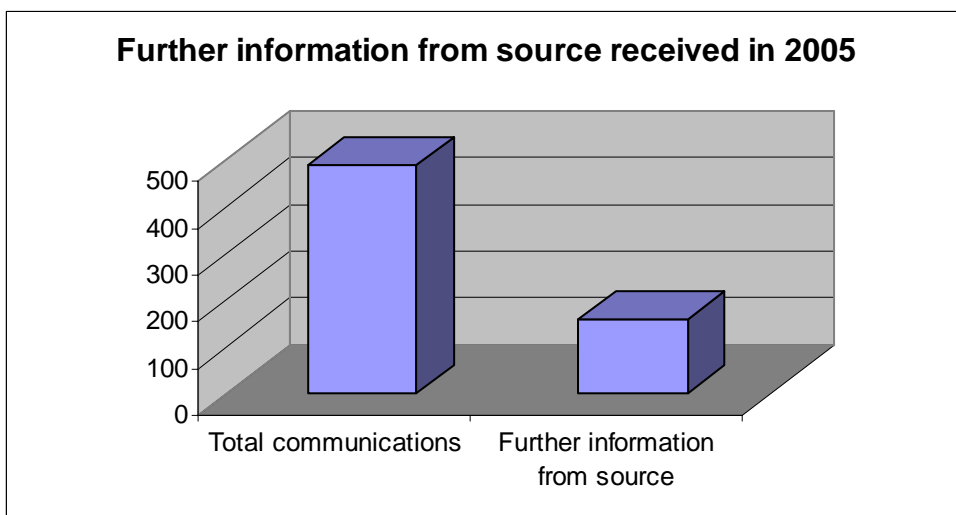
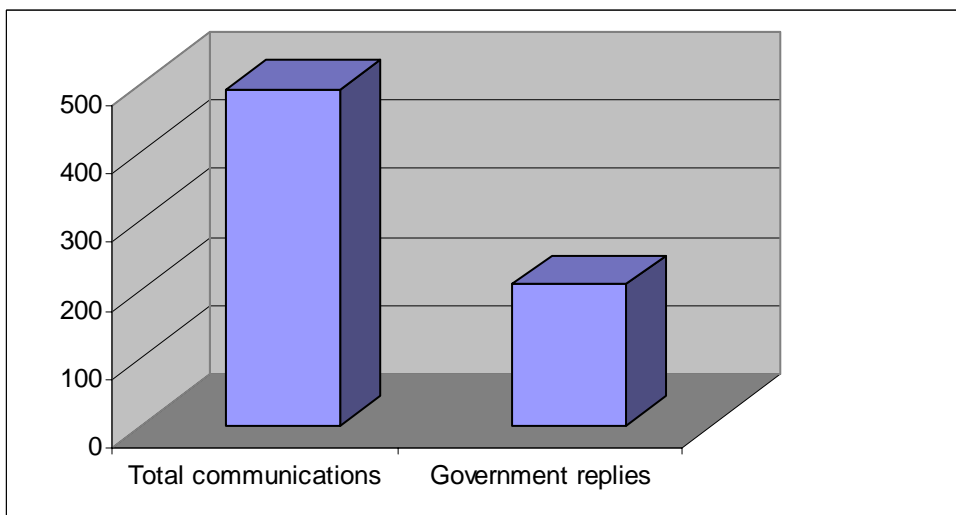
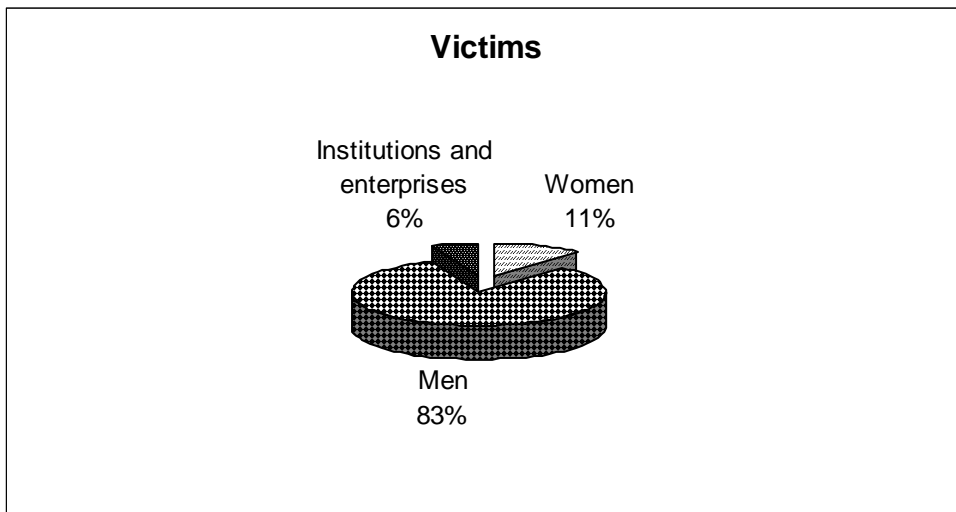
**(January-December 2005)<sup>a</sup>**

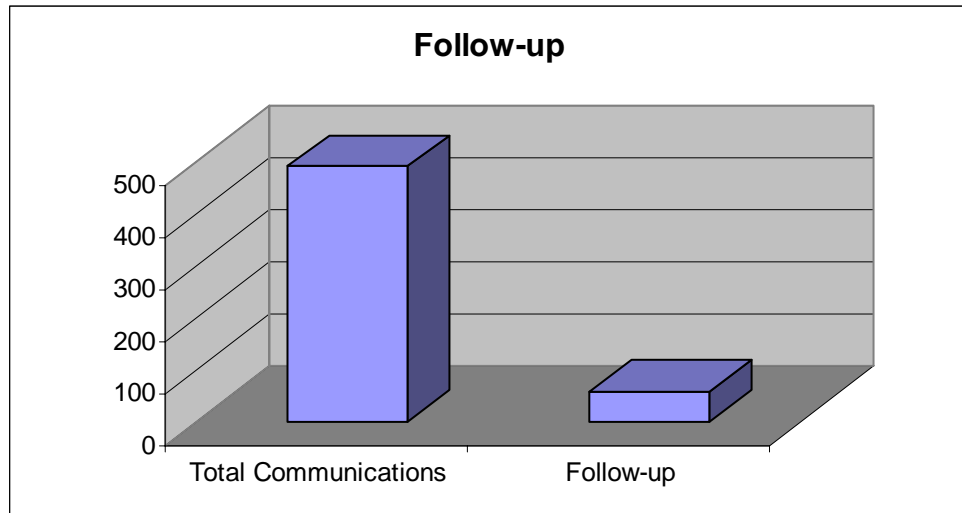
- Total number of communications: 490
- Number of individual victims: 1328
- Communications sent to 96 countries
- Government replies: 42%
- Further information from source: 33%
- Follow-up: 12%



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<sup>a</sup> General statistical information on communications sent by Special Procedures in 2005 is available on OHCHR website: [www.ohchr.org](http://www.ohchr.org).





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