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Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Addendum

Communications with Governments*

* The present report is being circulated as received, in the languages of submission only, as it greatly exceeds the word limitation currently used by the relevant General Assembly resolution.

CONTENTS

	Paragraphs	*Pages*
Introduction……………………………………………………………	**1-5**	**3**
Summaries of communications transmitted, replies received and press releases issued ………………………………………………..	**6-75**	**4**
Afghanistan…………………………………………………………….	**6-7**	**4**
Algeria…………………………………………………………....	**8-11**	**4**
Australia……………………………………………………………	**12-13**	**6**
Bahrain…………………………………………………………........	**14-17**	**7**
Chile……………………………………………………...................	**18-19**	**10**
China ……………………………………………………….............	**20-21**	**12**
France……………………………………………………………...…..	**22-23**	**13**
Germany ……………………………………………...…………	**24-25**	**13**
Indonesia…………………………………………………………….	**26-27**	**14**
Israel ……………………………………………………………...	**28-32**	**15**
Jordan……………………………………………………...……… .	**33-36**	**18**
Kenya……………………………………………………………..	**37-38**	**21**
Kyrgyzstan …………………………………………………………	**39-40**	**22**
Malaysia……………………………………………………………..	**41**	**22**
Maldives……………………………………………………………..	**42-43**	**23**
Mauritius……………………………………………………….....	**44-45**	**24**
Morocco ……………………………………………………………	**46-47**	**25**
Pakistan……………………………………………………....... .	**48-50**	**27**
South Africa……………………………………………………….…	**51-52**	**28**
Tajikistan …………………………………………………….....…..	**53**	**29**
Thailand…………………………………………………...………… .	**54-55**	**31**
Turkey…………………………………………………………….	**56-60**	**32**
Uganda……………………………………………………….….... …	**61-62**	**34**
United Kingdom of Great Britain and Northern Ireland	**63-66**	**35**

…………….……..

United States of America ……………………………….….…..……….…..	**67-71**	**37**
Uzbekistan ………………………………………………………….…..	**72-74**	**41**
Yemen ……………………………………………………….….........	**75**	**41**

Introduction

1. The present report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism contains summaries of communications transmitted to Governments between 1 January and 31 December 2006, as well as replies received up to 31 January 2007. In addition, the report covers press releases issued in 2006.

2. During the period under review the Special Rapporteur corresponded with Governments, either separately or jointly with other Special Rapporteurs, in 33 communications and he issued 7 press releases that relate to a total of 24 countries or territories. In specific cases, the Special Rapporteur decided to address the concerns related to his mandate in a separate letter, instead of joining communications of other special procedures.

3. In 2006, the Special Rapporteur received replies from 12 of the 24 Governments to which he had addressed communications. In addition, three Governments provided replies to communications sent in 2005. Most of the Governments offered detailed substantive information on the allegations received. The Special Rapporteur underlines that it is crucial that Governments share their views with him on the allegations received. The Special Rapporteur encourages cooperation from those Governments which have not yet provided replies to his communications. Replies received after 31 January 2007 and replies received during the reporting period, which were not able to be translated in time, will be reflected in the next communication report to the Human Rights Council.

4. In most cases, the Special Rapporteur acted upon information received from reliable sources concerning individual cases of alleged breaches of fundamental freedoms and human rights in the context of countering terrorism. In addition, he also took action with respect to legislative developments and proposals undertaken by a number of Member States. The Special Rapporteur recognizes that problems concerning human rights and fundamental freedoms in the context of countering terrorism are not only confined to the countries and territories mentioned.

5. In accordance with paragraph 14(e) of Commission on Human Rights Resolution 2005/80, as extended by Human Rights Council decision 1/102, the Special Rapporteur entered into a dialogue with several Member States on the preparation of legislation designed to combat terrorism. The Special Rapporteur, to the greatest possible extent, engaged with respective Governments during the drafting stage of the legislation. In the form of communications, press releases and informal consultations, the Special Rapporteur conveyed his main concerns to the Governments, some of which took the opportunity to reply, outlining their views and responding to specific questions posed by the Special Rapporteur. He regards this exchange of views as a positive and constructive dialogue resulting in a joint effort to draft and implement legislative frameworks that are equipped to successfully combating terrorism while at the same time effectively promoting and protecting human rights. With a view to his mandate, including the provision of advisory services or technical assistance found in paragraph (a) of Resolution 2005/80, the Special Rapporteur encourages more Member States to enter into dialogue, ideally during the preparatory stage of the adoption of new counter terrorism legislation or legislation on terrorism related offences.

SUMMARIES OF COMMUNICATIONS TRANSMITTED, REPLIES RECEIVED AND PRESS RELEASES ISSUED

Afghanistan

(a) *Communication sent to the Government by the Special Rapporteur*

6. On 27 June 2006 the Special Rapporteur sent a letter to the Government of Afghanistan, in which he referred to the **draft law against terrorism**. The Special Rapporteur drew the Government's attention to four substantive areas of concern. First, he pointed to the concern that terrorist acts as contained in Articles 5-12 of the draft law were defined as terrorist crimes without any requirement of specific terrorist intent or an underlying political or ideological cause. Second, Articles 6, 7, 8, 13, 14, and 15 of the draft law were not limited to serious acts of violence and were therefore overly broad. Furthermore, he referred to the concern that Article 21 of the draft law did not comply with the principle of legality since this Article gives precedence to this law in respect of any other conflicting law. Finally, the Special Rapporteur raised the issue of sanctions attached to terrorist offences pointing to the death penalty as provided in Articles 5-12, 14 and 15 of the draft law.

(b) *Communication from the Government*

7. As at 31 January 2007, there had been no response to the Special Rapporteur's correspondence.

Algeria

(a) **C***ommunications envoyées au Gouvernement par le Rapporteur spécial*

8. Le 20 mars 2006, le Rapporteur spécial a envoyé une lettre au Gouvernement d'Algérie concernant la **législation dans le domaine de la lutte contre le terrorisme,** en particulier le décret législatif 92-03 relatif à la lutte contre la subversion et le terrorisme (en partie incorporé à l'article 87 bis du Code Pénal) et certaines dispositions du Code de Procédure Pénale ainsi que certaines dispositions de la Charte pour la Paix et le Réconciliation Nationale et l'ordonnance 06-01 portant application de la Charte. Selon les informations reçues, l'article 87 bis du Code Pénal comprend une définition très large et générale de ce qui constitue un acte subversif et terroriste. De plus, le Code de Procédure Pénale permet une garde à vue pouvant durer jusqu'à 12 jours dans les cas de crimes qualifiés d'actes terroristes ou subversifs (article 51) et la détention provisoire peut être prolongée cinq fois lorsqu'il s'agit de crimes terroristes (article 125). Deuxièmement, le Rapporteur spécial a soulevé des question relatives à la Charte pour la Paix et la Réconciliation Nationale qui prévoit notamment (a) l'extinction des poursuites judiciaires à l'encontre de tous les individus impliqués dans des réseaux de soutien au terrorisme, qui décident de déclarer leurs activités aux autorités algériennes compétentes (article II.4), (b) la grâce pour les individus condamnés et détenus pour des activités de soutient au terrorisme (article II.6) ainsi que (c) la commutation et remise de peine pour ceux qui ne sont pas touchés par les mesures d'extinction des poursuites ou de grâce, ce qui inclut les individus qui ont été impliqués dans des attentats à l'explosif dans des lieux publics. Finalement, l'ordonnance 06-01 du 27 février 2005, qui met en oeuvre les dispositions de la Charte pour la Paix et la

Réconciliation Nationale, prévoit dans son article 20 que les dispositions relatives à la récidive sont applicables aux individus qui ont bénéficié, *inter alia*, de mesures d'extinction des poursuites prévus par l'ordonnance en application de la Charte si à l'avenir ils se rendent coupables de violations des articles du Code Pénal relatifs aux actes terroristes et subversifs. De plus, l'article 26 de l'ordonnance en application de l'article III.3 de la Charte prévoit l'interdiction d'exercer une activité politique aux individus ayant « participé à des actions terroristes ».

9. Par lettre du 26 juin 2006, le Rapporteur spécial, conjointement avec le Rapporteur spécial chargé d'examiner les questions se rapportant à la torture, a attiré l'attention du Gouvernement d'Algérie sur la situation de "V" et "I", citoyens algériens (cf. paragraphe 64). Selon les information reçues, « V » et « I » ont été qualifiés de " terroristes internationaux soupçonnés" par les autorités britanniques, sur la base d'informations confidentielles produites par les services de renseignement. Ces informations n'ont été communiquées ni aux individus en question, ni à leurs avocats, qui ont donc été dans l'impossibilité de les contester. Les deux individus étaient détenus dans une prison de haute sécurité. Ces individus ont été expulsés de Grande Bretagne par les autorités britanniques vers l'Algérie, les 16 et 17 juin respectivement, pour cause de « danger à la sécurité nationale » posé par ces individus au Royaume Uni. Les deux individus seraient détenus dans un endroit gardé secret depuis leur retour en Algérie, et ils n'auraient pas pu entrer en contact avec leurs familles, en violation du droit algérien, et ce malgré des assurances donnée par le consulat algérien à Londres qu'ils n'étaient pas recherchés par la police en Algérie et qu'ils seraient relâchés après quelques heures passés au commissariat de police de l'aéroport pour remplir des formalités. Ces deux individus seraient détenus par une agence de renseignement militaire, le Département du renseignement et de la sécurité (DRS), spécialisé dans les interrogatoires d'individus possédant des informations liés au terrorisme. Le Rapporteur a prie le Gouvernement de prendre toutes les mesures nécessaires pour assurer la protection des droits et des libertés des individus mentionnés, de diligenter des enquêtes sur les violations qui auraient été perpétrées et de traduire les responsables en justice. Le Gouvernement était aussi demandé d'adopter, le cas échéant, toutes les mesures nécessaires pour prévenir la répétition des faits mentionnés.

(b) *Communications reçues du Gouvernement*

10. Le 15 août 2006, le Gouvernement a répondu à la lettre envoyée le 20 mars 2006. S'agissant de la législation antiterroriste, le Gouvernement a informé le Rapporteur spécial que la législation algérienne incrimine et considère comme acte terroriste toute action dirigée contre la sûreté de l'Etat, l'intégrité du territoire, la stabilité et le fonctionnement normal des institutions par des moyens attentatoire au droit à la vie ou aux libertés fondamentales des citoyens et à la sécurité des biens publics et privés. Le Gouvernement a souligné que l'introduction de l'incrimination de l'acte terroriste dans la législation pénale algérienne constitue une avancée au plan juridique, dans la mesure où elle permet de définir avec précision les contours de cette nouvelle infraction et d'en cerner les éléments constitutifs. Quant au délai de garde à vue, le Gouvernement a informé que, compte tenu de la spécificité de cette forme de criminalité, le législateur a fixé le délai de douze jours maximum pour permettre aux officiers de la police judiciaire exerçant dans le cadre de la lutte antiterroriste, de remonter des filières complexes et démanteler ainsi des réseaux activant des plusieurs régions à l'intérieur du pays et à l'étranger. C'est pour les mêmes raisons que le législateur a permis au juge d'instruction de procéder à

plusieurs renouvellements de l'ordonnance de placement en détention provisoire de l'auteur d'un acte terroriste. S'agissant de la Charte pour la Paix et la Réconciliation Nationale, le Gouvernement a rappelé qu'il s'agit d'un choix éminemment politique, décidé par le Chef d'Etat et validé à 97,38 percent par le peuple algérien lors du référendum du 29 septembre 2005. Pour autant, La Charte pour la Paix et la Réconciliation Nationale, qui a eu pour l'effet positif de relancer la dynamique du repentir, n'exclut pas le jugement des auteurs de crimes terroristes les plus graves (massacre collectifs, attentats à l'explosif et viols) puisque ces derniers ne peuvent bénéficier que de simple commutations ou remises de peines, après leur jugement définitif.

11. Par lettre du 10 juillet 2006, le Gouvernement algérien a répondu à l'appel urgent envoyé le 26 juin 2006. Le Gouvernement a informé le Rapporteur spécial les deux individus étaient libres de leur mouvements et ont rejoint leurs familles.

Australia

(a) *Communication sent to the Government by the Special Rapporteur*

12. On 18 August 2006 the Special Rapporteur addressed a communication to the Government of Australia, in which he drew the Government's attention to the cases of **Amer Haddara, Shane Kent, Fadal Sayadi, Abdullah Merhi, Ahmed Raad, Ezzit Raad, Hany Taha, Aimen Joud, Abdul Nacer Benbrika, Bassam Raad, Majed Raad, Shoue Hammoud and Izzydeen Attik**. These individuals were awaiting trial for various offences relating mostly to membership and support of a terrorist organisation under the anti-terror provisions of the Criminal Code Act 1995 at the maximum security Acacia Unit of Barwon Prison in Victoria. The Special Rapporteur referred to an Urgent Appeal, which was sent by the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the independence of judges on 15 August 2006, relating to the same individuals but different issues. The Special Rapporteur expressed his serious concerns with regard to the practice of segregation of individuals on remand for terrorist offences. In this connection, the Special Rapporteur asked that the Government provides information about the exact charges for which these individuals are awaiting trial and the justification for the necessity and proportionality of the measures taken vis-à-vis them.

(b) *Communication from the Government*

13. By letter of 30 November 2006, the Government replied to the communication of the Special Rapporteur of 18 August 2006 as well as to other letters sent by special procedures on the same individuals. First, the Government suggests that the special procedures produce coordinated letters and requests for information which relate to the same case. Second, the Government highlights that pursuant to section 120 of the Constitution of Australia, the responsibility to house federal offenders, including those of remand, lies with the States and Territories, which is in the case Victoria. As regards the charges, the Government indicates that each of the individuals was charged with being a member of a terrorist organisation under section 102.3 of the Criminal Code. Various additional charges have also been laid against some of the men, including charges of intentionally recruiting a person to join a terrorist organisation, intentionally making funds available to a terrorist organisation, and possessing a thing connected with the preparation of a terrorist act. The Government further informs that the alleged offenders are being held on remand in Barwon Prison in Victoria, which is a maximum security facility. The

prison houses remand prisoners as the need arises. The alleged offenders are held within the Acacia High Security Unit. This Unit houses both remand and convicted prisoners; however, remand and convicted prisoners do not mix, which is consistent with Guideline 1.11 of the Standard Guidelines for Prisoners under the Revised Guidelines for Corrections in Australia 2004, with Rule 8(b) of the Standards Minimum Rules on the Treatment of Prisoners and article 10(2) (a) of the International Covenant Civil and Political Rights. Moreover, the Government informs that the alleged offenders have never been held in solitary confinement, but rather in individual cells. The Government also indicates that remand prisoners do not have limits on the number of visits from professionals, except by the conflicting demands of other prisoners to have access to the contact rooms available for professional visits, in accordance with article 14(3)(b) of the International Covenant Civil and Political Rights. Lawyers may visit their clients in the Acacia Unit between 8:45 am and 3.30 pm. Visits are video monitored for security reasons, but there is no audio sound or recording. Remand prisoners may make an unlimited number of legal professional calls.

Bahrain

(a) *Communications sent to the Government by the Special Rapporteur*

14. By letter dated 29 March 2006 the Special Rapporteur wrote to the Government of Bahrain with regard to the **draft law on counter-terrorism**, which was tabled before Parliament in March 2005. The Special Rapporteur drew the Government's attention to two substantive areas of concern. First, Article 1 of the March 2005 draft law contained a broad definition of terrorism and Article 2 of the draft law set out a list of trigger offences which may lead to the existence of a terrorist crime. Article 6 of the draft law, in turn, criminalized establishing, organizing, managing or having a prominent role in an organization, notwithstanding its name, that uses terrorism as one of the means to carry out its objective. By way of example, the reference in Article 1 of the draft law to "any use of force or violence or the threat thereof" was very vague. In addition, Article 2 point (3) and the reference in Article 1 to "damage" to "public or private facilities, buildings and properties or their occupation, or obstructing their work" and to "obstructing the public authorities or religious buildings or educational faculties from doing their work" were likely to allow demonstrations by civil society, students or labour unions to be qualified as terrorist groups and sanctioned as such. Second, the March 2005 draft law stated that an order of detention may be issued for a maximum of 90 days by the Public Prosecutor (Article 29) and that for individuals against whom there is enough evidence or where there is a case of flagrante delicto, the initial period of detention may last 14 days upon a decision by a judicial arrest officer and may be renewed once upon authorization by the public prosecutor (Article 30). Therefore, under this draft law, it was possible that an individual is detained up to 90 days without the involvement of any member of the judiciary. In addition, under the Article 31of the Draft Law, evidence which is used to extend the initial 14 day detention period was considered as strictly confidential to the public prosecution and it was forbidden to reveal either the information or reveal the names of those who have presented it.

15. On 30 June 2006 the Special Rapporteur once again wrote to the Government of Bahrain with regard to the **draft law on counter terrorism** as he was advised that it was to be deliberated by Parliament in early July 2006, reportedly with a new title called "Protecting Society from Terrorists Acts". The Special Rapporteur reiterated his concerns on some aspects of

the draft text and to highlight some additional concerns. First, he re-stated his concerns about the broadness of the definition of terrorism contained in the draft law, which he was advised had not been amended in the pending draft and had in fact already been adopted in another piece of legislation, namely the "Prohibition and Counter Money Laundering bill". The Special Rapporteur highlighted that the Bahraini definition suffers from the absence of two of the cumulative conditions for classifying a crime as a terrorist crime: there was no requirement of a specific aim to further an underlying political or ideological cause and some acts were qualified as terrorist without the intention of causing death or serious bodily injury. Second, the restrictions brought to freedom of association and assembly contained in the draft law, in particular Articles 5, 6, 8 and 9, were of concern. The third matter of concern was that of incitement to terrorism, contained in Article 10 of the draft law criminalizing the use of religious and public places to propagate provocative appeals or extremist ideas, as well as placing posters, pictures and signs that might insult religions or harm the national unity, social peace or destabilize public order and Article 12 of the draft law criminalizing the promotion or approval "in any way of a crime committed for terrorist purposes". Finally, the extensive powers of the Public Prosecutor regarding detention for up to 90 days without judicial review, which the Special Rapporteur also raised in his letter of 29 March, remained of concern.

(b) *Communication from the Government*

16. By letter of 29 September 2006, the Government replied to the communication sent on 29 March 2006. The Government informs the Special Rapporteur that the definition in the draft law does not go beyond the scope of the definition found in the regional conventions to which the Kingdom is a party or the laws currently in force, including the Arab Convention for the Suppression of Terrorism, which it ratified pursuant to Decree Law No. 15 of 1998, the Organization of the Islamic Conference Convention on Combating Terrorism, which it ratified pursuant to Decree Law No. 26 of 2002, and the Counter Terrorism Convention of the Gulf Cooperation Council, issued pursuant to Act No. 24 of 2005. The Government points out that the definition of terrorism in the draft law does not go beyond the scope of the definition contained in comparable laws, as explained above (Qatari law, Egyptian law, Emirates law, French law). The Government further advises that the proposed definition of terrorism consists of three main components which must be present to meet the condition of an aggravating circumstance with respect to offences committed for a terrorist aim. If any of these components is missing, the aggravating circumstance will not apply and the offence will not be subject to the penalties set out in the counter-terrorism law. Instead, it will be subject to the penalty prescribed in any other law, if there is one. The three components are referred to as means, terrorist aim and consequences of terrorism. As regards the first component, the condition is that the means used by the perpetrator to carry out an individual or collective offence must be the use or the threat of force such as assault, abduction or other acts in which force is used to achieve a criminal result. These acts are listed in all international conventions on the suppression of terrorism. With respect to the terrorist aim, the means used by the culprit, as explained above, must be employed in order to violate the Constitution or the laws or regulations, to disrupt public order, to jeopardize the safety and security of the Kingdom, or to damage national unity and the security of the international community. Third, in order for an act to be defined as an act of terrorism, the impact and purpose of using the means must be to harm, frighten and intimidate people, to endanger their lives or security, etc., as stated in the definition. The Government concludes from

the above that the definition of terrorism is not broad and is consistent with the relevant international conventions.

With respect to Article 2 of the draft law, the Government advises that the offences listed in this article are punished under other laws listing all the material components and the criminal intent on which such offences are designated as criminal acts. Article 2 of the draft law raises the penalty prescribed for such offences, when committed for the purposes of terrorism as defined in Article 1 of the draft law. If an offence is not committed to achieve a terrorist aim it will be punished in accordance with the Criminal Code and other laws.

In relation to Article 6 of the draft law, the Government points out that this article does not apply to the right to demonstrate or to any right guaranteed by the Bahraini Constitution. The acts covered by Article 6 refer to any illegal group established for the purpose of impeding the application of the Constitution and the law or for the other reasons cited in this paragraph. Moreover, for the elements of this offence to be present, terrorism must be one of the means used to achieve the group's aims. If any of these elements is missing, the offence listed in this article does not pertain.

As regards the Special Rapporteur's concerns related to Articles 30 and 31 of the draft law as compared with articles 9 and 14 of the International Covenant on Civil and Political Rights, the Government indicates its agreement and informs that it has worked with the Chamber of Deputies to reformulate this article to ensure that detainees and arrested persons are brought before the judicial authorities to review the legality of their detention and thus to avoid any conflict with the above-mentioned Covenant. The Government's letter also includes a summary of the reasoning behind the provisions of the draft law.

(c) *Press release*

17. The Special Rapporteur made the following statement on 25 July 2006:

"I urge the executive and legislative branches of government in Bahrain to reconsider the **new counter-terrorism bill** approved by the Appointees Chamber in a Special Session of Parliament on 22 July 2006 and to allow for further debate and additional amendments due to concerns that the implementation of this law could have a negative impact on human rights in the country."

The bill, titled 'Protecting Society from Terrorists Acts', is awaiting ratification by the Head of State before becoming law. The Special Rapporteur wrote to the Government in March and June 2006, when this bill was before Parliament, and identified some issues of concern regarding the proposed legislation.

"One of the main concerns is the overly broad definition of terrorism which is seen to be at variance with the principle of legality enshrined in several human rights instruments, including Article 15 of the International Covenant on Civil and Political Rights which represents a universal standard also in respect of countries that have not yet ratified the Covenant."

Due to the broad definition of terrorism and other vague terms, a number of human rights such as freedom of association and assembly and freedom of speech risk being subject to excessive

limitations such that the legislation might allow for severe or disproportionate restrictions on peaceful demonstrations by civil society. Also, the offence of incitement to terrorism fails to establish a clear and foreseeable threshold for criminalization. Further, the principle of due process may be denied due to the excessive powers of the Public Prosecutor regarding detention without judicial review.

"While fully conscious of the fact that States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism, I encourage the executive and legislative branches of Government to make amendments to this bill to bring it in line with international human rights law. As a member of the newly constituted UN Human Rights Council, it is an opportune time for Bahrain to reflect international human rights standards in its national legislation."

Chile

(a) *Comunicación enviada al Gobierno por el Relator especial*

18. El 11 de mayo de 2006, el Relator Especial envió un llamamiento urgente junto con el Relator Especial sobre el derecho a la alimentación, la Representante Especial del Secretario-General para los defensores de los derechos humanos, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, el Relator Especial sobre formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia y el Relator Especial sobre la independencia de magistrados y abogados, respecto a la situación de **Patricia Troncoso, Patricio Marileo Saravia, Jaime Marileo Saravia y Juan Carlos Huenulao Lienmil**, líderes y simpatizantes mapuches condenados a más de 10 años de prisión bajo la acusación de “incendio terrorista”. Su situación ha sido objeto de una comunicación personal enviada por el Relator Especial sobre la situación de los derechos humanos y libertades fundamentales de los indígenas a la Presidenta Sra. Michelle de Bachelet, el día 21 de abril de 2006. Con anterioridad, el Relator Especial sobre la situación de los derechos humanos y libertades fundamentales de los indígenas envió comunicaciones al Gobierno chileno expresando su preocupación por la aplicación de la ley antiterrorista a presos mapuches por hechos relacionados con la lucha social por la tierra y los legítimos reclamos indígenas. Según la información recibida, y referida en la comunicación anteriormente citada, en agosto 2004 Patricia Troncoso, Patricio Marileo Saravia, Jaime Marileo Saravia y Juan Carlos Huenulao Lienmil habrían sido condenados a penas de diez anos y un día de prisión después de haber sido acusados del delito de “incendio terrorista”, bajo la Ley Antiterrorista 18.314, por un incendio causado en el predio conocido como Poluco y Pidenco. De acuerdo con la información recibida, el juicio habría presentado irregularidades y las declaraciones de los testigos habrían presentado contradicciones. Actualmente, las personas mencionadas se encontrarían en la ciudad del Angol y desde el 13 de marzo de 2006 mantendrían una huelga de hambre en protesta por las fuertes condenas recibidas y por la aplicación de la ley antiterrorista (que se utiliza con frecuencia en relación con las reclamaciones agrarias y las reclamaciones para pedir un nivel de vida adecuado de los mapuches), habiéndose deteriorado gravemente su estado de salud tras más de 55 días de huelga de hambre. Se nota con mucha preocupación que los jueces habrían aplicado la ley de manera discriminatoria; mientras que por los delitos contra la propiedad se aplican generalmente multas o penas de prisión muy cortas, en el caso de los mapuches los jueces calificarían estos mismos delitos como actos de terrorismo y aplicarían penas de prisión muy severas, de por lo menos 10 años. Se expresan graves temores de que el uso de la ley Antiterrorista en el caso

anteriormente mencionado pueda estar relacionado con sus actividades en defensa de derechos humanos, en particular por sus actividades en defensa de la comunidad Mapuche. Además, dada la situación de extrema fragilidad de las personas anteriormente mencionadas, se expresan graves temores porque la situación pueda acarrear daños irreversibles para su salud física y psíquica, y pueda poner en peligro sus vidas.

(b) *Comunicación recibida del Gobierno*

19. Mediante comunicación del 23 de mayo del 2006, el Gobierno de Chile proporcionó información con respecto al llamamiento enviado el 11 de mayo. El gobierno informa de que el señor Huenulao, los señores Marileo y la señora Troncoso fueron condenados por un delito de incendio, que ya estaba previamente tipificado como delito en la ley penal y antiterrorista, con su pena correspondiente. El incendio de los fundos Poluco y Podenco, zona cuya propiedad pertenece a la empresa forestal MININCO, ocasionó un daño cercano a los US $ 600.000. En cuanto a los antecedentes judiciales, los inculpados, de acuerdo con el artículo 19.3 de la Constitución Política de Chile, contaron con defensa jurídica desde el inicio de la causa, defensa que fue proporcionada por la Defensoría Penal Pública. A su vez, también hicieron uso de recursos que proporciona la ley para impugnar las resoluciones judiciales. En consecuencia, no existe duda alguna de que se cumplieron los principios del debido proceso. Por lo que se refiere a la invocación de la ley antiterrorista, la Presidenta de la República, Sra. Michelle Bachelet, se ha comprometido a que el ejecutivo no invocará la aplicación de la Ley Antiterrorista, al hacer la denuncia o querella que corresponda, cuando en hechos futuros tipificados como delitos por la Ley Antiterrorista y que puedan ser juzgados por la ley Común se vean involucrados indígenas. De todas maneras, cabe resaltar que en el caso concreto del delito de incendio, la pena que establece el Código Penal es tan grave como la que establece la Ley Antiterrorista. Cabe destacar que los Senadores Alejandro Navarrro y Jaime Naranjo presentaron un proyecto de ley, sobre la libertad condicional, con el objeto de modificar el Decreto Ley Nº 321. Dicho proyecto establece la posibilidad de otorgar la libertad condicional a los condenados a penas privativas de libertad por delitos contemplados en la Ley 18.314 (Ley Antiterrorista), y a los condenados por delitos sancionados en otros cuerpos legales, en causas relacionadas con reivindicaciones violentas de derechos consagrados en la Ley 19.253 (Ley Indígena), siempre que los hechos punibles hayan ocurrido entre el 1 de Enero de 1997 y el 1 de Enero de 2006, y los mismos condenados suscriban en forma previa una declaración inequívoca y favorable al no uso de la violencia en la reivindicación de derechos establecidos en la Ley 19.253 y en el derecho internacional de los pueblos indígenas. El 15 de mayo de 2006, el Ministro del Interior comunicó que el Gobierno había puesto “suma urgencia” a la tramitación del Proyecto de Ley para modificar el Decreto Ley 321. Con motivo de la presentación del citado proyecto, el 14 de mayo de 2006 los cuatro afectados mencionados anteriormente depusieron temporalmente la huelga de hambre, a la espera de los resultados de la tramitación del proyecto de ley. El Gobierno desea especificar que esta situación no responde a una persecución política hacia el movimiento indígena o mapuche. A su vez, el Gobierno señala algunos antecedentes que a continuación se citan. La aplicación de la Ley Antiterrorista fue invocada frente a situaciones de extrema gravedad. En la actualidad existen 9 personas de ascendencia indígena condenadas por esta Ley. Asimismo, el Estado de Chile ha reconocido como legítima la demanda de los pueblos indígenas, en especial la del mapuche. Desde 1993, la Ley Indígena Nº 19.253 ha permitido traspasar unas 400.000 hectáreas de tierra a más de 500 comunidades a lo largo de todo el país.

China

(a) *Communication sent to the Government by the Special Rapporteur*

20. On 13 April 2006, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture, sent a letter to the Government of China drawing attention to the case of **Ismail Semed**, an ethnic Uighur from Xinjiang Uighur Autonomous Region (XUAR) in northwest China, who was believed to be at imminent risk of execution. According to the allegations received, Ismail Semed was convicted by the Urumqi Intermediate People's Court on 31 October 2005 for "attempting to split the motherland" and other charges related to possession of firearms and explosives. The possession of firearms charges against Ismail Semed appeared to have been based on old testimonies taken from other Uighurs, some of whom were reportedly executed in 1999. According to reports, those testimonies might have been extracted through torture. The charge of "splittism" was based on second-hand testimony which stated that Ismail Semed was a member of the East Turkestan Islamic Movement (ETIM), an organisation qualified as "terrorist" by the Chinese authorities, and attended one ETIM meeting in 1997 in Rawalpindi, Pakistan. However, his alleged membership of ETIM and attendance at that meeting have reportedly been disputed by people who were present at the meeting. Concern was expressed that he reportedly confessed to the terrorism-related charges under torture and subsequently denied them during his trial. Information has also been received indicating that his appeal might have already been heard in a closed session. The Special Rapporteur requested the Government in particular to indicate on the basis of what criteria organizations are qualified as terrorist organizations and whether they can appeal against such qualification.

(b) *Communication from the Government*

21. By letter of 12 July 2006, the Government replied to the joint communication sent on 13 April 2006. The Government informs that, on 13 August 2004, the Urumchi city procuratorial authorities instituted criminal proceedings against Ismail Semed with the Urumchi city intermediate level people's court for the offences of separatism, unlawful manufacture of ammunition and the causing of explosions. The Government indicates that the precise charges as set out in the bill of indictment are as follows. In January 1997, Ismail Semed, together with Hasan Mahsum (later shot dead in Pakistan) and Abdukadir Amat (now on the run), slipped out of the country through the city of Xiamen and made their way to Saudi Arabia to meet Kurban Aji and other persons, to propagate the notion of an independent Xinjiang, to carry out separatist activities and to drum up support. Soon after, Semed and the two other men travelled to Rawalpindi in Pakistan, to meet Uighur students and other young Uighurs engaged in business in that city, preaching to them and urging them to form an organization and to go to Afghanistan to receive training, for the purpose of waging a holy war. In March of that same year, Semed and the other men convened a preparatory meeting of the East Turkestan Islamic Movement and, following a division of tasks, Ismail Semed was appointed in charge of military operations. Thereafter, Ismail Semed and the other men continued to develop and expand the organization, establishing military bases, recruiting members, conducting fund-raising and other activities and forging links with Afghan Taliban bases and bases run by Bin Laden, striking an agreement with them on the provision of free training for their jihadists. From May 1997 to January 1998 Semed and his accomplices organized the transport of some 100 Uighur jihadists from Pakistan and the

Middle East to the above-mentioned military camps for training. After completing their training, Semed and the others appointed Usman Imat in charge and sent him to take 13 men to Xinjiang to set up workshops to manufacture explosives, to conduct training and to develop jihadist columns. After arriving in Xinjiang, Usman and the others purchased 1,053 boxes of erbium nitrate, for use in preparing chemicals and other reagents for the manufacture of explosives, and set up explosive manufacturing workshops in Turfan, Hotan and other cities. They trained some 100 men in the use of chemicals and reagents for the manufacture of explosive devices, detonators and blasting fuses and in weapons technology. On 5 December 1997 Semed attended a conference of the formally constituted East Turkestan Islamic Movement, held in Rawalpindi in Pakistan, and was appointed military commander. The conference resolved that the goal of the organization would be to liberate East Turkestan through a holy war and to set in place an Islamic State, and mapped out a strategic plan for the period ahead. In mid-December 1998, Semed and others organized a meeting in Rawalpindi at which they decided to break away from the East Turkestan Islamic Movement and form a separate grouping. They deposed their former leader, Hasan Mahsum, assumed control of their members and funds in Afghanistan and started to look for ways of illegally entering Xinjiang, so as to prepare for the conduct of military jihadist activities in that region. On 16 September 2004 the Urumchi intermediate level people’s court commenced hearings on this matter. The Government informs that, given the complexity of this case, the proceedings are still under consideration.

France

22. Par lettre du 26 avril 2006, le Rapporteur spécial a attiré l’attention du Gouvernement de France sur les informations reçues concernant la **législation relative à la lutte contre le terrorisme**, en particulier certaines dispositions résultant du Code pénal et du Code de procédure pénale, modifiées par la loi relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers du 23 janvier 2006. Le Rapporteur spécial a soulevé des questions concernant de dispositions relatives à la définition large des actes de terrorisme (articles 421-1 à 421-2-3 du Code pénal), la prolongation supplémentaire de 24 heures, renouvelable une fois, de la garde à vue d’un individu si il y a un risque sérieux de l’imminence d’une action terroriste en France ou à l’étranger (article 706-88 du Code de procédure pénale), le droit de consulter un avocat qu’à partir de la 72ième heure de la garde à vue et ensuite à chaque prolongation (96ième heure et 120ième heure) sur demande du gardé à vue ainsi que la détention provisoire prolongée pour une durée de 2 ans et 4 mois en matière correctionnelle et pour une durée de 4 ans et 4 mois en matière criminelle (articles 145-1 et 145-2 du Code de procédure pénale).

(a) *Communication reçue du Gouvernement*

23. Au 31 janvier 2007, le Rapporteur spécial n’a reçu aucune réponse du Gouvernement relative à la lettre du 26 avril 2006.

Germany

(a) *Communication sent to the Government by the Special Rapporteur*

24. On 18 December 2006 the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent a communication to the Government of Germany concerning the organization of **secret transfers of terrorist suspects** by the United States European Command (EUCOM) headquarters, Stuttgart-Vaihingen (see paragraph 69). It was alleged that EUCOM played a central role in the secret transfer of six suspected terrorists to Guantanamo Bay, Cuba. EUCOM reportedly organized from Germany the abduction of six prisoners of Algerian origin, namely Bensayah BELKACEM, Hadj BOUDELLAA, Saber LAHMAR, Mustafa Ait IDIR, Boumediene LAKHDAR and Mohamed NECHLE, from Tuzla, Bosnia and Herzegovina to Incirlik, Turkey in January 2002. From there they were flown to Guantanamo Bay, Cuba, where they continue to be detained without charges. Two German military officers, working at EUCOM, were assigned as liaison officers and tasked with obtaining and communicating information between the German and US authorities. Furthermore, information regarding this case was displayed on sources accessible to the public such as the website of EUCOM. The Special Rapporteur urged the German authorities to take all necessary measures to guarantee the accountability of any person guilty of the alleged violations. Furthermore, it was requested that the German Government adopt effective measures to prevent the use of German territory or involvement of German authorities in practices of extraordinary rendition in breach of human rights treaties ratified by Germany.

(b) *Communication from the Government*

25. A response to the Special Rapporteur's correspondence was requested by 17 February 2007.

Indonesia

(a) *Communication sent to the Government by the Special Rapporteur*

26. On 3 May 2006 the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, drew the attention of the Government of Indonesia to information received regarding **Mr. Amrozi bin H. Nurhasyim, Mr. Ali Ghufron alias Mukhlas,** and **Mr. Imam Samudera**, who were believed to be at imminent risk of execution. It was alleged that Amrozi bin H. Nurhasyim, Ali Ghufron alias Mukhlas, and Imam Samudera had been found guilty of involvement in the 12 October 2002 bombings on the island of Bali, which killed 202 people and injured a further 209. They were sentenced to death by the Denpasar District Court between August and October 2003. The men and their families have declined to seek a pardon from the President. On 14 April 2006, the Attorney General's office stated that the refusal to seek clemency would mean that they have exhausted all the legal remedies available to them and that, as a result, they would be executed immediately. On 25 April 2006, the Bali Prosecutor's Office announced that it had "completed preparations" for the execution and stated that it was waiting for the Attorney General's order to proceed with the executions. The Special Rapporteurs referred to two "'Government Regulations in lieu of law" (Peraturan Pemerintah Pengganti Undang-Undang, or "Perpus"), Perpus 1/2002 and 2/2002, which were issued by President Megawati on 18 October 2002, six days after the Bali bombing. Perpu 1/2002 provides that an act of terrorism, or the planning of or assisting in an act of terrorism, is punishable by death. Section 46 allows for its retroactive application if this is authorised by another Perpu or law. Perpu 2/2002 authorised that retroactive application "in relation to the [Bali] bombing incident". Perpus 1/2002 and 2/2002 were subsequently approved by Parliament in March 2003

and converted into the Law on Combating Criminal Acts of Terrorism 15/2003. Furthermore, information was received that on 23 July 2004, the Constitutional Court had ruled that the retroactive application of Perpu 1/2002 (i.e. Law 15/2003) violated Article 28I (1) of the Constitution and was therefore unconstitutional. The Special Rapporteur requested the Government to explain on which grounds it intends to proceed with the execution of the three individuals notwithstanding Article 28I(1) of the Constitution of Indonesia, the ruling of the Constitutional Court and the Indonesia's obligations under the International Covenant on Civil and Political Rights.

(b) *Communication from the Government*

27. As at 31 January 2007, no reply had been received to the Special Rapporteurs' correspondence.

Israel

(a) *Communications sent to the Government by the Special Rapporteur*

28. On 3 March 2006 the Special Rapporteur sent a letter to the Government of Israel with regard to the **draft "Criminal Procedure (Enforcement Powers – Special Provisions for Investigating Security Offences of Non-Residents) (Temporary Provision) Law, 5765 – 2005"**. The draft law, according to the information received, was to be examined at a special session of the Constitution, Law and Justice Committee, which was scheduled for 16 March 2006, with a view to obtaining its adoption by the Parliament at a special plenary session before the elections to be held on 28 March 2006. The Special Rapporteur drew the Government's attention to two substantive areas of concern. First, the proposed law would be applicable solely to non-residents of the State of Israel, who are defined by the draft law as either persons who are not registered in the population registry, or persons who are not legally present in Israel for a period exceeding three consecutive years. The Special Rapporteur, having studied the explanatory notes accompanying the governmental bill, failed to see that objective and reasonable justification would have been presented for the proposed distinction between residents and non-residents. He reminded the Government that the prohibition of discrimination is a cornerstone of international human rights law. It is set out, in particular, in Articles 2, 14.1 and 26 of the International Covenant on Civil and Political Rights (ICCPR) and in Articles 1 and 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which the State of Israel is a party. Second, the Special Rapporteur expressed concern that the draft law proposes to extend the initial period of detention by security forces from a maximum of 48 hours to 96 hours before the individual detained is brought before a judge. This can be followed by an additional period of detention bringing the detention to 20 days, renewable once, for a total of 40 days. The envisaged law would also extend the period during which a detainee under interrogation may be denied access to a lawyer from 21 days to 50 days. Furthermore, the new law would deny detainees the right to be present at court hearings held to consider an extension of their detention, except for the first hearing (up to 96 hours after the beginning of the detention), the hearing upon the expiry of the first 20 days of detention, and any extension thereof. In the Special Rapporteur's view, the explanatory note accompanying the governmental bill fails to advance adequate justification to the proposed extension of various time limits and the right to appear before a judge. He referred to article 9 and other provisions

and to the Concluding Observations on Israel of 21 August 2003 by the Human Rights Committee, concluding that the use of prolonged detention without any access to a lawyer or other persons of the outside world violated several articles of the Covenant. The Special Rapporteur asked the Government of Israel to bring to the attention of relevant governmental and parliamentary bodies that this draft legislation needs to be significantly amended before it is tabled before the Parliament for adoption.

29. On 21 August 2006 the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of freedom of opinion and expression, sent a letter to the Government of Israel with regard to information received concerning **Mr. Aziz Dweik**, Speaker of the Palestinian Legislative Council. Mr. Dweik, an academic aged 57 and member of Hamas, was elected Speaker of the Palestinian Legislative Council after the most recent elections. On 5 August 2006, Israeli Defence Forces (IDF) surrounded Mr. Dweik's house in Ramallah and took him into custody. From there he was taken to Ofer prison. On or around 10 August 2006, a court in Ofer decided to extend Mr. Dweik's detention, for further eight days. In these proceedings he had the assistance of a lawyer. He was then transferred to the Kfar Youna detention centre. The IDF has confirmed the detention of Mr. Dweik, stating that it was justified by Hamas being listed as a terrorist organization. Mr. Dweik remains in IDF detention. Israeli forces had already, on 29 June 2006, arrested eight members of the Palestinian Authority's government and 20 or more members of the Palestinian Legislative Council. Reminding the Government of article 25 of the ICCPR and its pivotal role in a democratic society, the Special Rapporteurs urged the Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person are respected. Furthermore, the Government was requested to indicate the legal basis for qualifying an individual or an entity as “terrorist” under Israeli law.

(b) *Communication from the Government*

30. As at 31 January 2007, there had been no reply to the Special Rapporteurs’ correspondence.

(c) *Press releases*

31. The Special Rapporteur issued a statement on 5 July 2006, following the adoption of Law 5765 – 2006 "Criminal Procedure (Enforcement Powers – Detention) (Detainees Suspected of Security Offences) (Temporary Provision)" on 27 June 2006 by the Israeli Knesset,

"I am pleased to note that many of the criticisms voiced by different stakeholders including civil society have been addressed in the draft that was finally adopted. In March 2006, I raised some issues in a communication to the State of Israel in relation to the previous draft law. In particular, the provisions relating to the discriminatory scope of application solely to non-residents of the State of Israel, and those relating to the period of practical incommunicado detention – originally proposed as 40 days – and access to a lawyer have been amended. I view this as a positive example of responsiveness to international concern.

"However, some of the concerns remain: the law still does not provide all the necessary procedural safeguards for individuals detained for security reasons. In particular, the law provides that an individual may be held in detention for up to 96 hours before being brought before a judge and may not be present in court when a decision on the extension of the detention

is made during the period when he is barred from contact with a legal counsel. In addition, while the provisions on access to legal counsel have not been worsened by this new law, the 21 days of detention without access to legal counsel authorised by the detention law currently in force remain incompatible with international human rights law.

"Fully conscious of the fact that States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism, I wish to recall that States have the duty to ensure that any such measure comply with their obligations under international law, in particular international human rights law. The right to the liberty of the person as enshrined in the International Covenant on Civil and Political Rights requires access to legal counsel immediately after arrest. I call upon the Israeli Government to ensure that this provision is fully respected in law and practice."

32. The Special Rapporteur issued the following statement on 7 December 2006 from Jerusalem:

"I welcome the Israeli Government's positive response to my request to conduct a country visit to Israel. This was indicated to me during my meeting today with senior officials from the Ministry of Foreign Affairs. I want to thank the Government for its willingness to meet and discuss issues pertaining to my mandate. It is my hope to visit Israel in the first half of 2007.

"The State of Israel has legitimate national security concerns and is often confronted with violent attacks, including against civilians. Hence, I fully understand that it must be able to respond to terrorist acts. However, the Government's response, including the enactment and implementation of legislation, and actual practices, must be in conformity with international law, in particular humanitarian and human rights law. If Israel resorts to the use of force, it must respect the distinction between military and civilian objectives, the principle of proportionality and the duty to prevent and minimize civilian loss of life, injury and damage to infrastructure.

"On 29 September 2006 the Special Rapporteur formally requested a visit to Israel to examine in situ questions relating to the mandate, and to formulate pertinent conclusions and recommendations with the objective of helping to ensure respect for human rights and fundamental freedoms in the fight against terrorism.

"The Special Rapporteur seeks to examine the impact of counter-terrorism operations on civil and political rights, such as right to life, liberty and security of the person, the prohibition against torture and other inhuman treatment, and the freedom of movement (Articles 6, 7, 9 and 12 of the International Covenant on Civil and Political Rights (ICCPR)). Furthermore, the Special Rapporteur is concerned about counter-terrorism measures that negatively impact on other rights, such as the right to housing, health and education (Articles 11, 12 and 13 of the International Covenant on Economic, Social and Cultural Rights), as many families have had their houses destroyed by Israeli authorities, causing displacement and lack of access to other services. Israel is a party to both Covenants, and there is no justification to deviate from these international obligations. In particular, many of the specific rights under the ICCPR are non-derogable even during times of public emergency.

"On 4 July 2006 the Special Rapporteur issued a press release following the adoption of law 5765 on 27 June by the Israeli Knesset which addressed enforcement powers and detention of

detainees suspected of security offences. The Special Rapporteur noted some positive changes in the final text but stated that the law does not appear to provide all necessary procedural safeguards for those detained for security reasons. For example, individuals can be detained up to 96 hours before being brought before a judge, they are not necessarily present in court when detention may be extended, and there are restrictions on access to counsel during detention. These aspects of the law are, in my view, incompatible with international human rights law.

"I am mindful that States have a duty to protect their population and to take effective measures to combat terrorism. However, sustainable results can only be achieved by promoting and protecting human rights while countering terrorism. Otherwise there is no real security for the civilian population".

The Special Rapporteur was in Israel to attend the Minerva Biennial Conference on Human Rights where he gave the keynote address on Terrorism and Human Rights.

Jordan

(a) *Communication sent to the Government by the Special Rapporteur*

33. On 10 July 2006 the Special Rapporteur wrote to the Government of Jordan with regard to the **legislation applicable to crimes of terrorism**, in particular that resulting from the Jordanian Penal Code No. 16 of 1960, as amended pursuant to the Provisional Act No. 54 which entered into force on 8 October 2001, and the **Draft Terror Prevention Law**. The Special Rapporteur drew the Government's attention to several substantive areas of concern. First, the Special Rapporteur pointed to the overly broad and vague definition of terrorism as contained in Article 147 paragraph 1 of the Jordanian Penal Code. In particular, its sweeping nature is revealed by the fact that an act may be qualified as terrorist regardless of the motives or purposes for carrying out the act as well as the references to damage, even partial, carried out against public or private property and facilities and the obstruction of the application of the constitution and laws. The Jordanian definition suffers from the absence of two of these cumulative conditions for classifying a crime as a terrorist crime: there is no requirement of a specific aim to further an underlying political or ideological cause and some acts are qualified as terrorist without the intention of causing death or serious bodily injury. Second, Article 5 of the draft terror prevention law provides that security services have the right to arrest and hold any suspect for a period of two weeks, which can be extended by the public prosecutor for a similar period, for justifiable reasons. Lastly, under Article 4 of the draft terror prevention law, the public prosecutor may take several freedom-limiting measures against individuals who are suspected of being involved in terrorist activities. In particular, the Public Prosecutor of the State Security Court may order surveillance of the home, the movements and communications of the suspected individual; ban from travel; and search the residence and impound any item relevant to terrorist activities and appropriate any money. These orders are valid for 3 months and may be renewed for another 3 months by the State Security Court. While the individual against whom these decisions are taken has the right to obtain the review of the measure, this can only be done before the Attorney General of the State Security Court, whose decisions are final. Due to the wide ranging consequences of the measures that may be taken vis-à-vis suspected terrorists in respect of several human right, these measures should in the Special Rapporteur's view be subject to review by a court of law. The Special Rapporteur also urged the Government of Jordan to review

the definition of terrorism contained in the draft law, significantly amend the draft terror prevention law before it is adopted by Parliament and qualify what constitutes "justifiable reasons" for keeping an individual in detention.

(b) *Communications from the Government*

34. By letter of 18 January 2006, the Government of Jordan replied to the communication sent on 17 November 2005 (see paras. 5-8, E/CN.4/2006/98/Add.1). The Government informed that the allegations submitted concerning Mr. Salah Nasser Salim 'Ali and Mr. Muhammad Faraj Ahmed Bashmilah were false, as there was no record showing that the two had been arrested for violations of penal, disciplinary or administrative codes. Furthermore, the Government indicated that there had been no files on the two Yemeni citizens indicating that they pose a security concern, eliminating the possibility of their arrest for what may be described as "terrorism".

35. By letter of 22 September 2006, the Government of Jordan replied to the communication sent on 10 July 2006. In its reply, the Government states that the definition contained in Article 147 paragraph 1 of the Jordanian Penal Code is consistent with the Arab Convention for the Suppression of Terrorism, which defines terrorism as any act or threat of violence, whatever its motive or purpose, which is carried out for the purpose of advancing an individual or collective criminal agenda, alarming and frightening people by doing them harm and endangering their lives, liberty or security, damaging the environment, damaging, occupying or seizing public or private installations, or endangering national resources. The definition contained in Article 147, paragraph 1, of the Criminal Code refers to the aims of the act as the basis for defining it as a terrorist offence. As stated in that article, the aim must be "to disrupt public order or endanger the safety and security of society". These aims are linked to a specific outcome, namely alarming and frightening people, endangering their lives and security, damaging the environment, damaging, occupying or seizing public or private installations or property, State installations or diplomatic missions, endangering national resources or impeding the application of the Constitution and the law. The presence of intent (criminal intent), the Government informs, is a key component of terrorist offences. These offences are subject to the general provisions of the Criminal Code. According to article 63 of the Criminal Code, intent is the desire to commit an offence as defined by law. It follows that criminal intent to commit a terrorist offence necessarily entails the desire to commit a criminal act and to achieve a criminal result.

With respect to Article 5 of the Draft Terror Prevention Law, the Government informs that it was designed to take account of the gravity of such offences. The purpose of the article is to give the security services enough time to gather evidence and conduct investigations into these kinds of offences. The article places a number of restrictions on this measure ensuring its correct implementation when and only when specific conditions are met. Thus, recourse to the period of time mentioned in the article can only be had in accordance with the prevention of terrorism law. The defendant must have committed a legally designated offence under that law. The time period cannot be extended unless by order of the public prosecutor and it can only be extended once, for the same period of time. Extension orders must be justified (i.e. they must be based on grounds that justify the extension). Two weeks is the maximum period of detention. If this period of time is not required for the purposes of the investigation and collection of evidence, the individual will be brought before the court as soon as these procedures are completed.

Referring to Article 7 of the International Covenant on Civil and Political Rights, the Government informs that according to article 159 of the Code of Criminal Proceedings, any confession made by a defendant, a suspect or an accused person without a public prosecutor being present shall be ruled inadmissible, unless the prosecution presents clear evidence of the circumstances in which the confession was made and the court is convinced that the confession was given voluntarily and of the person's own free will. If the court concludes that the defendant's confession was obtained as the result of any form of physical or mental coercion, it shall rule the confession to be null and void. Furthermore, Article 208 of the Criminal Code punishes anyone who uses violence or force to extract a confession. Accordingly, anyone who breaches this article must be brought before the competent court.

With respect to incommunicado detention, the Government reports that according to Article 66 of the Code of Criminal Proceedings, the public prosecutor is entitled to prevent a defendant in detention from communicating with the outside world for a period of up to 20 days, which may be extended. This does not apply to the defendant's counsel, who can see his client at any time and without a guard being present. Anyone deprived of his or her liberty by means of detention is entitled to apply to the competent judicial authorities for release and to appeal to the competent court against any rejection of his application.

As regards Article 4 of the Draft Terror Prevention Law, the Government letter informs that the Cabinet recently introduced a number of amendments to this draft law, of which the most important concern the defendant's right to appeal to the court (the State Security Court) against a decision handed down by the public prosecutor, and an increase in the number of safeguards provided. The Court must hear the appeal within one week of being seized of the matter. If the appeal is rejected, it can be sent before the Court of Cassation (the highest court in the land), which must issue a ruling within one week of being seized of the matter.

The Government further informs that there are three types of courts in Jordan, namely civil courts, religious courts and special courts. The types, levels, divisions and administration of the courts are determined by a special law. Special courts conduct proceedings in accordance with the relevant laws and the Constitution. The State Security Court was established by the State Security Act No. 17 of 1959 (as amended). It is an independent and impartial public court established by law. It applies the procedures and rules laid down in the Act and the Code of Criminal Proceedings, which are further explained in the Government's letter.

(c) *Press release*

36. The Special Rapporteur made the following statement on 7 September 2006:

"Before Jordan's Anti-Terrorism law enters into force I call for further debate and amendments as the implementation of this law as it currently stands could negatively impact on a number of human rights.

"I regret that Parliament passed this law, on 29 August, during a period of intense deliberation by a number of independent Members of Parliament, opposition party leaders and human rights activists who claim it infringes on certain public freedoms and peaceful political activities.

"The Special Rapporteur wrote to the Government in July 2006 when the draft law was before Parliament and identified a number of areas of concern.

"One of the primary concerns is the overly broad definition of terrorism since it is vague regarding the elements of intent and aim and can be seen to be at variance with the principle of legality. There are also a number of procedural safeguards that appear to have been compromised which can negatively impact on the right to a fair trial and due process. For example, the law currently allows suspects to be detained for up to 30 days without access to a lawyer and without judicial review. Further, the law gives considerable powers to law enforcement, security forces and the Public Prosecutor with regard to detention, search and arrest that effectively negate the right to privacy, freedom and movement and the presumption of innocence. Finally, the law designates military courts as having sole jurisdiction of terrorism cases which may lack judicial independence and deny a number of procedural guarantees.

"This law awaits ratification; and while I am fully conscious of the fact that States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism, I wish to recall that States have a duty to ensure that any such measures comply with their obligations under international law, in particular Articles 7, 9, 10, 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR), to which Jordan is a party".

Kenya

(a) *Communication sent to the Government by the Special Rapporteur*

37. On 21 June 2006 the Special Rapporteur sent a letter to the Government of Kenya with regard to the **draft Anti-terrorism Bill 2006**, which was under consideration by the Parliament. The Special Rapporteur brought several substantive areas of concern to the attention of the Government. First, the Special Rapporteur pointed to the overly broad definition of terrorism as contained Article 3 of the draft bill. Furthermore, he highlighted the vague reference to “any specified person” in Article 21 (1b) and (2c). Second, the Special Rapporteur underlined that Articles 6 and 7 of the draft bill are vaguely phrased and do not require any proof of intent on the person of the alleged perpetrator to support/commit a terrorist offence. Given the very broad and vague definition of “terrorism” and the lack of any intent requirement, articles 8 and 9 on incitement and aiding and abetting also carry the danger of being misused. Third, Part III of the draft bill confers large powers on the Minister to declare that an organization is “terrorist”, if he “believes that it is engaged in terrorism” (art. 11 (4)), based on an assessment of vaguely formulated criteria, such as “promotes and encourages terrorism or is otherwise involved in terrorism” (art. 11 (5 c and d)). Consequently, the Special Rapporteur underlined the need for revising the definition of terrorism contained in the draft bill by introducing clear and precisely formulated provisions, limiting its scope to acts that are genuinely terrorist in nature, and the need for clear and precise provisions with regard to the proscription of allegedly terrorist organizations and appropriate judicial oversight. Furthermore, the Special Rapporteur requested the Government to provide more detailed information on the creation of a victim’s fund and its operation.

(b) *Communication from the Government*

38. As at 31 January 2007, there had been no response to the Special Rapporteur's correspondence.

Kyrgyzstan

(a) *Communication sent to the Government by the Special Rapporteur*

39. On 1 September 2006 the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on freedom of religion and belief, drew the Government of Kyrgyzstan's attention to the case of Mr. Mohammadrafiq Kamoluddin, imam of a mosque in the city of Kara-Suu, Mr. Ayubkhodja Shahobidinov and Mr. Fathullo Rahimo (see paragraph 73). According to the information received, on 6 August 2006, the above-mentioned individuals were killed in the city of Osh as the result of an alleged counter terrorism operation, led by the National Security Service of Kyrgyzstan, in cooperation with the security forces of Uzbekistan. It has been reported that these individuals were suspected members of the Islamic Movement of Uzbekistan and were planning to carry out a terrorist attack on the territory of the State of Uzbekistan. Other reports highlight that it was not alleged that Mr. Mohammadrafiq Kamoluddin was a member of the Islamic Movement of Uzbekistan or that he was involved in the commission of terrorist acts. The Special Rapporteur requested the Government on what basis it was decided to kill, rather than capture, these three individuals and to indicate legal basis for qualifying an individual or an entity as "terrorist" under the law of Kyrgyzstan.

(b) *Communication from the Government*

40. As at 31 January 2007, there had been no reply to the Special Rapporteur's correspondence.

Malaysia

(a) *Communication from the Government*

41. By letter of 15 January 2007, the Government replied to the letter sent by the Special Rapporteur on 3 October 2005 (see paras. 9-10, E/CN.4/2006/98/Add.1). The Government informs that the Internal Security Act 1960 (ISA) came into force on 1 august 1960 in West Malaysia and on 16 September 1963 in East Malaysia. The Government further indicates that the aim of the ISA is to counter the subversive elements and threats prejudicial to national security. The provisions vesting powers of preventive detention in the Police and the Minister of Internal Security are sections 8 and 73 of the ISA. These sections empower the preventive detention of persons suspected of acting in any manner prejudicial to national security, the maintenance of essential services, and economic life of Malaysia. The Government explains that section 73 of the ISA allows arrest without warrant and detention by the Police not exceeding 60 days unless with a written order by the Minister pursuant to section 8. Section 8 of the ISA provides for the Minister's power to issue an order for detention of any person without trial for up to two years, on the ground that the Minister is satisfied that the detention is necessary to prevent the person from acting in any manner prejudicial to national security. Such detention order may be renewed for a further period of not more than two years at a time. The Government further indicates that that a person detained under the ISA is not left without a legal recourse. A person detained can

petition to the High court for a writ of habeas corpus to be issued. On various occasions, the High Court had granted habeas corpus to detainees wrongfully detained. The Government then highlights that the right to judicial review cannot be granted for any act done or decision made by the Yang di-Pertuan Agong (King) or the Minister in the exercise of their discretionary power except if it is proved that there was a breach of any procedural requirement regarding such act or decision (section 8B of the ISA). Section 8B of the ISA has been judicially considered and has been held to be in conformity with the Federal Constitution in the Federal Court cases of Kerajaan Malaysia & Ors v. Nasaharuddin Nasir (2004) CLJ 81 and Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors (2005) CLJ 914. Section 11 of the ISA provides that any person against whom an order by the Minister under section 8 has been made shall be entitled to make representations against that order to an Advisory Board. The Board shall, within three months of the date on which the representations are received, or within such longer period as the Yang di-Pertuan Agong may allow, consider the representations and make recommendations thereon to the Yang di-Pertuan Agong, who shall in turn give such directions He thinks fit regarding the order made by the Minister. Furthermore, section 13 of the ISA provides that any order made by the Minister under section 8 of the ISA shall, so long as it remains in force, be reviewed not less than once every six months by an Advisory Board. The Advisory Board is established pursuant to Article 15 of the Federal Constitution which provides that it shall consist of a Chairman, who shall be appointed by the Yang di-Pertuan Agong and who shall be or have been, or be qualified to be, a judge of the Federal Court, the Court of Appeal or a High Court, and two other members who shall be appointed by the Yang di-Pertuan Agong. The Government concludes that the ISA is still needed in order to maintain peace and stability in the country. Finally, the Government informs that it has recently received a report form the Royal Commission to enhance the Operation and Management of the Royal Malaysian Police. Among others, the Royal Commission recommended for a reduction of the period of detention from 60 to 30 days under section 8 of the ISA. Other recommendations include detainees having visitations rights for counsel and family members. The Government indicates that it is presently studying these proposals.

Maldives

(a) *Communication sent to the Government by the Special Rapporteur*

42. On 26 May 2006 the Special Rapporteur wrote to the Government of the Maldives with regard to the **Law on Prevention of Terrorism** adopted in 1990 and its application to the case of Mr. Mohamed Nasheed. According to the information received, Mr. Mohamed Nasheed was arrested by the police on 12 August 2005 when he and four other individuals were reportedly sitting peacefully to mark the first anniversary of “Black Friday”. He had allegedly been charged inter alia with the offense of terrorism and his trial was scheduled to be resumed on 28 May 2006. The Special Rapporteur was concerned that the definition contained in Article 2 (g) of the Law on Prevention of Terrorism was overly broad and vague and covered an array of actions which would include peaceful demonstrations by civil society, students or labour groups, as well as other acts such as written threats to damage any property. In addition, the requirement of intent appeared to be absent from this definition. The Special Rapporteur requested the Government to refrain from prosecuting Mr. Mohamed Nasheed as well as any other individual on the basis of this law before it is significantly amended and brought in line with international

human rights standards. Furthermore, the Special Rapporteur asked the Government to review the definition of "acts of terrorism" contained in the above-mentioned law.

(b) *Communication from the Government*

43. By letter of 17 July 2006, the Government extended an invitation for a country visit to the Special Rapporteur. Furthermore, the Government made reference to the meeting held between the Foreign Minister of the Maldives and the Special Rapporteur on 20 June 2006, during which the case of Mr. Nasheed was also discussed. In its letter, the Government also informed that a new Penal Code was being considered. The new Code will redefine the crime of terrorism.

Mauritius

(a) *Communication sent to the Government by the Special Rapporteur*

44. On 20 March 2006 the Special Rapporteur sent a letter to the Government of Mauritius with regard to the **legislation applicable to crimes of terrorism**, in particular the **Prevention of Terrorism Act**, adopted in 2002. The Special Rapporteur drew the Government's attention to three substantive areas of concern relating to this legislation. First, Special Rapporteur pointed to the broad definition of terrorist acts as contained in the Prevention of Terrorism Act. Second, the Prevention of Terrorism Act and a correlative Constitution Amendment Bill (No. 3 of 2002) extended the initial period of detention for individuals arrested under suspicion of having committed a terrorist act up to 36 hours before the individual is brought before a judge. During this time, the detainee would not have access to counsel, to relatives or to a doctor of his choice but only, upon his request, to a government medical officer. In addition, the right to bail has been limited for those individuals who are arrested or detained for an offence related to terrorism. Third, under the Prevention of Terrorism Act, the Minister in charge of national security may declare any person to be a "suspected international terrorist" based, inter alia, on his "reasonable" suspicion that the person "(i) is or has been concerned in the commission, preparation or instigation of acts of international terrorism; (ii) is a member of, or belongs to, an international terrorist group; (iii) has links with an international terrorist group and he reasonably believes that the person is a risk to national security". This qualification has wide-ranging consequences given the nature of the charge, and may have immediate implications, including financial, such as the freezing of funds; civil, such as stripping Mauritanian citizenship in the case of dual citizenship; or administrative, such as prohibiting entry into the territory of Mauritius or prohibiting immigration for foreigners. The Special Rapporteur asked the Government to indicate the procedural and judicial guarantees granted to individuals who have been declared "suspected international terrorists" to challenge such a qualification and the criteria used in the determination that individuals are "suspected international terrorists". Furthermore, the Special Rapporteur asked the Government to indicate how this issue will affect the right of individuals to apply for asylum.

(b) *Communication from the Government*

45. As at 31 January 2007, there had been no reply to the Special Rapporteur's correspondence.

Morocco

(a) *Communication envoyée au Gouvernement par le Rapporteur spécial*

46. Le 5 avril 2006, le Rapporteur spécial a envoyé une lettre au Gouvernement du Maroc concernant la **loi relative à la lutte contre le terrorisme du 29 mai 2003**, qui a modifié certaines dispositions du Code pénal ainsi que certaines dispositions du Code de procédure pénale. Selon les informations reçues, la loi du 29 mai 2003, qui a ajouté au Code pénal les articles 218-1 à 218-9, contient une définition très large et générale de ce qui constitue des actes de terrorisme. En outre, l'article 218-2 incrimine l'apologie d'actes constituant des infractions de terrorisme. Deuxièmement, selon le Code de procédure pénale, la durée de la garde à vue dans les cas de crimes qualifiés d'actes terroristes est de 96 heures, renouvelables deux fois sur autorisation écrite du ministère public, ce qui porte à 12 jours le délai de garde à vue (article 66). En outre, le droit de consulter un avocat n'existe qu'a partir de la première prolongation de la garde a vue, soit 96 heures dans les cas d'actes terroristes, et un officier de police judiciaire peut retarder la communication de l'avocat avec le gardé à vue pour une période ne pouvant pas excéder 48 heures à compter de la première prolongation, ce qui équivaut à une période de 6 jours. Enfin, le droit d'être soumis à un examen médical n'existe qu'après présentation de l'individu au Procureur, et ce soit lorsque la demande lui en est faite, soit de sa propre initiative lorsqu'il a constaté des indices qui justifient cet examen (Article 73 du Code de procédure pénale). Le Rapporteur spécial a sollicité auprès du Gouvernement l'obtention d'informations relatives aux modifications de la législation en ce qui concerne la définition d'actes terroristes et aux modifications législatives portant sur les garanties procédurales telles que la durée de la garde à vue, la présentation personnelle du détenu devant un juge, la possibilité d'introduire un recours devant un tribunal afin que celui-ci statue sur la légalité de la détention, ainsi que l'accès à un avocat et à un médecin dès le début de la garde à vue. Finalement, le Gouvernement a été demandé de fournir des informations sur toute autre mesure prise dans le contexte de la législation relative à la lutte contre le terrorisme afin d'assurer que la législation soit en accord avec le Pacte relatif aux droits civils et politiques, en particulier ses articles 7, 9 et 15.

(b) *Communication from the Government*

47. By letter of 29 January 2007, the Government of Morocco replied to the Special Rapporteur's correspondence of 5 April 2006. The Government informs that the Counter-Terrorism Act issued on 28 May 2003 is in fact an extension of the Criminal Code, insofar as some particular provisions on terrorist crimes are concerned. These provisions define terrorist crimes, refer to penalties for aggravating factors and list appropriate procedures for dealing with such offences. The definition of a terrorist crime is taken from the Arab Convention for the Suppression of Terrorism and from some comparable laws of democratic States. Furthermore, the Government indicates that the Moroccan legislature has listed a series of ordinary offences that are covered by the Criminal Code and are particularly heinous, abhorrent or grave in terms of the impact that they have on the security of the population and public order in Morocco. These offences are deemed to be terrorist crimes, if they are committed in pursuit of an individual or collective agenda that relies on intimidation, terrorism or violence to place public order in grave jeopardy. The Moroccan legislature furthermore makes it an offence to promote and finance terrorism and to encourage and incite others to commit terrorist crimes.

In addition, the Government highlights that the legislature set the period of custody for terrorist crimes at up to 12 days, given the amount of time required to investigate and understand all aspects of these kinds of offences and given the nature and gravity of these offences, as well as the importance of investigating them thoroughly. If the exigencies of the investigation are such that an extension of custody is required, the police must apply to the prosecution service for written authorization. In fact, the period of custody for terrorist crimes is only 96 hours (four days); it cannot be extended automatically but only by order of a prosecuting judge, who must verify the grounds for the extension. Moreover, the Code of Criminal Procedure requires the police to notify the prosecution service and the family of an arrested person as soon as the person is placed in custody. The police must register, in their records, which are scrutinized by the prosecution service, the time and date on which custody begins and the date on which the person is presented to the prosecution service. The police must also draw up a list of all persons being held in custody. Visits to police stations are carried out at least once a week.

As regards the concern expressed by the Special Rapporteur that access to counsel is only possible after the first extension of the period of custody, i.e. six days, the Government informs that the legislature approved this measure because of the confidentiality of police investigations in terrorism cases and the need to protect the police and the investigation proceedings. With respect to medical attention, the Government underlines that the Code of Criminal Procedure requires every royal prosecutor-general, royal prosecutor and investigating judge to order a medical examination of any person brought before him, if the person or his counsel requests one or if the officer at law can see signs, or suspects, that violence or torture has occurred.

The Government further advises that the Moroccan legislature criminalizes acts of violence and torture and, while it does not define these terms precisely, it nevertheless makes it an offence to commit any act that adversely affects the liberty and physical and personal integrity of individuals. The legislature has adopted a set of provisions, laws and measures to prevent such acts. For example, the Criminal Code prohibits any judge, public official, government agent or law enforcement officer from doing any act that harms a citizen’s personal liberty and civil rights. Section 225 of the Criminal Code prescribes a penalty of deprivation of civil rights for such an act, while the perpetrator will also be subject to the penalty laid down in paragraph 3 of section 436 of the Code, i.e. a term of between 20 and 30 years, if he is entrusted with public authority or is in one of the categories listed in section 225 and if the arbitrary act or violation of personal liberty was committed or ordered for personal reasons or to pander to personal desires. The Government further states that Morocco is determined to strengthen and promote rights and freedoms, to amend its domestic laws in accordance with the international instruments which it has ratified, and to consolidate institutional mechanisms which ensure respect for human rights, has ratified all the relevant international human rights instruments, notably the International Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, which it ratified on 21 November 1996. In an effort to ensure consistency between domestic legislation and the Convention, the Anti-Torture Act No. 43.04 was brought into law. The Act defines torture, recognizes victims of torture, and prescribes penalties for torture. It also lists certain aggravating circumstances, such as where the offence is committed against a judge, a law enforcement officer or a public official, in or during the course of his duties, or against a witness, a victim or a plaintiff, either because that person has given a statement or filed a complaint with a view to bringing proceedings, or in order to prevent that person from doing so.

Pakistan

(a) *Communications sent to the Government by the Special Rapporteur*

48. On 7 March 2006 the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent a letter to the Government of Pakistan (see paragraph 67) regarding three incidents of **air strikes by United States unmanned aircraft against targets in Pakistan**, each of them resulting in the death of several civilians. According to the information received, on 5 November 2005, an unmanned aircraft operated by the US Central Intelligence Agency (CIA) fired a missile at a house in North Waziristan, Pakistan. The CIA had received information that al-Qaeda operative Hamza Rabia, a citizen of Egypt alleged to have been involved in an attempt on the life of President Pervez Musharraf in December 2003, was staying there with his wife and children. While an overall of eight persons, including his wife and children, were reportedly killed in the attack, Hamza Rabia managed to escape with an injured leg. Furthermore, it was reported that on 1 December 2005, an unmanned drone operated by the CIA fired a missile at a house in the village Haisori, near the town of Mir Ali, North Waziristan, about 30 kms from the Afghani border, killing five persons. It appeared that the dead were Hamza Rabia, two other foreign men, and the 17-year-old son and an eight-year-old nephew of the owner of the house. While officials of the Government of Pakistan stated that the blast resulting in the deaths was caused by explosives handled or stored in the house, reports indicate that residents of the area saw an unmanned aircraft fire a missile at the house and recovered fragments of the missile. Information received also indicated that in the early morning hours of 13 January 2006 a remote-piloted Predator aircraft of the United States security services launched a strike with “Hellfire” missiles on the village of Damadola in the Bajaur Agency, North Western Pakistan, close to the border with Afghanistan. The attack was reported to have killed 18 persons, including women and children. The target of the strike reportedly was Ayman al-Zawahri, who is commonly referred to as the “number two” of al-Qaeda. He was reportedly expected at a dinner in Damadola on the evening of 12 January 2006. The Government of Pakistan was reported to have stated that 5 senior al-Qaeda figures were among those killed, including a chemical and explosives expert, Midhat Mursi al-Sayed alias Abu Abu Khabab, Abu Obaidah al-Misri, allegedly al-Qaeda chief of operations for Afghanistan’s eastern Kunar province, and Ayman al-Zawahiri’s son-in-law Abdur Rehman al-Maghribi. However, the reports received indicated that the bodies of the five “Arab fighters” killed in the strike were pulled out of the rubble and taken away from the scene soon after the strike, so that only the bodies of 13 Pakistani victims could be identified. It was the Special Rapporteur’s understanding that the US Central Intelligence Agency (CIA) was authorized to operate such Predator operations under presidential authority signed after the September 11, 2001 terrorist attacks. With regard to the incident in Haisori of 1 December 2005, the Government’s position reportedly was that the deaths were caused by the explosion of explosives stored in the house. With regard to the incident in Damadola on 13 January 2006, however, media reports suggested that the Government attributed the deaths to a missile fired by a US aircraft. The Government’s Prime Minister, Mr. Shaukat Aziz, was reported to have publicly stated that such attacks were not acceptable to Pakistan. In connection with these conflicting reports, the Special Rapporteurs also expressed concern at information received regarding Mr. Hayatullah Khan, a reporter for the Urdu-language daily "Ausaf" and photographer for the European Press Photo Agency, who reportedly found and reported evidence that the deaths in Haisori village on 1 December 2005 had been caused by a US air strike, thus contradicting your Government’s official version of the

events. According to information received, he was abducted by armed men on 5 December 2005, in Mir Ali, North Waziristan, and has since then remained unaccounted for. The Special Rapporteurs urged the Government to clarify the whereabouts of Mr. Khan and to ensure that his rights to life, physical integrity, personal freedom and freedom of expression are respected. In addition, the Government was requested whether it accepted that there were three air strikes by unmanned CIA drones on targets in Pakistan on 5 November 2005, 1 December 2005, and 13 January 2006. Furthermore, the Special Rapporteurs asked the Government of Pakistan whether it agreed to the killing of Hamza Rabia and Ayman al-Zawahri as well as whether it agreed to the United States carrying out air strikes against targets in Pakistan in order to kill terrorism suspects.

49. On 18 August 2006 the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, drew the attention of the Government of Pakistan to the case of Mr. **Khalid Mehmood Rashid**, a Pakistani citizen (see paragraph 51). According to information received, Mr. Khalid Mehmood Rashid was handed over by South African authorities to Pakistani officials at an air base in South Africa in late 2005. Thereafter, he left the country with Pakistani officials on an unscheduled flight. It was alleged that he had not been seen or heard from since. According to the Pakistani High Commission in South Africa, on 14 June 2006, Mr Rashid was "wanted in Pakistan for his suspected links with terrorism and other anti-state elements ... Presently he is in the custody of the Government of Pakistan". On 29 June 2006, the Lahore High Court directed the state to disclose his whereabouts within three weeks. The Special Rapporteur requested the Government to indicate on what basis the individual was had been wanted in Pakistan for his suspected links with terrorism and other anti-state elements and for what offences he has had charged. Furthermore, the Special Rapporteur asked to be provided with details as to whether the individual had been brought before a court for the determination of the lawfulness of his detention and of the criminal charges of against him.

(b) *Communication from the Government*

50. As at 31 January 2007, there had been no reply to the Special Rapporteur's correspondence.

South Africa

(a) *Communication sent to the Government by the Special Rapporteur*

51. On 18 August 2006 the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, drew the attention of the Government of South Africa to the case of Mr. **Khalid Mehmood Rashid**, a Pakistani citizen (see paragraph 49). According to information received, Mr. Khalid Mehmood Rashid was handed over by South African authorities to Pakistani officials at an air base in South Africa in late 2005. Thereafter, he left the country with Pakistani officials on an unscheduled flight. It was alleged that he had not been seen or heard from since. According to the Pakistani High Commission in South Africa, on 14 June 2006, Mr Rashid was "wanted in Pakistan for his suspected links with terrorism and other anti-state elements ... Presently he is in the custody of the Government of Pakistan". On 29 June 2006, the Lahore High Court directed the state to disclose his whereabouts within three weeks. The Special Rapporteur requested the Government to provide in particular information on the measures taken by South African authorities to ensure compliance with international norms, specifically the non-

refoulement obligation, as well as whether Mr. Khalid Mehmood Rashid had an opportunity to appeal the decision taken before being handed over.

(b) *Communication from the Government*

52. By letter dated 23 November 2006, the Government replied to the communication of the Special Rapporteur. The Government informed that Mr. Rashid was detained on 31 December 2005 under the provisions of section 34, 42 and 8 of the Immigration Act, No 13 of 2002. On 6 November 2005, Mr Rashid was deported to Pakistan by having been handed over by South African authorities to Pakistani officials at Waterkloof Air Force Basis, South Africa. At that stage, the South African authorities were not aware of the fact that Mr Rashid was "wanted in Pakistan for his suspected links with terrorism and other anti-state elements". The first time, the South African authorities became aware thereof, was when the Pakistani High Commission to South Africa issued a statement to this effect on 14 June 2006.The Government further informed that, on 2 November 2005, Mr Rashid waived his entitlement to the review procedure provided for in section 8 of the Immigration Act as well as his entitlement to call for the confirmation of his detention by way of a warrant arrest issued by a South African court. The Government underlined that it cannot adopt the approach that all deportations to countries such as Pakistan will lead to the torture of such returnees. In the event of the South African officials, however, being aware of the possibility that specific returnees may well be exposed to torture, the South African Government will request written undertakings by the returnee's government that the relevant international covenants regulating torture will be respected.

Tajikistan

(a) *Communication from the Government*

53. By letter dated 24 November 2005, the Government replied to the Special Rapporteur's communication of 20 October 2005 (see paras. 13-14, E/CN.4/2006/98/Add.1). The Government informed that Muhamadruzi Iskandarov's complicity in the commission of a number of other serious and especially serious offences was proved by the preliminary investigation. As a result of the investigation, in June 2005 he was charged with the commission of offences under several articles of the Criminal Code of the Republic of Tajikistan. On 4 July 2005 the investigation of the criminal case against M. Iskandarov was completed and on approval of the indictment the case was sent to the Supreme Court of the Republic of Tajikistan for consideration of the merits. By a judgement of the criminal division of the Supreme Court of the Republic of Tajikistan rendered on 6 October 2005, M. Iskandarov was found guilty of the illegal storage of large quantities of firearms, ammunition, explosive substances and explosive devices, terrorism, banditry, multiple instances of the embezzlement of public property entrusted to him, the illegal engagement of private protection, and other serious and especially serious offences under common criminal law, and sentenced to 23 years' deprivation of liberty. It must be noted that during the preliminary investigation M. Iskandarov fully admitted his guilt in the killing of a militia officer and members of his family in 1993. However, in compliance with the inter-Tajik peace agreement, the part of the criminal case regarding those facts concerning M. Iskandarov was terminated pursuant to the Amnesty Act for participants in the political and armed resistance of 1992-1997 in Tajikistan. In the course of the proceedings, evidence collected both during the court hearings and in the judicial examination was examined fully, with the involvement of the

defendant, M. Iskandarov, his defence counsel and other participants in the proceedings. The evidence was also subjected to the appropriate legal scrutiny. Allegations that illegal methods had been used during the pretrial investigation were examined during the hearing and a legal ruling was passed on their substance. In particular, during the trial it was established that at the pretrial investigation the defendants M. Iskandarov, D. Sakovarov and E. Ibrogimov had been assigned defence counsel, and the investigative actions had been performed with their involvement. During the investigation they made statements admitting their complicity in acts of terrorism and illegal storage of weapons and ammunition. During the pretrial investigation the defendants had lodged no complaints or objections concerning the manner in which the investigation was conducted or alleging the use of prohibited methods of investigation, although they had had every opportunity to do so. Witnesses, namely B. Muhibov, head of the police task force, B. Homidov, head of the investigation team, C. Uzokov, detective, I. Bazirov, procurator of Tajikabad district, T. Nazirov, task force member, explained at the court hearing that, from the moment they were taken into custody, M. Iskandarov, D. Sakovarov and E.A. Ibrogimov had quite spontaneously, freely, and without any coercion made statements admitting their complicity. During the investigation no pressure of any kind of mental or physical force had been applied at any time. In accordance with due process, all the defendants had been provided with lawyers - two defence lawyers in the case of M. Iskandarov - and the lawyers had been present when they made their statements admitting their complicity in the offences. The fact that M. Iskandarov and D. Sakorov had made their statements without coercion or pressure of any kind during the investigation is confirmed by video recordings of their testimony during the pretrial investigation, in which they testify freely in the presence of their lawyers with regard to the offences committed, and also give replies to the lawyers’ questions in which they admit their complicity. Taken together, all these facts disprove allegations that prohibited methods were used against these defendants during the pretrial investigation, and that they were prevented from communicating freely.

The Special Rapporteur was further informed that the assertion that M. Iskandarov was charged with terrorism for religious or political reasons is inconsistent with the facts of the matter, as he was found guilty and sentenced for offences which do not relate in any way to his political, let along his religious, activities. In addition, as the records have established, M. Iskandarov organized and committed the crime of terrorism after criminal proceedings had been initiated on counts of embezzlement on a particularly large scale committed while he had still been employed by Tajikgas. He committed this offence after he had become aware of the evidence in the case against him and realized that he would be prosecuted. It was then that he conceived the idea of committing a terrorist crime as a way of evading criminal prosecution. It was specifically with this aim that he took advantage of the opportunity presented by the discontent of certain members of his gang, who resented the fact that a manhunt had been launched against them for certain especially serious offences, including murder. Accordingly, when they met, he suggested that they carry out their terrorist operation. The motive of this crime specified in M. Iskandarov’s statements admitting his complicity was to attract public attention and give him leverage in forcing the Government to drop the criminal case against him. Finally, the Special Rapporteur was provided with relevant excerpts of the Criminal Code of the Republic of Tajikistan, namely Article 179 (Terrorism) and Article 186 (Banditry).

Thailand

(a) *Communication sent to the Government by the Special Rapporteur*

54. On 11 January 2006 the Special Rapporteur sent a letter to the Government of Thailand, in which he referred to the use of what was described to him as **blacklists of suspected militants**. According to information received, district offices, local police and military task forces prepared lists which identify typically Muslim villagers from southern regions in Thailand said to be members or supporters of militant groups, or having shown an inclination towards separatist ideology. Those identified in these lists were said to have been asked to surrender themselves to prove their innocence, pledge not to participate in insurgent activities, and undertake re-education programmes. Failing this, a warrant for the individual's arrest was issued under an Emergency Decree adopted in July 2005. It was alleged that those arrested subject to the Emergency Decree were not entitled to exercise their right to silence, nor have access to legal counsel, nor bring an application for habeas corpus. Safeguards under the Criminal Procedure Code were also said to be not applicable. The Special Rapporteur requested the Government to provide him with a copy of the Emergency Decree of July 2005 and to advise him of the grounds upon which this state of emergency was declared. Furthermore, the Special Rapporteur asked the Government to advise him of the basis upon which individuals were listed in the blacklists mentioned and whether this is linked in any way with the criminalisation of membership in any organization(s). Moreover, the Special Rapporteur requested the Government to inform him of the basis upon which individuals were denied the right to exercise their right to silence, access to legal counsel, and their inability to bring an application for habeas corpus. In this context, the Special Rapporteur asked the Government to provide him with comprehensive information on specific provisions of the Thai Penal Code and Anti-Money Laundering Act and related anti-terrorism laws and measures. Referring to an emergency anti-terrorist decree, establishing criminal offences in the Penal Code and providing for various investigative tools to fight terrorism, issued in August 2003, the Special Rapporteur requested the Government to advise him whether this decree was still in force and, if so, the basis upon which it was issued and continued to exist.

(b) *Communication from the Government*

55. By letter dated 30 June 2006, the Government replied to the communication of the Special Rapporteur. The Government informed that, with a view to the unrest in the south of the country, the Thai authorities were compelled to keep a preliminary checklists of those suspected of having links with armed militants. With regard to the concern raised as to the so called "black list", the Government clarified that no such lists are being compiled by the law enforcement officials in Thailand. The only existing list are "watch lists" similar to what other countries also keep for similar national security concerns. According to Section 11 (1)-(2) of the Emergency Decree, law enforcement officials can request the court to issue arrest warrants and/or summons in order that the suspects can be appropriately interrogated by the authorities. This process of questioning can last from 3 days up to 30 days maximum in accordance with Section 12 of the Emergency Decree. After the 30 days limit, a person can only be further detained if he is charged with an offence. In this case, the suspect has the right to remain silent and access to a legal counsel. Furthermore, a person arrested according to the Emergency Decree is not considered a suspect under criminal law. The information obtained from the suspect during the 30 days

interrogation period cannot be used against that suspect in court. This is in accordance with Article 134/4 of the Criminal Procedure Code.

Turkey

(a) *Communications sent to the Government by the Special Rapporteur*

56. On 22 June 2006 the Special Rapporteur, together with the Special Rapporteur on the question of torture, Special Rapporteur on the promotion and protection of freedom of opinion and expression and the Special Representative of the Secretary General on human rights defenders, drew the attention of the Government of Turkey to information they had received regarding Mr. **Resit Yaray**, board member of the Batman branch of the Human Rights Association (HRA); Mr. **Mursel Kayar**, member of the Batman branch of the HRA; Mr. **Ali Oncu**, member of the Diyarbakir Branch of the HRA and chairperson of TES-IS; Mr. **Edip Yasar** and Mr. **Mecail Ozel**, members of the Diyarbakir Branch of the HRA; Mr. **Necdet Atalay**, former Spokesman of the Diyarbakir Democracy Platform, Secretary General of the Machine Engineers' Association, and a HRA member; Mr. **Erdal Kuzu**, lawyer and Secretary General of the Mardin branch of HRA; and Mr. **Hüseyin Cangir**, Chairperson of the Mardin branch of the HRA. According to the information received, on 29 March 2006, Mr. Resit Yaray and Mr. Mursel Kayar were arrested and detained in the Directorate of Security in Batman, as they were trying to observe riots that were taking place in Batman village. While in custody Mr. Resit Yaray and Mr. Mursel Kayar were said to be beaten by police officers after their arrest. On 2 April 2006 Mr. Resit Yaray and Mr. Mursel Kayar were charged with "assisting and supporting illegal organizations" and transferred to Batman prison, where they remain. The first hearing of the trial of Mr. Resit Yaray and Mr. Mursel Kayar was scheduled to take place on 30 June 2006 before Diyarbakir Aggravated Penalty Court. Furthermore, on 29 March 2006, Mr. Necdet Atalay was arrested and was detained in Diyarbakir D Type Prison. He has been charged with "assisting and supporting illegal organisations" and the first hearing of his trial will take place on 13 July 2006. On 30 March 2006, Mr. Mecail Ozel was arrested and detained by police officers in Ofis, Diyarbakir. It was alleged that he had been held incommunicado until 3 April 2006. On 4 April 2006, Mr. Mecail Ozel was brought before the Diyarbakir Criminal Court, charged with "assistance and support to illegal organizations" and transferred to the Diyarbakir Prison where he was being held. It was reported that the first hearing of Mr. Mecail Ozel's trial took place on 13 July 2006. On 2 April 2006, Mr. Erdal Kuzu, and Mr. Hüseyin Cangir, Chairperson of the HRA Mardin branch, were arrested in the city of Kiziltepe they allegedly tried to prevent attacks by security forces against civilians. They were seriously beaten during their detention and were released several hours later. On 4 April 2006 Mr. Ali Oncu and Mr. Edip Yasar were arrested and detained by the anti-terrorism branch of the security forces. On 5 April 2006 they were charged with "assisting and supporting illegal organizations" and were transferred to Diyarbakir Prison where they remain in detention. Mr. Edip Yasar's trial was scheduled to begin on 13 July 2006. Grave concern was expressed that the above events were connected with the activities of the above named people in defence of human rights, in particular because of their efforts to observe and report on human rights violations allegedly committed by the security forces during the disturbances in Turkey in March and April 2006. The Government was specifically requested to explain the legal bases and the domestic law applicable to the arrest of Mr. Resit Yaray, Mr. Mursel Kayar, Mr. Ali Oncu, Mr. Edip Yasar, Mr. Mecail Ozel, Mr. Necdet Atalay, Mr. Erdal Kuzu and Mr. Hüseyin Cangir.

57. By letter dated 15 August 2006, the Special Rapporteur drew the attention of the Government of Turkey to information concerning Mr. **Osman Baydemir**, mayor of Diyarbakir Metropolitan Municipality. The Special Rapporteur mentioned that he had had the opportunity to visit Diyarbakir during his country visit of February 2006. According to the information received, following his intervention during incidents in March 2006 in Diyarbakir, Mr. Baydemir has been charged under article 314/2 of the Turkish Penal Code – membership in an armed organisation – with reference also to articles 314/3 and 220/7 –, and article 53/1 of the Turkish Penal Code, as well as to article 5 of the Anti-Terror Law. The case was to be tried in the Diyarbakir Aggravated Felony Court No.6. The Government was requested to inform the Special Rapporteur of the factual allegations concerning the charge against Mr. Baydemir and the justification for considering the conduct of Mr. Baydemir as "terrorism". Furthermore, the Special Rapporteur asked the Government to indicate whether any limitations allowed in Turkish law have been placed upon Mr. Baydemir as regards the legal safeguards pertaining to the investigation of the case. Moreover, the Special Rapporteur asked to be advised on the penalty called for by the prosecution in this case. Finally, the Government was asked whether the trial of Mr. Baydemir had been open to the public, allowing for the independent monitoring of the trial.

(b) *Communication from the Government*

58. By letter of 4 September 2006, the Government replied to the Special Rapporteur's communication sent le 22 June 2006. The Government informed that Mr. Resit Yaray and Mr. Mursel Kayar were apprehended by law enforcement officials while they were breaking windows of the Turkish Telecom and of Akbank and entering both buildings respectively. They were then transferred to the Public Prosecutor. On 2 April 2006, they were arrested upon the decision of the Penal Court of first Instance of Batman pursuant to Article 100/3-a-9 of the Code of Criminal Procedure. The court trial against Mr. Resit Yaray and Mr. Mursel Kayar was initiated on the charges of willfully assisting illegal organizations. On 30 June 206, the Court ruled on the continuation of their arrests. At the time of writing of the Government's reply, the case was still underway. As regards Mr. Edip Yasar and Mr. Necdet Atalay, the Government advised that they were among the persons who actively participated in the incidents which took place from 28 to 31 March 2006 in Diyarbakir. They had been detained upon their interrogation on 4 April 2006 by the instruction of the Public Prosecutor. On 5 April 2006, they were arrested by the decision of the Heavy Penal Court of Diyarbakir pursuant to Article 100/3-a-9 of the Code of Criminal Procedure. A court trial was initiated against both individuals on the charges of willfully assisting illegal organizations. On 20 July 2006, Mr. Edip Yasar and Mr. Necdet Atalay were released by decision of the Court. At the time of writing of the Government's reply, the case was still underway. With respect to Mr. Mecail Ozel, the Government indicated that he was detained by law enforcement authorities when trying to invade several private residences. His family was officially informed of his detention the same day. He was also allowed to access his lawyer. Mr. Mecail Ozel was arrested by order of the Heavy Penal Court on 3 April 2006, where a court trial was initiated against him. On 17 April 2006, the Court decided on the continuation of his arrest pursuant to Article 100/3 of the Code of Criminal Procedure. A hearing was held by the Court on 8 August 2006 and at the time of writing of the Government reply, the case was still underway. On 6 April 2006, Mr. Mecail Ozel lodged a complaint with the Office of the Chief Public Prosecutor of Diyarbakir alleging that he was subject to torture during his detention. An investigation was initiated by the Chief Public Prosecutor on this complaint, which was still

underway at the time of writing of the Government reply. The Government also informed that an investigation was initiated against Mr. Erdal Kuzu and Mr. Hüseyin Cangir by the Office of the Chief Public Prosecution of Diyarbakir for their involvement in the incidents during the funerals on 29 March to 1 April 2006 in Diyarbakir. The Government maintained that they were not arrested or detained in connection with the investigation. Finally, the Government informed that Mr. Ali Oncu was detained on 4 April 2006 in connection with his involvement in the incidents which took place during the funerals in Diyarbakir on 29 March to 1 April 2006. On 5 April 2006, he was arrested by the decision of a court. Later, a court trial was initiated against Mr. Ali Oncu on the charge of willfully assisting illegal organizations. On 13 July 2006, the court decided to release him and to suspend the hearing until 10 October 2006. At the time of writing of the Government reply, the case was still underway.

59. On 11 October 2006, the Government replied to the allegation letter sent on 15 August 2006. The Government informed that a case was initiated against Mr. Osman Baydemir in the 6th Heavy Penal of Diyarbakir on the charge of “willfully assisting an armed organization” under Articles 314/3 and 220/7 of the Turkish Penal Code. The first hearing was scheduled to be held on 20 October 2006. According to the indictment, the charge against Mr. Osman Baydemir was based on his public statement, displaying support for the members of the terrorist organization PKK/KADEK who lost their lives during a counter-terrorist operation in Bingol as well as encouraging and supporting the persons who were involved in the incidents of violence which took place in Diyarbakir on 29 March to 1 April 2006. The Government further informed that the link to terrorism had been established in terms of the terrorist nature and activities of the PKK/KADEK, constituting an armed organization according to Article 314 of the Turkish Penal Code and the established jurisprudence of the Supreme Court of Appeals. According to the indictment, the public statements of Mr. Osman Baydemir support the terrorist organization PKK/KADEK in furthering its activities. Finally, the Government informed that according to Article 141 of the Constitution, court trials are open to the public. Trials can only be held closed to the public by the decision of a court, in cases where public morals or public security absolutely so dictates.

(c) *Press releases*

60. On 2 February 2006 the Special Rapporteur issued a press release announcing his forthcoming country visit to Turkey. In a press release of 30 March 2006, the Special Rapporteur outlined his preliminary findings on the country visit to Turkey. His conclusions and recommendations are contained in the report on the Mission to Turkey of 16 November 2006 (A/HRC/4/26/Add.2).

Uganda

(a) *Communication sent to the Government by the Special Rapporteur*

61. On 6 January 2006 the Special Rapporteur sent a letter to the Government of Uganda referring to information received concerning a charge of terrorism against opposition leader and Presidential candidate Dr. **Kizza Bisegye**. According to information received, Dr. Kizza Bisegye, 49, was leader of the main opposition party in Uganda, the Forum for Democratic Change, and a candidate in the approaching Presidential elections. He was arrested on 14

November 2005, accused of treason, concealment of treason and rape, shortly after returning to Uganda after some years abroad. He was taken to the High Court for a bail hearing in Kampala on 16 November 2005, which was abandoned after the Court was surrounded by armed members of a special counter-terrorism security force, prompting the presiding judge to withdraw from the proceedings. Soldiers took up positions around the High Court, apparently prepared to re-arrest anyone who was released on bail. Their presence resulted in 14 of those charged with Dr. Bisegye, who were granted bail, to refuse to leave the prison. Dr. Bisegye was later charged with separate military offences of terrorism and unlawful possession of firearms and, instead of appearing at the reconvened bail hearing, he was instead taken to be heard on these fresh charges before a military tribunal. These charges carry the death penalty upon conviction. Dr. Bisegye has in the past been accused of leading the People's Redemption Army and having links with the Lord's Resistance Army. On arraignment before the Army Court-Martial, the Head of the Court-Martial General Tumwine entered a plea of not guilty on behalf of Dr. Bisegye, who had refused to recognise the jurisdiction of the Court. Eighteen of a suspected 22 accomplices to Dr. Bisegye appeared before General Tumwine on the same charges. In protesting the jurisdiction of the Court-Martial and the conduct of that hearing at the same time that Dr. Bisegye was scheduled to appear for his bail hearing before the civilian High Court, legal representatives of Dr. Bisegye, Mr. Elias Lukwago and Mr. Caleb Alaka, were arrested for contempt of Court. Proceedings before the Court-Martial are said to have been closed. A Government ban had been imposed against the reporting, discussion or debate of all proceedings against Dr. Bisegye and his alleged accomplices. The Government had also banned any demonstrations linked to these charges and proceedings. Dr. Bisegye was released on bail by the High Court in early January 2006. The status of charges against him before the Military Court-Martial was to be considered by Uganda's Constitutional Court. The Government was inter alia requested to inform the Special Rapporteur of the factual allegations concerning the charge(s) of terrorism against Dr. Bisegye, providing him also with relevant excerpts of the legislation under which Dr. Bisegye was charged. The Special Rapporteur also asked the Government to advise him why Dr Bisegye and his alleged conspirators are, as civilians, being tried before a military tribunal. Furthermore, the Special Rapporteur asked to be advised of the legal and factual grounds upon which legal counsel Mr. Elias Lukwago and Mr. Caleb Alaka were arrested for contempt of court, and the result and current status of any resulting charges against them. Finally, the Special Rapporteur requested to be informed of the status of proceedings before the Constitutional Court. In this context, the Special Rapporteur requested comprehensive information on Uganda's Anti-Terrorism Act 2002 and related anti-terrorism laws and measures, with particular regard to what was said to be an overly broad definition of 'terrorism', the applicability of the death penalty under the act to minors, the breadth of provisions allowing the prohibition of organizations, and powers of interception of communications and other forms of surveillance.

(b) *Communication from the Government*

62. By letter of 12 January 2006, the receipt of the Special Rapporteur's letter of 6 January 2006 has been acknowledged. No further reply has so far been received.

United Kingdom of Great Britain and Northern Ireland

(a) *Communications sent to the Government by the Special Rapporteur*

63. On 21 June 2006, following the adoption of the **United Kingdom's Terrorism Act 2006**, the Special Rapporteur wrote to the Government of the United Kingdom of Great Britain and Northern Ireland to thank them for the cooperation extended to him in the process towards the adoption of the law, notably for the meetings in November 2005 and the responses to his written questions, but also to express the two areas of concerns. First, the Special Rapporteur referred to certain overly broad and vague terms and concepts such as "indirectly encouraging" acts of terrorism and "glorification", interpreted as including "any form of praise or celebration". In relation to intent, the Special Rapporteur commended its explicit inclusion in some parts of the Act, regretting at the same time that is not always a necessary element of the offences and that, in particular, there is a possibility of committing the offence of encouragement of terrorism and dissemination of terrorist publications through "recklessness". Second the Special Rapporteur addressed the issue of the extension of the length of detention without charge for up to 28 days for terrorist suspects. While appreciating the Government's opinion that one's right to habeas corpus was not affected by the previous 14-day period of detention and that the extension of detention without charges, possible under strict conditions, was subject to judicial oversight, the Special Rapporteur he remained of the opinion that the possibility of 28 days of detention without charge is too long unless there is a regular judicial review of all aspects of the detention, including the reasons for it and any arguments the detainee may wish to present to contest them.

64. On 26 June 2006 the Special Rapporteur, together with the Special Rapporteur on the question of torture, brought to the Government of United Kingdom of Great Britain and Northern Ireland's attention information received concerning two Algerian men, known as "V" and "I" (see paragraph 9). According to the allegations received, "V" and "I" were labelled as "suspected international terrorists" by the authorities on the basis of secret intelligence to which they had no access and which they were therefore unable to challenge, and detained in high-security prisons. They were deported to Algeria on 16 and 17 June 2006 respectively, on the grounds that they presented a "threat to the national security". The two men had been held at an undisclosed location since their arrival in Algeria, and had been allowed no contact with their families, in violation of Algerian law and in spite of earlier assurances by the Algerian consulate in London that they were not wanted for any crimes in Algeria and that they would be released after they had spent a few hours in police custody at the airport to satisfy formalities. The men were held by a military intelligence agency, the Department for Information and Security (Département du renseignement et de la sécurité, DRS), which specializes in interrogating people thought to possess information about terrorist activities. The Special Rapporteur requested the Government to indicate in particular on which basis the two men were labelled "suspected international terrorists" and whether they had an opportunity to appeal this decision. Furthermore, he asked to be advised what measures the Government had taken to ensure compliance with international norms, notably the non-refoulement obligation if there is a risk of torture.

(b) *Communication from the Government*

65. As at 31 January 2007, there had been no reply to the Special Rapporteur's communication of 21 June 2006.

66. By letter of 4 August 2006, the Government replied to the Special Rapporteur's letter sent on 26 June 2006. The Government informed that, in April 2002, the then Home Secretary issued a certificate under Section 21 of the Anti-terrorism, Crime and Security Act 2001 in respect of "I".

The grounds for this certification under that Section (which was repealed in March 2005) were that the Home Secretary reasonably suspected that the person was a terrorist. Such certification only applied to persons suspected of international terrorism. This decision was taken on the basis of an assessment by the British Security Service. “I” was then detained. He appealed against this certificate to the Special Immigration Appeals Commission, which is a superior court of record. The appeal was dismissed. “I” was released when Section 21 of the 2001 Act was repealed in March 2005. As regards “V”, the Government advised that he was not certified and not detained under the provisions of the 2001 Act. He was detained and remanded in custody while being tried on criminal charges. He was found not guilty, and released in April 2005. In August 2005, “I” was notified that the Home Secretary intended to deport him from the UK on the grounds that he was a threat to national security. “V” was notified in September 2005. Both men were detained pending their deportation. Both initially appealed against the decision to deport them, but both men subsequently withdrew their appeals. “V” was deported on 16 June and “I” on 17 June 2006. The Government underlined that, notwithstanding the withdrawal of the men’s appeal against deportation, it held extensive discussions with the Algerian authorities about the circumstances in which they would be returned. The UK was informed by the Algerian authorities that “V” and “I” were held in police custody because they had been deported from the UK, that they were being asked to explain the circumstances of their detention in the UK and of their deportation, and that this is standard Algerian practice in accordance with the Algerian Penal Code. Both men were released on 22 June. The Government also informed that it was not aware of any allegations of mistreatment of the two men while they were in detention following their return to Algeria. Finally, the Government informed that in case of removals from the UK, which include deportations, an assessment is made whether or not the removal is consistent with the UK’s international obligations. According to the Government’s information, these assessments are conducted on an individual basis, taking into account of the facts of the particular case, and publicly available information. Such assessments must necessarily be conducted before the removal takes place. In the cases of “I” and “V”, the assessment reached was that neither man would be in danger of being subjected to torture or to cruel or degrading treatment if returned.

United States of America

(a) *Communications sent to the Government by the Special Rapporteur*

67. On 7 March 2006 the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent a letter to the Government of the United States of Amercia (see paragraph 48) regarding three incidents of **air strikes by United States unmanned aircraft against targets in Pakistan**, each of them resulting in the death of several civilians. According to the information received, on 5 November 2005, an unmanned aircraft operated by the US Central Intelligence Agency (CIA) fired a missile at a house in North Waziristan, Pakistan. The CIA had received information that al-Qaeda operative Hamza Rabia, a citizen of Egypt alleged to have been involved in an attempt on the life of President Pervez Musharraf in December 2003, was staying there with his wife and children. While an overall eight persons, including his wife and children, were reportedly killed in the attack, Hamza Rabia managed to escape with an injured leg. Furthermore, it was reported that on 1 December 2005, an unmanned drone operated by the CIA fired a missile at a house in the village Haisori, near the town of Mir Ali, North Waziristan, about 30 kms from the Afghani border, killing five persons.

It appeared that the dead were Hamza Rabia, two other foreign men, and the 17-year-old son and an eight-year-old nephew of the owner of the house. While officials of the Government of Pakistan stated that the blast resulting in the deaths was caused by explosives handled or stored in the house, reports indicated that residents of the area saw an unmanned aircraft fire a missile at the house and recovered fragments of the missile. Information received also indicated that in the early morning hours of 13 January 2006 a remote-piloted Predator aircraft of the United States security services launched a strike with "Hellfire" missiles on the village of Damadola in the Bajaur Agency, North Western Pakistan, close to the border with Afghanistan. Reports indicated that US Predator drones were circling the area of Damadola village during the three days preceding the missile strike. The attack was reported to have killed 18 persons, including women and children. The target of the strike reportedly was Ayman al-Zawahri, who is commonly referred to as the "number two" of al-Qaeda. He was reportedly expected at a dinner in Damadola on the evening of 12 January 2006. The Government of Pakistan was reported to have stated that 5 senior al-Qaeda figures were among those killed, including a chemical and explosives expert, Midhat Mursi al-Sayed alias Abu Abu Khabab, Abu Obaidah al-Misri, allegedly al-Qaeda chief of operations for Afghanistan's eastern Kunar province, and Ayman al-Zawahiri's son-in-law Abdur Rehman al-Maghribi. However, the reports received indicated that the bodies of the five "Arab fighters" killed in the strike were pulled out of the rubble and taken away from the scene soon after the strike, so that only the bodies of 13 Pakistani victims could be identified. It was the Special Rapporteur's understanding that the US Central Intelligence Agency (CIA) was authorized to operate such Predator operations under presidential authority signed after the September 11, 2001 terrorist attacks. The Government of Pakistan was reported to have lodged a diplomatic protest over the incident on 14 January 2006. Pakistan's Prime Minister, Mr. Shaukat Aziz, reportedly stated publicly that such attacks are not acceptable to Pakistan. The Government of the United States of America was requested to inform the Special Rapporteur whether the reports according to which the target of the missile strike against Damadola was Ayman al-Zawahri were accurate. Furthermore, the Sprecial Rapporteur asked particularly on what basis it was decided to kill, rather than capture, Ayman al-Zawahri and Hamza Rabia.

68. On 15 September 2006 the Special Rapporteur addressed a letter to the Government of the United States of America drawing attention to information received regarding **Ravil Gumarov** and **Timur Ishmuratov**, two former detainees at Guantánamo Bay, Cuba. According to information received, in February 2004, Ravil Gumarov and Timur Ishmuratov, along with five other Russian citizens, were returned from Guantánamo Bay to Russia. After their return, in April 2005, they were arrested in connection with the explosion of a pipeline in Tatarstan in January 2005. While in detention, they were allegedly severely mistreated in an effort to force them to confess. Both men confessed to the crime during the investigation, but subsequently withdrew their confessions in court. In September 2005, a jury unanimously acquitted them and a third defendant, Fanis Shaikhutdinov, of the charges against them. However, the Russian Supreme Court subsequently annulled the verdict – thereby allowing the three men to be tried again for the same crime – and on 5 May 2006, the defendants were convicted of terrorism and illegal possession of weapons or explosives, and were ordered to pay for the property damage. Ravil Gumarov was sentenced to a term of 13 years, and Timur Ishmuratov to 11 years and one month. The third man, Fanis Shaikhutdinov, received 15 years and six months. All three appealed their convictions to the Russian Supreme Court. The Government was requested to inform the Special Rapporteur whether the facts related to the return from Guantanamo Bay to

Russia of the two individuals were accurate. Furthermore, the Special Rapporteur asked the Government what measures had been taken to ensure compliance with international norms, notably the non-refoulement obligation if there is a risk of torture or other inhuman, degrading or cruel treatment. In this context, the Special Rapporteur requested to be advised on whether the Government had carried out an individual assessment of the risks if these individuals were returned to Russia. Finally, the Special Rapporteur asked the Government to inform him about its intention to provide compensation to these two individuals if there were findings that the allegations above were true.

69. On 18 December 2006 the Special Rapporteur, together with the Special Rapporteur on the question of torture, sent a communication to the Government of the United States of America concerning the organization of **secret transfers of terrorist suspects** by the United States European Command (EUCOM) headquarters, Stuttgart-Vaihingen (see paragraph 24). It was alleged that EUCOM played a central role in the secret transfer of six suspected terrorists to Guantanamo Bay, Cuba. EUCOM reportedly organized from Germany the abduction of six prisoners of Algerian origin, namely Bensayah BELKACEM, Hadj BOUDELLAA, Saber LAHMAR, Mustafa Ait IDIR, Boumediene LAKHDAR and Mohamed NECHLE, from Tuzla, Bosnia and Herzegovina to Incirlik, Turkey in January 2002. From there they were flown to Guantanamo Bay, Cuba, where they continue to be detained without charges. The Special Rapporteur pointed out that, on 17 January 2002, the investigative judge of the Supreme Court of the Federation of Bosnia and Herzegovina had issued a decision terminating the applicants' pre-trial detention on the grounds that there were no further reasons or circumstances upon which pre-trial detention could be ordered. Furthermore, the Human Rights Chamber for Bosnia and Herzegovina, in its decision of 11 October 2002, had concluded that the hand-over of the six individuals to the US authorities was in violation of a number of provisions of the European Convention of Human Rights and Fundamental Freedoms (ECHR), including article 5 (para. 1) and article 6 (para.2) and also article 1 of Protocol No. 6 to the ECHR. The Special Rapporteur requested the Government to adopt effective measures to prevent the occurrence of practices of extraordinary rendition in breach of international human rights law. The Government was also asked to indicate on which basis these six men had been labelled "terrorist suspects" and whether they had an opportunity to appeal this decision. Furthermore, the Special Rapporteur requested the Government to inform him on what grounds the six individuals were detained at Guantanamo Bay, Cuba. Finally, the Special Rapporteur asked to be advised about the details on the procedural guarantees being employed providing for judicial review of the continued detention of the six individuals.

(b) *Communication from the Government*

70. As at 31 January 2007, there had been no reply to the communications sent on 7 March 2006 and 15 September 2006. A response to the Special Rapporteur's correspondence of 18 December was requested by 17 February 2007.

(c) *Press release*

71. The Special Rapporteur issued the following statement on 27 October 2006:

"On 17 October 2006 the **Military Commissions Act** (MCA) was signed into law, less than four months after the Supreme Court's decision on 29 June 2006 in Hamdan v. Rumsfeld which upheld the applicability of Common Article 3 of the Geneva Conventions to all detainees during times of armed conflict, affirmed minimum standards of due process protection and struck down the special military commissions initially established by the President of the United States of America in 2001. Debate regarding this legislation was relatively brief considering its potential impact, and while there were some positive amendments made by Congress, the MCA contains a number of provisions that are incompatible with the international obligations of the United States under human rights law and humanitarian law.

Several national and international non-governmental organizations have been critical of many aspects of the MCA, which was enacted to provide a legal basis for the military commissions. I believe it is important in my capacity to publicly express my concerns on this law as the United States has taken a lead role on countering terrorism since the 11 September 2001 terrorist attacks. Therefore there is an added concern that some Governments may view certain aspects of this legislation as an example that could be followed in respect of their national counter-terrorism legislation.

A number of provisions of the MCA appear to contradict the universal and fundamental principles of fair trial standards and due process enshrined in Common Article 3 of the Geneva Conventions. One of the most serious aspects of this legislation is the power of the President to declare anyone, including US citizens, without charge as an "unlawful enemy combatant" – a term unknown in international humanitarian law – resulting in these detainees being subject to the jurisdiction of a military commission composed of commissioned military officers. At the same time, the material scope of crimes to be tried by military commissions is much broader than war crimes in the meaning of the Geneva Conventions. Further, in manifest contradiction with article 9, paragraph 4 of the International Covenant on Civil and Political Rights the MCA denies non US citizens (including legal permanent residents) in US custody the right to challenge the legality of their detention by filing a writ of habeas corpus, with retroactive effect. Another concern is the denial of the right to see exculpatory evidence if it is deemed classified information which severely impedes the right to a fair trial.

On 1 September 2005, less than a month after assuming the mandate, the Special Rapporteur wrote to the Government advising he would welcome the opportunity to cooperate with the Government by providing written comments, attending parliamentary hearings or undertaking a country visit in order to assess the conformity of existing or envisaged counter-terrorism measures with international human rights standards. Further, in July of this year, the Special Rapporteur formally requested a country visit to the United States in order to assess its counter terrorism laws and practices against international standards.

In addition to the Special Rapporteur's numerous concerns with respect to the Military Commissions Act he also has concerns regarding a number of other issues relating to the protection of human rights in the context of countering terrorism such as the Patriot Act, immigration laws and policies, CIA secret detention centers, rendition flights, breaches of non-refoulement and the Government's denial of extra-territorial human rights obligations. During a

country visit, the Special Rapporteur would like to discuss these and other issues with relevant authorities, and he hopes that the Government will extend him an invitation in the very near future".

Uzbekistan

(a) *Communications sent to the Government by the Special Rapporteur*

72. On 10 August 2006 the Special Rapporteur, together with the Special Rapporteur on freedom of religion or belief, drew the attention of the Government of Uzbekistan to information received concerning **legal amendments restricting the right to promote the bible outside prayer houses**. According to the information received, following a meeting of the heads of the main confessions organised by the Religious Affairs Department held on 28 July 2006, a number of changes to the criminal and administrative Codes were announced. In particular these changes provide that persons who promote the bible outside prayer houses should be fined, and, in case of repeated attempts, imprisoned. Also the "pastor" of the church to which the person belongs can be fined respectively punished. These punishments also apply if a person carries more than one bible since it is assumed that only one is needed for private use.

73. On 1 September 2006 the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on freedom of religion and belief, drew the Government of Uzbekistan's attention to the case of Mr. **Mohammadrafiq Kamoluddin**, imam of a mosque in the city of Kara-Suu, Mr. Ayubkhodja Shahobidinov and Mr. Fathullo Rahimo (see paragraph 39). According to the information received, on 6 August 2006, the above-mentioned individuals were killed in the city of Osh as the result of an alleged counter terrorism operation, led by the National Security Service of Kyrgyzstan, in cooperation with the security forces of Uzbekistan. Reports indicated that these individuals were suspected members of the Islamic Movement of Uzbekistan and were planning to carry out a terrorist attack on the territory of the State of Uzbekistan. Other reports highlighted that it was not alleged that Mr. Mohammadrafiq Kamoluddin was a member of the Islamic Movement of Uzbekistan or that he was involved in the commission of terrorist acts. The Special Rapporteur requested the Government particularly on what basis it was decided to kill, rather than capture, these three individuals and to indicate legal basis for qualifying an individual or an entity as "terrorist" under the law of Uzbekistan.

(b) *Communication from the Government*

74. As at 31 January 2007, there had been no response to the Special Rapporteur's correspondence.

Yemen

(a) *Communication from the Government*

75. By letter of 20 December 2005, the Government of Yemen replied to the Special Rapporteur's letter sent on 17 November 2005 (see paras. 28-30, E/CN.4/2006/98/Add.1). The Government informed that Mr. Salah Nasser Salim 'Ali and Mr. Muhammad Faraj Ahmed

Bashmilah stated, when questioned, that they had not been tortured by the Indonesian, Jordanian or United States of America authorities. Furthermore, the Government advised that the two men had not been arrested but rather handed over to the Yemeni authorities by the United States authorities after having been accused of being members of the organisation know as Al-Quaida. The Yemeni authorities detained the two individuals under the Code of Criminal Procedures No. 13 of 1994, with a view to questioning them and verifying the allegations made by the United States authorities. The Government indicated that steps were being taken to verify that the Department of Public Prosecutions had followed the proper legal procedures. Moreover, the Yemeni authorities received the files on the two individuals from the United States authorities on 10 November 2005. The Government stated that the legal procedures were being completed pending the arraignment against the two men before the courts. Finally, the Government indicated that, under the Prisons Act, detainees awaiting trial are legally entitled to access to medical treatment and rehabilitation programmes, whether at a detention centre or, if they have been convicted and sentenced to imprisonment, at a prison. Internal rules regulating and establishing the parameters for such treatments are being applied, the implementation of which is overseen by the Department of Public Prosecutions.

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