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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston\***

**Addendum**

**Communications to and from Governments**

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\* Owing to its length, the present report is circulated as received.

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1	4
II. Communications and replies.....	2-7	4
A. Violation alleged.....	3	4
B. Subject (s) of appeal.....	4	5
C. Character of replies received.....	5-6	5
D. Observations of the Special Rapporteur.....	7	5
III. Tabulation of communications and replies.....	8-12	5
A. “Communications sent” and “Government responses received”.....	9	6
B. “Number and category of individuals concerned”.....	10	6
C. “Alleged violations of the right to life upon which the Special Rapporteur intervened”.....	11	6
D. “Character of replies received”.....	12	6
IV. Table of communications.....		7
Afghanistan.....	13-15	13
Bangladesh.....	16-71	15
Belarus.....	72-87	28
China.....	88-158	35
Colombia.....	159-178	57
Democratic Republic of the Congo.....	179-200	63
Egypt.....	201-206	69
El Salvador.....	207-223	71
Ethiopia.....	224-250	83
Gambia.....	251-257	90
Guatemala.....	258-269	92
Guinea.....	270-282	95
Honduras.....	283-309	99
India.....	310-333	106
Indonesia.....	334-363	114
Iran (Islamic Republic of).....	364-479	123
Iraq.....	480-493	156
Israel.....	494-504	162
Italy.....	505-514	165
Japan.....	515-530	168

Libyan Arab Jamahiriya .....	531-539	173
Madagascar .....	540-545	176
Mexico .....	546-560	178
Mongolia .....	561-572	184
Myanmar .....	573-578	186
Nepal .....	579-589	188
Nigeria .....	590-604	191
Occupied Palestinian Territory.....	605-627	196
Pakistan .....	628-650	202
Philippines.....	651-744	207
Russian Federation.....	745-807	227
Saudi Arabia.....	808-834	239
Senegal .....	835-839	247
Serbia .....	840-846	249
Somalia .....	847-856	250
Sri Lanka .....	857-1051	253
Sudan .....	1052-1084	300
Thailand .....	1085-1115	310
Uganda .....	1116-1148	319
Ukraine .....	1149-1153	329
United States of America .....	1154-1182	331
Uzbekistan.....	1183-1192	339
Venezuela (Bolivarian Republic of).....	1193-1198	344
Viet Nam .....	1199-1209	346
Yemen .....	1210-1232	349

## **I. Introduction**

1. This report contains a comprehensive account of communications sent to Governments between 16 March 2009 and 15 March 2010, along with replies received between 1 May 2008 and 30 April 2010. It also contains responses received to communications that were sent in earlier years.

## **II. Communications and replies**

2. Along with fuller reproductions or summaries of correspondence, this report summarizes the correspondence regarding each communication under four headings for ease of reference.

### **A. Violation alleged**

3. Violations are classified into the following categories:
- (a). Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment (“Death penalty safeguards”).
  - (b). Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, or groups cooperating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above and when the Government is failing to take appropriate protection measures (“Death threats”).
  - (c). Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention (“Deaths in custody”).
  - (d). Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality (“Excessive force”).
  - (e). Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State (“Attacks or killings”).
  - (f). Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law (“Violations of right to life in armed conflict”).
  - (g). Expulsion, refoulement, or return of persons to a country or a place where their lives are in danger (“Expulsion”).
  - (h). Impunity, compensation and the rights of victims (“Impunity”).

The short versions contained in parentheses are used in the tabulation of communications.

## **B. Subject(s) of appeal**

4. The subjects of appeal are classified in accordance with paragraph 6 of Commission of Human Rights resolution 2004/37 and paragraph 5 (b) of General Assembly resolution 61/173.

## **C. Character of replies received**

5. The replies received have been classified according to the following five categories designed to assist the Commission in its task of evaluating the effectiveness of the mandate:

(a) “Largely satisfactory response” denotes a reply that is responsive to the allegations and that substantially clarifies the facts. It does not, however, imply that the action taken necessarily complies with international human rights law.

(b) “Cooperative but incomplete response” denotes a reply that provides some clarification of the allegations but that contains limited factual substantiation or that fails to address some issues.

(c) “Allegations rejected but without adequate substantiation” denotes a reply denying the allegations but which is not supported by documentation or analysis that can be considered satisfactory under the circumstances.

(d) “Receipt acknowledged” denotes a reply acknowledging that the communication was received but without providing any substantive information.

(e) “No response”.

6. There are two minor, additional characterizations: (i) Where a response has been received but has not yet been translated by the United Nations, the response is characterized simply as “Translation awaited”; (ii) Where a response has not been received from the Government but less than 90 days has elapsed since the communication was sent, that fact is indicated by characterizing the response as: “No response (recent communication)”.

## **D. Observations of the Special Rapporteur**

7. In order to underscore the importance of the dialogue between the Special Rapporteur and Governments and to avoid any appearance that the principal goal is the exchange of correspondence for its own sake, this report contains brief comments by the Special Rapporteur on the extent to which he considers each reply to have responded adequately to the concerns arising under the mandate. An indication is also provided in instances in which additional information is required to respond effectively to the information received.

## **III. Tabulation of communications and replies**

8. To provide an overview of the activities of the mandate in the past year, this report also includes a table that contains the following information by country.

**A “Communications sent” and “Government responses received”**

9. These columns contain the total number of communications sent by the Special Rapporteur and the total number of responses received from Governments. The columns also contain subtotals for urgent appeals (UA) and allegation letters (AL).

**B. “Number and category of individuals concerned”**

10. The subjects of communications are classified in accordance with paragraph 6 of Commission of Human Rights resolution 2004/37.

**C. “Alleged violations of the right to life upon which the Special Rapporteur intervened”**

11. This column lists the number of communications containing allegations of a particular category. (See Section I, paragraph 3 above).

**D. “Character of replies received”**

12. See Section I, paragraph 5 above

#### IV. Table of communications

<i>Communications sent</i>	<i>Governments responses received</i>	<i>Numbers and category of individuals concerned</i>	<i>Alleged violations of the right to life</i>	<i>Character of replies received</i>
Afghanistan	1 AL	6 males	Attacks or killings	No response
Bangladesh	1 UA	5 males	Death penalty safeguards	Largely satisfactory response
	1 AL	6 unknown (members of indigenous communities)	Excessive force	No response (recent communication)
Belarus	1 UA	1 male	Death penalty safeguards	Translation awaited
	1 UA	1 male	Death penalty safeguards	Cooperative but incomplete response
China	1 AL	1 male	Excessive force	Translation awaited
	1 UA	4 males and 1 female	Death penalty safeguards	Largely satisfactory response
	1 UA	156 unknown (demonstrators)	Excessive force	Translation awaited
	1 UA	1 male and 1 female	Death penalty safeguards	Largely satisfactory response
	1 UA	1 male (foreign national)	Death penalty safeguards	Cooperative but incomplete response
	1 UA	12 males	Death penalty safeguards	Cooperative but incomplete response
	1 UA	1 male	Death penalty safeguards	No response (recent communication)
Colombia	1 AL	1 female, 5 males, 6 minors (members of indigenous community)	Attacks or killings	No response
	1 UA	1 female, 2 males	Death threats	No response

Democratic Republic of the Congo	1 AL	(human rights defenders) 1 male (journalist)	Attacks or killings	No response
	1 UA	4 males (human rights defenders)	Death penalty safeguards	No response
	1 AL	1 male and others	Impunity (rights of victims)	No response
Egypt	1 AL	1 male (foreign national)	Death in custody	No response
El Salvador	1 UA	2 females, 2 males (human rights defenders) and 16 others	Attacks or killings and death threats	Cooperative but incomplete response
Ethiopia	1 UA	5 males (opposition party leaders)	Death penalty safeguards	Cooperative but incomplete response
Gambia	1 AL	Group concern	Death threats	No response
Guatemala	1 AL	1 male (human rights defender)	Attacks or killings	Receipt acknowledged
Guinea	1 UA	Approximately 150 (demonstrators, unknown)	Attacks or killings	No response
Honduras	1 UA	2 males	Attacks or killings	No response
	1 UA	2 males, 3 unknown (demonstrators)	Excessive force	No response
India	1 AL	1 female, 1 male	Excessive force	Largely satisfactory
	1 AL	2 males	Excessive force	Largely satisfactory response
Indonesia	1 AL	1 female, 1 male	Excessive force	No response
	1 AL	1 male	Impunity	No response
	1 AL	2 males	Death in custody	No response
Iran (Islamic Republic of)	1 UA	Group concern	Concern on legislation imposing death penalty for non-serious crimes	No response
	1 AL	1 male	Death in custody	No response
	1 UA	1 male (minor)	Death penalty safeguards	No response



1 UA	2 males (religious minority members)	Death penalty safeguards	No response
1 UA	1 male (minor)	Death Penalty safeguards	No response
1 UA	2 males (minors)	Death penalty safeguards	No response
1 UA	12 unknown (demonstrators)	Excessive force	No response
1 UA	1 male (minor)	Death penalty safeguards	No response
1 UA	1 male (minor)	Death penalty safeguards	No response
1 UA	1 male (minor)	Death penalty safeguards	No response
1 UA	2 males (minors)	Death penalty safeguards	No response
1 UA	3 males	Death penalty safeguards	No response
1 UA	7 males (ethnic minority)	Death penalty safeguards	No response
1 UA	1 male (minor)	Death penalty safeguards	No response
1 UA	1 male	Death penalty safeguards	No response
1 UA	7 males, 3 minors	Death penalty safeguards	No response
1 UA	Group concern: 14 males, 2 minors and 44 unknown (demonstrators)	Excessive force	No response
1 UA	Group concern: about 37	Death penalty safeguards	No response

			unknown and others		
	1 UA		1 male and 1 female	Death penalty safeguards	No response
Iraq	1 AL		11 Unknown	Excessive force	Allegations rejected but without adequate substantiation
	1 AL		Group concern: 168 males, 1 female and 12 Unknown	Death penalty safeguards	Translation awaited
Israel	1 AL		12 males	Attacks or killings	No response
Italy	1 AL		7 males	Death in custody	No response (recent communication)
Japan	1 UA		5 males	Death penalty safeguards	Cooperative but incomplete response
Libyan Arab Jamahiriya	1 AL		1 male (human rights defender)	Death in custody	Largely satisfactory response
Madagascar	1 AL		1 female and 2 males	Excessive force	No response
Mexico	1 UA		7 unknown (migrants)	Excessive force	No response
	1 AL		4 males (journalists)	Attacks or killings	No response
Mongolia	1 UA		1 male	Death penalty safeguards	Receipt acknowledged
Myanmar	1 AL		2 males	Excessive force	Cooperative but incomplete response
Nepal	1 AL		1 female (minor)	Impunity	No response (recent communication)
Nigeria	1 AL		Group concern: 10 males and 878 unknown	Attacks or killings	No response
	1 AL		Group concern: 200 unknown (religious minority)	Attacks or killings	No response
Occupied Palestinian	2 UA		1 male	Death penalty safeguards	No response

Territory				
Pakistan	1 AL	2 (journalists)	males Attacks or killings	Cooperative but incomplete response
	1 AL		1 male (religious minority) Death in custody	No response (recent communication)
Philippines	1 AL	1 male (rights defender)	(human rights defender) Attacks or killings	Receipt acknowledged
	1 AL	1 male	Attacks or killings	Cooperative but incomplete response
	1 UA	5 (journalists)	males Attacks or killings and death threats	Cooperative but incomplete response
Russian Federation	1 AL	2 males (and human rights defender)	(priest and human rights defender) Attacks or killings	No response
	1 AL	Group (57 including women)	concern persons Attacks or killings 24	Cooperative but incomplete response
	1 AL	1 female (judge)	Attacks or killings	Translation awaited
	1 UA	1 female (human rights defender)	Attacks or killings	Cooperative but incomplete response
	1 AL	1 male (journalist)	Attacks or killings	Cooperative but incomplete response
	1 AL	1 female and 1 male (rights defender)	(human rights defender) Attacks or killings	Cooperative but incomplete response
Saudi Arabia	1 UA	1 male	Death penalty safeguards	No response
	1 UA	1 male (foreign national)	Death penalty safeguards	No response
	1 UA	3 male and 1 female (2 foreign)	Death penalty safeguards	No response

			nationals, 1 journalist)		
Senegal	1 AL		6 males	Death in custody	No response
Serbia	1 AL		1 male (journalist)	Impunity	No response
Somalia	1 UA		1 female and 2 males	Death penalty safeguards	No response
Sri Lanka	1 UA		Group concern: about 6432 civilians, including 454 children	Violations of right to life in armed conflict	No response
	1 AL		Group concern (incl. 2 unknown men)	Violations of right to life in armed conflict	Cooperative but incomplete response
	1 UA		2 females (journalists)	Death threats	No response
	1 AL		1 male	Death in custody	No response
	AL		3 males (opposition party leaders)	Excessive force	Receipt acknowledged
Sudan	1 UA		10 males	Death Penalty safeguards	No response
	1 UA		6 males	Death Penalty safeguards	No response
	1 UA		10 males (minors)	Death Penalty safeguards	Translation awaited
Thailand	1 AL		Group concern (incl 4 teachers)	Attacks or killings	No response
	1 UA		Group concern: 69 unknown, 9 minors (migrants)	Deaths in custody	Cooperative but incomplete response
	1 AL		2 males	Death penalty safeguards	Largely satisfactory response
Uganda	1 AL		Group concern, over 20 unknown people	Excessive force	No response
	1 UA		1 male	Death in custody	No response
	1 AL		Concerns on legislation	Death penalty safeguards	No response

Ukraine	1 AL	1 male	Death in custody	No response (recent communication)
United States of America	1 UA	1 male	Death penalty safeguards	Largely satisfactory response
	1 AL	6 males	Excessive force	Receipt acknowledged
	1 AL	3 males	Death in custody	Largely satisfactory response
Uzbekistan	1 UA	2 males (religious minority)	Death in custody	Largely satisfactory response
Venezuela (Bolivarian Republic of)	1 AL	1 male (human rights defender)	Attacks or killings	No response
Viet Nam	1 UA	1 female	Death penalty safeguards	Cooperative but incomplete response
Yemen	1 UA	Group concern	Attacks or killings	No response
	1 UA	1 female	Death penalty safeguards	No response
	1 UA	3 males	Death penalty safeguards	No response

## Afghanistan

### **Killing of six Afghan National Police officers by Afghan Special Guards**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** 6 males

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Afghanistan has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 17 July 2009,** sent with Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination.

13. In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning reports of a shooting incident that occurred on 29 June 2009, between armed Afghan Special Guards (also referred to by the

local population as “Afghan Special Forces”) and Afghan National Police (ANP) inside the Attorney General’s office in Kandahar, Afghanistan.

14. While the precise identity and chain of command of the Afghan Special Guards is unclear, according to information received, it is an Afghan private entity operating as a security company. Information received indicates that it may be working with, or led by, American Special Forces in Afghanistan, or armed international intelligence services.

According to the information received:

On 29 June 2009, at 11.45 am a shoot out erupted between Afghan Special Guards and Afghan National Police (ANP) inside the Attorney General’s office in Kandahar.

It is alleged that the Afghan Special Guards went to the Attorney General’s office to forcefully and unconditionally demand the release of a suspect, who had been arrested by the ANP in connection with a criminal offence for theft of a motor vehicle.

The Attorney General, Mr. Hafizullah Khaliqya, reportedly refused to release the suspect on the grounds that it would be illegal and unconstitutional. He also advised the Afghan Special Guards that the arrested suspect will have to be charged for the offence as required in law. The Attorney General then reportedly called the Chief of Police (B.G. Matiullah Khan Qateh) and the Chief of Crime (Col. Abdul Khalik) for assistance. Both the Chief of Police and the Chief of Crime arrived at the scene accompanied by their body guards. Then, it is alleged that an argument erupted inside the Attorney General's office and that the Afghan Special Guards opened fire and killed the Chief of Police, the Chief of Crime and four other ANP officers. There are unconfirmed reports of civilian casualties.

According to police reports, 41 suspects have been arrested in connection with the incident and await charge before the court in Kabul. In addition, it was also reported that six ANP sustained gun wound injuries and were admitted at Mirwais provincial hospital for treatment.

15. Without expressing at this stage any opinion on the facts of the case, we would like to bring to your Excellency’s Government’s attention its concern regarding the allegation referred to above and would welcome detailed information on the following questions:

1. Are the facts alleged in the above summary of the case accurate, including regarding the individuals and institutions involved?

2. Please provide details on the Afghan Special Guards involved in the shooting, and whether it is a private military and security company, and if so, whether it is registered in accordance with the Afghan procedure for regulating activities of private security companies in Afghanistan. Please also specify whether its personnel and weapons are registered with the Afghan authorities. Please specify the regulations that are in place to ensure the accountability of these Afghan Special Guards. If the force is a private company, which Governments or organizations does it contract its services to?

3. If the Afghan Special Guards involved in the shooting are not members of a private security company, please provide information on what authority, if any, they operate under, or what command structure, if any, they report to.

4. Please provide the details, and where available the results, of any investigation which may have been carried out in relation to this event. Please also indicate what steps are being taken to ensure that the alleged perpetrators of the shooting are investigated, tried, and convicted.

## Bangladesh

### **Death sentences of Syed Farooq-ur Rahman, Sultan Shahriar Rashid Khan, Mohiuddin Ahmed, AKM Mohiuddin Ahmed, and Bazlul Huda**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

**Subject(s) of appeal:** 5 males

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the detailed response provided by the Government of Bangladesh.

**Urgent Appeal dated 26 January 2010,** sent with the Special Rapporteur on the independence of judges and lawyers.

16. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the death sentences imposed on Messrs. Syed Farooq-ur Rahman, Sultan Shahriar Rashid Khan, Mohiuddin Ahmed, AKM Mohiuddin Ahmed, and Bazlul Huda, five men found guilty of the murder of Prime Minister Sheikh Mujibur Rahman and his family members on 15 August 1975. It is our understanding that the Supreme Court of Bangladesh was scheduled to review the death sentences on 24 January 2010, and if confirmed, the men will be at imminent risk of execution.

According to the information received:

On 15 August 1975, army officers entered the residence of the then Prime Minister of Bangladesh, H.E. Sheikh Mujibur Rahman, and killed him, his wife, sons, a brother and a number of other individuals staying at the residence that night. Only his two daughters, who were abroad at the time, survived the killing.

In 1978 the then President of Bangladesh signed the Indemnity Ordinance, which gave immunity from prosecution to those involved in the killing of H.E. Sheikh Mujibur Rahman. The Immunity Ordinance was revoked only in 1996 and prosecutions for the murders were launched.

On 12 July 1996, Mr. Bazlul Huda was arrested in Thailand upon request of the Government of Bangladesh. He was still in detention in Thailand when the trial against him and the other men accused of the murder of H.E. Sheikh Mujibur Rahman took place in Dhaka. At the trial, Mr. Huda was represented by a Government-appointed lawyer. (The information submitted to us does not clarify how many others of the defendants were tried in absentia).

On 8 November 1998, the court in Dhaka sentenced 15 defendants to death, including Messrs. Syed Farooq-ur Rahman, Sultan Shahriar Rashid Khan, Mohiuddin Ahmed, AKM Mohiuddin Ahmed, and Bazlul Huda. Mr. Huda was extradited to Bangladesh on the same day.

The defendants appealed to the High Court. On 30 April 2001, the High Court delivered its judgment, upholding the death sentence for 12 of the 15 defendants, including the five defendants named above. Messrs. Syed Farooq-ur Rahman, Sultan Shahriar Rashid Khan, Mohiuddin Ahmed, AKM Mohiuddin Ahmed, and Bazlul Huda appealed their sentence to the Supreme Court, which granted leave to appeal in 2007. By judgment of 19 November 2009, the Supreme Court upheld the five death sentences. On 3 January 2010, warrants for the execution ("death warrants") of the five defendants were issued.

The rejection of the appeals by the Supreme Court left two remedies open to the defendants: a further review by the Supreme Court and petitions for clemency to the President of Bangladesh, known as “mercy petitions”. The Supreme Court review was scheduled to take place on 24 January 2010.

On 7 January 2010, Messrs. Huda, Mohiuddin Ahmed, and AKM Mohiuddin Ahmed filed their mercy petitions. As of 21 January 2010, Messrs. Syed Farooq-ur Rahman and Sultan Shahriar Rashid Khan had not yet requested clemency.

Before the Supreme Court review was concluded, representatives of the authorities announced that preparations for the execution of the five men had begun and that the prisoners would be executed by the first week of February. The Minister of State of the Ministry of Law, Justice and Parliamentary Affairs, Mr. Qamrul Islam, for instance, told the media on 19 November 2009 that “the five condemned will be executed in January”. According to media reports, on 19 January 2010, the President considered and rejected the mercy petitions of Mohiuddin Ahmed, AKM Mohiuddin Ahmed, and Bazlul Huda.

Throughout the years, the judicial proceedings in this case were accompanied by considerable pressure from supporters of the current Prime Minister of Bangladesh, who is the daughter of H.E. Sheikh Mujibur Rahman. In several instances, when the judges in the case made statements or took decisions they disagreed with, the supporters of the Prime Minister took part in violent riots.

17. Without in any way prejudging the accuracy of the information summarized above, we would like to draw the attention of your Excellency’s Government to some principles of international law applicable to this case. We would in the first place respectfully remind your Excellency’s Government that in capital punishment cases the obligation to observe rigorously all the guarantees for a fair trial set out in article 14 of the International Covenant on Civil and Political Rights, to which Bangladesh is a party, admits of no exception.

18. In expounding on the fundamental right to a fair hearing, the UN Human Rights Committee, the independent expert body monitoring the implementation of the Covenant by States Parties and thus its most authoritative interpreter, has observed that

19. “[f]airness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive. A hearing is not fair if, for instance, the defendant in criminal proceedings is faced with the expression of a hostile attitude from the public or support for one party in the courtroom that is tolerated by the court, thereby impinging on the right to defence, or is exposed to other manifestations of hostility with similar effects.” (CCPR/C/GC/32, para. 25).

20. In writing to your Excellency’s Government about this case, we are fully conscious that a crime of such heinous nature and profound political impact as the murder of Prime Minister Sheikh Mujibur Rahman and his family will nearly inevitably result in tensions surrounding the trial of the persons accused of it. Under such circumstances, the need for the other branches of Government to live up to their obligation to protect the independence of the judiciary from “improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter” (see the UN Basic Principles on the Independence of the Judiciary, particularly Principles 1 and 2), and thereby to ensure the right to a fair trial, becomes all the more pressing.

21. Article 6(2) of the Covenant guarantees to “[e]veryone charged with a criminal offence ... the right to be presumed innocent until proved guilty according to law.” In this respect, the UN Human Rights Committee has observed that “[i]t is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making



public statements affirming the guilt of the accused.” Statements by senior Government representatives discussing the execution of the defendants before the judicial proceedings have come to a conclusion, such as those reportedly made by the Minister of State of the Ministry of Law, Justice and Parliamentary Affairs, risk to be seen as prejudging the outcome of the trial and as influencing the judicial process.

22. With specific regard to the defendants tried and sentenced to death in absentia, including Mr. Huda, we would further recall that the minimum guarantees of the right to a fair trial include the right to be “tried in [one’s] presence, and to defend [one]self in person or through legal assistance of [one’s] own choosing” (article 14(3)(d) of the Covenant). In this regard, we are concerned that Mr. Huda may have been tried in Dhaka in absentia and represented by Government-appointed lawyers while he already was in detention in Thailand awaiting extradition upon request of your Excellency’s Government. We are also concerned that following his extradition to Bangladesh he may not have been allowed to present evidence to his discharge which was not considered at the in absentia trial.

23. We urge your Excellency’s Government to take all necessary measures to guarantee that the rights of Messrs. Syed Farooq-ur Rahman, Sultan Shahriar Rashid Khan, Mohiuddin Ahmed, AKM Mohiuddin Ahmed, and Bazlul Huda under international law, in particular the right to the most scrupulous observation of due process in death penalty cases, are respected.

24. In the circumstances of this case, considering the 35 years expired since the commission of the crime and the inevitable difficulty of providing a fair hearing to the defendants, we would attach the highest importance to the granting of clemency. In this respect, article 6(4) of the Covenant expressly provides that “[a]mnesty, pardon or commutation of the sentence of death may be granted in all cases.”

25. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate the specific circumstances under which Mr. Huda and the other defendants were tried in absentia. Please indicate the measures taken to ensure in subsequent proceedings that the defendants tried in absentia were able to exercise fully their right to a fair trial.
3. Assuming the information summarized above is accurate in this respect, please explain why the mercy petitions of three of the defendants were rejected before the Supreme Court review of their cases had concluded. Why were the warrants for the execution (“death warrants”) of the five defendants issued on 3 January 2010, before the Supreme Court review scheduled for 24 January 2010?

#### **Response from the Government of Bangladesh dated 5 February 2009**

26. The Permanent Mission has duly forwarded the contents of the communication to the competent authorities in Bangladesh. However this mission is honored to provide the following preliminary response awaiting a more detailed one from the capital on this long standing justice issue:

27. On 15 August 1975, the father of the nation Bangabandhu Sheikh Mujibur Rahman was brutally killed, along with eighteen members of his family. In addition, twelve civilians and a policeman also lost their lives in this heinous act. Bangabandhu’s two daughters-Sheikh Hasina, current prime minister of the country and Sheikh Rehana survived as they were abroad at that time. The government which took over after the assassinations, granted

indemnity to all the self-confessed killers from the prosecution and offered them foreign assignments. Enjoying such impunity, many of the killers went to public claiming at home and abroad, with the print as well as in electronic media, that they orchestrated the heinous killings. It remained as a dark spot in the history of the nation for a long time. Due legal processes could commence only in 1996. During the intervening years, except for a brief period, the country was under unconstitutional rule with military and quasi-military governments in power.

28. The first information report (FIR) was filed on 2 October 1996, by Mr. A.F.M. Mohitul Islam with the Dhanmondi Police Station. On 12 November 1996, the Parliament repealed the indemnity Ordinance of 1975, removing legal obstacle in holding the trial.

29. Following proper investigations, submission of charge sheet, and framing of charges, the trial court completed its first proceedings on 8 November 1998, pronouncing death sentences to 15 of the accused and acquitting four others.

30. The hearing of the death reference started in the high court on 28 June 2000, about 20 months after the verdict of the trial court and was completed on 30 April 2001. Judges embarrassment in the Appellate Division of the Supreme Court further delayed completion of the trial of the case. No hearing took place during the term of the previous government (2001-2006) for one reason or another.

31. A five member special bench began hearing of the regular appeal after the Grand-Alliance formed the government following the elections of 29 December 2008. The hearing started on 5 October 2009. After 29 days of hearing, the Appellate Division of the Supreme Court delivered the final verdict on 19 November 2009. On 17 December 2009, all five of the Bench signed the final verdict.

32. Death warrants were issued against Syed Faruk Rahman, Mohiuddin Ahmed, Bazlul Huda, A.K.M Mohiuddin abd Sultan Sharriar Rashid Khan on 3 January 2010. All five death-row convicts submitted separate review petitions and a special four member bench of the Appellate Division of the Supreme Court, headed by chief Justice Md. Tafazzul Islam, dismissed the review petitions on 27 January 2010. Clemency pleas were rejected by the Honorable President as well. The five convicted killers were executed past midnight of 27 January 2010, in accordance with the final verdict.

33. The trial of this high profile case conducted in an transparent manner in an open, regular court. The process was open to the public, judicial and constitutional scrutiny. Penal provisions and Jail Code were followed throughout the process. Extreme caution was taken in each step to uphold due process of law.

34. It took four years for justice to be served. In this case justice was delayed but not denied. Even though the process of trying the killers has been long and arduous, it has fulfilled the demands of the law. The verdict has ended impunity and reaffirmed the rule of law.

#### **Response of the Government of Bangladesh dated 23 February 2010**

35. The Special Rapporteur has made three specific queries regarding the murder case of Bangabandhu Sheikh Mujibur Rahman. The queries are as follows:

1. Are the alleged facts in the summary of the case accurate?
2. Under what circumstances Mr Huda and others accused were tried in absentia? What are measures taken to ensure in subsequent proceedings that the accuseds tried in absentia were able to exercise fully their right to fair trial
3. Why the mercy petitions of the three convicts were rejected before the review applications in the Appellate Division (Supreme Court) had concluded? Why were

the warrants for execution (death warrant) of five convicts issued on 3 January 2010, before the Supreme Court review scheduled for 24 January 2010?

### Reply to Question No. 1

36. The facts alleged in the necessary are not comprehensive. In order to assess the whole events, there are also some important facts which do deserve consideration.

37. After the killing of Bangabandhu Sheikh Mujibur Rahman and his family members including his wife, three sons, two daughters in law, one brother and Col. Jamil, S.I Siddiquir Rahman, Sepoy Shamsul Hossain in the fateful night of August 15, 1975, Indemnity Ordinance 1975 was promulgated on 26.09.1975 with a view to protect the killers from being tried for the murder. No one was dared to initiate any proceedings against the killers in the adverse situation and it was not also possible to take legal action against the killers.

38. After establishment of democratic government on 14.11.1996 Indemnity Repeal Act 1996 was enacted and the Indemnity Ordinance 1975 was repealed. The convict Shahriar Rashid Khan and mother of convict Faruque Rahman challenged the validity of indemnity Repeal Act 1996 by filing writ petitions in the High Court Division and the writ petitions were dismissed. They filed appeal in the Appellate Division (Supreme Court) against the dismissal of their petitions and the Appellate Division after a full and lengthy hearing dismissed the appeal in declaring the indemnity Repeal Act 1996 is a valid law.

39. The instant criminal case was initiated by lodging First Information Report (FIR) with Dhanmondi Police Station on 02.10.1996 and the investigating agency investigated the case and submitted charge sheets (recommendations for trial) against 20 alive accused who were found involved in the killing. Out of 20 accuseds, one accused Jubaida Rashid was discharged by the High Court Division on an application filed by her. And finally 19 accuseds were put on trial in the court sessions Judge, Dhaka and charges under section 301/34 of the Penal Code (for committing murders in furtherance of common intention) 302/120B of the Penal Code (criminal conspiracy for murder) and 201 of the Penal Code (for screening out evidence) and in support of the charges 61 witnesses were examined by defense counsel on behalf of the accuseds who were present and also by the state defence lawyers engaged for the absconding accused. After examining the witnesses and hearing the defense and as well as the arguments learned serious convicted 15 accused under section 302/34 and 302/120B of the Penal Code and sentenced them to death by his judgment and order dated 08.11.1998. The hearing in the Court of Session Judge took place for 151 days.

40. In compliance of law, the case was submitted before the High Court Division for confirmation of death sentences and 4 convicts namely Sultan Shahriar Rashid Khan, Bazlul Huda, Sayed Farook Rahman, Muhiuddin Ahmed (Artillery) filed separate appeals against the judgment and order of conviction and sentence passed by the learned Sessions Judge. The Death reference and connected appeals were taken up for hearing in a Division Bench of the High Court Division, and Honorable Senior Judge of the Division Bench after hearing confirmed the death sentence of 10 convicts and acquitted the other 5 but the other Honorable Judge confirmed the death sentences of all 15 accuseds. Hearing in the Division Bench continued for 63 days. Thereafter as per law the matter was placed before a 3<sup>rd</sup> Judge and Honorable 3<sup>rd</sup> Judge after hearing the parties for 25 days confirmed the death sentence of 12 convicts and acquitted 3 convicts.

41. The convicts (1) Sayed Farook Rahman (2) Sultan Shariar Rashid Khan (3) A.K.M. Muhiuddin (Lancer) (4) Muhiuddin Artillery (5) Bazlul Huda filed five separate petition for leave to appeal in the Appellate Division. A.K.M. Muhiddin though was absconding during trial and at the stage of appeal in the High Court Division, he was deported to Bangladesh on 18.02.2007 from U.S.A and all the leave petitions were heard together and leave was

granted on 23.09.2007 after hearing the cases for 26 days. Even petition for leave to appeal of A.K.M. Muhiddin was time barred, he was granted leave.

42. Thereafter five separate appeals were taken up for hearing in the Appellate Division in a bench of 5 Judges. They heard the parties for 29 days and all the Judges dismissed the appeals in upholding the conviction and death sentences on 19.11.2009.

43. After dismissing the appeals in the Appellate Division the trial court issued execution warrant on 03.01.2010 and in the meantime five convicts filed 5 separate review petitions and review petitions were heard on 25.01.2010 to 26.01.2010 and the review petitions were dismissed on 27.01.2010 and sentences were executed on 28.01.2010 at midnight.

44. In holding trial all the procedure have meticulously been followed. The accuseds who were present have been defended by the counsel of their own choice and the absconding accuseds were defended by the state engaged state defense lawyers, trial was held in the court of Sessions Judge under general law and no special law were enacted nor any Special Sessions was set up for trial. It is relevant here to mention that convicts Sayed Farook Rahman, Sultan Shahriar Rashid Khan and Muhiuddin (Artillery) made confession admitting their guilt. The case was started on 02.10.1996 and ended on 19.11.2009 by the judgment and order of the Appellate Division dismissing all the appeals. So all the legal processes are being followed in holding trial and the defence also got all the opportunity to make their defence. No illegality or irregularity has been done in the trial and hearing of the appeals in the High Court Division as well as in the Appellate Division.

#### **Reply to Question No. 2**

45. In our law there is a provision (section 339B of the Code of Criminal Procedure) of holding trial in absentia. Section 339B of the Code of Criminal Procedure is quoted here

46. *“339B. Trial in absentia- (1) Where after the compliance with the requirements of section 87 and section 88, the Court has reason to believe that an accused person has absconded or concealing himself so that he cannot be arrested and produced for trial and there is no immediate prospect of arresting him, the Court taking cognizance of the offence complained of shall, by order published in at least two national daily Bengali Newspapers having wide circulation, direct such person to appear before it within such period as may be specified in the order, and if such person fails to comply with such direction, he shall be tried in his absence.*

*(2) Where in a case after the production or appearance of an accused before the Court or his release on bail, the accused person absconds or fails to appear, the procedure as laid down in sub-section (1) shall not apply and the Court competent to try such person for the offence complained of shall, recording its decision so to do, try such person in his absence.”*

47. It says for in absentia trial compliance of provision of section 87 and 88 of the criminal is necessary Section 87 and 88 of the Code of Criminal Procedure are as follows:

*87. Proclamation of a person absconding:-*

*(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*

*(2) The proclamation shall be published as follows:*

- (a) *it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;*
- (b) *it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and*
- (c) *a copy thereof shall be affixed to some conspicuous part of the Court-house.*
- (3) *A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.*

88. Attachment of property of person absconding:

- (1) *The Court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person.*
- (2) *Such order shall authorize the attachment of any property belonging to such person within the [local area] in which it is made; and it shall authorize the attachment of any property belonging to such person without such [local area] when endorsed by the District Magistrate [ Chief Judicial Magistrate] or [Chief Metropolitan Magistrate] within whose [local area] such property is situate.*
- (3) *If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made-*
  - (a) *by seizure; or*
  - (b) *by the appointment of a receiver; or*
  - (c) *by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or*
  - (d) *by all or any two of such methods, as the Court thinks fit.*
- (4) *If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the Government, be made through the Collector of the district in which the land is situate, and in all other cases-*
  - (e) *by taking possession; or*
  - (f) *by the appointment of a receiver; or*
  - (g) *by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or*
  - (h) *by all or any two of such methods, as the Court thinks fit.*
- (5) *If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.*
- (6) *The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under [Order XL of the First Schedule to the Code of Civil Procedure 1908*
- (6A) *If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the*

*claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part: Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.*

*(6B) Claims or objections under sub-section (6A) may be preferred or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate, [Chief Judicial Magistrate] [or Chief Metropolitan Magistrate] in accordance with the provisions of sub-section (2), in the Court of such Magistrate.*

*(6C) Every such claim or objection shall be inquired into by the Court in which it is preferred or made: Provided that, if it is preferred or made in the Court of a [Chief Judicial Magistrate] [or Chief Metropolitan Magistrate] such Magistrate may make it over for disposal to any Magistrate [or to any Metropolitan Magistrate, as the case may be] subordinate to him.*

*(6D) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6A) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.*

*(6E) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.*

*(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Government, but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under sub-section (6A) has been disposed of under that sub-section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.*

48. After compliance of section 87 and 88 of the Code of Criminal Procedure if an accused is found to be absconding and concealing himself so he can not be arrested and produced for trial and there is no immediate prospect of arresting him a notification in the news paper notifying him to appear before the court is necessary.

49. In the case of Mr. Huda and other absconding accused were found absconding ( they having had the full knowledge of he case were hiding and keeping themselves away from the process of the court) and the court prior to commencement of trial complied the provision of above quoted law and only thereafter their cases was taken up for trial.

50. In our criminal administration of justice, a criminal trial commences with the framing charge and prior to framing charge as per provision of rule 1 chapter XII of the Legal Remembrancers Manual, state defence lawyers were engaged for the absconding accused and the accused who were present engaged their lawyer by their own choice. The engaged lawyers both by the accuseds themselves and state defence lawyers cross examined the witnesses extensively and argued the case for the defence.

51. After conviction by the trial court when the death reference and appeals were heard in the High Court Division, state defence lawyers were also appointed for the absconding accuseds and they and as well as the defence lawyer appeared for he convicts defended

their respective accuseds. And point for determination is also same against all. The accused who were present were defended by renowned lawyers having reputation in the legal field along with state defence lawyers and the accuseds were given all the facilities to ensure a fair trial.

52. In the case of Mr. Huda, who was brought back to Bangladesh and produced before the court on 08.11.1998 after pronouncement of judgement he was sent to jail [sic]. Thereafter he filed appeal in the High Court Division and his appeal was heard and dismissed. Then he filed petition for leave to appeal and leave was granted and his appeal was heard and dismissed. In the Appellate Division the case of Mr. Huda and other appellants were considered in the light of evidence and materials on record and after assessment of entire evidence the Appellate Division dismissed his appeal.

53. Though Mr. Huda was absconding during trial of the case he was defended by a lawyer and his lawyer engaged by his choice defended him in the appeals and there is no doubt that his right of fair trial has been ensured and exercised by him.

### **Reply to Question No. 3**

54. When a death sentence is passed, it shall not be executed till it is confirmed by the High Court Division. The court which passes the sentence shall submit the proceeding before the High Court Division for confirmation. The relevant provision is Section 374 of the Code of Criminal Procedure which says

*374. Sentence of death to be submitted by Court of Session: - When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court Division and the sentence shall not be executed unless it is confirmed by the High Court Division.*

55. And when the sentence is confirmed by the High Court Division, the court which passes the sentence on receiving the order of the High Court Division causes such order to be carried into effect and issues execution warrant. This is guided by the provision of section 381 of the Code of Criminal Procedure, Section 381 says,

*381. Execution of order passed under section 376:- When a sentence of death passed by a Court of Session is submitted to the High Court Division for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court Division thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.*

56. In the instant case, sentence of death against 15 convicts was passed by the trial court on 08.11.1998. High Court Division confirmed the death sentence against 12 on 30.04.2001. The court could have issued the execution warrant after confirmation of sentence by the High Court Division but as the convicts obtained an order of stay from the Appellate Division, the trial court did not issue the same. The Appellate Division dismissed the appeal of five convicts on 19.11.2009 and also vacated the order of stay. After dismissal of the appeal and vacating the order of stay there remains no legal bar to issue execution warrant and trial court issued the execution warrant only after receiving the judgement and order of the Appellate Division.

57. In our criminal procedure, there is no provision for review of judgement passed by a criminal court. The appellate division in exercising constitutional power may review of its judgement and review only lies only on a point of law if there is an error of law appears or on the face of record.

58. Here convict Bazlul Huda and A.K.M Muhiuddin filed review petition on 10.01.2010. Convict Shahriar Rashid Khan filed review petition on 17.01.2010 and convicts Sayed Farooque Rahman and Muhiuddin Ahmed (Artillery) filed review petitions

on 19.01.2010. All the review petitions were dismissed. While review petitions were pending there was no stay order against executions of sentence.

59. The trial court on receiving the judgement and order of the Appellate Division passed in appeals of 5 convicts issues execution warrant on 03.01.2010. Rule 991 of Jail Code says that execution of death sentence will be carried into effect between 21 to 28 days after receiving the execution warrant. The jail Authority received the execution warrant on 03.01.2010 and as per rule jail authority fixed the date for execution on 28.01.2010 which is within the time framed under the above stated rule. There is no violation of any law or rule in carrying out the execution. The only limitation in execution is if any petition for special leave to appeal is pending before the Supreme Court, the execution shall not be held but in the present case the appeals were dismissed earlier on 19.11.2010 [sic]. The jail authority having received the certificate given by the lawyers of the condemned convicts intimating filing of review petition, even though there was no stay order from court abstained from carrying the execution. And execution was carried into effect only after dismissing the review petition

60. Three convicts filed review petitions and also filed review mercy petitions to the president. The president when receives a mercy petition, it is his prerogative to allow or reject it and it is always seen and disposed of expeditiously, filing of review petition does not create any legal bar from exercising the prerogative by the president and therefore the three convicts filed the mercy petition even though they had review petitions. The president after giving due consideration and in following the law and practice rejected the mercy petitions.

61. The execution warrant was issued only after receiving the order of the Appellate Division on 03.01.2010, when the execution warrant was issued there was no review petition and there was no stay order. The trial court in view of above noted provision of section 381 of the code is under an obligation to issue such warrant. The trial court has not violated any law or rule in issuing the execution warrant on 03.01.2010.

#### **Bangladesh: Killings by Bangladesh army soldiers**

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

**Subject(s) of appeal:** 6 people (unknown)

**Character of reply:** No response (recent communication)

**Observations of the Special Rapporteur:** The Special Rapporteur looks forward to receiving a response concerning these allegations.

**Allegation letter dated 5 March 2010,** sent with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

62. In this connection, we would like to bring to your Excellency's Government attention information we have received about the alleged attacks on Jumma villages, in Rangamati and Khagrachari districts, Chittagong Hill Tracts, which have resulted in numerous dead and injured, as well as in hundreds of people displaced.

According to the information received:

On 19 February 2010, Bangladesh army personnel of the Baghaihat zone army camp and Bengali settlers, launched attacks against indigenous peoples in 14 indigenous villages in Sajek Union, in Rangamati district, Chittagong Hill Tracts. Bengali settlers, allegedly backed by the Bangladesh army, burnt down over 200



houses of the indigenous Jumma villagers. Several shops and one Buddhist temple were also burnt to the ground, and homes have been looted.

On 20 February, military personnel reportedly opened fire into a crowd of indigenous villagers. According to the information received, six Jumma villagers were killed and at least 25 Jumma villagers were injured in the attacks. Further, 1500 indigenous peoples have been displaced as a result of the attacks. The displaced indigenous villagers whose houses have been burnt have not been provided any assistance from Government authorities, and many people are currently living in the jungles with no shelter.

On 23 February, in Khagrachari district, Chittagong Hill Tracts, houses and shops belonging to indigenous peoples were burned down by Bangali settlers, reportedly in the presence of military personnel.

It is reported that the Bangladesh army personnel had prohibited independent observers including human rights activists and journalists from accessing the villages where the attacks occurred.

Jumma people have been living in the area for decades, and have continuously protested the Bengali settlement on their land. In January 2010, Bengali settlers, with the support of the army, resumed expansion of their settlements into Jumma lands within the Sajek area, Rangamati district, thereby escalating already existing tensions.

These events follow similar events from 20 April 2008, during which a group of Bengali settlers allegedly attacked several indigenous Jumma villages, injuring people and burning down more than 70 houses, reportedly with no effective intervention by the Bangladesh authorities. According to the information received, since the incidents in 2008, tensions in the area have remained high and the indigenous residents have feared additional attacks by military personnel and settlers.

63. While we do not wish to prejudge the accuracy of these allegations we would like to refer your Excellency's Government to the fundamental principles applicable under international law in relation to the concerns raised. We would like to stress that your Excellency's Government has the obligation under the International Covenant on Civil and Political Rights ("ICCPR"), to ensure that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6). Further as expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials ("Basic Principles") law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5) and intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

64. We would also like to bring to the attention of your Excellency's Government the recommendations made by the Human Rights Council at its eleventh session of the universal periodic review for Bangladesh to address the problems of extrajudicial killings and torture by security forces, to take steps to address the culture of impunity for human rights violations by law enforcement agencies, to adopt further measures to fight impunity for human rights violations, including by law enforcement officials and to fight impunity and hold all officers and persons acting on their behalf accountable for acts of torture and harassment of civilians (paras. 20 and 26, Report of the working group on the universal periodic review, A/HRC/1118).

65. The Special Rapporteur on Summary Executions has argued in detail in his report presented to the General Assembly at its sixty first session that force should not normally be the first resort: so far as the circumstances permit, law enforcement officials should attempt to resolve situations through non-violent means. As a first step, officials should attempt to “restrain or apprehend the suspected offender” Without using force that carries a high risk of death — perhaps by physically seizing the suspect. If the use of firearms does prove necessary, law enforcement officials should “give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident” (A/61/311, paras 41- 45).

66. We would like to bring to your Excellency’s attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life. The investigation of such cases “shall be thorough, prompt and impartial. ... The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death.” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, “Prevention and Investigation Principles”). Further Principle 17 (“Prevention and Investigation Principles”) provides that “[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law.”

67. In addition, we note that this situation follows up on a letter sent to your Excellency’s Government by the former Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, Professor Rodolfo Stavenhagen. On 3 April 2008, the former Special Rapporteur, together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the Special Rapporteur on the right to food, sent a letter to the Government of Bangladesh to call its attention to information received concerning the alleged ongoing illegal seizure of the traditional lands of Jumma indigenous communities in Barbadan, Khagrachari and Merung districts, in the Chittagong Hill Tracts.

68. While we appreciate your Government’s letter of 12 March 2009, in which the Government reiterated its full support and cooperation with the mandate and work of the Special Rapporteur and to other human rights special procedures, and assured that the contents of the communication were duly noted and forwarded to the concerned authorities in Bangladesh for necessary inquiry and actions, we note that we have still not received the full substantive response to the 3 April 2008 letter, almost two years later.

69. Further, we would like to refer your Excellency’s Government to the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007. In particular we refer to the following provisions:

*Article 10*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

*Article 26(1)*

Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

*Article 26(3)*

States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

*Article 32(2)*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources [...].

70. In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of the Jumma villagers are respected, and that the accountability of any person guilty of the alleged violations, including military personnel, is ensured. We also request that your Government adopt immediate and effective measures to prevent the recurrence of these acts.

71. Further, it is our responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention, with a view towards engaging in a possible future constructive dialogue with your Excellency's Government on this matter. We would be grateful for your cooperation and comments on the following:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the alleged killings. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; and where none have been undertaken please explain why. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate what measures are being undertaken to discourage the use of excessive force and to eliminate the number of fatal shootings occasioned by law enforcement officials.
5. What measures have been taken to ensure the immediate security and safety of the alleged victims, including food, water and shelter, for all women, men and children who have been left homeless because of the arson attacks?
6. What steps has the Government taken, or intends to take, to prevent the expansion of Bangali settlers into Jumma villages?
7. Does your Government have a plan and timeline to implement the Chittagong Hill Tracts Accord? In this connection, what steps have been taken to fairly resolve all outstanding land disputes in the Chittagong Hill Tracts, in accordance with the Chittagong Hill Tracts Accord? What steps have been taken to demilitarize the Chittagong Hill Tracts area, in accordance with the Accord?

## Belarus

### Death sentence against Vasily Yusepchuk

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** Translation awaited

**Observations of the Special Rapporteur:** The Government of Belarus replied to the communication below on 18 December 2010. The Special Rapporteur appreciates the response but unfortunately had not received a translation of it from the relevant services at the time this report was finalized. He is unable, therefore, to make observations, and expects they will be included in the next report. However, a copy of the original response letter is available online at the following address: [http://www2.ohchr.org/english/issues/executions/docs/Belarus\\_18.12.09\\_6.2009.pdf](http://www2.ohchr.org/english/issues/executions/docs/Belarus_18.12.09_6.2009.pdf).

**Urgent appeal dated 13 October 2009**, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

72. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the reportedly imminent execution of Mr. Vasily Yusepchuk.

According to the information received:

Mr. Vasily Yusepchuk was sentenced to death for murder on 29 June 2009 by the Brest Regional Court. The Supreme Court rejected his appeal on 2 October 2009. Mr. Yusepchuk has until 12 October 2009 to apply for clemency.

Reports indicate that in Belarus, prisoners are given no prior notification that they are about to be executed. In accordance with prevailing practice, prisoners are informed in the presence of the director of the detention facility, the prosecutor and one other Ministry of Interior employee that their appeal for clemency has been denied and that the death sentence will be carried out. They are then reportedly immediately taken to a room, where they are forced to their knees and shot in the back of the head with a pistol. Their families are not informed of the rejection of the clemency petition and not given the opportunity for a last visit to the prisoner. They are informed days or sometimes weeks later that the execution has taken place. The body of the executed prisoner is not handed over to the family and the place of burial is not disclosed to them.

73. While we do not wish to prejudge the accuracy of these reports, we would like to recall that such secrecy in post-conviction proceedings in capital cases has been found to violate international legal obligations, in particular articles 6(2) and 7 of the International Covenant on Civil and Political Rights, to which Belarus is a party. Article 6(2) enshrines the principle that, "[i]n countries which have not abolished the death penalty", the death sentence may only be imposed "not contrary to the [other] provisions of the ... Covenant", which include the due process guarantees of article 14(1) of the Covenant. Article 7 provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

74. As found in a report to the Human Rights Council on Transparency and the imposition of the death penalty (E/CN.4/2006/53/Add.3), "[r]efusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation." The practice of informing prisoners of their impending execution

only moments before they die, and families only later, is “inhuman and degrading and undermine[s] the procedural safeguards surrounding the right to life.” (para. 32).

75. In the case of *Banderenko v Belarus* (28 April 2003, CCPR/C/77/D/886/1999) the Human Rights Committee found that the lack of transparency described above put the mother of a condemned prisoner in a state of anguish and mental stress amounting to inhuman treatment in violation of article 7 of the Covenant. The Human Rights Committee observed that “[c]omplete secrecy surrounding the date of execution, and the place of burial and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities’ initial failure to notify the [mother of the convict] of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son’s grave amounts to inhuman treatment of the [mother of the convict], in violation of article 7 of the Covenant.”

76. The Committee called upon Your Excellency’s Government to prevent similar violations in the future. Similar observations were made in the case of *Lyashkevish v Belarus* (Communication No. 887/1999 para 9.2).

77. We would therefore respectfully call on your Excellency’s Government to take all necessary steps to ensure that Vasily Yusepchuk’s right to due process in post-conviction proceedings, his right not to be subjected to inhuman and degrading treatment, as well as his and his family’s privacy rights are fully respected. A refusal to provide Vasily Yusepchuk, his family and lawyer with timely and reliable information on the timing of any planned execution is highly likely to lead to violations of due process rights.

78. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.
2. Please explain the steps taken by your Excellency’s Government to ensure that the due process rights of Vasily Yusepchuk and his right not to be subjected to inhuman and degrading treatment continue to be protected
3. Please explain the measures taken or planned by the Government of Belarus to bring its practice of the death penalty, insofar as it chooses to retain capital punishment, into line with the principles set forth in my report on Transparency and the imposition of the death penalty (E/CN.4/2006/53/Add.3).

**Belarus: Death sentence of Andrei Zhuk**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the response of the Government of Belarus, and notes that, as the Government states, the execution of Mr. Zhuk had not taken place at the time of the Government’s response. However, he regrets that, despite the detail the Government provided with respect to other aspects of its death penalty procedures, the Government’s response did not address the concern specifically raised in the Special Rapporteur’s letter, namely that prisoners are given no prior notification that they are about to be executed. As the Government is aware,

the Human Rights Committee has twice found that the Government's secrecy with respect to notification of execution violates Article 7 of the ICCPR. The Special Rapporteur looks forward to the Government's response to the specific issue of secrecy in post-conviction proceedings, and to the Government's explanation of the steps taken to ensure that Mr. Zhuk's due process rights and his right not to be subjected to inhuman and degrading treatment are protected.

**Urgent appeal dated 5 November 2009**, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

79. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the reportedly imminent execution of Mr. Andrei Zhuk.

According to the information received:

On 17 July 2009, Mr. Andrei Zhuk was found guilty of armed assault and double murder and sentenced to death by the Minsk Regional Court. The Supreme Court rejected his appeal on 27 October 2009.

As we indicated in our recent communication to your Excellency's Government of 13 October 2009 regarding the case of Vasily Yusepchuk, our concerns focus on reports we have received with respect to an alleged lack of transparency in the proceedings following Supreme Court confirmation of a death sentence in Belarus. The reports received allege that:

In Belarus, prisoners are given no prior notification that they are about to be executed. In accordance with prevailing practice, prisoners are informed in the presence of the director of the detention facility, the prosecutor and one other Ministry of Interior employee that their appeal for clemency has been denied and that the death sentence will be carried out. They are then reportedly immediately taken to a room, where they are forced to their knees and shot in the back of the head with a pistol. Their families are not informed of the rejection of the clemency petition and not given the opportunity for a last visit to the prisoner. They are informed days or sometimes weeks later that the execution has taken place. The body of the executed prisoner is not handed over to the family and the place of burial is not disclosed to them.

80. While we do not wish to prejudge the accuracy of these reports, we would like to recall that such secrecy in post-conviction proceedings in capital cases has been found to violate international legal obligations, in particular articles 6(2) and 7 of the International Covenant on Civil and Political Rights, to which Belarus is a party. Article 6(2) enshrines the principle that, "[i]n countries which have not abolished the death penalty", the death sentence may only be imposed "not contrary to the [other] provisions of the ... Covenant", which include the due process guarantees of article 14(1) of the Covenant. Article 7 provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

81. As found in a report to the Human Rights Council on Transparency and the imposition of the death penalty (E/CN.4/2006/53/Add.3), "[r]efusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation." The practice of informing prisoners of their impending execution only moments before they die, and families only later, is "inhuman and degrading and undermine[s] the procedural safeguards surrounding the right to life." (para. 32).

82. In the case of *Banderenko v Belarus* (28 April 2003, CCPR/C/77/D/886/1999) the Human Rights Committee found that the lack of transparency described above put the mother of a condemned prisoner in a state of anguish and mental stress amounting to

inhuman treatment in violation of article 7 of the Covenant. The Human Rights Committee observed that “[c]omplete secrecy surrounding the date of execution, and the place of burial and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities’ initial failure to notify the [mother of the convict] of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son’s grave amounts to inhuman treatment of the [mother of the convict], in violation of article 7 of the Covenant.”

83. The Committee called upon your Excellency’s Government to prevent similar violations in the future. Similar observations were made in the case of Lyashkevish v Belarus (Communication No. 887/1999 para 9.2).

84. As in the case of Vasily Yusepchuk, we would therefore respectfully call on your Excellency’s Government to take all necessary steps to ensure that Andrei Zhuk’s right to due process in post-conviction proceedings, his right not to be subjected to inhuman and degrading treatment, as well as his and his family’s privacy rights are fully respected. A refusal to provide Andrei Zhuk, his family and lawyer with timely and reliable information on the timing of any planned execution is highly likely to lead to violations of due process rights.

85. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate?
2. Please explain the steps taken by your Government to ensure that the due process rights of Andrei Zhuk and his right not to be subjected to inhuman and degrading treatment continue to be protected.
3. Insofar as your Excellency’s Government chooses to retain capital punishment, please explain the measures taken or planned to ensure that the convict’s due process rights are not violated in post-conviction proceedings.
4. Please explain further the measures adopted to address the concerns expressed in this communication and by the Human Rights Committee as to the impact on the convict and his family of the “complete secrecy surrounding the date of execution, and the place of burial and the refusal to hand over the body for burial”.

**Response of the Government of Belarus dated 18 December 2009 (translated from Russian)**

86. Information from Belarus in response to the Special Rapporteurs’ note regarding the death sentence handed down to Mr. A.S. Zhuk

87. In connection with the enquiry made by Special Rapporteurs Mr. P. Alston and Mr. M. Nowak on the death sentence handed down to Mr. A.S. Zhuk, the Belorussian authorities wish to respond as follows:

1. The convicted party, Mr. Andrei Sergeevich Zhuk, a citizen of Belarus, was born in 1983 in the village of Skovshin in the Soligorsk district of Minsk Region, was divorced, unemployed, had completed specialized secondary education and was living in building 4, flat 4, Komsomol Street, Soligorsk, in Minsk Region.

Prior convictions: in 2005, he was sentenced to six months' punitive deduction of earnings, with the State receiving 10 per cent of his income, and in 2006 he was sentenced to four months and five days' deprivation of liberty.

Mr. Zhuk was convicted by the Minsk Regional Court on 17 July 2009 under article 139, paragraph 2 (1), 2 (12) and 2 (15); article 205, paragraph 2; article 207, paragraph 3; article 294, paragraph 3; and article 328, paragraph 1, of the Criminal Code of Belarus, and sentenced to the ultimate sanction of the law – the death penalty with confiscation of property.

On 27 October 2009 the criminal division of the Supreme Court of Belarus issued a decision confirming the sentence handed down to Mr. Zhuk by the criminal division of the Minsk Regional Court on 17 July 2009, and his cassational appeal was denied.

Mr. Zhuk received a written copy of that decision in prison (5 November 2009). The manner in which an appeal for clemency should be formulated was explained to him.

Pursuant to article 174, paragraph 2 (1), of the Penal Enforcement Code, Mr. Zhuk as the convicted party submitted an appeal for clemency on 13 November 2009, which was transmitted on the same day to the Presidential Pardons Commission.

Until that appeal is considered by the President, Mr. Zhuk's sentence will be suspended pursuant to paragraph 7 of the Regulations on granting clemency for convicts and on reducing the criminal responsibility of persons cooperating in uncovering crime and in mitigating its effects.

2. Mr. Zhuk has been found guilty of committing a series of crimes.

Between 15 January and 23 February 2009 he and convict I.S. Sorokin broke into number 31 Sadovaya Street in the village of Zazhevichi in the Soligorsk district of Minsk Region, where they stole an IZ-12 hunting shotgun, 30 cartridges, a cartridge belt and a hunting knife belonging to Mr. N.I. Dubovski, resulting in a loss of property worth 239,800 Belarusian roubles (around 85 US dollars).

Mr. Zhuk used the hunting gun to make a sawn-off shotgun.

On 27 February 2009 at about 7.30 p.m., with the assistance of convict Mr. V.N. Moroz, Mr. Zhuk and Mr. Sorokin carried out an armed assault on Mr. G.A. Zubets and Ms. S.N. Lapsueva, staff of the agricultural production cooperative Bolshevik-Agro, in the village of Krivichi, in the Soligorsk district of Minsk Region, and absconded with the cooperative's payroll funds in a Chevrolet Niva car with car plate number 78-44 AX-5.

During the armed assault, Mr. Zhuk, with the help of Mr. Sorokin, who held the victims down, killed Mr. Zubets, shooting him in the head with the sawn-off shotgun, and Ms. Lapsueva with two shots, one to the shoulder and one to the head. After killing their victims, they took 62,468,810 Belarusian roubles in large bills (around US\$ 26,000) and fled to Slutsk, where they divided the money between them.

On his arrest on 1 March 2009, Mr. Zhuk was in possession of narcotics: 0.7 ml of methadone, equal to 0.001 grams of dry substance, which he had purchased for personal use.

Mr. Zhuk's guilt for the crimes for which he has been convicted is proven by the case file and is supported by all the evidence, which was appropriately investigated, evaluated and taken into consideration by the court during sentencing.

Mr. Zhuk pleaded guilty on all counts and confirmed that he had killed Mr. Zubets and Ms. Lapsueva with shots to the head using the sawn-off shotgun.



Mr. Zhuk, Mr. Sorokin and Mr. Moroz fled to the town of Slutsk, where they divided the money between them. Mr. Zhuk and Mr. Sorokin received 22 million roubles each, and Mr. Moroz received 16 million roubles.

Mr. Sorokin, as a defendant, gave a similar statement and confirmed that Mr. Zhuk shot the victims dead with a sawn-off shotgun.

Mr. Moroz, as a defendant, confirmed that on 27 February 2009 he had assisted Mr. Zhuk and Mr. Sorokin in an armed assault on the staff of the agricultural production cooperative Bolshevik-Agro who were carrying the payroll money.

Searches of the accused persons' homes conducted on 1 March 2009 resulted in the discovery and seizure of the following sums of money:

In Mr. Zhuk's possession – 15,950,000 roubles;

In Mr. Moroz's possession – 11,302,200 roubles;

In Mr. Sorokin's possession – 17,400,000 roubles, in bank packaging bearing the name of the open joint stock company Belagroprombank, dated 27 February 2009 and with the reference number MFO 153001917.

Bank worker Mr. S.A. Tyabus has testified as a witness, confirming that on 27 February 2009 money in such packets had been given to Ms. Lapsueva, who was killed by Mr. Zhuk during the armed assault.

The court conducted a thorough psychological assessment of Mr. Zhuk.

The forensic psychologists concluded that the accused, Mr. Zhuk, was and remains of sound mind.

At the time the crime was committed he was not manifesting any signs of temporary psychological disorder, and the court considered him to be fully aware of his criminal conduct.

In carrying out multiple killings, Mr. Zhuk was fulfilling the role allocated to him as part of a criminal plan. His actions constitute criminal behaviour in all respects.

Since Mr. Zhuk as accused had two prior convictions for wilful commission of crimes, and as he once again wilfully committed a criminal offence, the court had sound grounds to conclude that the accused was a recidivist under article 43, paragraph 1, of the Criminal Code.

When sentencing Mr. Zhuk, the court of first instance proceeded on the basis of individualization of the penalty, taking into account the nature and degree of public danger of the crimes committed, Mr. Zhuk's role in those crimes, the motives and aims of the criminal conduct, information about his personality, the nature of the harm inflicted, and extenuating and aggravating circumstances.

The court considered Mr. Zhuk's open remorse for committing the crimes, his active assistance in their disclosure by helping to locate evidence and the weapons used in the crime, his partial redress of the wrong done, and the fact that he has a young child as extenuating circumstances.

The court, however, also noted the fact that Mr. Zhuk committed a crime, wilfully taking the lives of two people, among the aggravating circumstances, which also included the fact that he was under the influence of alcohol when the crime was committed.

As the organizer of and most active participant in the crimes, Mr. Zhuk acted in cold blood and in a particularly insidious manner when committing them.

Taking into account the particularly dangerous nature of the crimes Mr. Zhuk committed and the exceptional danger he poses to society, the court was justified in handing down the highest possible sentence – the death penalty.

In handing down this type of sentence, the court took account of the provisions of Part III, article 6, paragraph 2, of the International Covenant on Civil and Political Rights.

The Supreme Court of Belarus considers the sentence to be fair and in line with the degree of danger to society posed by the crimes committed and the information regarding the defendant's personality.

There is no doubt about the legality and grounds for the sentence handed down to Mr. Zhuk.

3. Belarus recognizes the supremacy of the universally accepted principles of international law and ensures its legislation is in line with those principles (article 8 of the Constitution).

Article 6 of the International Covenant on Civil and Political Rights (hereinafter, "the Covenant"), which Belarus has ratified, provides, inter alia, that every human being has the inalienable right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. In countries which have not abolished the death penalty, a sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime. Anyone sentenced to death shall have the right to seek a pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. Article 6 of the Covenant stipulates, however, that, "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant."

Pursuant to article 24 of the Constitution, each person shall have the right to life. The death penalty, until it is abolished, may be used in accordance with the law as the ultimate sanction for particularly serious crimes, and only by sentence of a court.

Pursuant to article 59, paragraph 1, of the Criminal Code, the death penalty (shooting) may be applied as the ultimate sanction for certain particularly serious crimes involving premeditated deprivation of life among the aggravating circumstances (until such time as the death penalty is abolished).

In accordance with the provisions of article 174 of the Penal Enforcement Code, after the sentence has entered into force, persons sentenced to death have the following rights:

- To submit, in the established legal order, a petition for clemency
- To have consultations with a lawyer and any persons with the right to provide legal assistance, without restrictions to length and number
- To receive and send letters without restrictions
- To have one short meeting per month with close relatives
- To receive one parcel or delivery every three months, in accordance with the regulations set by the prison administration
- To obtain over the course of a month, food products by cashless settlement, and other essential items by cash from their personal accounts, including by postal order, in an amount set for persons held in high security prisons
- To officialize, in accordance with the law, the necessary civil and legal and marital and family relationships

- To meet with members of the clergy
- To receive essential medical care

Pursuant to the provisions of article 175 of the Penal Enforcement Code, when a death sentence comes into force it is carried out upon receipt of an official communication certifying that complaints submitted in accordance with supervisory procedures and petitions for clemency have been denied. The death penalty is carried out in private, by shooting. A death penalty is carried out in the presence of the procurator, a representative of the facility in which the sentence is being implemented and a physician. The prison administration is obliged to inform the court that handed down the sentence that it has been carried out, and the court notifies a member of the sentenced person's immediate family.

Respect for the law in force in Belarus when the death sentence is carried out is guaranteed by the presence of the procurator.

## China

### Death of Phuntsok Rabgay

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

**Subject(s) of appeal:** 1 male

**Character of reply:** Translation awaited

**Observations of the Special Rapporteur:** The Government of China replied to the communication below on 2 July 2010. The Special Rapporteur appreciates the response but unfortunately had not received a translation of it from the relevant services at the time this report was finalized. He is unable, therefore, to make observations, and expects they will be included in the next report. However, a copy of the original response letter is available online at the following address: [http://www2.ohchr.org/english/issues/executions/docs/Chine\\_21.08.09\\_17.2009.pdf](http://www2.ohchr.org/english/issues/executions/docs/Chine_21.08.09_17.2009.pdf)

**Allegation letter dated 9 April 2009**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

88. In this connection, we would like to bring to your Government's attention information we have received concerning the death of Mr. Phuntsok Rabgay, a 27-year-old monk, in Drango County, Garzê Tibetan Autonomous Prefecture, Sichuan Province.

According to the information received,

On 25 March 2009, Phuntsok Rabgay was pasting leaflets containing allegations that monks had been tortured and imprisoned by the authorities and an appeal to the local population to forego crop cultivation and harvest as a gesture of mourning and disobedience. He was detected by Drango County Public Security Bureau (PSB) personnel and tried to elude arrest by fleeing on a motorcycle. The PSB personnel, however, managed to pursue and catch him. Upon arrest, they beat him with batons. He died shortly thereafter. The PSB officers reportedly dropped his body from a hill in order to create the appearance of a case of suicide.

89. While we do not wish to prejudge the accuracy of these allegations, we would like to stress that each Government has the obligation to protect the rights to life and physical and mental integrity of all persons, particularly those in custody of State agents. These rights

are set forth inter alia in the Universal Declaration of Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In this respect we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraphe 9.2):

“While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life [...]”.

90. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

91. The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

92. We would also like to appeal to Your Excellency's Government to ensure the right to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights.

93. Further, we would like to refer to the recently adopted General Assembly resolution 63/181, which urges States “to step up their efforts to protect and promote freedom of thought, conscience, religion or belief, and to this end: (a) To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia, by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, or the right to practise freely one's religion, including the right to change one's religion or belief, is violated; (b) To ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights”.

94. We should also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression of the above mentioned person, in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights which provides that “ Everyone shall have the right to

freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

95. We urge your Government to carry out an inquiry into the circumstances surrounding the death of Phuntsok Rabgay expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations.

96. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate whether compensation has been provided to the family of Phuntsok Rabgay.

**China: Death sentences against Losang Gyaltse, Loyar, Gangtsu, Dawa Gangpo and Penkyi**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 4 males, 1 female

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the response of the Government of China, and the clarification that the two death sentences imposed with a two-year reprieve will be commuted if the individuals at issue, Mr. Dawa Gangpo and Ms. Penkyi, each commits no other “deliberate offences” by the end of the reprieve period. The Special Rapporteur would appreciate the Government keeping his successor informed whether the sentences are in fact commuted at the end of the reprieve period, and the outcomes of any appeals.

97. The Special Rapporteur notes that all the death sentences at issue in this communication appear to have been imposed for arson and not for a charge of, or conviction for, an offence based on an intention to kill which results in the loss of life. As such, the imposition of the death penalty in these cases would not meet the “most serious crime” requirement under international law.

98. The Special Rapporteur appreciates the Government’s explanation that defendants have a right to retain defence counsel of their choice and would appreciate further explanation of the means by which the individuals at issue in this communication were offered the ability to exercise that right, and the manner in which they may have chosen not to do so.

**Urgent appeal dated 1 May 2009**, sent with the Special Rapporteur on the independence of judges and lawyers.

99. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the imposition of the death sentence on five individuals on charges related to the March 2008 riots in Lhasa, Tibet Autonomous Region (TAR).

According to the information received:

On 8 April 2009, the Municipal Intermediate People's Court in Lhasa tried five persons accused of setting fire to shops in Lhasa and thereby causing the death of seven persons.

The Municipal Intermediate People's Court found Mr. Losang Gyaltshe guilty of setting fire to two clothes shops on 14 March 2008. The arson resulted in the death of one shop owner.

Messrs. Loyar, Gangtsu and Dawa Gangpo were found guilty of setting fire to a motorcycle dealership on 15 March 2008. The arson resulted in the killing of five people. Loyar received the death sentence, Gangtsu the death sentence with two-year reprieve, and Dawa Gangpo a sentence of life imprisonment.

Ms. Penkyi, aged 21 and from Norbu Village, Dogra township in Sakya County, was given a suspended death sentence with two-year reprieve, after being found guilty of setting fire to Hongyu Trousers on Qingnian road, on 14 March 2008. A shop owner, Zuo Rencun, died in the fire.

A spokesperson for the Municipal Intermediate People's Court stressed that during the trial the five defendants had been assisted by lawyers. Other sources, however, indicate that the lawyers who assisted the defendants were appointed by your Excellency's Government, while a group of lawyers from across the People's Republic of China who had volunteered to represent Tibetans charged in connection with the March 2008 riots were warned not to take up such cases and allegedly even threatened with revocation of their license.

100. While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to these cases under international law.

101. We would like to remind your Excellency's Government that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). The reports brought to our attention indicate that, while the arson Losang Gyaltshe, Loyar, Gangtsu and Penkyi were found guilty of did in fact result in loss of life, they might not have been charged with and found guilty of intentional killing.

102. We would further remind your Excellency's Government that in capital punishment cases there is an obligation to provide criminal defendants with "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights). Relevant to the case at hand, the right to a fair trial includes the right to be assisted by legal counsel of one's own choosing. Principle 16 of the Basic Principles on the Role of Lawyers provides that "Governments shall ensure that lawyers ... (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics." While we acknowledge that your Government reportedly provided legal counsel to the

defendants, the alleged intimidation of lawyers who volunteered to defend Tibetans criminally charged in relation to the incidents in March 2008 would represent a serious interference with the independent and fair administration of justice.

103. Only full respect for stringent due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates human rights standards. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights of Losang Gyaltse, Loyar, Gangtsu and Penkyi under international law are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not carried out unless all of the concerns raised are convincingly dispelled.

104. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide details regarding the trials of Losang Gyaltse, Penkyi, Loyar and Gangtsu: which provisions of criminal law were they found guilty of having violated? What conduct were they charged with and found guilty of? In particular, what were the Court's findings regarding the willfulness of the killing of the persons who died as result of arson?
3. Is it accurate that the authorities discouraged lawyers who volunteered to defend Tibetans charged in relation to the incidents in March 2008? Who selected the lawyers who defended Losang Gyaltse, Penkyi, Loyar and Gangtsu? When and how often did the lawyers who defended them meet with their clients ahead of the trials on 8 April 2009?
4. Are the judgments rendered by the Municipal Intermediate People's Court in Lhasa in the cases of Losang Gyaltse, Penkyi, Loyar and Gangtsu accessible to the public?
5. Please explain the remedies open to Losang Gyaltse, Penkyi, Loyar and Gangtsu to challenge the sentences imposed against them.

**Response from the Government of China dated 9 June 2009 (translated from Chinese)**

105. Receipt is acknowledged of the joint communication No. UA G/SO 214 (3-3-13) G/SO 214 (33-24) CHN 11/2009 from the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers of the United Nations Human Rights Council. The Chinese Government has looked carefully into the matters raised in the communication and replies as below.

106. All five of the people in question, Lobsang Gyaltse, Loyar, Gangtsu, Dawa Gangpo, and Penkyi, from Sajia County, were principal offenders in a fatal case of arson during the "14 March" events. They intentionally set fire to shops, killing 11 innocent people and burning down 4 stores, causing destruction to lives and property, and severely undermined social order, public security and stability. Their acts violated article 115, paragraph 1, of the Criminal Law (Whoever commits arson, breaches dikes, causes explosions, spreads poison or causes serious injury, death or major damage to public or private property shall be liable to not less than 10 years of imprisonment, life imprisonment or death).

107. When trying the above cases, the court acted in accordance with the law from start to finish in handling the cases, conducting the trials and rendering its judgements. It applied

a policy of both leniency and severity, ensuring that the death penalty is applied strictly, in limited circumstances, and with the utmost caution. Among the above-mentioned five defendants, only two, Lobsang Gyaltshe and Loyar, were sentenced to death. Their offences were extremely serious and the circumstances particularly heinous; they caused grave damage to society. The court might have rendered death sentences in the other cases, but meted out lesser punishments to the defendants who met the statutory requirements. The death sentences with a two-year reprieve will be commuted if, by the end of the reprieve period, the convicts concerned have committed no further deliberate offences.

108. China is a State governed by the rule of law. It ensures strict observance of the Code of Criminal Procedure in all trials of criminal offences. The above cases were tried, and the sentence pronounced, in public; the evidence was irrefutable. The defendants had a right to retain defence lawyers of their choice. The court appointed lawyers for those who did not, in accordance with the law. In addition, the court arranged Tibetan language interpreters for the defendants. The defence lawyers were able to set out their arguments in full. The defendants' procedural rights were fully protected and their ethnic customs and human dignity were respected. On investigation, it has been found that the Government did not prevent lawyers from defending the Tibetans who participated in the "14 March" events.

109. Under the Code of Criminal Procedure, if the defendants do not accept this judgement they may appeal to a higher court, in this case the Tibet Autonomous Region High People's Court. The law provides for a special review of death sentences and death sentences with a two-year reprieve which has been upheld in the second instance. Authorization for the execution of a death sentence must be sought from the Supreme People's Court.

110. The Chinese Government hereby requests the incorporation of the full text above in the relevant United Nations reports.

#### **China: Deaths in July 2009 unrest in Xinjiang Autonomous Province**

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

**Subject(s) of appeal:** 156 people (unknown)

**Character of reply:** Translation awaited

**Observations of the Special Rapporteur:** The Government of China replied to the communication below on 21 August 2009. The Special Rapporteur appreciates the response but unfortunately had not received a translation of it from the relevant services at the time this report was finalized. He is unable, therefore, to make observations, and expects they will be included in the next report. However, a copy of the original response letter is available online at the following address: [http://www2.ohchr.org/english/issues/executions/docs/Chine\\_21.08.09\\_17.2009.pdf](http://www2.ohchr.org/english/issues/executions/docs/Chine_21.08.09_17.2009.pdf)

**Allegation letter dated 9 July 2009,** sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

111. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the large number of deaths, casualties and mass arrests resulting from violent clashes in Xinjiang Uighur Autonomous Region.

According to information received:

On 5 July 2009, at least 156 people were killed and over 800 injured following violent clashes between Han and Uighurs during demonstrations in



Urumqi, the capital of the Xinjiang Uighur Autonomous Region. Police have detained some 1,434 individuals in connection with the protests.

The exact circumstances surrounding the aforementioned events remain unclear. However, the protests may have been sparked by alleged Government inaction following the June 2009 killing of two Uighurs by Han at a factory in Shaoguan, Guangdong.

112. While initial internet footage of the demonstration showed protesters marching peacefully through Urumqi, violent clashes later ensued between Uighur groups and Han groups, and resulted in mass bloodshed and destruction of property. According to some reports, excessive police force may have contributed to the deaths of several protesters. State media has reportedly accused separatist Uighur groups, based both inside and outside the country, of instigating the violence.

113. According to media accounts, officials have said that the death penalty will be sought against those responsible for the riots.

114. During the protests mobile phone services were reportedly blocked and internet connections minimized, with websites and online discussion forums ordered not to publish any material related to the protests. Media watchdog groups and others have expressed concerns that media censorship during the protests may be an attempt to prevent independent reporting on the circumstances surrounding the demonstrations.

115. Without in any way implying any determination on the facts of the case, we would like to refer Your Excellency's Government to the fundamental principle set forth in Article 3 of the Universal Declaration of Human Rights which provides that every individual has the right to life and security of the person. This includes a due diligence obligation on the part of Your Government to protect the lives of persons within your territory and jurisdiction from attacks by other persons within your territory (*Jiménez Vaca v. Colombia*, CCPR/C/74/D/859/1999, UN Human Rights Committee, 25 March 2002, paragraph 7.3).

116. We would also like to bring to your Excellency's Government's attention to the duty to thoroughly, promptly and impartially investigate killings, and to prosecute and punish all violations of the right to life. As reiterated by the 61st Commission on Human Rights in Resolution 2005/34, all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions", and "to identify and bring to justice those responsible". At the same time, with respect to reports that the death penalty will be sought against those responsible for the riots, we would like to remind your Excellency's Government that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

117. With respect to the allegations that the security forces were responsible for the killing of some protesters we would like to draw your Excellency's Government's attention to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life." (Adopted by the Eighth

United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

118. We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of expression, as recognized in article 19 of the Universal Declaration of Human Rights, which provides that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

119. We would further like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of assembly and association, as recognized in article 20 of the Universal Declaration of Human Rights, which provides that "Everyone has the right to freedom of peaceful assembly and association."

120. In the event that your investigations support or suggest the above allegations to be correct, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the affected persons are respected and the accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

121. Moreover, it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to my attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide detailed information as to the exact number of people killed, and explain the circumstances in which each killing occurred.
3. If there were any killings by police or security forces, please explain whether the use of lethal force was justified in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Officials, and what investigations have been carried out to make this determination. What were the instructions given to the security forces before and during the demonstrations?
4. What measures were and are being taken by your Excellency's Government to protect people from the outbreak of violence?
5. What efforts have been undertaken to promptly and thoroughly investigate the alleged killings during the riots? Please provide the details and results of any investigations, medical examinations, judicial or other inquiries that have been or will be initiated, including any investigation into the conduct of the security forces.
6. Have any alleged perpetrators been detained and charged? In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions that have been or will be undertaken?
7. Please provide the details on how the actions undertaken by public officials regarding this case are compatible with the international norms and standards of the right to freedom of opinion and expression and the related right to peaceful assembly and association.
8. Please provide information on the legal basis upon which protesters were arrested and detained and how that is compatible with the international norms and standards on the right to freedom of opinion and expression.

**China: Death sentences against Du Yimin and Tang Yanan**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male, 1 female

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur:** The Special Rapporteur notes the information provided by the Government of China and observe also that the imposition and execution of the death penalty in the cases of Ms. Du Yimin and Mr. Tang Yanan does not comply with international law. While there may have been serious financial crimes at issue in each of these cases, the offences did not involve any intentional killing and thus cannot meet the “most serious crimes” requirement as it is interpreted and applied by international human rights bodies.

**Urgent appeal dated 31 August 2009**

122. In this connection, I would like to draw the attention of your Excellency’s Government to information I have received regarding two cases of persons sentenced to death on charges of “fraudulent raising of public funds”. Ms. Du Yimin’s death sentence was reportedly executed on 5 August 2009, while Mr. Tang Yanan’s case is reportedly still pending before the Supreme People’s Court.

According to the information I have received:

Mr. Tang Yanan and approximately 20 other co-defendants were reportedly charged with having illegally obtained, from 2004 to 2007, 970 million Yuan from nearly 50,000 investors. The investors were told that the funds were to be invested with high returns in a deer breeding centre to cull deer antlers which could be used in Chinese herbal medicines. On 11 December 2008, the Bozhou City Intermediate People’s Court in Anhui province convicted Tang Yanan of “fraudulent raising of public funds” and sentenced him to death.

Mr. Tang Yanan appealed against the conviction. The Anhui Provincial People’s High Court upheld the guilty verdict on 12 August 2009. The death penalty is now pending for confirmation before the Supreme People’s Court.

Ms. Du Yimin, a businesswoman running beauty parlours, was found guilty of illegally raising approximately 700 million Yuan from hundreds of investors. The Hangzhou Intermediate People’s Court found her guilty of “fraudulent raising of public funds” and sentenced her to death in March 2008. On 13 January 2009, her appeal was rejected. The Supreme People’s Court confirmed the death sentence. She was executed on 5 August 2009.

123. While I do not wish to prejudice the accuracy of the allegations reported to me, I would like to respectfully remind your Excellency’s Government that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). This would exclude charges of fraudulent raising of public funds from those for which the death penalty can be imposed under international law.

124. In view of the irrevocable nature of the death penalty, I urge your Government not to proceed with the execution of Mr. Tang Yanan, should the Supreme People's Court confirm the death sentence in his case.

125. It is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters.

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide details regarding the offences which carry the death sentence in the People's Republic of China.
3. How many persons have been sentenced to death and executed on charges of "fraudulent raising of public funds" since the beginning of the year 2005?

**Response from the Government of China dated 12 February 2010 (translated from Chinese)**

126. Receipt is hereby acknowledged of joint communication No. UA G/SO 214 (33-27) CHN 25/2009 from the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions. The Chinese Government has looked into the matter carefully and wishes to make the following reply:

1. Case of Du Yimin, originally from Zhejiang, Board Chairman of Yicheng Investment Management Co., Ltd. From 2003 to June 2006, Du Yimin invested in beauty-parlour and cosmetics businesses which were operating at a loss, she backed out of a few real estate investments after they were developed, and made unsuccessful investments in mining ventures in Vietnam and a molybdenum mine in Qingtian county of Zhejiang Province. Nevertheless, using the need for large-scale capital investments in those projects as a smokescreen, she falsified real-estate investment development agreement documents and official seals, and with high interest returns as an inducement, illegally raised 709 million yuan renminbi from common citizens in Liandu District and Puyun County of Lishui City in Zhejiang Province. In addition to partially repaying interest and principal, she used the income from the funds raised to purchase building properties, vehicles and make other lavish expenditures, and was unable to repay 128 million yuan renminbi outstanding at the time the case came to the attention of the authorities. The case was tried in the Lishui Municipal Intermediate People's Court, which ruled that since the amount of Du Yimin's fraud was especially large and had entailed especially large economic losses, the circumstances of the commission of the crime were especially serious and the crime itself was extremely grave, it accordingly sentenced defendant Du Yimin to death for the fraudulent raising of funds, with lifetime deprivation of political rights and confiscation of all her personal assets. After the sentence had been pronounced, Du appealed the ruling to a higher court. In the trial of second instance, the Zhejiang Provincial Superior People's Court rejected the appeal and upheld the original ruling, and reported the case to the Supreme People's Court for review in accordance with the law. Following its review, the Supreme People's Court held that the trials in the first and second instance had clearly established the facts of the case, the evidence had been ample and factual, the verdicts accurate, the sentences appropriate, and the trial procedures lawful, and therefore approved the death penalty for Du in accordance with the law. Her death sentence was carried out on 5 August 2009.

2. Case of Tang Ya'nan, originally from Anhui, Board Chairman of Wanwuchun Technology Development Co., Ltd. From June 2004 to March 2007, despite being fully aware that the Wanwuchun Company was operating at a loss, and that he was absolutely unable to repay principal and interest on the proceeds of a sika deer-breeding

operation, nevertheless, using high interest returns as an inducement, and overstating and falsifying the company's business condition, illegally raised 973 million yuan renminbi in seven provinces and municipalities and 116 counties and districts including Anhui, Henan and Beijing. Most of the money was spent on personal purchases of vehicles, real estate, luxury items, transfers and concealment as well as repaying principal and interest on funds raised earlier and issuing high-denomination fund-raising business commissions and incentives. At the time the case came to the attention of the authorities, a total of 333 million yuan renminbi in raised funds could not be repaid, leading to the suicide of one of the victims of the fraud. The case was tried in the Bozhou Municipal People's Court in Anhui, which ruled that in having planned and directed the fraudulent fund-raising activities, Tang was the prime culprit in the joint offense as well as a recidivist, that the circumstances of the commission of the crime were especially serious and that the crime itself was extremely grave, and accordingly sentenced defendant Tang Ya'nan to death for the fraudulent raising of funds, with lifetime deprivation of political rights and confiscation of all his personal assets. After sentence had been pronounced, Tang appealed the ruling to a higher court. In the trial of second instance, the Anhui Provincial Superior People's Court rejected his appeal and upheld the original ruling, reporting the case to the Supreme People's Court for review in accordance with the law. Following its review, the Supreme People's Court held that the trials in the first and second instance had clearly established the facts of the case, the evidence had been ample and factual, the verdicts accurate, the sentences appropriate, and the trial procedures lawful, and therefore approved the death penalty for Tang in accordance with the law. His death sentence was carried out on 7 January 2010.

127. China's Criminal Law contains clear provisions regarding the sentencing of those convicted of crimes of all types. Although the death penalty continues to exist, its application is strictly controlled, especially with reference to non-violent crimes. In the case of fraudulent fund-raising, the death penalty is lawfully applied only in serious cases where the amounts involved are extremely large and the damage to the interests of the State, society or the public is extremely grave. The general public demands that crimes of this nature be punished severely, and the application of the death penalty in such cases assists in deterring and preventing them. In order to ensure the correct application of the death penalty, as well as reduce and control its application to the greatest extent possible, China's Criminal Procedure Law provides that upon the conclusion of general first- or second-instance trial procedures, death-penalty verdicts must undergo a special death-penalty review process, and take effect only after review and approval by the Supreme People's Court of China. In order to ensure transparency and achieve impartiality in the administration of justice, all judgments and rulings of Chinese courts are publicly available, and members of the public in need of knowledge about the contents of relevant court judgments and rulings can learn about them via open channels.

128. The Chinese Government respectfully requests that the foregoing be reproduced in its entirety in a relevant document of the United Nations.

**China: Death sentence against Akmal Shaikh**

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur notes the response of the Government of China. He regrets that the Government chose to proceed with the execution of an individual for a drug-related crime despite the fact that such crimes do not

fall within the “most serious crimes” requirement, as interpreted by international human rights bodies, for imposition of the death penalty. He also regrets the denial of a psychiatric evaluation in a death penalty case when a prima facie case has been made in relation to mental illness. He also regrets that the Government continues to refuse to provide information repeatedly requested by the Special Rapporteur, namely the number of people sentenced to death and executed on charges of drug trafficking since 2005.

**Urgent appeal dated 23 October 2009**, sent with the Special Rapporteur on the independence of judges and lawyers.

129. In this connection, we would like to draw the attention of your Excellency’s Government to information we have received regarding the case Mr. Akmal Shaikh, a man sentenced to death on drug trafficking charges.

According to the information we have received:

On 12 September 2007, Mr. Akmal Shaikh was arrested at the airport of Urumqi, the capital of the Xinjiang Uighur Autonomous Region (XUAR), when he arrived on a flight from Tajikistan. He was accused of carrying four kilograms of heroin in his luggage. There are credible allegations that Mr. Shaikh is suffering from severe mental illness, which would impact his culpability. Nevertheless, the judicial authorities denied his counsel’s request that Mr. Shaikh be evaluated by mental health professionals. On 29 October 2008, the XUAR Intermediate People’s Court found him guilty and sentenced him to death. His appeal against the sentence was rejected by the Uighur Autonomous Regional Higher People’s Court in the course of the current month of October 2009 (the precise date has not been reported to us). The case is now before the Supreme People’s Court for confirmation of the death sentence.

130. While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully remind your Excellency’s Government that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). This would exclude charges of drug trafficking from those for which the death penalty can be imposed under international law. In addition, given the serious concerns about Mr. Shaikh’s mental health, it is not clear that the intentionality requirement is met in his case.

131. We would also like to refer Your Excellency’s Government to the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1984/50 of 25 May 1984. Of particular relevance is paragraph 3 which provides that the death penalty shall not be carried out on persons who have become insane. In addition resolution 1989/64 of the Economic and Social Council resolution of 24 May 1989 on the Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, recommends in paragraph 1(d) that States further strengthen the protection of the rights of those facing the death penalty, eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution. Legal authorities have concluded that it has become a norm of customary law that the insane may not be executed.

132. We note that the denial by the judicial authorities of his counsel’s request that Mr. Shaikh be evaluated by mental health professionals also raises concerns with regard to his right to “a fair and public hearing before an independent and impartial tribunal” (article 10

of the Universal Declaration on Human Rights). In this connection we would also like to refer Your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular, principle 6 provides that "the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected."

133. In view of the irrevocable nature of the death penalty, we urge your Government not to proceed with the execution of Akmal Shaikh, should the Supreme People's Court confirm the death sentence in his case.

134. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters.

1. Are the facts alleged in the above summary of the case accurate?
2. What is the basis for the judicial authorities' denial of a mental health evaluation of Mr. Shaikh?
3. How many persons have been sentenced to death and executed on charges of drug trafficking since the beginning of the year 2005?

**Response from the Government of China dated 4 January 2010 (translated from Chinese)**

135. Receipt is hereby acknowledged of joint communication No. UA G/SO 214 (3-3-16) G/SO 214 (33-27) CHN 31/2009 from the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions and the Special Rapporteur of the Human Rights Council on the independence of judges and lawyers. The Chinese Government has looked into the matter carefully and wishes to make the following reply:

136. Review by the Chinese Supreme People's Court of the death penalty for drug trafficking imposed in the case of Akmal Shaikh (a British national) has now been completed. In its review, the Supreme People's Court verified that in the early hours of 12 September 2007, Akmal arrived at Urumqi International Airport in Xinjiang on an international flight from Dushanbe in the Republic of Tajikistan carrying 4,030 grams of heroin. Upon his arrival, Chinese Customs security personnel discovered the heroin in the lining of his hand-luggage; the purity level of the heroin was analyzed as 84.2 per cent. In the view of the Supreme People's Court, the fact that Akmal illicitly brought a large quantity of heroin into China is clear and the evidence is irrefutable; his actions amount to the crime of drug trafficking, and the nature of the offence is serious. Under the provisions of articles 48 and 347 of the Chinese Criminal Law, the death sentence imposed on Akmal by the Urumqi Municipal Intermediate People's Court was appropriate, and the Supreme People's Court therefore approved this death sentence in accordance with the law. Akmal was executed by lethal injection in Urumqi, Xinjiang on 29 December.

137. China is a State ruled by law; its judicial organs handle cases independently in strict accordance with the law. Throughout the entire process of his being taken into custody and put on trial, the legal rights and relevant treatment to which Akmal was entitled were fully guaranteed in accordance with the law. With regard to the issue of his undergoing a court-ordered psychiatric evaluation, under Chinese law, evidence of the possibility that the accused suffers from mental illness must be produced when applying to have the accused undergo a psychiatric evaluation, so that the court may decide whether or not such an

evaluation is needed. Although British consular officials requested a court-ordered psychiatric evaluation of Akmal, the materials presented were insufficient to prove that Akmal suffered from mental illness or that members of his family had ever suffered from mental illness; nor did Akmal himself provide relevant materials. Upon deliberation, the court concluded that nothing in the case gave cause to doubt Akmal's mental condition, and the application for a psychiatric evaluation did not meet the requirements for acceptance.

138. The Chinese Government wishes to reiterate that while the death penalty continues to exist under Chinese law, its application is strictly controlled. On the other hand, crimes involving drugs are recognized throughout the world as serious offenses, entailing serious harm to society; both the international community and Chinese civil society demand that such crimes be punished severely. The application of the death penalty in cases of crimes so harmful to society is appropriate, helps to deter and prevent them, and accords with the vital interests of the general public.

139. The Chinese Government respectfully requests that the foregoing be reproduced in its entirety in a relevant document of the United Nations.

**China: Death sentences against persons tried in connection with violence in Xinjiang Province**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 12 males

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur notes the detailed response of the Government of China, but regrets that the response does not address the Special Rapporteur's two questions concerning whether the death penalty was imposed in the 12 cases at issue here after a fair trial, as required by international law. First, although the Government describes the outcomes of trials and appeals in each of the 12 cases, it does not address whether the accused were assisted by counsel of their own choice, a fundamental fair trial right, and, if not, how counsel were selected. Similarly, the Government does not respond to the concern that the trial judges of the Urumqi Intermediate People's Court who rendered the death sentences were not impartial, and were, instead, selected on political grounds and received instructions from the Communist Party as to how the cases should be handled. Any such interference with the judicial process would be a violation of the requirement of "a fair and public hearing before an independent and impartial tribunal." Universal Declaration of Human Rights, Article 10.

140. The Special Rapporteur notes with concern that two of the accused were sentenced to death for crimes that did not result in an intentional killing, which is a violation of the "most serious crimes" requirement as interpreted by international human rights bodies. In the first instance, Anwar Akbar was sentenced to death with a two-year reprieve for robbery, and in the second, Xi'erzhati Maimaititusong was sentenced to death with a two-year suspension, for arson. The Special Rapporteur urges that these sentences be commuted and requests that the Government keep the Special Rapporteur's successor informed of any such developments in these cases.

141. Urgent appeal dated 3 November 2009, sent with the Special Rapporteur on the independence of judges and lawyers.

142. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the trials before the Urumqi Intermediate People's Court of men accused in relation to the violent protests in Urumqi in



July 2009, resulting in the imposition of the death sentences against twelve of the defendants.

According to information received:

The violent protests in Urumqi, Xinjiang Province, from 5 to 7 July 2009 resulted, according to information provided by the Government of the People's Republic of China, in the death of 197 persons, 134 of them Han Chinese, and injuries to about 1,600 others.

On 12 and 15 October 2009, the Urumqi Municipal Intermediate People's Court heard cases on charges relating to violence in the July 5 riots in Urumqi. The trial hearing sessions were concluded in one day. Nine of the defendants were sentenced to death including Messrs. Abdukerim Abduwayit, Gheni Yusup, Han Junbo, Abdulla Mettohti, Adil Rozi, Nureli Wuxiu'er, and Alim Metyusup. Three people including Mr. Ainiwa'er Aikepa'er were sentenced to death with a two year reprieve. In the case of Mr Tayirejan Abulimit the death sentence was reduced to a sentence of life imprisonment in view of his cooperation with the police investigation. Four other defendants in the case were sentenced to life and another five were given jail terms. A number of concerns have been raised and are summarized below.

The Urumqi Intermediate People's Court failed to give public notification of the upcoming trials, as it would have been required to do under the criminal procedure law. No foreign observers or journalists were present. There are concerns that the audience at the trial could have been selected among court personnel and civil servants.

The judges and prosecutors involved in the trials were specifically selected to hear these cases based on political criteria, and received direct instructions from Communist Party authorities regarding the handling of the cases. Official reports state that the Party Committee of the Xinjiang High People's Court organized special training sessions for the selected judicial officers, who were also given a manual entitled the "Propaganda Education Manual on the Truth about the July 5th Incident in Urumqi," prepared by the Party authorities.

On 11 July 2009, judicial authorities in Urumqi and Beijing warned lawyers to exercise caution in accepting cases related to the July 2009 violent protests in Urumqi. Partners of law firms were told to report such cases immediately and to "positively accept monitoring and guidance from legal authorities and lawyers' associations" in this regard. Reports indicate that the lawyers appointed to defend the accused were chosen not only for their legal skills but also for "their good political qualities". Lawyers were furthermore banned from making comments to the print and electronic media or on the internet.

On 30 October 2009, the Xinjiang Uighur Autonomous Region Higher People's Court upheld the nine death sentences imposed by the Urumqi Municipal Intermediate People's Court. The nine people are currently at risk of imminent execution which will be carried if their sentences are approved by the Supreme Court.

143. While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to these cases under international law.

144. We would like to remind your Excellency's Government that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it is essential that in capital punishment

cases the defendants' right to "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights) is scrupulously respected.

145. With regard to the reports concerning the alleged selection by the authorities and intimidation of lawyers who defended those criminally charged for their involvement in the July 2009 riots in Urumqi, we wish to bring to the attention of your Excellency's Government that the right to a fair trial includes the right to be assisted by legal counsel of one's own choosing. This right is set forth in Principle 5 of the Basic Principles on the Role of Lawyers (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). Also Principle 1 of the Basic Principles on the Role of Lawyers stipulates that all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings. Further Principle 16 of the Basic Principles on the Role of Lawyers provides that "Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference ...".

146. Additionally, in relation to the alleged restrictions on the freedom of expression of counsel, we would like to remind your Excellency's Government that Principle 23 of the Basic Principles on the Role of Lawyers stipulates that "lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights ..." If the reports we have received regarding legal counsel to the defendants were (also only in part) accurate, this would represent a serious interference with the independence and fair administration of justice.

147. With regard to alleged selection criteria for the judges assigned to hear the cases related to the July 2009 riots in Urumqi, we would like to draw the attention of your Excellency's Government to the Basic Principles on the Independence of the Judiciary (Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985), which provide authoritative guidance as to the meaning of the right to "a fair and public hearing before an independent and impartial tribunal". Principle 1 states that it "is the duty of all governmental and other institutions to respect and observe the independence of the judiciary." Principle 2 provides that "the judiciary decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

148. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights guaranteed under international law to all the persons on trial in relation to the July 2009 incident in Urumqi, including Messrs. Abdukerim Abduwayit, Gheni Yusup, Abdulla Mettohti, Adil Rozi, Nureli Wuxiu'er, Alim Metyusup and Tayirejan Abulimit and the six reportedly sentenced to death on 14 October 2009, are fully respected. Only full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law protecting the right to life from a summary execution, which violates the most fundamental human right. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

149. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected

to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide details regarding the charges against the sentenced to death on charges related to the July 2009 riots in Urumqi, including Messers. Abdukerim Abduwayit, Gheni Yusup, Abdulla Mettohti, Adil Rozi, Nureli Wuxiu'er, Alim Metyusup and Mr Tayirejan Abulimit: which provisions of criminal law were they charged with and found guilty of having violated?
3. Please indicate whether the accused persons were assisted by counsel of their own choosing. If not so, what were the selection criteria for the lawyers who defended the accused persons?
4. Please indicate how the judges sitting on the trials before the Urumqi Intermediate People's Court on 11 and 14 October 2009 were selected. Is it accurate that these judges received direct instructions from Communist Party authorities regarding the handling of the cases and underwent a special training session organized by the Party Committee of the Xinjiang High People's Court?

**Response of the Government of China dated 17 December 2009 (translated from Chinese)**

Letter No. GJ/066/2009

150. Receipt is acknowledged of the joint communication from the Special Rapporteur on Arbitrary Executions and the Special Rapporteur on Independence of Judges and Lawyers regarding the Urumqi "7.5" incident (UA G/SO 214 (3-3-16) G/SO 214 (33-27) CHN 32/2009). The Chinese Government answered an earlier letter about the incident from the Special Rapporteur on Arbitrary Executions and the Special Rapporteur on Freedom of Opinion and Expression, on 12 August. In a spirit of active cooperation with the United Nations human rights mechanisms, the Government has made thorough inquiries into the trials and verdicts arising out of the Urumqi "7.5" incident. Below is our reply.

1. The Urumqi "7.5" incident was a case of serious premeditated, organized, violent criminal beating, smashing, looting and arson. It was planned, directed, and instigated by foreign separatist forces, and organized and carried out by domestic separatist elements. It caused significant losses of life and property: altogether 197 people died.

151. In October 2009, the Intermediate People's Court of Urumqi City conducted public trials and rendered judgement in first instance on 6 cases with 21 defendants charged with murder and arson in the Urumqi "7.5" incident. Nine defendants were sentenced to death, among them Abdukerim Abduwayit, Gheni Yusup, and Alim Metyusup. Three defendants were sentenced to death with a two-year reprieve, among them Aizeziji Yasin. Four defendants were sentenced to life imprisonment, among them Ruzi Imam. Five defendants were sentenced to fixed terms of imprisonment, among them Abriz Wujimamut. The judgements and sentences passed on the defendants mentioned in the joint communication are detailed below.

(1) Abdukerim Abduwayit assaulted and killed innocent people in five separate incidents resulting in five deaths, for three of which he was directly responsible. He also set fire to buildings in the downtown area, causing significant financial losses and forcing 13 people to leap to safety. His methods were especially cruel and the circumstances and consequences of his crimes were especially serious. Based on the relevant laws, he was convicted of murder and sentenced to death and deprivation of political rights in perpetuity; he was also sentenced to 15 years' imprisonment for

arson. The court determined that the death sentence should be carried out and that the accused should be deprived of his political rights in perpetuity.

(2) Gheni Yusup mustered crowds and acted as the ringleader in acts of beating, smashing, looting and arson at four separate sites. Altogether five people died and two were injured. Yusup was convicted of murder, and sentenced to death and deprivation of political rights in perpetuity. He was also convicted of robbery and sentenced to life imprisonment, deprivation of political rights in perpetuity, and confiscation of his personal property. The court determined that the death sentence should be carried out, that the accused should be stripped of his political rights in perpetuity, and that all his personal property should be confiscated.

(3) Abdulla Mettohti played a major part in beating, smashing, looting and arson at four separate sites which resulted in a total of nine deaths, two persons injured and financial losses of more than 1.37 million yuan. He was convicted of murder and of arson, and sentenced in each case to death and deprivation of political rights in perpetuity. The court determined that the death sentence should be executed, and that the accused should be deprived of his political rights in perpetuity.

(4) Adil Rozi played a major part in beating, smashing, looting and arson at two separate sites which resulted in a total of four deaths and one person injured. He was convicted of murder, and sentenced to death and deprivation of political rights in perpetuity.

(5) Nureli Wuxiu'er participated in beating, smashing, looting and arson at three sites with the serious consequences of four deaths and one person injured. He was convicted of murder, and sentenced to death and deprivation of political rights in perpetuity.

(6) Alim Metyusup engaged in multiple acts of beating, smashing, looting and arson. He assaulted innocent people, causing five deaths and one serious injury; he set fire to houses, causing significant financial losses. His methods were brutal; the circumstances of his crimes were especially abominable, and the consequences, extremely serious. He was convicted of murder, and sentenced to death and deprivation of political rights in perpetuity; he was also sentenced to 10 years' imprisonment for arson and to 5 years' imprisonment for robbery. The court determined that the death sentence should be carried out, and that the accused should be deprived of his political rights in perpetuity.

(7) Ahmatjan Moming and others beat two innocent people to death. He also committed robbery. He was convicted of murder, and sentenced to death and deprivation of political rights in perpetuity; he was also sentenced to five years' imprisonment for robbery. The court determined that the death sentence should be carried out, and the accused should be deprived of his political rights in perpetuity.

(8) Tohti Pazil and others beat two innocent people to death. He also joined in smashing vehicles, causing huge financial losses. He was convicted of murder, and sentenced to death and deprivation of political rights in perpetuity; he was also sentenced to seven years' imprisonment for wilful destruction of property. The court determined that the death sentence should be carried out, and the accused should be deprived of his political rights in perpetuity.

(9) Han Junbo took the lead in chasing and attacking victims such as Rouzhahong Ahmad, and was directly responsible for causing Ahmad's death. He was convicted of murder, and sentenced to death and deprivation of political rights in perpetuity.

- (10) Anwar Akbar was a ringleader in mass smashing of vehicles and shops and an accessory to attempted murder. He was convicted of robbery and sentenced to death with a two-year reprieve, deprivation of political rights in perpetuity, and confiscation of his personal properties. For the (attempted) murder he was sentenced to 10 years' imprisonment. The court determined that the death penalty should be applied with a two-year suspension, that Anwar should be deprived of his political rights in perpetuity, and that all his personal property should be confiscated.
- (11) Aizezjiang Yasin was involved in the beating of one person to death, and in theft of property. Considering that he confessed his offence when brought to justice, and played an important role in solving the case, he was convicted of murder and sentenced to death with a two-year suspension and deprivation of political rights in perpetuity. He was also sentenced to nine years' imprisonment for robbery. The court determined that the death penalty should be applied with a two-year suspension, and that Yasin should be deprived of his political rights in perpetuity.
- (12) Xi'erzhati Maimaitusong set fire to vehicles and caused significant losses of public and private property. He was convicted of arson and sentenced to death with a two-year suspension and deprivation of political rights in perpetuity.
- (13) Tayirejan Abulimit was involved in assaults on innocent people, leaving three dead and one seriously injured in odious circumstances. Considering his offence, he should have been sentenced to death; but when brought to justice he confessed and assisted in capturing Alim Metyusup, which was highly meritorious service meriting lesser punishment in accordance with the law. He was convicted of murder and sentenced to life imprisonment and deprivation of political rights in perpetuity. He was also sentenced to six years' imprisonment and a fine for robbery. The court determined that the life sentence should be applied, that Abulimit should be deprived of his political rights in perpetuity, and that the fine should be paid.
- (14) Ruzi Imam set fire to vehicles, causing substantial losses of public and private property. He was convicted of arson and sentenced to life imprisonment and deprivation of political rights in perpetuity.
- (15) Tusongjiang Maimaiti was a ringleader in urging people to commit beating, smashing, looting and arson, causing huge financial losses. He was convicted of robbery and sentenced to life imprisonment, deprivation of political rights in perpetuity, and confiscation of his personal property.
- (16) Tu'ersong Abulizi was involved in assaulting innocent people and caused one death. He was also involved in smashing and looting vehicles, causing huge financial losses. He was convicted of murder and sentenced to life imprisonment and deprivation of political rights in perpetuity. He was also sentenced to five years' imprisonment for wilful destruction of property. The court determined that the life sentence should be applied, and Abulizi should be deprived of his political rights in perpetuity.
- (17) Abriz Wujimamut was involved in assaulting innocent people and caused one death. He also committed robbery. He was sentenced to 15 years' imprisonment for murder and to 5 years' imprisonment and a fine for robbery. The court determined that a term of 18 years' imprisonment should be imposed, and the fine should be paid.
- (18) Abushehelil Maimaitimin was involved in attempted murder. He was sentenced to 10 years' imprisonment for murder.

(19) Liu Bo was an accessory in assaults on victims such as Rouzhahong Ahmad. He was convicted of murder and sentenced to 10 years' imprisonment and deprivation of political rights for 3 years.

(20) Iqbal Yishan was involved in smashing vehicles, causing huge financial losses. He was sentenced to six years' imprisonment for wilful destruction of property.

(21) Kurbanjian Wahab was involved in smashing vehicles, causing huge financial losses. He was sentenced to five years' imprisonment for wilful destruction of property.

2. Under Chinese law, the court of second instance renders final judgement. A defendant can appeal the decision rendered in first instance to a higher-level court. After the Intermediate People's Court of Urumqi City announced its decisions, six defendants, among them Abdukerim Abduwayit and Alim Metyusup, did not appeal. The six included two people sentenced to death, one to life imprisonment and three to fixed terms of imprisonment. The other 15 defendants appealed within the statutory deadlines; they included 7 people sentenced to death, 3 to death with a two-year suspension, 3 to life imprisonment, and 2 to fixed terms of imprisonment.

The High People's Court of the Xinjiang Uyghur Autonomous Region (XUAR) formed a collegiate bench in accordance with the law and conducted an open hearing on the appeals against three of the death sentences. During the hearing, the procurator presented physical evidence, testimony, expert evaluations and records of the crime scenes. The appellants each stated their reasons for appealing and fully exercised the procedural rights specified by the law. Lawyers presented the defence's arguments before the court. The court used the appellants' native languages in conducting its proceedings. The hearings were attended by more than 100 people including the victims, the appellants' relatives, and members of the public. The court concluded that the facts established in the decisions reached at first instance were clear, the law had been correctly applied, the sentences handed down were appropriate, the trial procedure was legal, and the appellants' grounds for appeal were unsustainable. It therefore dismissed the appeals in accordance with the law and upheld the original judgements.

In addition, the XUAR High People's Court reviewed the cases of the appellant and defendant and heard the opinions of other parties to the proceedings during its consideration in second instance of the charges of murder and robbery against Aizejiang Yasin. Having done so, it dismissed the appeal and upheld the original judgement. It reviewed the death sentences passed on Abdukerim Abduwayit for murder and arson and on Alim Metyusup for murder, robbery and arson, neither of whom had appealed, in accordance with the established procedure, concluding that the death sentences handed down in first instance were appropriate and upholding the original judgements in accordance with the law.

Chinese law requires death sentences to be referred to the Supreme People's Court for approval unless the sentence is imposed by the Supreme People's Court itself. The XUAR High People's Court thus referred the nine cases attracting the death penalty to the Supreme People's Court for approval. After review, the Supreme People's Court upheld the nine death sentences.

In November, the Intermediate People's Court of Urumqi City, acting on an order issued by the President of the Supreme People's Court, executed the nine seriously violent criminals implicated in the "7.5" events.

As the law provides, the Court executed the nine criminals by lethal injection. Before the execution, it arranged for the criminals to meet their relatives. After the execution, relatives of the executed criminals from ethnic minorities and religious people

held ceremonies. The convicts' ethnic customs, dignity and human rights were fully respected.

3. The Chinese Government would like to emphasize the following points.

(1) The rule of law obtains in China. Under the Criminal Code, all offenders are equal before the law. Anyone who commits a crime will be called to account regardless of their ethnicity and religion. Even so, where statutory or discretionary mitigating circumstances apply, lesser or lighter punishments may be imposed. The nine people sentenced to death in the Urumqi "7.5" events killed innocent people. Their offences were extremely serious. They deserved the punishments they received under Chinese law. For example, Abdukerim Abduwayit kept beating, smashing, looting and fire-raising all the way along the Tuanjie Road in Urumqi on the evening of 5 July. He kicked, stabbed and bludgeoned (with pliers) five innocent people to death. Later he set fire to buildings in the downtown area, which caused financial loss of more than 260,000 yuan and forced 13 people to leap to safety. Gheni Yusup mustered a crowd on the evening of July 5 to engage in beating, smashing, looting and arson and led three other defendants, Abdulla Mettohti, Adil Rozi and Nureli Wuxiu'er, in beating and smashing with sticks and stones, looting and arson at four sites near Zhongwan Road; together they beat four innocent people to death, and injured another person. Along with other rioters, Gheni Yusup beat one innocent person to death and injured another. Abdulla Mettohti also set fire to the Tianshan grain store on Zhongwan Road in Tianshan District, causing five innocent people hiding in the shop to be burned to death and doing more than 1.37 million yuan-worth of damage.

(2) The courts strictly followed the law and legal procedure in trying these cases. The facts of the defendants' offences were clearly established and the evidence was conclusive. The prosecution presented evidence in court that fully substantiated the charges, and used an audio-visual system to display video recordings of the crime scenes. The victims, relatives of the defendants and members of the public attended the hearings.

(3) The defendants fully exercised their procedural rights during the hearings. Their counsel put forward arguments for the defence in court. A collegiate bench presided over the prosecutions and conducted a judicial examination of the facts. The court proceedings were conducted in the defendants' native languages. After the trials in first instance, the XUAR High People's Court considered the appeals and publicly announced its decisions. The nine death sentences were referred to the Supreme People's Court for approval. The Supreme People's Court upheld them after review. During its review, the Court interrogated the defendants and heard out their confessions and defence submissions.

152. The Chinese Government hereby requests the incorporation of the full text above into the relevant United Nations reports.

**China: Death sentence against Gan Jinhua**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** No response (recent communication)

**Observations of the Special Rapporteur:** The Special Rapporteur looks forward to receiving a response concerning these allegations.

**Urgent appeal dated 11 February 2010**, sent with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

153. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding alleged violations of the right to a fair trial in the case of Mr. Gan Jinhua, who is reportedly currently awaiting a review by the Supreme Court of his death sentence.

According to information we have received:

Mr. Gan was detained on 12 November 2004 in Chencun town, Shunde District, Guangdong Province and charged with killing two persons in the course of a robbery. On 10 June 2005, the Foshan City Intermediate Court sentenced Gan Jinhua to death for robbery. Gan Jinhua appealed; on 28 December 2005, the Guangdong Province Higher Court upheld his sentence. In April 2006, Gan Jinhua was granted a last-minute reprieve as the Guangdong Province Higher Court sent his case back for a retrial, but on 18 April 2008 Gan was again convicted and sentenced to death by the Foshan City Intermediate People's Court. Gan Jinhua appealed, but in December 2009 the Guangdong Higher People's Court upheld the ruling. Mr. Gan's case is currently before the Supreme People's Court for review of the death sentence.

Mr. Gan was convicted and sentenced to death primarily on the strength of his confession. This confession was obtained after Mr. Gan had been prevented from sleeping for more than three days, interrogated over the course of more than one hundred hours, from 8 a.m. on 12 November to 11 p.m. on 16 November 2004, and threatened by the police while being questioned. As a result, there are glaring inconsistencies between Mr. Gan's confession and the other evidence in the case, amongst others with regard to the way the robber entered and left the crime scene and the weapon used for the killing. Other inconsistencies concern the record of Mr. Gan's interrogation on 15 November 2004. It states that it took place in the Shunde Detention Center, but Mr. Gan's wife, mother, and sister visited him that evening in the Chencun Police Station. Mr. Gan also stated that part of his statement was written by a policeman, who forced him to sign without allowing him to look at its content.

In the course of Mr. Gan's final retrial, his wife, mother, and elder sister were prevented from testifying by the presiding judge, preventing Mr. Gan's lawyers from addressing some central facts of the case.

154. While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to this case under international law.

155. We would like to remind your Excellency's Government that it is essential that in capital punishment cases the defendant's right to "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights) is scrupulously respected. The right to a fair trial includes the right to obtain the attendance and examination of witnesses on one's behalf under the same conditions as witnesses on behalf of the prosecution. While we recognize that the charges against Mr. Gan were examined and reviewed by a number of first instance and appeals courts and a full retrial appears to have been granted, the information summarized above suggests that Mr. Gan was not allowed to call potentially important witnesses on his behalf.

156. With regard to the reports that Mr. Gan's confession was obtained under duress, specifically following more than three days of sleep deprivation, we wish to bring to the



attention of your Excellency's Government that the right to a fair trial also requires the right not to be compelled to confess. Article 15 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the People's Republic of China is a Party, states that no statement established to have been made as a result of torture may be invoked as evidence in any proceedings. This principle was recently reiterated by the Human Rights Council in paragraph 6c of resolution 8/8 of 2008. In addition to being a crucial fair trial guarantee, it is also an essential aspect of the non-derogable right to physical and mental integrity protected by the Convention Against Torture. To make this right effective, the Convention Against Torture dictates in Article 13 that "[e]ach State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

157. Only full respect for stringent due process guarantees distinguishes capital punishment from a summary execution. We therefore urge your Excellency's Government to take all necessary steps to ensure that Mr. Gan Jinhua's right to life be respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

158. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters.

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide details regarding the circumstances under which Mr. Gan Jinhua's confession was obtained.
3. What is, under Chinese law, the value of a confession given to police investigators but revoked at trial?
4. Please explain on what grounds Mr. Gan's wife, mother, and elder sister were prevented from testifying at the re-trial?
5. Are the judgments rendered in the case of Mr. Gan Jinhua accessible to the public?

## Colombia

### **Asesinato de 12 miembros de la comunidad indígena Awá**

**Violación alegada:** Muerte como consecuencia de ataque o ejecuciones por parte de fuerzas de seguridad o por grupos paramilitares

**Persona objeto del llamamiento:** 1 mujer, 5 hombres, 6 menores de edad

**Carácter de la respuesta:** No se recibió ninguna respuesta

**Observaciones del Relator Especial:** El Relator Especial lamenta que el Gobierno de Colombia no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

**Carta de alegación del 22 de septiembre de 2009,** enviada con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas.

159. En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con el presunto asesinato de 12 miembros de la comunidad indígena Awá el 26 de agosto de 2009 en el territorio indígena de Gran Rosario, en el municipio de Tumaco, Nariño. Entre las 12 personas asesinadas se encuentran cuatro niños y cinco adolescentes de entre ocho meses y diecinueve años de edad.

Según las informaciones recibidas:

El 26 de octubre, aproximadamente a las 5 horas de la mañana, un grupo de hombres armados habría invadido la casa de la Sra. **Tulia Mariana Guanga García**. Los hombres habrían llevado ropa camuflageada sin insignia y habrían estado encapuchados. Habrían matado a tiros a doce personas. Las víctimas (con sus edades aproximadas) fueron la Sra. **Guanga García**, 30, y sus dos hijos, **James Laurencio García**, 3, y **Angie Jazmín Rodríguez**, 8, un bebé de 8 meses, **Jeison Ferney Rodríguez**, **Alex Rodríguez**, 8, **Luis García Bisbicus**, 15; **Juana Guanga García**, 17, el Sr. **Fabio Taicuz García**, 18, el Sr. **Nolberto Guanga Taicuz**, 19, el Sr. **Amado Nastacuas Guanga**, 19, el Sr. **Álvaro Guillermo Pascal Guanga**, 21, y el Sr. **Lorenzo García Cuasaluzan**, 40. Además, tres personas habrían resultado heridas en el incidente: **David García**, 12; el Sr. **Javier García**, 20 y la Srta. **Yolanda Bisbicus**, 22.

160. Tomamos nota con profunda preocupación de que, de ser confirmado, ésta sería la segunda vez en el año en curso que la comunidad indígena Awá es víctima de masacre: En febrero de 2009, más de 20 personas Awá habrían sido asesinadas en un ataque que después habría sido reivindicado por guerrilleros de las Fuerzas Armadas Revolucionarias de Colombia (FARC) quienes asumieron responsabilidad por ocho de las muertes.

161. Además, observamos que, desde hace casi dos años, han habido advertencias oficiales sobre la amenaza de violencia que enfrenta la comunidad indígena Awá, incluyendo el riesgo de asesinatos múltiples. Desde principios de octubre de 2007, el sistema de alerta temprana de la Defensoría del Pueblo habría emitido informes sobre riesgos que alertan sobre la amenaza seria que enfrenta la comunidad indígena Awá como resultado del conflicto en Nariño y la presencia del Ejército Nacional de Colombia, guerrilleros de las FARC y otros grupos armados ilegales en la región. Según la información recibida, con estas 12 muertes del 26 de agosto de 2009, el número de miembros asesinados de la comunidad Awá habría ascendido a 38 en este año.

162. Las muertes recientes son aún más preocupantes puesto que el incidente tuvo lugar en la casa de la Sra. García quien habría sido la única testigo del presunto asesinato de su esposo, el Sr. Gonzalo Rodríguez Guanga, incidente que la Sra. García habría denunciado como ejecución extrajudicial cometida por el Ejército Nacional de Colombia.

163. De acuerdo con la información recibida, el 23 de mayo de 2009, el Sr. Rodríguez y la Sra. García habrían estado viajando cerca del kilómetro 80 en el municipio de Tumaco cuando fueron detenidos por miembros del Ejército Nacional de Colombia. Según el testimonio que la Sra. García supuestamente dio a las autoridades indígenas y a la Defensoría del Pueblo de la región, miembros de las fuerzas armadas habrían ordenado a la Sra. García que se alejara de su esposo y le habrían ordenado que siguiera caminando. Según el presunto testimonio de la Sra. García, se habría alejado de su esposo y habría empezado a caminar cuando un poco después habría escuchado unos disparos. La Sra. García habría afirmado que la muerte de su esposo se trataba de una ejecución extrajudicial.

164. De acuerdo con nuestras fuentes fidedignas, el **Batallón de Contra guerrilla** número 23 de la Brigada Militar No. XXIII, habría aceptado responsabilidad de la muerte del Sr. Rodríguez. Miembros de las fuerzas armadas habrían reportado a las autoridades que el Sr. Rodríguez habría sido detenido en marzo de 2009 y que habría sido acusado de ser

miembro de las FARC. Un juez habría ordenado su liberación. Según los miembros de las fuerzas armadas, el 23 de mayo de 2009, el Sr. Rodríguez habría sido detenido nuevamente y habría sido asesinado cuando intentaba escapar de custodia militar y empezaba a disparar contra sus captores. El cadáver del Sr. Rodríguez habría sido trasladado al depósito de cadáveres para una necropsia. La oficina de la Procuraduría General habría iniciado una investigación de la muerte del Sr. Rodríguez pero luego habrían transferido el caso al sistema de justicia militar el 28 de mayo de 2009 donde sigue bajo investigación.

165. Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos garantizan a todo individuo el derecho a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida. Como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias.”

166. Además, quisiéramos referirnos específicamente al Artículo 6(1) del Pacto Internacional sobre Derechos Civiles y Políticos (PIDCP) que estipula que el Estado garantizará la protección de toda persona que se encuentra bajo amenaza de muerte. Como expresado en los principio 4 y 15 de los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, esto requiere que se garantice una protección eficaz a toda persona en peligro de ejecución. Quisiéramos instar al Gobierno de su Excelencia a que adopte inmediatamente todas las medidas necesarias, en conformidad con el Derecho Internacional, para proteger el derecho a la vida de los sobrevivientes y los testigos de la masacre del 26 de agosto, así como la de los miembros de sus familias y líderes de la comunidad, cuyo bienestar pueda estar en peligro en el curso de la investigación de estos asesinatos y en espera del resultado del proceso judicial.

167. Además, el Artículo 6 del PIDCP estipula que los funcionarios encargados de hacer cumplir la ley, deben utilizar la fuerza solamente cuando sea absolutamente necesario y la fuerza utilizada debe de ser proporcional al objetivo legítimo que se persiga (Véanse los principios 4 y 9 de los Principios Básicos de las Naciones Unidas sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de Hacer Cumplir la Ley). La ley no permite el uso de fuerza letal contra individuos no armados detenidos por las fuerzas de seguridad de un Estado, bajo ninguna circunstancia. Además, cuando un Estado detiene a un individuo, debe ceñirse a un grado elevado de diligencia para proteger los derechos del mismo. Como consecuencia, cuando un individuo muere en custodia estatal, se presume la responsabilidad del Estado. Para superar la presunción de responsabilidad del Estado, debe de haber “una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias, incluidos aquellos en los que las quejas de parientes u otros informes fiables hagan pensar que se produjo una muerte no debida a causas naturales en las circunstancias referidas” (principio 9 de los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias).

168. Por último, deseamos llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de las Naciones Unidas **sobre los derechos de los pueblos indígenas**, adoptada por la Asamblea General el 13 de septiembre

de 2007, y en particular el artículo 2, que estipula que “Los pueblos y las personas indígenas son libres e iguales a todos los demás pueblos y personas y tienen derecho a no ser objeto de ningún tipo de discriminación en el ejercicio de sus derechos, en particular la fundada en su origen o identidad indígenas.”

169. Quisiéramos instar al Gobierno de su Excelencia a que inicie una investigación imparcial y transparente sobre las circunstancias que rodean a) las muertes de las personas indígenas Awá asesinadas el 26 de agosto de 2009, y b) la muerte del Sr. Rodríguez el 23 de mayo de 2009, con vistas a tomar toda acción disciplinaria o judicial que sea apropiada y asegurar que rinda cuentas cualquier persona culpable de asesinatos ilícitos, así como compensar a las familiares de las víctimas. Tomamos nota, en este sentido, de la medida en la dirección acertada que ha tomado el Gobierno de su Excelencia de pedir el apoyo y seguimiento de la Oficina del Alto Comisionado para los Derechos Humanos en la investigación.

170. Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas en relación con (a) las muertes de las 12 personas de la comunidad indígena Awá el 26 de agosto de 2009, y (b) la muerte del Sr. Rodríguez el 23 mayo de 2009? Por favor, proporcione información sobre las circunstancias alrededor de las muertes.

2. Por favor proporcione información detallada sobre las medidas cautelares adoptadas en este caso para garantizar la protección eficaz e inmediata de los sobrevivientes y los testigos de los asesinatos el 26 de agosto de 2009, así como cualquier líder comunitario que pueda estar en peligro en espera del resultado de la investigación y el proceso judicial de los responsables de los asesinatos. Por favor proporcione información detallada sobre las medidas cautelares adoptadas para proteger la comunidad indígena Awá en la situación de alto riesgo en que se encuentra como resultado del conflicto en Nariño. ¿Se ha brindado apoyo psicológico a los sobrevivientes o a los familiares de las víctimas?

3. Por favor proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con las muertes del 26 de agosto de 2009 así como los resultados de cualquier investigación forense, médica, policial o cualquier otra pesquisa relativa a las muertes. Por favor proporcione información sobre las medidas tomadas para asegurar que los presuntos responsables de los asesinatos sean investigados, procesados y sancionados.

4. Por favor proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con la muerte del Sr. Rodríguez el 23 de mayo de 2009 así como los resultados de cualquier investigación forense, médica, policial o cualquier otra pesquisa relativa a la muerte. Por favor proporcione información sobre las medidas tomadas para asegurar que los presuntos responsables del asesinato sean investigados, procesados y sancionados. A la luz de la gran relevancia de este caso, y en función del enfoque del Código Penal Militar, las decisiones pertinentes de la Corte Constitucional, y las directivas del Ministerio de Defensa, ¿existe alguna razón por la que este caso no pueda ser referido inmediatamente a la oficina de la Procuraduría General en lugar de ser remitido al sistema de justicia militar?

**Colombia: Amenazas de muerte e intimidaciones contra familiares de presuntas víctimas de ejecuciones extrajudiciales por parte de fuerzas de seguridad**

**Violación alegada:** Amenazas de muerte y temor de ejecución inminente por parte de oficiales estatales, grupos paramilitares, o grupos que cooperan con o son tolerados por el Gobierno, así como por parte de personas no identificadas que podrían estar vinculadas con la categorías mencionadas arriba y cuando el Gobierno no toma medidas de protección adecuadas

**Persona objeto del llamamiento:** 1 mujer, 2 hombres,

**Carácter de la respuesta:** No se recibió ninguna respuesta

**Observaciones del Relator Especial:** El Relator Especial lamenta que el Gobierno de Colombia no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

**Llamamiento urgente del 1 december 2009,** mandado con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas.

171. En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con la Sra. Luz Marina Porras Bernal, integrante de las Madres de Soacha, su hijo, el Sr. John Smith Porras Bernal y los demás miembros de las Madres de Soacha. Las Madres de Soacha es un grupo formado por madres de los jóvenes de Soacha, Cundinamarca, que fueron ejecutados extrajudicialmente, supuestamente a manos del ejército, en enero de 2008. Las Madres de Soacha exigen justicia en los asesinatos de sus hijos. El Sr. Smith Porras Bernal ayuda a las Madres de Soacha y realiza campañas para exigir justicia y poner fin a la impunidad en este caso conocido como “los falsos positivos de Soacha”.

Según las informaciones recibidas:

El 2 de noviembre de 2009, el Sr. Smith Porras Bernal habría recibido una carta en la que decía “así se esconda y se encierre en ese apartamento usted sale porque sale y hay te vamos a coger porque se le advirtió... si no quieres que te pase nada lárguese lo más pronto posible porque le queda muy poco tiempo no lo olvide no estamos jugando porque ya lo tenemos fichado créalo no estamos jugando...”

Asimismo, el 20 de octubre de 2009, el Sr. Smith Porras Bernal habría recibido otra carta amenazante en su casa que decía que, “se atuviera a las consecuencias”. Esta amenaza se referiría a otra carta amenazante enviada el 10 de octubre de 2009 en la que el autor habría advertido al Sr. Smith Porras Bernal y a las otras personas que exigen justicia en relación con las ejecuciones extrajudiciales en Soacha que deben guardar silencio, una amenaza que habría sido ignorado.

Cabe añadir que otras de las Madres de Soacha han sido objeto de intimidación y hostigamiento.

172. Se teme que las amenazas contra el Sr. Smith Porras Bernal y la Sra. Porras Bernal y los actos de intimidación y hostigamiento contra otros miembros de las Madres de Soacha estén relacionados con las actividades que realizan en defensa de los derechos humanos, y en particular con sus esfuerzos para exigir justicia en el caso de sus hijos ejecutados extrajudicialmente. Como se mencionó en el comunicado de prensa después de la visita de la Relatora Especial sobre la situación de los defensores de los derechos humanos a Colombia en septiembre de 2009, siguen existiendo en Colombia patrones de hostigamiento y persecución contra los defensores de derechos humanos, y a menudo contra sus familiares. El Gobierno de su Excelencia tiene la responsabilidad de investigar de manera exhaustiva las violaciones cometidas contra los defensores de derechos humanos y enjuiciar a sus autores. Asimismo, el Gobierno de su Excelencia debe condenar firmemente cualquier

acto de agresión o intimidación contra los defensores de derechos humanos, tomando la oportunidad para reconocer la importancia de su labor.

173. Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos y en particular los artículos 1 y 2. Éstos establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales en los planos nacional e internacional y que es la responsabilidad primordial y el deber de todos los Estados de proteger, promover y hacer efectivos todos los derechos humanos, adoptando las medidas necesarias para crear las condiciones sociales, económicas, políticas y de otra índole, así como las garantías jurídicas requeridas para que toda persona sometida a su jurisdicción, individual o colectivamente, pueda disfrutar en la práctica todos esos derechos y libertades.

Además, quisiéramos referirnos a los artículos siguientes:

- el artículo 6, apartados b) y c), estipula que toda persona tiene derecho, individualmente y con otras, conforme a lo dispuesto en los instrumentos de derechos humanos y otros instrumentos internacionales aplicables, a publicar, impartir o difundir libremente a terceros opiniones, informaciones y conocimientos relativos a todos los derechos humanos y las libertades fundamentales y a estudiar y debatir si esos derechos y libertades fundamentales se observan, tanto en la ley como en la práctica, y a formarse y mantener una opinión al respecto, así como a señalar a la atención del público esas cuestiones por conducto de esos medios y de otros medios adecuados.
- el artículo 12, párrafos 2 y 3, estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración. A este respecto, toda persona tiene derecho, individual o colectivamente, a una protección eficaz de las leyes nacionales al reaccionar u oponerse, por medios pacíficos, a actividades y actos, con inclusión de las omisiones, imputables a los Estados que causen violaciones de los derechos humanos y las libertades fundamentales, así como a actos de violencia perpetrados por grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.

174. Además, nos permitimos hacer un llamamiento urgente al Gobierno de su Excelencia para que adopte las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: “Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección”.

175. Consideramos apropiado hacer referencia a la resolución 12/16 del Consejo de Derechos Humanos, la cual insta a los estados a que garanticen que las víctimas de violaciones al derecho a la libertad de expresión puedan interponer recursos eficaces para investigar efectivamente las amenazas y actos de violencia [...] y llevar ante la justicia a los responsables de esos actos, para luchar contra la impunidad.

176. Quisiéramos instar al Gobierno de su Excelencia a que adopte todas las medidas necesarias para proteger los derechos y las libertades de las personas mencionadas e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que tome las medidas efectivas para evitar que tales hechos, de haber ocurrido, se repitan.

177. Teniendo en cuenta la urgencia del caso, agradeceríamos recibir del Gobierno de su Excelencia una respuesta sobre las acciones emprendidas para proteger los derechos de las personas anteriormente mencionadas.

178. Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Fue presentada alguna queja?
3. Por favor proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con el caso. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
4. Por favor proporcione información detallada sobre las medidas de protección adoptadas para garantizar la integridad física y psicológica del Sr. John Smith Porras Bernal, así como la de la Sra. Luz Marina Porras Bernal y los demás miembros de las Madres de Soacha.

## Democratic Republic of the Congo

### L'assassinat de Bruno Koko Chirambiza

**Violation alléguée:** Morts en conséquence de attaques or assassinats par les forces de sécurité de l'Etat, ou groupe paramilitaires, brigades de la mort ou autre forces privé que coopérant avec or sont tolérée par l'Etat

**Objet de l'appel:** 1 homme

**Caractère de la réponse:** Pas de réponse

**Observations du Rapporteur Spécial:** Le Rapporteur Spécial regrette que le Gouvernement de la République démocratique du Congo n'ait pas coopéré avec le mandat qui lui a été conféré par l'Assemblée Générale et le Conseil des droits de l'homme.

**Lettre d'allégation envoyée le 15 Septembre 2009,** conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, et le Rapporteur spécial sur la situation des défenseurs des droits humains..

179. Dans ce contexte, nous souhaiterions attirer l'attention du Gouvernement de votre Excellence sur des informations que nous avons reçues concernant l'assassinat de M. Bruno Koko Chirambiza. M. Chirambiza était journaliste-présentateur du journal en Swahili de la radio *Star* émettant à Bukavu, province du Sud-Kivu.

Selon les informations reçues :

Dans la nuit du samedi 22 au dimanche 23 août 2009, alors qu'il rentrait d'un mariage, M. Chirambiza aurait été poignardé à mort par un groupe de huit personnes armées en tenue civile. M. Chirambiza serait décédé des suites de ses blessures à l'hôpital général de référence de Bukavu.

De vives craintes sont exprimées quant au fait que l'assassinat de M. Chirambiza soit lié à ses activités non violentes de promotion et de protection des droits de l'homme, et ce dans l'exercice de son droit à la liberté d'opinion et d'expression. M. Chirambiza est le troisième journaliste assassiné à Bukavu en 2 ans, après MM. Didace Namujimbo et Serge Maheshe de Radio Okapi, assassinés en novembre 2008 et juin 2007 respectivement. De vives craintes sont de ce fait réitérées quant à l'intégrité physique et mentale des journalistes -et plus largement des défenseurs des droits de l'homme- travaillant dans l'est de la RDC.

180. Sans vouloir à ce stade préjuger des faits qui nous ont été soumis, nous voudrions attirer l'attention au Gouvernement de votre Excellence aux principes fondamentaux applicables en vertu du droit international en l'espèce. En particulier, je voudrais référer à l'article 3 de la Déclaration universelle des droits de l'Homme et à l'article 6 du Pacte international relatif aux droits civils et politiques, qui stipulent que tout individu a le droit à la vie et à la sûreté de sa personne, que ce droit doit être protégé par la loi, et que nul ne peut être arbitrairement privé de la vie.

181. Le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires a souligné dans un rapport à la Commission des droits de l'homme que des "crimes, y compris des meurtres, perpétrés par des particuliers peuvent aussi engager la responsabilité de l'État si celui-ci n'a pas pris les mesures voulues pour dissuader, empêcher et punir les auteurs" (E/CN.4/2005/7, para. 71.). Le Conseil des droits de l'homme a, dans sa résolution 8/3 sur le mandat du Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, rappelé que "tous les États ont l'obligation de mener des enquêtes exhaustives et impartiales sur tous les cas présumés d'exécutions extrajudiciaires, sommaires ou arbitraires." Le Conseil ajouta que cette obligation comprend l'obligation "d'adopter toutes les mesures nécessaires, notamment d'ordre législatif et judiciaire, afin de mettre un terme à l'impunité et d'empêcher la réitération de telles pratiques, comme le prévoient les Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions. " En particulier nous souhaiterions attirer l'attention du Gouvernement de votre excellence au principe 4 qui prévoit que les gouvernements doivent assurer une protection efficace par des moyens judiciaires ou autres aux personnes et aux groupes qui seront menacés d'une exécution extrajudiciaire, arbitraire ou sommaire.

182. Nous voudrions aussi attirer l'attention du Gouvernement de votre Excellence sur les principes fondamentaux énoncés dans la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 1 et 2 qui stipulent que « chacun a le droit, individuellement ou en association avec d'autres, de promouvoir la protection et la réalisation des droits de l'homme et des libertés fondamentales aux niveaux national et international » et que « chaque État a, au premier chef, la responsabilité et le devoir de protéger, promouvoir et rendre effectifs tous les droits de l'homme et toutes les libertés fondamentales, notamment en adoptant les mesures nécessaires pour instaurer les conditions sociales, économiques, politiques et autres ainsi que les garanties juridiques voulues pour que toutes les personnes relevant de sa juridiction puissent, individuellement ou en association avec d'autres, jouir en pratique de tous ces droits et de toutes ces libertés ».

183. De même, nous souhaiterions attirer l'attention du Gouvernement de votre Excellence sur les dispositions suivantes, en particulier :

- l'article 6, a), conformément auquel chacun a le droit, individuellement ou en association avec d'autres de détenir, rechercher, obtenir, recevoir et conserver des informations sur tous les droits de l'homme et toutes les libertés fondamentales en



ayant notamment accès à l'information quant à la manière dont il est donné effet à ces droits et libertés dans le système législatif, judiciaire ou administratif national;

- l'article 6, alinéas b) et c), qui stipule que chacun a le droit, individuellement ou en association avec d'autres, conformément aux instruments internationaux relatifs aux droits de l'homme et autres instruments internationaux applicables, de publier, communiquer à autrui ou diffuser librement des idées, informations et connaissances sur tous les droits de l'homme et toutes les libertés fondamentales; d'étudier, discuter, apprécier et évaluer le respect, tant en droit qu'en pratique, de tous les droits de l'homme et de toutes les libertés fondamentales et, par ces moyens et autres moyens appropriés, d'appeler l'attention du public sur la question ;
- l'article 12, para. 2 et 3, qui stipule que l'État prend toutes les mesures nécessaires pour assurer que les autorités compétentes protègent toute personne, individuellement ou en association avec d'autres, de toute violence, menace, représailles, discrimination de facto ou de jure, pression ou autre action arbitraire dans le cadre de l'exercice légitime des droits visés dans la présente Déclaration. À cet égard, chacun a le droit, individuellement ou en association avec d'autres, d'être efficacement protégé par la législation nationale quand il réagit par des moyens pacifiques contre des activités et actes, y compris ceux résultant d'omissions, imputables à l'État et ayant entraîné des violations des droits de l'homme et des libertés fondamentales, ainsi que contre des actes de violence perpétrés par des groupes ou individus qui entravent l'exercice des droits de l'homme et des libertés fondamentales.

184. Nous souhaiterions également rappeler au Gouvernement de votre Excellence les normes et principes fondamentaux pertinents énoncés à l'article 19 de la Déclaration universelle des droits de l'homme, et réitérés à l'article 19 du Pacte international relatif aux droits civils et politiques, qui précisent que: « Toute personne a droit à la liberté d'expression; ce droit comprend la liberté de rechercher, de recevoir et de répandre des informations et des idées de toute espèce, sans considération de frontières, sous une forme orale, écrite, imprimée ou artistique, ou par tout autre moyen de son choix ».

185. Dans le cas où vos enquêtes appuient ou suggèrent l'exactitude des allégations susmentionnées, nous prions le Gouvernement de votre Excellence de prendre toutes les mesures nécessaires pour diligenter des enquêtes sur la violation perpétrée et de traduire les responsables en justice. Nous prions aussi le Gouvernement de votre Excellence d'adopter toutes les mesures nécessaires pour prévenir la répétition des faits mentionnés.

186. Il est de notre responsabilité, en vertu des mandats qui nous ont été confiés par le Conseil des droits de l'homme de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Etant dans l'obligation de faire rapport de ces cas au Conseil des droits de l'homme, nous serions reconnaissants au Gouvernement de votre Excellence de ses observations sur les points suivants :

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts?
2. Au cas où une plainte a été déposée au nom de M. Chirambiza, quelles suites lui ont été données ?
3. Veuillez nous fournir toute information, et éventuellement tout résultat des enquêtes, examens médicaux, investigations judiciaires et autres menées en relation avec les faits.

**République démocratique du Congo: Peine capitale imposée à un civil par un tribunal militaire**

**Violation alléguée:** Non-respect des standards internationaux relatifs aux sauvegardes et les restrictions sur l'application de la peine capitale

**Objet de l'appel:** 4 hommes

Caractère de la réponse: Pas de réponse

**Observations du Rapporteur Spécial:** Le Rapporteur Spécial regrette que le Gouvernement de la République démocratique du Congo n'ait pas coopéré avec le mandat qui lui a été conféré par l'Assemblée Générale et le Conseil des droits de l'homme.

**Appel urgent envoyée le 11 mars 2010** avec le Rapporteur Spécial sur l'Indépendance des Juges et des Avocats et le Rapporteur Spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants.

187. A cet égard, nous souhaiterions attirer l'attention de votre Gouvernement sur la situation de M. **Firmin Yangambi**, avocat membre du Conseil de l'ordre du Barreau de Kisangani et président de l'organisation non-gouvernementale d'appui aux victimes de la guerre Paix sur terre, M. **Eliya Lokundo**, oncle de M. Yangambi, M. **Benjamin Olangui**, représentant de Paix sur Terre à Kinshasa et M. **Eric Kikunda**, sympathisant de Paix sur Terre.

Selon les informations reçues :

Le 3 mars 2010, M. Yangambi aurait été condamné à mort par la Cour militaire de Kinshasa-Gombe pour détention illégale d'armes de guerre et tentative d'organisation d'un mouvement insurrectionnel. M. Elia Lokundo aurait été condamné à perpétuité et MM. Kikunda et Olangi à 20 ans d'emprisonnement pour complicité dans la même affaire. Leurs avocats auraient interjeté appel.

Il est allégué que les procès de MM Yangambi, Lokundo, Kikunda et Olangi auraient été émaillés d'irrégularités. La Cour aurait notamment fondé sa décision sur des procès verbaux d'interrogatoire menés sous la torture et sans la présence des avocats des prévenus.

Selon les informations reçues, le 27 septembre 2009, alors qu'ils se rendaient à un rendez vous avec un officier de la garde républicaine dans le cadre de leur enquête, MM. Yangambi et Getumbe auraient été arrêtés par l'ANR et détenus au secret.

Le 28 septembre 2009, M. Mende Omalanga, Ministre de la Communication et porte-parole du Gouvernement, aurait annoncé l'arrestation de M. Yangambi pour avoir « convoyé une cargaison d'armes dans le but de lancer un nouveau mouvement insurrectionnel contre la République Démocratique du Congo à partir de Kisangani ».

Le 30 septembre 2009, le domicile de M. Yangambi aurait été perquisitionné par des officiers de la justice militaire, de la police et de l'ANR mandatés par l'Auditeur supérieur de garnison de Kisangani. La perquisition aurait eu lieu en présence des avocats du barreau de Kisangani et de témoins. Il est allégué qu'aucune preuve soutenant les charges retenues contre M. Yangambi n'aurait été trouvée. Le même jour, M. Getumbe aurait été libéré alors que M Yangambi était transféré au Centre pénitentiaire et de rééducation de Kinshasa.

Le 18 novembre 2009, MM. Yangambi, Olangi, Kikunda et Lokundo auraient été déférés devant à la Cour militaire de Kinshasa/Gombe. Lors de l'audience, MM. Kikunda et Olangi auraient déclaré avoir été torturés pendant leur

détention. M. Yangambi aurait été privé de sommeil et de nourriture pendant plusieurs jours.

De graves craintes sont exprimées quant au fait que la condamnation à mort de M. Yangambi et les condamnations à 20 ans d'emprisonnement de MM. Olangi et Kikunda par un tribunal militaire fondé sur des procès verbaux d'interrogatoire menés sous la torture et sans la présence des avocats des prévenus. De très sérieuses craintes sont également exprimées quant à leur intégrité physique et psychologique.

188. Sans vouloir à ce stade nous prononcer sur les faits qui nous ont été soumis, nous souhaiterions attirer l'attention de votre Gouvernement sur le fait que bien que la peine de mort ne soit pas prohibée en droit international, celle-ci a toujours été interprétée par les principaux organes des Nations Unies comme constituant une exception au principe du droit fondamental à la vie, qui ne peut être prononcée que pour les crimes les plus graves. En l'occurrence, un examen approfondi et systématique de la jurisprudence de l'ensemble des principaux organes des Nations Unies chargés d'interpréter les dispositions concernant les crimes les plus graves révèle que la peine de mort ne peut être imposée que dans le respect de la restriction selon laquelle elle doit être cantonnée aux crimes les plus graves, aux cas où il peut être démontré qu'il y avait intention de tuer et que cette intention a entraîné la perte d'une vie humaine (A/HRC/4/20, para. 53). La peine capitale devrait par conséquent être exclue dans les cas de détentions illégales d'armes de guerre et de tentatives d'organisation d'un mouvement insurrectionnel. Comme le Comité de droits de l'homme a noté dans son Observation générale n° 32: « Dans les affaires où l'accusé risque la peine capitale, il va de soi qu'il doit bénéficier de l'assistance effective d'un avocat à tous les stades de la procédure », ce qui n'était pas le cas au cours du procès des MM Yangambi, Lokundo, Kikunda et Olangi.

189. Dans ce contexte, nous rappelons également à votre Gouvernement que l'article 15 de la dite Convention stipule que « Tout Etat partie veille à ce que toute déclaration dont il est établi qu'elle a été obtenue par la torture ne puisse être invoquée comme un élément de preuve dans un procédure, si ce n'est contre la personne accusée de torture pour établir qu'une déclaration a été faite. » L'Assemblée Générale, dans le paragraphe 7 de sa Résolution A/RES/61/153 du 14 février 2007, a réitéré cette demande.

190. Dans le paragraphe 22 de son observation générale n° 32, le Comité de droit de l'homme a évoqué que « Le jugement de civils par des tribunaux militaires ou d'exception devrait être exceptionnel, c'est-à-dire limité aux cas où l'Etat partie peut démontrer que le recours à de tels tribunaux est nécessaire et justifié par des raisons objectives et sérieuses et où, relativement à la catégorie spécifique des personnes et des infractions en question, les tribunaux civils ordinaires ne sont pas en mesure d'entreprendre ces procès. » Cet argument était aussi soutenu par le Comité dans sa décision relative à la communication no 1172/2003 (Madani vs. Algérie). Dans cette décision, le Comité a stipulé qu'« Il incombe à l'Etat partie poursuivant des civils devant des tribunaux militaires de justifier une telle pratique. Le Comité estime que l'Etat partie doit démontrer, relativement à la catégorie spécifique des personnes en question, que les tribunaux civils ordinaires ne sont pas en mesure d'entreprendre ces procès, que d'autres formes alternatives de tribunaux civils spéciaux ou de haute sécurité ne sont pas adaptées à cette tâche et que le recours à des tribunaux militaires garantit la pleine protection des droits de l'accusé, conformément à l'article 14. [...] la simple invocation des dispositions juridiques internes pour le procès par les tribunaux militaires de certaines catégories de délits graves ne peut justifier, aux termes du Pacte, le recours à de tels tribunaux. »

191. Dans son rapport sur sa visite en République démocratique du Congo, l'ancien Rapporteur spécial avait recommandé que la justice civile devrait être sensiblement renforcée, car c'est elle qui doit être la seule compétente pour juger des civils (A/HRC/8/4/Add.2, para. 77).

192. Nous prions votre Gouvernement de prendre toutes les mesures nécessaires pour assurer la protection des droits et des libertés de MM Yangambi, Lokundo, Kikunda et Olangi, de diligenter des enquêtes sur les violations qui auraient été perpétrées et de traduire les responsables en justice. Nous prions aussi le Gouvernement de votre Excellence d'adopter, le cas échéant, toutes les mesures nécessaires pour prévenir la répétition des faits mentionnés.

193. Au vu de l'urgence du cas, nous saurions gré à votre Gouvernement de nous fournir une réponse sur les démarches préliminaires entreprises afin de protéger les droits des personnes ci-dessus mentionnées.

194. Il est de notre responsabilité, en vertu des mandats qui nous ont été confiés par le Conseil des droits de l'homme, de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Etant dans l'obligation de faire rapport de ces cas au Conseil des droits de l'homme, nous serions reconnaissants au Gouvernement de votre Excellence de ses observations sur les points suivants, tels qu'ils s'avèrent pertinents au regard du cas soulevé :

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts?
2. Veuillez indiquer dans quelle mesure le droit à un procès équitable, tel qu'établi par les normes et standards internationaux, a été respecté au cours du procès de MM. Yangambi, Lokundo, Kikunda et Olangi.
3. Veuillez nous fournir toute information, et éventuellement tout résultat des enquêtes, investigations judiciaires et autres menées en relation avec les allégations de torture à l'encontre de MM. Yangambi, Kikunda et Olangi.
4. Veuillez indiquer la base légale ayant prévalu à l'arrestation, la détention et la condamnation de MM. Yangambi, Lokundo, Kikunda et Olangi. Veuillez indiquer en quoi ces mesures sont compatibles avec les normes et standards internationaux contenus inter alia dans le Pacte international relatif aux droits civils et politiques.

#### **République démocratique du Congo: Mesures pour assurer la protection des témoins**

**Violation alléguée:** Impunité, compensation et droits des victimes

**Objet de l'appel:** 1 homme et des autres

**Caractère de la réponse:** Pas de réponse

**Observations du Rapporteur Spécial:** Le Rapporteur Spécial regrette que le Gouvernement de la République démocratique du Congo n'ait pas coopéré avec le mandat qui lui a été conféré par l'Assemblée Générale et le Conseil des droits de l'homme.

#### **Lettre d'allégation envoyée le 15 Octobre 2009**

195. J'ai l'honneur de m'adresser à vous en ma qualité de Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires conformément à la résolution 60/251 de l'Assemblée générale et à la résolution 8/3 du Conseil des droits de l'homme.

196. Je m'adresse au Gouvernement de votre Excellence afin de déposer une plainte formelle au sujet de l'imposition, lors de ma visite à Kisantu dans la province du Bas Congo le 13 octobre 2009, d'une interdiction de m'entretenir avec des témoins des homicides d'un grand nombre de supporters du Bundu Dia Kongo au cours des dernières années. Il semblerait que cette interférence avec ma capacité de bien mener ma mission officielle aurait été ordonnée par le Gouverneur de la Province. Cette interdiction a été mise en œuvre par le maire de Kisantu. Le fait d'être empêché de m'entretenir avec des témoins et de tenir toute réunion dans le district constitue une violation claire des garanties de liberté de mouvement et de la possibilité d'avoir des contacts avec des témoins, convenues

entre le Gouvernement hôte et le Rapporteur spécial des Nations Unies, garanties qui sont prévues par les termes de référence applicables à telles missions. Dès mon départ de Kisantu, la situation a été aggravée par la détention par la police de la personne qui avait organisé la rencontre prévue avec les témoins. Mon retour à Kisantu a été nécessaire afin d'assurer sa mise en liberté.

197. Je suis profondément reconnaissant au Gouvernement de votre Excellence pour son invitation à visiter la République Démocratique du Congo, ainsi que pour ses déclarations indiquant son engagement à coopérer pleinement avec le travail du Conseil des droits de l'homme des Nations Unies. Cependant, cet incident est profondément troublant.

198. Par ailleurs, je reste préoccupé pour la sécurité de la personne qui fut détenue ainsi que celle des autres témoins. Je voudrais également attirer l'attention du Gouvernement de la République Démocratique du Congo sur l'obligation d'assurer que tous les témoins et leurs familles « jouissent d'une protection contre les violences, les menaces de violence ou tout autre forme d'intimidation » (principe 15 des Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions, adoptés par le Conseil économique et social dans sa résolution 1989/65 du 24 mai 1989). Ce principe se retrouve également dans les termes de références applicables aux missions d'établissement des faits des Rapporteurs et Représentants spéciaux de la Commission de droits de l'homme (E/CN.4/1998/45, Appendice V), qui établit la liberté d'enquêter et prévoit des « assurances du gouvernement qu'aucune personne ou qu'aucun individu à titre officiel ou privé ayant eu des contacts avec le Rapporteur ou le Représentant spécial dans le cadre de son mandat ne sera soumis pour cette raison à des menaces, à des mesures de harcèlement ou à des sanctions, ou qu'il fera l'objet de poursuites judiciaires »

199. Etant dans l'obligation de faire rapport de ces faits au Conseil des Droits de l'Homme, je serais reconnaissant de recevoir de votre part, dans les plus brefs délais, un éclaircissement des faits et des mesures prises pour assurer la protection de l'individu concerné ainsi que des témoins.

200. Veuillez croire, Excellence, en l'assurance de ma haute considération.

## **Egypt**

### **Death in custody of Yusuf Hamdane Awad (Abu Zahri)**

**Violation alleged:** Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Egypt has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 17 November 2009,** sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. We would like to bring to the attention of your Excellency's Government information we have received concerning the death in custody of Mr Yusuf Hamdane Awad (Abu Zahri), aged 38, Palestinian national.

According to information received

On 28 April 2008, Mr Yusuf Hamdane Awad (Abu Zahri) was arrested at the Egyptian-Palestine Border by the Egyptian State Security Intelligence (SSI). He was then held at the SSI headquarters in Al Arish for a period of two weeks before being transferred to the SSI headquarters in Nasr City, Cairo. Forty-five days later, he was moved to Burj al Arab Prison near Alexandria. During his detention he was frequently moved between the regional SSI building in Kom Dekka and the SSI headquarters in Nasr city for questioning. It is alleged that, while in custody, he was subjected to beatings, electrocution and sleep deprivation.

On 15 September 2009, he was taken to Kom Dekka for questioning and on 19 September 2009, he was returned to Burj Al Arab prison. By this time his health had deteriorated, and he was sent to Alexandria University hospital for medical treatment. He was diagnosed with massive internal bleeding in his head and was kept at the intensive care unit for a period of two weeks. On 8 October 2009, he was taken back to Burj Al Arab Prison although he had not fully recovered.

On 10 October 2009 Mr Yusuf Hamdane Awad (Abu Zahri) was pronounced dead. The Egyptian authorities stated publicly that he had died of a heart and kidney failure due to a pre-existing condition. However, the permit for his burial issued by the Egyptian Ministry of Health and Population indicated that the cause of death was under investigation. His body was sent to his family in Gaza, where an autopsy was conducted which indicated that the cause of death was a massive internal haemorrhage in the head.

It is alleged that the deceased was a brother of Mr Sami Abu Zahri, the spokesman for the Harakat al-Muqāwamat al-Islāmiya (HAMAS) and that he may have been detained because of his brother's political affiliation.

201. While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the fundamental principles under international law applicable to this case. Article 6 of the International Covenant for Civil and Political Rights (ICCPR), to which Egypt is a party, states that no one shall be arbitrarily deprived of his or her life. Article 7 of the same Covenant provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

202. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In this respect we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraphe 9.2):

203. While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant."

204. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP

4), stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

205. The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Egypt is a Party.

206. We urge your Excellency’s Government to carry out inquiries into the circumstances surrounding the death of Mr Yusuf Hamdane Awad (Abu Zahri) expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate his family. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the case summary accurate? If not, please provide all relevant information and documents demonstrating their inaccuracy.
2. Please indicate the legal basis for the arrest and detention of Mr Yusuf Hamdane Awad (Abu Zahri).
3. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to this case. Please explain the steps taken to ensure that these investigations comply with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
4. Please provide the details of any criminal prosecutions and/or disciplinary measures in relation to persons found to be responsible, either as perpetrators or as responsible superiors, for the death in custody of Mr Yusuf Hamdane Awad (Abu Zahri).
5. Please provide the details of any compensation payments made to the families or dependants, if any, of Mr Yusuf Hamdane Awad (Abu Zahri).

## **El Salvador**

### **Asesinatos y amenazas de muerte contra defensores de derechos humanos**

**Violación alegada:** Amenazas de muerte y temor de ejecución inminente por parte de oficiales del Estado, grupos paramilitares, o grupos que cooperan con o son tolerados por el Gobierno así como por parte de personas no identificadas que podrían estar vinculadas con la categorías mencionadas arriba y cuando el Gobierno no toma medidas de protección adecuadas y muertes producidas por ataques o homicidios por parte de fuerzas de seguridad del Estado, o grupos paramilitares, escuadrones de la muerte, o otras fuerzas privadas que cooperan con o son tolerados por el Estado

**Persona objeto del llamamiento:** 2 mujeres, 2 hombres y otros 16

**Carácter de la respuesta:** Respuesta cooperadora, pero incompleta

**Observaciones del Relator Especial:** El Relator Especial aprecia la respuesta del Gobierno de El Salvador y espera recibir información sobre el resultado del procesamiento de los

individuos acusados del asesinato del Sr. Gustavo Marcelo Rivera Moreno. El Relator también espera información sobre el resultado de las investigaciones sobre los asesinatos del Sr. Ramiro Rivera Gomez y de la Sra. Dora Alicia Sorto Recinos, y sobre los procesamientos que resulten. Dado que las investigaciones en estos dos casos no había terminado a la fecha de la respuesta del Gobierno, el Relator Especial apreciaría detalles sobre la razón para la cual la Policía Nacional Civil concluyó que no hay relación alguna entre estos tres casos de asesinato de defensores de derechos humanos que trabajan sobre cuestiones relacionadas.

**Llamamiento urgente con fecha 15 de enero de 2010**, enviado con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, el Relator Especial **sobre el derecho** de toda persona al disfrute del más alto nivel posible de **salud** física y mental, y la Relatora Especial sobre la situación de los defensores de los derechos humanos.

207. En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con en relación con los asesinatos del Sr. Ramiro Rivera y de la Sra. Dora Alicia Recinos Sorto, las amenazas de muerte contra el Sr. José Santos Rodríguez, el esposo de la Sra. Recinos Sorto, y los actos de intimidación y amenazas de muerte contra la Sra. Isabel Gámez y los demás miembros del personal de Radio Victoria. El Sr. Rivera era vicepresidente del Comité Ambiental de Cabañas (CEC), una organización que realiza actividades de información sobre las consecuencias negativas de la minería de oro tanto para la salud como para el medio ambiente, y en particular sobre el impacto de la contaminación con cianuro. La Sra. Recinos Sorto era integrante de la misma organización. El Sr. Santos Rodríguez es miembro de la junta directiva del CEC. La Sra. Gámez es periodista con Radio Victoria, una estación de radio del municipio de Victoria en Cabañas que ha denunciado públicamente a la empresa minera canadiense Pacific Rim por daño medioambiental y que también ha denunciado el secuestro, tortura y asesinato del defensor del medio ambiente, el Sr. Marcelo Rivera, en junio de 2009. El Sr. Marcelo Rivera también realizaba actividades de protesta contra la minería.

208. La empresa minera canadiense Pacific Rim actualmente no está operando en la mina El Dorado en Cabañas aunque busca su reapertura. Muchos opositores a la minería han realizado manifestaciones protestando contra dicha reapertura por varias razones, entre ellas, la contaminación de los ríos y la enorme extracción de agua para el uso de la mina la cual genera una escasez de agua para el uso de la gente de la región.

Según las informaciones recibidas:

El 26 de diciembre de 2009, aproximadamente a las 3:30 horas de la tarde, la Sra. Recinos Sorto habría sido asesinada mientras caminaba a su casa con su hijo de dos años en sus brazos. La Sra. Recinos Sorto habría estado en su octavo mes de embarazo cuando la habrían asesinado. El niño de dos años habría sido herido en el incidente.

Durante el año 2009, la Sra. Recinos Sorto habría denunciado el hecho de que su esposo, el Sr. Santos Rodríguez, habría recibido varias amenazas de muerte y que en varias ocasiones hombres armados no identificados habrían llegado a su casa preguntando por el paradero de su esposo. Asimismo, en mayo de 2008, el Sr. Santos Rodríguez habría sido atacado con un machete.

En otro incidente, el 20 de diciembre de 2009, el Sr. Ramiro Rivera habría sido asesinado a tiros mientras conducía en su camioneta con un colega y una adolescente. Los agresores se habrían acercado a la camioneta y habrían disparado varias veces matando al Sr. Rivera y a su colega. La adolescente habría sido herida en el incidente.



El Sr. Ramiro Rivera habría sido beneficiario de medidas de protección brindadas por la policía tras un incidente el 7 de agosto de 2009 cuando habría sido víctima de una tentativa de asesinato.

Asimismo, se informó que, el 23 de diciembre de 2009, se habría enviado una amenaza de muerte por correo electrónico a dieciséis miembros del personal de Radio Victoria que decía:

“Bueno, ya mandamos al hoyo a dos, la pregunta es quién va ser el tercero, será acaso el Padre Quintanilla o alguno de los de la radio, no es mala idea seguir mejor con alguno de los bocones de la Radio Victoria... No importa que anden un batallón de policías cuidándolos detrás como perros, cuando lo queremos, las muertes van a seguir y nadie detiene la venganza iniciada, preferimos que el tercero de los muertos sea un locutor, o un corresponsal..., el blanco más seguro es un locutor, cuidasen que no estamos jugando esta es la nueva ola de advertencias que estamos iniciando luego de quebrarnos a Ramiro”

El 24 de diciembre de 2009, ocho de las personas que habrían recibido la amenaza del día anterior habrían recibido otro correo electrónico amenazante informándoles que ya habrían elegido a la persona que iban a asesinar. El 27 de diciembre de 2009, el día después del asesinato de la Sra. Recinos Sorto, seis hombres armados no identificados habrían llegado a la casa de la Sra. Gámez, una periodista de Radio Victoria. Los hombres se habrían asomado por las ventanas de la casa pero se habrían retirado cuando se dieron cuenta que la Sra. Gámez no se encontraba en casa.

209. Se teme que los asesinatos de la Sra. Recinos Sorto y los Sres. Ramiro Rivera y Marcelo Rivera y las amenazas de muerte contra el Sr. Santos Rodríguez estén relacionados con sus actividades en defensa de los derechos humanos, y en particular sus actividades de protesta contra la minería en Cabañas. Asimismo, se teme que las amenazas de muerte contra el personal de Radio Victoria estén relacionadas con el hecho de que han denunciado violaciones de derechos humanos, entre ellos, la tortura y asesinato del Sr. Marcelo Riveras. Se expresa preocupación que estos actos de agresión y amenazas busquen intimidar a las organizaciones sociales en Cabañas. Se expresa una profunda preocupación por la integridad física y psicológica del Sr. Santos Rodríguez y el personal de Radio Victoria.

210. Sin implicar, de antemano, una conclusión sobre los hechos, quisiéramos llamar la atención del Gobierno de su Excelencia sobre el derecho a la integridad física y mental de la(s) persona(s) anteriormente mencionada. Este derecho está establecido por los artículos (citar los artículos pertinentes) (códigos de alegaciones del mandato) En este contexto, deseamos (deseo) llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos y en particular los artículos 1 y 2. Éstos establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales en los planos nacional e internacional y que es la responsabilidad primordial y el deber de todos los Estados de proteger, promover y hacer efectivos todos los derechos humanos, adoptando las medidas necesarias para crear las condiciones sociales, económicas, políticas y de otra índole, así como las garantías jurídicas requeridas para que toda persona sometida a su jurisdicción, individual o colectivamente, pueda disfrutar en la práctica todos esos derechos y libertades.

211. Además, quisiéramos referirnos (quisiera referirme) a los artículos siguientes:

*Derecho a reunirse o manifestarse pacíficamente*

- el artículo 5, apartado a), estipula que a fin de promover y proteger los derechos humanos y las libertades fundamentales, toda persona tiene derecho, individual o colectivamente, en el plano nacional e internacional a reunirse o manifestarse pacíficamente.

*Uso excesivo de la fuerza durante manifestaciones*

212. Además, quisiera/quisiéramos referirme/nos al (a mi) informe de 2006 a la Asamblea General (A/61/312) (de la Representante Especial del Secretario-General para los defensores de los derechos humanos) y en particular al párrafo 98 que dice que “de conformidad con el artículo 15 de la Declaración [sobre los Defensores de los Derechos Humanos], la Representante Especial exhorta a los Estados a que garanticen que los organismos encargados de hacer cumplir la ley y sus miembros reciban formación y adquieran concienciación sobre las normas internacionales de derechos humanos y las normas internacionales sobre la vigilancia de reuniones pacíficas, incluida la Declaración sobre los Defensores de los Derechos Humanos, el Código de conducta para funcionarios encargados de hacer cumplir la ley y otros tratados, declaraciones y directrices pertinentes. La Representante Especial también aconseja a todos los Estados que todas las denuncias de uso indiscriminado o excesivo de la fuerza por funcionarios encargados de hacer cumplir la ley se investiguen cabalmente y se adopten las medidas apropiadas en contra de los funcionarios responsables.”

*Defensores jóvenes y estudiantes en manifestaciones*

213. En relación con la participación en manifestaciones de jóvenes menores de 18 años, quisiera/quisiéramos referirme/nos a mi informe a la Asamblea General de 2007 (de la Representante Especial del Secretario-General para los defensores de los derechos humanos) en el cual recomiendo/a de “adoptar medidas para crear un entorno favorable que permita que los niños y jóvenes se asocien y expresen su opinión sobre cuestiones que les afectan, así como sobre cuestiones más generales de derechos humanos. Las protestas de los estudiantes tienen un gran valor educativo ya que son parte de las primeras experiencias de participación en los asuntos públicos y defensa de los derechos humanos que tienen los estudiantes. La creación de un entorno favorable para las protestas de los estudiantes es una inversión social y una obligación jurídica” (A/62/225, párrafo 101 b).

*Derecho a formar organizaciones, a afiliarse y participar en ellas*

- el artículo 5, apartados b) y c), establece que a fin de promover y proteger los derechos humanos y las libertades fundamentales, toda persona tiene derecho, individual o colectivamente, en el plano nacional e internacional a formar organizaciones, asociaciones o grupos no gubernamentales, y a afiliarse a ellos o a participar en ellos, y a comunicarse con las organizaciones no gubernamentales e intergubernamentales.

*Derecho a poseer, obtener, recibir información*

- el artículo 6, apartado a), establece que toda persona tiene derecho, individualmente y con otras, a conocer, recabar, obtener, recibir y poseer información sobre todos los derechos humanos y libertades fundamentales, con inclusión del acceso a la información sobre los medios por los que se da efecto a tales derechos y libertades en los sistemas legislativo, judicial y administrativos internos.

*Derecho a la libertad de opinion y expresion*

- el artículo 6, apartados b) y c), estipula que toda persona tiene derecho, individualmente y con otras, conforme a lo dispuesto en los instrumentos de derechos humanos y otros instrumentos internacionales aplicables, a publicar, impartir o difundir libremente a terceros opiniones, informaciones y conocimientos relativos a todos los derechos humanos y las libertades fundamentales y a estudiar y debatir si esos derechos y libertades fundamentales se observan, tanto en la ley como en la práctica, y a formarse y mantener una opinión al respecto, así como a señalar a la atención del público esas cuestiones por conducto de esos medios y de otros medios adecuados.

*Derecho a discutir nuevas ideas*

- el artículo 7 estipula que “Toda persona tiene derecho, individual o colectivamente, a desarrollar y debatir ideas y principios nuevos relacionados con los derechos humanos, y a preconizar su aceptación”.

*Derecho a un juicio imparcial*

- el artículo 9, párrafo 1, establece que en el ejercicio de los derechos humanos y las libertades fundamentales, incluidas la promoción y la protección de los derechos humanos a que se refiere la presente Declaración, toda persona tiene derecho, individual o colectivamente, a disponer de recursos eficaces y a ser protegida en caso de violación de esos derechos.

*Derecho a ofrecer una asistencia jurídica*

- el artículo 9, párrafo 3, apartado c), establece que toda persona tiene derecho, individual o colectivamente, entre otras cosas, a ofrecer y prestar asistencia letrada profesional u otro asesoramiento y asistencia pertinentes para defender los derechos humanos y las libertades fundamentales.

*Derecho a la integridad física/protección otorgada por el Estado*

- el artículo 12, párrafos 2 y 3, estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración. A este respecto, toda persona tiene derecho, individual o colectivamente, a una protección eficaz de las leyes nacionales al reaccionar u oponerse, por medios pacíficos, a actividades y actos, con inclusión de las omisiones, imputables a los Estados que causen violaciones de los derechos humanos y las libertades fundamentales, así como a actos de violencia perpetrados por grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.

*Participacion de las mujeres en ONG*

214. Asimismo, quisiéramos llamar la atención del Gobierno de Su Excelencia sobre la Convención sobre la eliminación de todas las formas de discriminación contra la mujer y en especial el artículo 7 que establece que los Estados tomarán todas las medidas apropiadas para eliminar la discriminación contra la mujer en la vida política y pública del país y, en particular, garantizarán a las mujeres, en igualdad de condiciones con los hombres, el derecho a [...] participar en organizaciones y en asociaciones no gubernamentales que se ocupen de la vida pública y política del país.

215. Además, nos permitimos hacer un llamamiento urgente al gobierno de su Excelencia para que tome las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: “Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección”.

216. Quisiéramos instar al Gobierno de su Excelencia a que adopte todas las medidas necesarias para proteger los derechos y las libertades de la(s) persona(s) mencionada(s) e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que tome las medidas efectivas para evitar que tales hechos, de haber ocurrido, se repitan.

217. Teniendo en cuenta la urgencia del caso, agradeceríamos recibir del Gobierno de su Excelencia una respuesta sobre las acciones emprendidas para proteger los derechos de la(s) persona(s) anteriormente mencionada(s).

218. Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Fue presentada alguna queja?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de los exámenes médicos llevados a cabo. Si éstas no hubieran tenido lugar o no hubieran sido concluidas, le rogamos que explique el por qué.
4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
5. Por favor, indique si la víctima o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.
6. Por favor, indique si se ha tomado medidas para garantizar la integridad física y psicológica de XXX.

**Respuesta del gobierno con fecha 25 de marzo de 2010:**

219. La Misión Permanente de El Salvador ante la Oficina de las Naciones Unidas en Ginebra, Suiza, saluda atentamente al Alto Comisionado de las Naciones Unidas para los Derechos Humanos y haciendo referencia a las diferentes solicitudes de información que nos han hecho llegar de esa oficina:

220. Nota Ref. UA G/SO 214 (67-17), G/SO 214 (107-9), G/SO 214 (33-27) SLV 1/2010, del 15 de enero de 2010 relacionada a los casos sobre los asesinatos del Sr. Ramiro Rivera y la Sa. Dora Alicia Recinos Sorto, así como a las amenazas de muerte a miembros del personal de Radio Victoria;

[ . . . ]

221. Asimismo, se informa al Alto Comisionado de las Naciones Unidas para los Derechos Humanos, que la República de El Salvador se encuentra en la plena disposición de cumplir con sus compromisos internacionales en este sentido le informa que aún están en consultas con las instituciones involucradas para remitir la información pertinente a la brevedad posible, por lo que tiene el agrado de solicitar una prórroga para la presentación de los informes a los casos antes mencionados.

### **Respuesta del gobierno con fecha 5 de mayo de 2010**

222. Informe sobre los asesinatos de los señores Gustavo Marcelo Rivera Moreno, Ramiro Rivera Gómez, y de la señora Dora Alicia Recinos Sorto; las amenazas de muerte contra el señor José Santos Rodríguez, el esposo de la señora Recinos Sorto; y los actos de intimidación y amenazas de muerte contra la señora María Isabel Gámez y los demás miembros del personal de Radio Victoria.

1. Son exactos los hechos a los que se refieren las alegaciones presentadas.

Según el informe de la investigación a cargo de la Fiscalía General de la República, se ha establecido plenamente la existencia del delito de homicidio agravado en perjuicio del señor **Gustavo Marcelo Rivera Moreno**, sucedido en el Cantón Agua Zarca, Municipio de Ilobasco, Departamento de Cabañas, el 18 de Junio de 2009. A partir de la investigación llevada a cabo por dicha Institución del Estado, se estableció que el 18 de Junio de 2009, el señor Gustavo Marcelo Rivera Moreno habría salido de su casa de habitación para acudir a una reunión en horas de la tarde con un sujeto perteneciente a la Mara Salvatrucha, siendo el punto de reunión el desvío conocido como El Molino, lugar al que otros dos sujetos pertenecientes a la misma Mara lo irían a recoger para conducirlo a un terreno ubicado en el Cantón Agua Zarca. El señor Gustavo Marcelo Rivera Moreno habría tenido una discusión con los miembros del grupo, la cual tuvo como resultado la agresión y homicidio del señor Rivera Moreno. Una vez muerto, sacaron el cadáver de la casa y lo lanzaron a un predio baldío. Posteriormente, en horas de la madrugada se presentó uno de los autores materiales en compañía de otras 3 personas, para mover el cadáver hacia un pozo artesanal. El 29 de Junio de 2009, fue localizado el cadáver por miembros de la Policía Nacional Civil.

Diversos organismos sociales, entre ellos representantes de la Asociación Amigos de San Isidro Cabañas (ASIC), a la cual pertenecía la víctima, han rechazado la versión de la Fiscalía General de la República que ha sido descrita, en audiencia realizada en la sede del Ministerio de Relaciones Exteriores. No obstante, la hipótesis descrita es la única que ha sido judicializada por la autoridad fiscal en el proceso penal correspondiente.

Asimismo, se ha establecido plenamente la existencia del delito de homicidio agravado en perjuicio del señor **Ramiro Rivera Gómez**, sucedido en el Cantón Trinidad, Municipio de Sensuntepeque, Departamento de Cabañas, el 20 de diciembre de 2009, mientras se conducía a bordo de su vehículo particular, siendo acompañado por personal de la División de Víctimas y Testigos, quienes le brindaban protección especial desde el 29 de Agosto de 2009. El señor Rivera Gómez formaba parte de la Mesa Nacional Contra la Minería.

A partir de la investigación a cargo de la Fiscalía General de la República, también se ha establecido plenamente la existencia del delito de homicidio en perjuicio de la señora **Dora Alicia Recinos Sorto** sucedido en el Cantón Trinidad, Municipio de Sensuntepeque, Departamento de Cabañas, el 26 de diciembre de 2009, mientras regresaba de lavar ropa de una quebrada, cargando en brazos a uno de sus hijos de dos años de edad, cuando personas desconocidas salieron a su encuentro y le dispararon, falleciendo al instante y resultando en el mismo acto lesionado el hijo de la señora Recinos Sorto.

En relación a las amenazas que se han producido en este caso, según la Fiscalía General de la República, el 9 de Noviembre de 2009, en el lugar de residencia de la señora

Dora Alicia Recinos Sorto y el señor José Santos Rodríguez, aproximadamente a las 9 de la noche, varios sujetos se hicieron presentes y preguntaron por el señor Rivera Gómez, al no obtener respuesta, amenazaron con asesinar a todos los involucrados si no lo encontraban.

En cuanto al caso de los actos de intimidación y amenazas de muerte contra la señora María Isabel Gámez y los demás miembros del personal de Radio Victoria, según consta en el informe de investigación de la Policía Nacional Civil, a principios del mes de Julio de 2009, las víctimas empezaron a recibir amenazas de muerte vía correo electrónico (internet), anónimos (escritos a mano), mensajes de celular y mediante llamadas telefónicas a celulares y teléfonos fijos.

2. Por favor, proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con los asesinatos de la señora Recinos Sorto y los señores Ramiro Rivera y Marcelo Rivera. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

#### **Caso del homicidio agravado en contra del señor Gustavo Marcelo Rivera Moreno.**

La Policía Nacional Civil, a través de la División Élite contra Crimen Organizado (DECO), y bajo el direccionamiento funcional de la Fiscalía General de la República, realizó las siguientes diligencias de investigación en el período transcurrido entre el 30 de Junio de 2009 y el 15 de Julio del mismo año, la mayoría de ellas basada en información proporcionada, según la Fiscalía General de la República, en un testigo cuya identidad mantiene en reserva de confidencialidad:

1. Acta de denuncia en la que se establece que el señor Gustavo Marcelo Rivera Moreno desapareció en horas de la tarde del 18 de Junio de 2009.
2. Acta policial del 24 de Junio de 2009, en la que se deja constancia de las labores de búsqueda que se realizaron en los alrededores de la zona.
3. Acta policial del 24 de Junio de 2009, en la que se deja constancia de la localización del testigo clave, a quién se le otorgó Régimen de Protección, quien brindó información que llevó a la localización del cadáver.
4. Acta de inspección ocular policial y levantamiento del cadáver de la víctima, del 30 de Junio de 2009.
5. Actas de entrevistas a testigos presenciales y no presenciales.
6. Acta de pesquisas policiales del 6 de Julio de 2009, en la cual se individualiza a los imputados.
7. Acta policial del 7 de Julio de 2009, mediante la cual consta que el testigo clave reconoce a los imputados a través del recorrido fotográfico Kardex.
8. Orden administrativa en contra de los imputados.
9. Actas de captura de los imputados.
10. Orden de registro con prevención de allanamiento, en la cual se autoriza el allanamiento de cuatro inmuebles.
11. Actas de allanamiento de las residencias de los imputados.
12. Autopsia de la víctima, el señor Gustavo Marcelo Rivera Moreno.
13. Informe de investigación biológica de criminalística, en el que se establece a partir del análisis de ADN que el cadáver de la víctima corresponde al del señor Gustavo Marcelo Rivera Moreno.
14. Reconocimiento médico forense del levantamiento de cadáver.

## 15. Álbum fotográfico

Las diligencias descritas motivaron a la Fiscalía General de la República a ordenar la detención el 7 de Julio de 2009, de cuatro personas por atribuírseles el delito de homicidio agravado en contra del señor Gustavo Marcelo Rivera Moreno; y tres personas detenidas por atribuírseles el delito de encubrimiento en el delito de homicidio agravado del señor Gustavo Marcelo Rivera Moreno; además a todos los detenidos se les atribuyó el delito de agrupaciones ilícitas en perjuicio de la paz pública.

La Audiencia de Imposición de Medidas se realizó el 13 de Julio de 2009, en el Tribunal Especializado de Instrucción B, de la ciudad de San Salvador, donde se decretó la Medida de Detención Provisional en contra de los imputados.

En relación a uno de los sujetos acusados de encubrimiento, fue requerido como Ausente en el Centro Penal de Chalatenango y posteriormente intimado en dicho Centro Penitenciario.

Según el informe de la Fiscalía General de la República, el proceso judicial ha finalizado su fase de Instrucción y la Fiscalía de Crimen Organizado presentó el Dictamen Acusatorio ante el mismo Tribunal el 13 de Febrero de 2010. El Juez Especializado de Instrucción B, quien conoce el caso, estableció el viernes 30 de Abril del presente año, como la fecha para la realización de la Audiencia Preliminar, en que se decidirá si los imputados enfrentan el juicio por los delitos que se les atribuyen.

### **Caso del homicidio agravado en contra del señor Ramiro Rivera Gómez.**

Las diligencias iniciales de la investigación realizadas por la Policía Nacional Civil bajo el direccionamiento funcional de la Fiscalía General de la República, son:

1. Acta de inspección ocular del lugar del homicidio, a través de la cual se recolectaron las siguientes evidencias: muestras de sangre, 19 casquillos de metal calibre 9mm, 3 casquillos calibre 5.56 mm, y un arma de fuego tipo revolver calibre 5.56 mm ubicada a la orilla de la calle al costado norponiente del vehículo.
2. Reconocimiento del cadáver.
3. Autopsia de la víctima.
4. Actas de entrevistas a testigos presenciales y no presenciales.

### **Caso del homicidio en contra de la señora Dora Alicia Recinos Sorto.**

Las diligencias iniciales de la investigación realizadas por la Policía Nacional Civil bajo el direccionamiento funcional de la Fiscalía General de la República, son:

1. Acta de inspección ocular del lugar del homicidio, a través de la cual se dejó constancia de la existencia de más de 5 lesiones producidas por arma de fuego en el cadáver de la señora Dora Alicia Recinos Sorto; así como también se recolectaron un proyectil y 5 casquillos al parecer calibre 9 mm.
2. Solicitud de ratificación de los casquillos al Tribunal correspondiente, y su posterior envío a la División Técnica y Científica de la Policía Nacional Civil, para su respectivo estudio.
3. Reconocimiento del cadáver.
4. Autopsia de la víctima.
5. Actas de entrevistas a testigos presenciales y no presenciales.

La Policía Nacional Civil manifiesta que no existe evidencia de que el homicidio cometido contra el señor Gustavo Marcelo Rivera Moreno, esté relacionado con el homicidio del señor Ramiro Rivera Gómez, ni con el de la señora Dora Alicia Recinos Sorto.

En los casos de los homicidios del señor Ramiro Rivera Gómez y el de la señora Dora Alicia Recinos Sorto, la Fiscalía General de la República mantiene abiertas las investigaciones, sin haber establecido las hipótesis definitivas respectivas sobre la autoría de los homicidios.

3. Por favor, proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con las amenazas de muerte contra el señor Santos Rodríguez y la señora Isabel Gámez y contra los miembros del personal de Radio Victoria. Si estas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

#### **Caso de amenazas de muerte en contra del señor José Santos Rodríguez.**

La Policía Nacional Civil ha informado que dentro de sus archivos de control de denuncias, no encuentra registro sobre alguna denuncia interpuesta por la señora Dora Alicia Recinos Sorto, por el delito de amenazas contra su compañero de vida, el señor José Santos Rodríguez, o contra ella misma, en fechas anteriores a su homicidio.

Sin embargo, a raíz del homicidio del señor Ramiro Rivera Gómez, la Delegación de la Policía Nacional Civil del Departamento de Cabañas, asignó a partir del 20 de diciembre de 2009, una patrulla policial para brindar seguridad a los habitantes del Cantón Trinidad, y otra al Cantón la Maraña, ambos en el Municipio de Sensuntepeque, Departamento de Cabañas; además ordenaron patrullajes y controles vehiculares en calles aledañas a los Cantones antes mencionados; y visitas de parte de la Jefatura Policial para supervisar los dispositivos policiales antes mencionados. Además, la denuncia por el delito de amenazas interpuesta por el señor José Santos Rodríguez fue incorporada a las diligencias realizadas en el caso de las amenazas de muerte en contra de la señora María Isabel Gámez y los demás miembros del personal de Radio Victoria.

#### **Caso de amenazas de muerte en contra de la señora María Isabel Gámez y de los miembros del personal de Radio Victoria.**

En los archivos de control de denuncias de la Policía Nacional Civil, se encuentran registradas 12 denuncias por el delito de amenazas interpuestas por las víctimas la señora María Isabel Gámez, el señor José Santos Rodríguez y los miembros del personal de Radio Victoria: el señor Óscar Arnulfo Ramírez Beltrán, el señor Edward Manuel Renderos Lara, el señor Alejandro Laínez García, el señor Vladimir Abarca Ayala, el señor José Alexander Beltrán Castillo, el señor Ludwin Franklin Iraheta, la señora Irene de Jesús Rivas, el señor José Pablo Escobar Ayala, el señor Miguel Ángel Ayala López, el señor Santos Neftalí Ruíz Martínez, el señor Francisco Antonio Pineda Gutiérrez, y el señor Luis Alberto Quintanilla Rodríguez.

Concerniente a las investigaciones iniciadas a partir de estas denuncias, que se están conociendo en la Unidad Fiscal Especializada de Delitos Contra el Crimen Organizado de la Fiscalía General de la República y la División de Investigaciones Criminales de la Policía Nacional Civil, ambas autoridades reportaron que se ha realizado las siguientes diligencias:

- (a). Actividades correspondientes para lograr establecer el origen de las llamadas telefónicas, los correos electrónicos de donde amenazan a las víctimas, secuestrando de forma legal los teléfonos de las víctimas a fin de asegurar la evidencia, además de la sustracción de información (IP) de los correos recibidos por las víctimas.



- (b). Solicitud de bitácoras telefónicas.
- (c). Actas de entrevistas a las víctimas y testigos.
- (d). Anticipo de prueba grafotécnica en manuscritos enviados a las víctimas, en la que se determinó que los cuatro manuscritos secuestrados han sido escritos por diversas personas.

A raíz de las diligencias iniciales de la investigación, se ha logrado establecer los números de IP desde los cuales fueron enviados los mensajes vía correo electrónico a los celulares de las víctimas, así como también se determinó el número telefónico desde donde son originadas algunas de las llamadas amenazantes, logrando individualizar a la persona a quién está asignado dicho número telefónico.

4. Por favor, proporcione información detallada sobre las medidas de protección adoptadas para garantizar la integridad física y psicológica de señor Santos Rodríguez y la señora Isabel Gámez y contra los miembros del personal de Radio Victoria.

#### **Medidas de protección adoptadas para garantizar la integridad física y psicológica del señor José Santos Rodríguez**

Con el objetivo de garantizar la integridad física y psicológica del señor José Santos Rodríguez, desde el 26 de diciembre de 2009, se le ha incluido dentro del Programa de Protección a Víctimas y Testigos, habiéndose dictado en su caso las siguientes medidas ordinarias de protección<sup>1</sup>:

- Que en las diligencias de investigación administrativa o de carácter judicial, no consten los datos generales del señor José Santos Rodríguez, ni cualquier otro que pueda servir para su identificación, pudiéndose utilizar para referirse a ellas un nombre clave que le ha sido asignado.
- Que se fije la oficina de Protección a Víctimas y Testigos como domicilio del señor José Santos Rodríguez, para efectos de citaciones y notificaciones.
- Que la persona protegida sea conducida a cualquier lugar donde hubiere de practicarse alguna diligencia o a su domicilio, de la manera que disponga la Unidad Técnica Ejecutiva<sup>2</sup>.
- Que el señor José Santos Rodríguez rinda su testimonio en ambientes no formales, ni hostiles, y que se grabe su testimonio por medios audiovisuales para facilitar su reproducción en la vista pública cuando sea necesario o el señor José Santos Rodríguez no pudiere comparecer.
- Que se cambie el número telefónico de la persona protegida.
- Que se impida que la persona protegida sea fotografiada o se capte su imagen por cualquier otro medio.

Asimismo, al señor José Santos Rodríguez, le son brindadas las siguientes medidas de protección extraordinarias<sup>3</sup>:

<sup>1</sup> Las medidas ordinarias de protección a víctimas y testigos se encuentran establecidas en el artículo 10 de la Ley Especial para la Protección de Víctimas y Testigos

<sup>2</sup> Organismo administrador del Programa de Protección a Víctimas y Testigos.

<sup>3</sup> Las medidas extraordinarias de protección a víctimas y testigos se encuentran establecidas en el artículo 11 de la Ley Especial para la Protección de Víctimas y Testigos.

- Seguridad policial mientras se mantengan las circunstancias de peligro, proporcionada por la División de Protección a Víctimas y Testigos.
- Cambio de residencia temporal.
- Cualquier otra medida que sea pertinente aplicar si las condiciones de peligrosidad lo requieren y que estén previstas en los artículos 10 y 11 de la Ley Especial para la Protección de Víctimas y Testigos.

**Medidas de protección adoptadas para garantizar la integridad física y psicológica de la señora María Isabel Gámez y de los miembros del personal de Radio Victoria.**

La señora María Isabel Gámez y los 12 miembros del personal de Radio Victoria son parte del Programa de Protección a Víctimas y Testigos, otorgándoseles dicha protección en diferentes fechas a partir del 1° de Agosto de 2009, en atención al requerimiento presentado por el señor Director del Área de Protección a Víctimas y Testigos, de fecha 16 de Agosto de 2009. Sin embargo, el señor Alejandro Láñez García y el señor José Alexander Beltrán Castillo renunciaron voluntariamente a dicha protección en las fechas 7 y 14 de Agosto de 2009, respectivamente; asimismo, los señores Vladimir Abarca Ayala, Santos Neftalí Ruíz Martínez y Francisco Antonio Pineda Gutiérrez, tampoco accedieron a aceptar las medidas de protección extraordinarias brindadas por la Unidad Técnica Ejecutiva, sin embargo, y según lo manifestado por el abogado del Equipo Técnico Evaluador que lleva el caso, a la fecha poseen medidas de protección ordinarias; además, el servicio de protección brindado al señor Ludwin Franklin Iraheta fue suspendido el 15 de Diciembre de 2009, según el informe de la Unidad Técnica Ejecutiva, debido al incumplimiento del señor Ludwin Franklin Iraheta de los compromisos adquiridos con el Programa de Protección a Víctimas y Testigos, violentando el artículo 14 literales g), h), i), j), k), y l) de la Ley Especial para la Protección de Víctimas y Testigos. No obstante el señor Iraheta puede ser reconsiderado en caso de que él o sus beneficiarios soliciten las medidas.

Habiéndose dictado en el caso de los miembros de Radio Victoria sujetos al Régimen de Protección a Víctimas y Testigos, las siguientes medidas ordinarias de protección:

- Que en las diligencias de investigación administrativas o de carácter judicial, no consten los datos generales de la persona protegida, ni cualquier otro que pueda servir para su identificación, pudiéndose utilizar para referirse a ellas un número o cualquier otra clave.
- Que durante el tiempo que las personas protegidas permanezcan en los lugares en que se lleve a cabo la diligencia, se les facilite un sitio reservado y custodiado.
- Que las personas protegidas comparezcan para la práctica de cualquier diligencia, utilizando las formas o medios necesarios para imposibilitar su identificación visual.
- Que la persona protegida rinda su testimonio en ambientes no formales, ni hostiles, y que se grabe su testimonio por medios audiovisuales para facilitar su reproducción en la vista pública cuando sea necesario o la persona no pudiere comparecer.
- Que se cambie el número telefónico de la persona protegida.
- Que se impida que la persona protegida sea fotografiada o se capte su imagen por cualquier otro medio.
- Que se prohíba que cualquier persona revele datos que permitan identificar al protegido.
- Cualquier otra que estuviere acorde a los principios establecidos en la presente Ley.

223. Así como también las medidas extraordinarias reguladas en los artículos 11 y 12 de la Ley Especial para la Protección de Víctimas y Testigos, en el sentido de que personal de la Unidad Técnica Ejecutiva proteja de forma personal a cada una de las víctimas.

## Ethiopia

### **Death sentences imposed on Berhanu Nega, Melaku Teffera Tilahun, Andargachew Tsigie, Muluneh Iyoel Fage, and Mesfin Aman.**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 5 males

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the detailed information provided by the Government of Ethiopia regarding the death sentences against Berhanu Nega, Melaku Teffera Tilahun, Andargachew Tsigie, Muluneh Iyoel Fage, and Mesfin Aman. The Special Rapporteur notes, however, that the provision in the Constitution requiring the death penalty to be imposed only as stipulated under law is inconsistent with the international law requirement that the death penalty can only be imposed for the “most serious crimes”. The Special Rapporteur respectfully urges the Government to ensure the commutation of death sentences that do not meet the “most serious crimes” requirement, and to take steps to prohibit the death sentence for crimes that do not meet the requirement.

**Urgent Appeal dated 11 March 2010,** sent with the Social Rapporteur on the independence of judges and lawyers.

224. In this connection, we would like to draw the attention of your Government to information we have received regarding the death sentences imposed on Messrs. **Berhanu Nega, Melaku Teffera Tilahun, Andargachew Tsigie, Muluneh Iyoel Fage, and Mesfin Aman.**

According to information received:

On 22 December 2009, the Federal High Court in Addis Ababa sentenced to death Messrs. Berhanu Nega, Melaku Teffera Tilahun, Andargachew Tsigie, Muluneh Iyoel Fage, Mesfin Aman, on the charges of inter alia “conspiring to undermine the constitution and violently overthrow the government.” The five defendants used to be officials of the former opposition party, Coalition for Unity and Democracy. They are amongst the forty-six defendants who were tried for alleged links to what is known as the “May 14” (“Ginbot 7”) movement, which had the declared aim to overthrow the Ethiopian Government.

It is reported that thirteen of the defendants including Messrs. Berhanu Nega, Andargachew Tsigie, Muluneh Iyoel Fage, Mesfin Aman were tried in absentia. The court invoked as an aggravating circumstance their previous conviction of life imprisonment in relation to the 2005 post-election violence in Ethiopia for which they were later released on pardon. Of the total forty-six defendants who were tried in the case, forty were found guilty by the court on 18 November 2009, on all five counts as charged. Thirty-one defendants were sentenced to life imprisonment, while two others were sentenced to ten years’ imprisonment. Five defendants were acquitted of all charges and one other had been released earlier without having to defend his case.

Most of the convicted defendants have reportedly appealed their sentences to the Federal Supreme Court.

225. While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully remind your Government that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life and as such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. Article 6 (2) of the International Covenant on Civil and Political Rights (ICCPR) stipulates that “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes...” A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). This would exclude charges of “conspiring to undermine the constitution and violently overthrow the government.” from those for which the death penalty can be imposed under international law.

226. The Human Rights Committee has pointed out that the expression ‘most serious crimes’ must be read restrictively to mean that the death penalty should be a quite exceptional measure (HRC, General Comment 6 (1982)). Further the decision of the Committee in *Baboeram et al. v. Suriname* is instructive it was stated that “the deprivation of life by the authorities of the State is a matter of the utmost gravity. This follows from the article as a whole and in particular is the reason why paragraph 2 of the article lays down that the death penalty may be imposed only for the most serious crimes. The requirements that the right shall be protected by law and that no one shall be arbitrarily deprived of his life mean that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State” (Communication No. 146/1983 and 148-154/1983 a/ Para 14)

227. With regard to the allegation that some of the defendants in the case were tried in absentia we would like to draw the attention of your Government to article 14 paragraph 3 (d) of the International Covenant on Civil and Political Rights, which states that “in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing.

228. Only full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law protecting the right to life from a summary execution, which violates the most fundamental human right. We therefore urge your Government to take all necessary steps to ensure that the rights under international law of Messer’s Berhanu Nega, Melaku Teffera Tilahun, Andargachew Tsigie and Muluneh Iyoel Fage, Mesfin Aman are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

229. Moreover, it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters.

1. Are the facts alleged in the above summary of the case accurate?
2. In so far as your Excellency’s Government chooses to retain capital punishment, please explain the measures taken or planned to ensure that the convict’s due process rights are not violated during pre and post-conviction proceedings.

3. Please provide details of the steps being undertaken by your Excellency's Government ensure that the death penalty is imposed only in cases where it can be shown that there was an intention to kill which resulted in the loss of life.

### **Response of the Government of Ethiopia dated 29 April 2010**

#### *General overview of the trial*

230. A total of 46 defendants including Dr. Birhanu Nega (38<sup>th</sup> defendant), Mr. Melaku Tefera (24<sup>th</sup> defendant), Mr. Andargachew Tsige (39<sup>th</sup> defendant), Mr. Muluneh Iyoel (40<sup>th</sup> defendant) and Mr. Mesfine Aman (40<sup>th</sup> defendant) were charged with five different counts involving the commission of grave and specific offences in violation of the criminal code of the Federal Democratic Republic of Ethiopia (Federal Police Investigation File No. 662/2009, Federal High Court Prosecutor File No. 03636/2009 and Federal High Court Criminal File No. 81406).

231. These offences include:

- organizing or leading, as members of Ginbot 7, a revolt, mutiny or armed rebellion against government officials and its institution (Federal Criminal Code Articles 32(1), (a) (b), 38(1) and 240(1)(a)).
- outrage against the constitutional order or the constitution by overthrowing, modifying or suspending the Federal Constitution or overthrowing or changing the constitutional order established through violence, threats, conspiracy or any other unlawful means (Articles 32(1), (a) (b), 38(1) 27(1) and 238(1)(a) and (b)).
- publicly instigating or inciting refusal by members of the armed forces to serve in the military and commit desertion and mutiny (Articles 32(1), (a) (b), 38(1) (2), and 247(c)).
- recruiting, organizing or bringing into the country troops, guerillas, bandits or mercenaries, or importing, storing up or importing arms, munitions, provisions money or such material means (Articles 32(1), (a) (b), 38(1) (2), and 256(a) and (b)).
- publicly promoting by a word of mouth, images or writing, or conspiring, planning or urging the formation of a band or a group; joins such a group, adheres to its schemes or obeys its instructions or enters into relations or establishes secrete communications with a foreign government, political party, organization or agent (Articles 32(1), (a) (b), 38(1) (2), and 257(a)(b)(c) and (d) of the Criminal Code of Ethiopia).

232. The trial of Mr. Melaku Tefera Tilahun and additional defendants was held in their presence, with due respect and observance of the federal constitution and the relevant provisions of the Criminal Procedure Code. On the other hand, the trial of Dr. Birhanu Nega, Mr. Andargachew Tsige, Mr. Muluneh Iyoel, Mr. Mesfin Aman and a few others were held in absentia owing to the fact that the aforementioned individuals were not present in the territory of Ethiopia during the period in which the trial was held. All the defendants were adequately informed of the nature of the charges brought against them and were given the same in writing. Upon the fulfillments of the requirements stipulated under the Criminal Procedure Code, the Court then ordered the production of prosecution evidence. The Federal prosecutor summoned 89 witnesses and produced over 1500 pages of documentary evidence, 8 audio cassettes, one additional audio CD cassette and 8 minutes long video. It also produced additional exhibits including electronics and communication equipments. Moreover, statements of confession by the defendants as recorded in the police investigation report and the preliminary inquiry was introduced to the Court. These pieces of evidence showed how the defendants from the very beginning planned and organized a

violent overthrow of the constitutional order by means of force, and were involved in executing the aforementioned crimes.

233. The Federal High Court, after examining the sufficiency of the various facet of the prosecution evidence, established that with the exception of one of the defendants, the evidence produced by the Prosecutor has provided a prima facie case against all other defendants. It therefore granted full trial and requested the defendants to respond to the charges leveled against them. The defendants did so by producing 95 witnesses and furnishing additional documentary evidence. Upon a scrupulous examination of the oral, documentary, audio, video and other evidences produced by the prosecutor and the defense counsel and pursuant with the relevant provisions of the Federal Criminal Code, the Federal High Court passed a verdict of conviction against all but six defendants. As regards the remaining six defendants, the Court rendered an acquittal order .

234. The ruling of the court gave due regard to the defendants' personal circumstances or the circumstances of the particular offence( *Tompson v. St Vincent and the Grenadines*. Communication No. 806/1998. CCPR/C/70/D/806/1998). The defendants were offered the opportunity to submit their opinion to the court as to the individual circumstances that should be taken into consideration by the Court as mitigating conditions before rendering the final ruling on sentencing. Ensuring the fulfillments of all the procedural requirements and having examined the opinions submitted by both the prosecutor and the defense with regard to the aggravating and mitigating circumstances, the Court rendered death sentence against Mr. Melaku Tefera Tilahun, Dr. Birhanu Nega Bonger, Mr. Andargachew Tsigae Hailemariam, Mr. Muluneh Euale Fagae and Mr. Mesfin Aman. It also sentenced the other defendants to imprisonment of various degrees.

235. The five defendants were sentenced to death in accordance with Article 117 of the Criminal Code, on the ground that the defendants were found to have committed four serious offenses, the dangerous and repeated criminal acts of the defendants and the absence of extenuating circumstance to mitigate the punishment. In the presence of these factual as well as evidentiary reasons the death sentence that was rendered by the Court was both legal and legitimate. The Federal High Court has considered and determined the existence of aggravating circumstances in its conviction ruling. The defendants had previously been charged with five counts and were found guilty and sentenced to 15 years rigorous imprisonment by a Federal High Court (File No. 42246 and 46990). Following this conviction, the defendants, through facilitation by traditional elders, requested the government and the people of Ethiopia for a pardon in June 2008 and were released on conditional pardon. Shortly after, however they were found to be involved in the commission of similar offences which triggered the revocation of the pardon pursuant to the federal proclamation governing the granting and revocation of pardon. Moreover, the manner in which the defendants executed the offense and the nature of the offense themselves aggravate the crime in line with Article 258 of the Federal Criminal Code which authorizes the Court to pass a sentence of death “ where the acts involve a conspiracy brought to fruits carried out by an organized armed band.” Moreover it is evident from the records of the Court that the defendants failed to provide to the Court any possible grounds as mitigating circumstances.

236. The trial process took place in a context which respected due process. The rights of the defendants to their human dignity, communication with and visit by their spouses, close relatives, friends, religious councilors, medical doctors and legal counselor and other basic right were respected in accordance with article 10(1) and (2) of the international covenant on civil and political rights(ICCPR), UN Standards Rules for the treatment of prisoners, article 21(1) and (2) of the Constitution and proclamation No.365/2003 which establishes the federal Prisons.

*Death penalty under Ethiopian law*

237. The joint letter also raises questions with regard to the sentencing of the aforementioned individuals with death penalty. It is stated that death penalty shall be imposed under extreme cases or circumstances and it should relate to crimes that has resulted in the loss of human life. The comprehensive list of the existing international and regional human rights instruments ratified by Ethiopia do not prohibit the application of death penalty (General Comment 6, CCPR , 1982, para6). And this has been correctly acknowledged in the letter. States have the sovereign authority to enact criminal laws that may provide for the application of death penalty as a punishment for criminal conviction by a competent court of law based on accepted international norms and standards. Paragraph 2 of Article 6 of the ICCPR clearly provides that:

“In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present covenant--- This penalty can only be carried out pursuant to a final judgment rendered by a competent court.”

238. In addition, sub-article 4 of the above mentioned Article further stipulates that:

“Any one sentenced to death shall have the right to seek pardon or commutation of the sentence, amnesty, pardon or commutation of the sentence of death may be granted in all cases.”

239. The Ethiopian legal system protects the fundamental right to life as provided for both under international and regional human rights instruments. According to Article 15 of the FDRE Constitution, every person has the right to life. Both the constitution and the revised criminal code provide a framework for a very restrictive interpretation of exceptions to this fundamental right. Article 15 of the Constitution stipulates: “ No person may be deprived of his life except as a punishment for a *serious criminal offence determined by law.*” Accordingly, not only ought the crime be serious and grave, but its determination must also be made based on a clear stipulation in the law. Moreover, the 2003 Criminal Law of the FDRE has prescribed death penalty as a punishment only for the most serious offences. As per to Article 117 of the Criminal Law, death penalty will be passed for the most serious crime which has exhausted all the possible legal routes. For a sentence of death penalty to be implemented, the special part of the code which makes the act a crime should specifically stipulate that that the particular crime is punishable by death penalty. Therefore the law in Ethiopia guarantees the fundamental right to life, provide for the application of death penalty only for “ the most serious crimes” and provides ample opportunities for commutations.

240. The defendants against whom capital punishment is imposed have committed very serious and grave crimes. They were found guilty on all the five counts. They instigated the army to commit mutinous crime. It has been proved beyond any doubt by oral testimonies, documents, video and audio evidence that the defendants along with three different anti-peace organizations (democratic guard, military alliance and Genbot 7) formed an association and organizing member of the armed forces which were expelled on the grounds of discipline and other active members of the armed as well as police force with a motive of achieving their purpose and with premeditated intention to instigate armed revolt and mutiny. The close reading of the court's file vividly indicates that the court rendered the death penalty against the defendants in accordance with, the appropriate provisions of the Criminal Code of Ethiopia. The other defendants were found by the Court for trying to commit a crime against the Constitution and the constitutional order by means of violence and conspiracy and had been punished by the Court ranging from rigorous up to life imprisonment. Among these defendants some were granted pardon for previous crimes

based on their request but instead of learning from their mistakes they were found involved in the commission of other crimes. This shows the exceptional nature of the crime committed by the defendants and the absence of any serious extenuating circumstances.

241. With respect to the execution of the penalty, it should be noted that the death penalty passed by a court would only be executed where the president has given his or her approval. Furthermore, without investigating the possibility of non-execution of the death sentence through amnesty or pardon or any other forms of commutation, it cannot be executed. This has encouraged a development with respect to a practice in Ethiopia which may be likened, as acknowledged in the Human Rights Council's report on Ethiopia's report under the Universal Periodic Review to a *de facto* moratorium.

*Due process and trial in absentia*

242. Four out of the five defendants who have been sentenced to death have been tried in absentia. The proceeding has been held pursuant to 161(2)(a) of the Criminal procedure Code of Ethiopia which states that a person who is charged with an offence punishable with rigorous imprisonment for not less than twelve years can be tried in absence if he fails to appear before court. The Government shares the position held by the special rapporteurs that international human rights instruments particularly article 14 of the International Covenant on Civil and Political Rights provides guarantees to everyone charged with a crime "to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing." This notwithstanding this, it is the government's view that trial in absentia is not inconsistent with applicable international human rights law which does not prescribe a blanket prohibition of trial in absentia (General Comment 13, CCPR, 1984, para. 11). Human rights treaty bodies held that trial in absentia, if undertaken in keeping with certain minimum procedural guarantees, are not incompatible with article 14 of ICCPR (Communication No. 16/79 (Mbenge v. Zaire; Ali Maleki v. Italy, Communication No. 699/1996).

243. Every effort has been made to guarantee the rights of all the defendants to appear before the court in line with article 14(3) of the International Covenant on Civil and Political Rights (ICCPR). FDRE Constitution and the Ethiopian criminal procedure code provide for due process protection, namely, fair hearing, presumption of innocence, minimum guarantee for the defense and the right to have a case reviewed by a higher courts. These procedural requirements are identified as prerequisites particularly in cases involving the imposition of the death penalty (General Comment 6, CCPR, 1982, para 7.) Summons has been communicated through the official gazette, radio and TV.

244. The cases of all the 46 defendants have been brought to a public trial and their cases have been heard by an ordinary court within a reasonable period of time in accordance with Article 14(3)(c) of the International Covenant on Civil and Political Rights and Article 20(1) of the FDRE Constitution. In line with Article 3(a) of the International Covenant on Civil and Political Rights and Article 20(2) of the FDRE Constitution, the rights of the accused to be informed with sufficient particulars of the charge brought against them in a language they understand and be provided with the charges in writing have been respected. In accordance with Article 14(2) of the International Covenant on Civil and Political Rights and Article 20(3) of the FDRE Constitution, the rights of the accused to be presumed innocent until proven guilty according to the law they have been accused by and not to be compelled to testify against themselves have been duly respected.

245. All the accused who were present during the whole trial stage in person, have been able to examine by themselves or through their legal representatives all the human, documentary, audio and video evidences brought against themselves in accordance with Article 14(e) of the International Covenant on Civil and Political Rights and Article 20(4) of the FDRE Constitution. In addition, they were allowed to defend all the charges and



evidences brought against them and they were able to produce documentary and photographic evidences and heard before a court on their defense.

246. In accordance with Article 14(3) of the International Covenant on Civil and Political Rights and Article 20(5) of the FDRE Constitution, the accused have been informed of their right to be presented by legal counsel of their choice, and if they do not have sufficient means to pay for it due to the fact that there would be miscarriage of justice, they were informed of their right to be provided with legal representation at state expense. Accordingly, they declined the legal representation at the state expense and opted to be presented by legal counsel of their own choice. Hence, the court provided them with a reasonable period of time until they find a legal counsel of their choice and all the accused who took part in the trial were represented by a total of 6 legal counsels and litigated up to the end. Furthermore, there was no accused, among those who took part during the trial in person, without a legal counsel.

247. During the conducting of the trial, from the beginning until the end, it was made possible for the accused to understand every process in the court in a language they understand. Starting from 24<sup>th</sup> April 2009 where the arrest of the 46 accused begun until 22<sup>nd</sup> December 2009 where the final decision have been passed, works in relation with the investigation work by the police, the preparation of the charges and presentation of evidences and litigation by the Federal Public Prosecutor, hearing of the evidences produced by both sides and passing of decision after looking into all the evidences have been conducted. The finalizing of the trial in 8 months period of time when viewed from the large number of the accused, the variety and numerous nature of evidences produced by both sides and the complexity of the crimes, shows the fact that all the accused have got a speedy decision.

#### *Appeal process*

248. An appeal has been lodged before the Federal Supreme Court against the judgment of the Federal High Court. The case is therefore currently pending before the federal Supreme Court. This is in full compliance with Human Rights Committee's General Comment No. 13 wherein it is provided that any conviction with respect to capital crimes should be reviewed by an appellate court.

#### *Conclusion*

249. After examining the evidence presented to it by the prosecutor and defense, the Federal High Court has established that Dr. Birhanu Nega Bonger, Ato Melaku Tefera Tilahun, Ato Andargachew Tsege Haile Giorgis, Ato Mulunehe Eyuel and Ato Mesfin Aman along with other 41 defendants have committed a very serious crime under the Ethiopian federal criminal code. It has also shown that a stringent due process guarantees were ensured in keeping with domestic legislations and international standards as enshrined in the ICCPR. International human rights instruments and customary law do not provide a blanket prohibition of death penalty. Neither do they prohibit the trial of persons in absentia. The Ethiopian domestic legislation guarantees the fundamental right to life and provides protection from summary execution.

250. It is the government's sincere hope that this reply has sufficiently addressed your concerns. As the case is now pending before the federal Supreme Court, it is perhaps appropriate to let the domestic legal system take its course.

## Gambia

### Death threats against human rights defenders made by head of state

**Violation alleged:** Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, or groups cooperating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above and when the Government is failing to take appropriate protection measures

**Subject(s) of appeal:** Group concern

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of the Gambia has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 29 September 2009,** sent with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

251. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the recent speech of the President of the Gambia, Colonel A.J.J Jammeh, allegedly threatening human rights defenders and anyone who seeks to "destabilise" the country.

According to the information received:

On 21 September 2009, President Jammeh delivered a speech on the state-owned Gambia Radio and Television Services (GRTS), where he allegedly threatened to kill human rights defenders in the Gambia, together with anyone who seeks to "destabilise" the country. Some excerpts of his speech read as follows: "What I want to make very clear to everybody and those so-called human rights campaigners is that I will never allow anyone to destabilise this country. [...] If you think that you can collaborate with so-called human rights defenders, and get away with it, you must be living in a dream world. I will kill you, and nothing will come out of it. If you are affiliated with any human rights group, be rest (*sic*) assured that your security is not guaranteed by my Government. We are ready to kill saboteurs."

Deep concern is expressed for the physical and psychological integrity of all human rights defenders in the Gambia, including all personnel and persons working with the African Commission on Human and Peoples' Rights, which has its headquarters in Banjul, and which will be holding its 46th ordinary session from 11 to 25 November 2009. The content of the speech is of particular concern as it follows a recent case of six journalists who were arrested and sentenced to two years of imprisonment and fined 250,000 Dalasis (US\$10,000) for criticizing the government regarding the lack of investigation into the murder of journalist Mr. Deydra Hydara, which was the subject of our urgent appeal sent to your Excellency's government on 12 August 2009. While we welcome the fact that the journalists were later released on a presidential pardon, we remain concerned that the right to freedom of opinion and expression is being stifled in the Gambia and that all persons who voice criticism of the government are now exposed to heightened risk to their physical and psychological integrity.

252. While we do not wish to prejudge the accuracy of these allegations, we would like to stress that each Government has the obligation to protect the right to life, physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

253. We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression of all persons, including human rights defenders in the Gambia, in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and reiterated in article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

254. We would further like to reiterate the principle enunciated in Resolution 2005/38 of the Commission on Human Rights, which, while noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, calls on States to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

255. Furthermore, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

256. Moreover, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".
- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form,

join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 13 (b) and (c) which stipulate that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means.

257. We would like to urge your Excellency's Government to take all necessary steps to protect the life, physical and psychological integrity of all Gambian human rights defenders as well as all personnel and persons working with the African Commission on Human and Peoples' rights. We would welcome any clarification on this issue and we trust that your Excellency's Government will reaffirm its position to protect and promote fundamental rights and freedoms for all and the essential role human rights defenders play in this regard.

## Guatemala

### Asesinato de Fausto Leonel Otzín Poyón

**Violación alegada:** Muerte como consecuencia de ataque o asesinato posiblemente relacionado con las actividades legítimas realizadas en defensa de los derechos humanos.

**Persona objeto del llamamiento:** 1 hombre (defensor de los derechos humanos)

**Carácter de la respuesta:** Acuso de recibo

**Observaciones del Relator Especial:** El Relator Especial aprecia la explicación del Gobierno de que se comenzó una investigación relativa a la muerte del Sr. Fausto Leonel Otzín Poyón y espera recibir una respuesta detallada sobre el resultado de las investigaciones y de las relativas acciones judiciales.

**Carta de alegación con fecha de 31 diciembre 2009,** enviado con la Relatora Especial sobre la situación de los defensores de los derechos humanos y la Relatora Especial para la independencia de jueces y abogados

258. En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con el asesinato del Sr. Fausto Leonel Otzín Poyón, abogado maya, ex-director ejecutivo de la Asociación de Abogados Mayas y uno de los fundadores de la Asociación Juvenil en Solidaridad y Apoyo (AJESA). El Sr. Otzín Poyón habría realizado actividades en defensa y promoción de los derechos de las comunidades indígenas de Guatemala.

Según las informaciones recibidas:

El 18 de octubre de 2009, el Sr. Otzín Poyón habría sido localizado en el fondo de un barranco en San Juan Comalapa, departamento de Chimaltenango, después de sólo un día de haber desaparecido. Su cuerpo habría presentado señales visibles de tortura así como heridas de machete. El Sr. Otzín Poyón habría muerto poco después de que se le hubiera encontrado.

Cabe añadir que el Sr. Otzín Poyón recientemente habría recibido varios mensajes en su teléfono amenazándole de muerte.

259. Se teme que el asesinato del Sr. Otzín Poyón esté relacionado con las actividades legítimas que realizaba en defensa de los derechos humanos, en particular de los pueblos indígenas.

260. Asimismo, quisiéramos expresar nuestra profunda preocupación por el deterioro de la seguridad de los defensores de los derechos humanos y por la impunidad generalizada que prevalece en relación con los actos de agresión y violencia cometidos contra ellos. Nosotros de acuerdo con lo dicho por la entonces Representante Especial sobre la situación de los defensores de derechos humanos en su informe al Consejo de Derechos Humanos en febrero de 2009 quien consideraba dudoso que la situación de los defensores y de los derechos humanos en general pueda mejorar sin un claro punto de inflexión en materia de impunidad. El Gobierno de su Excelencia tiene la responsabilidad de investigar de manera exhaustiva las violaciones cometidas contra los defensores de derechos humanos y enjuiciar a sus autores. Asimismo, el Gobierno de su Excelencia debe condenar firmemente cualquier ataque contra los defensores de derechos humanos, tomando la oportunidad para reconocer la importancia de su labor.

261. Sin implicar, de antemano, una conclusión sobre los hechos, en este contexto, deseamos llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos y en particular los artículos 1 y 2. Éstos establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales en los planos nacional e internacional y que es la responsabilidad primordial y el deber de todos los Estados de proteger, promover y hacer efectivos todos los derechos humanos, adoptando las medidas necesarias para crear las condiciones sociales, económicas, políticas y de otra índole, así como las garantías jurídicas requeridas para que toda persona sometida a su jurisdicción, individual o colectivamente, pueda disfrutar en la práctica todos esos derechos y libertades.

262. Además, quisiéramos referirnos a los artículos siguientes:

- el artículo 12, párrafos 2 y 3, estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración. A este respecto, toda persona tiene derecho, individual o colectivamente, a una protección eficaz de las leyes nacionales al reaccionar u oponerse, por medios pacíficos, a actividades y actos, con inclusión de las omisiones, imputables a los Estados que causen violaciones de los derechos humanos y las libertades fundamentales, así como a actos de violencia perpetrados por grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.

263. En este contexto, deseamos llamar la atención del Gobierno de su Excelencia sobre los Directrices sobre los Principios básicos sobre la función de los abogados, adoptados por

el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, La Habana, 27 de agosto a 7 de septiembre de 1990 y en particular sobre:

- Principio 16. Los gobiernos garantizarán que los abogados a) puedan desempeñar todas sus funciones profesionales sin intimidaciones, obstáculos, acosos o interferencias indebidas; b) puedan viajar y comunicarse libremente con sus clientes tanto dentro de su país como en el exterior; y c) no sufran ni estén expuestos a persecuciones o sanciones administrativas, económicas o de otra índole a raíz de cualquier medida que hayan adoptado de conformidad con las obligaciones, reglas y normas éticas que se reconocen a su profesión.
- Principio 17. Cuando la seguridad de los abogados sea amenazada a raíz del ejercicio de sus funciones, recibirán de las autoridades protección adecuada.
- Principio 18. Los abogados no serán identificados con sus clientes ni con las causas de sus clientes como consecuencia del desempeño de sus funciones.

264. En caso de que sus investigaciones apoyen o sugieran la exactitud de las alegaciones arriba mencionadas, quisiéramos instar al Gobierno de su Excelencia que adopte todas las medidas necesarias para proteger la independencia del poder judicial, en especial la de los jueces provisorios. Quisiéramos asimismo instarle a que adopte las medidas eficaces para evitar que se repitan tales hechos.

265. Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por la Asamblea General, intentar clarificar los hechos traídos a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos si pudiéramos obtener su cooperación y sus observaciones sobre los siguientes asuntos:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Fue presentada alguna queja?
3. Por favor, proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con este caso. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables del asesinato del Sr. Otzín Poyón? Si no se han realizado diligencias judiciales y administrativas respecto al caso, le rogamos que explique por qué.

**Respuesta del Gobierno de Guatemala con fecha de 17 de marzo de 2010:**

266. El Gobierno respondió a esta carta de alegación el 17 de marzo de 2010 de la manera siguiente:

1. Son exactos los hechos a los que se refieren las alegaciones presentadas?

En cuanto a los hechos que refiere el caso, el Ministerio Público informó que el señor Fausto Leonel Otzín Poyón, ex director ejecutivo de la Asociación de Abogados Mayas, fue encontrado el 18 de octubre del 2009 en el fondo de un barranco en San Juan Comalapa, departamento de Chimaltenango, por lo que la investigación se encuentra a cargo del Auxiliar Fiscal Eduardo Calvillo de la Agencia No.3 de la Fiscalía Distrital de Chimaltenango, con No. De expediente MPO43-2009-8591.

2. Fue presentada queja alguna?

Según lo manifestado por el Ministerio Público, no se han presentado quejas por parte de los familiares ni de la Asociación de Abogados Mayas, por lo que sólo se han realizado investigaciones por parte del MOP

3. Proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con el caso. Si éstas no han tenido lugar o no han sido concluidas:

*El 18 de enero de 2010, el Ministerio Público informó lo siguiente:*

267. Que el expediente se encuentra identificado con el número MPO43-2009-8591, a cargo del Fiscal Eduardo Israel Calvillo y del agente Fiscal Licenciado Romilio Orellana Paiz, siendo el agraviado Fausto Leonel Oztín Poyón, por los delitos de asesinato y robo agravado, quien fue encontrado el 18 de octubre del 2009 en el fondo de un barranco en San Juan Comalapa, departamento de Chimaltenango.

268. Dentro de las diligencias realizadas por el Ministerio Público, constan las declaraciones de testigos que se mencionan en acta de levantamiento de cadáver e investigaciones de la Dirección Especializada en Investigación Criminal –DEIC-; inspección en el lugar de los hechos; allanamientos de residencias sospechosas, mismas que se realizaron para tratar de localizar las pertenencias del fallecido, zapatos, teléfonos celulares, etc. Por lo que también dentro de la investigación se realizaron pruebas de luminol en la residencia de los sospechosos y ampliaciones a las declaraciones de los testigos; informes y peritajes forenses. Se concluye que, en cuanto a la autoría, hasta el momento no se ha logrado la identificación plena, por lo que no se ha solicitado la aprehensión de ninguna persona. Se continúa con la investigación.

*El 18 de enero de 2010, el Ministerio Público informó:*

269. El Sub-Comisario de PNC Justino Isaías Jrónimo Alvarado, Jefe de la División Especializada en Investigación Criminal de la Policía Nacional Civil, informó sobre lo requerido a través del Oficio No. 060-2010 Ref. JIJA/join.Srio.DEIC, de 15 de enero 2010, cuya parte conducente señala:

- “...Al respecto me permito informarle que en la Delegación DEIC con sede en el Departamento de Chimaltenango, se iniciaron las investigaciones en relación al fallecimiento del señor Fausto Leonel Oztín, mismas que se encuentran abiertas a espera que el Fiscal del Ministerio Público que se lleva las investigaciones de lineamientos. Asimismo, se informa que el presente caso está a cargo del Auxiliar Fiscal Eduardo Calvillo de la Agencia No.3 de la Fiscalía Distrital de Chimaltenango, con No. De expediente MPO43-2009-8591...”.

## **Guinea**

### **Les massacres de manifestants par les forces de sécurité de l'Etat**

**Violation alléguée:** Morts en conséquence du recours à la force par les agents d'application de la loi ou toute autre personne agissant sur autorité directe ou indirecte de l'Etat, ne répondant pas aux exigences de nécessité absolue et de proportionnalité

**Objet de l'appel:** Massacres

**Caractère de la réponse:** Pas de réponse

**Observations du Rapporteur Spécial:** Le Rapporteur Spécial regrette que le Gouvernement de la Guinée n'ait pas coopéré avec le mandat qui lui a été conféré par l'Assemblée Générale et le Conseil des droits de l'homme.

**Appel urgent envoyé le 6 octobre 2009** avec le Président Rapporteur du Groupe de Travail sur la détention arbitraire, le Président du Groupe de Travail sur les Disparitions Forcées ou Involontaires, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, la Rapporteuse spéciale chargée de la question de la violence contre les femmes, y compris ses causes et ses conséquences, et le Groupe de

Travail sur l'utilisation des mercenaires comme moyen de violer les droits de l'homme et d'empêcher l'exercice du droit des peuples.

270. A cet égard, nous souhaiterions attirer l'attention du Gouvernement de votre Excellence sur les opérations de forces de sécurité guinéennes au cours des journées du 28 et 29 septembre 2009 à Conakry.

Selon les informations reçues:

Le 28 septembre 2009, près de 50 000 personnes manifestant contre une éventuelle candidature du Capitaine Moussa Dadis Camara aux élections présidentielles de janvier 2010 auraient défilé dans les rues et se seraient ensuite regroupées dans un stade de Conakry à la mi-journée.

Les forces de sécurité seraient alors intervenues afin d'évacuer le stade en utilisant des gaz lacrymogènes ainsi que leurs armes à feu. Des membres des forces de sécurité auraient tiré en l'air mais également ouvert le feu en direction de la foule. Certaines sources font état de la participation de mercenaires d'origine du Liberia parmi les forces de sécurité lors la répression de la manifestation. Plus de 150 personnes auraient été tuées et plus d'un millier blessées. Plusieurs corps de manifestants porteraient des traces de blessures multiples, causées par arme à feu et par des armes blanches, notamment des couteaux et baïonnettes.

De nombreuses femmes participant à la manifestation ou se trouvant dans la zone auraient été arrêtées par les forces de sécurité, déshabillées et soumises à des violences sexuelles, notamment des attouchements, des viols, y compris collectifs, aussi bien dans le stade que plus tard dans des lieux de détention.

Suite à la manifestation, pendant plusieurs heures, de nombreuses personnes, y compris des blessés, auraient été arrêtées à leur domicile, dans la rue ainsi que dans des hôpitaux. Il a été rapporté que ces personnes risquent d'être torturées ou de disparaître. Certaines familles n'auraient toujours aucune nouvelle de leurs proches qui auraient participé à la manifestation.

Plusieurs dizaines de manifestants seraient encore détenus, notamment dans les camps militaires de Alpha Yalla Diallo et Koundara, au quartier général de la Compagnie mobile d'intervention et de sécurité ainsi que dans un centre de détention géré par la Gendarmerie, le PM-3. Selon les informations reçues, aucune de ces personnes détenues depuis le 28 septembre n'aurait été présentée à un juge.

Le 29 septembre 2009, dans la banlieue de Conakry, les forces de sécurité auraient ouvert le feu sur des jeunes qui se trouvaient dans la rue causant la mort de trois adolescents, un à Cosa et deux à Wanidara.

Des membres des forces de sécurité auraient procédé à l'enlèvement de cadavres des lieux de la manifestation ainsi que des hôpitaux et les auraient emmenés dans des lieux inconnus. A l'hôpital Ignace Deen de Conakry, plusieurs dizaines de corps auraient ainsi été emportés. Selon les informations reçues, ces enlèvements de cadavres auraient pour objectif de dissimuler les corps des victimes.

271. Sans vouloir à ce stade nous prononcer sur les faits qui nous ont été soumis, nous souhaiterions néanmoins intervenir auprès de votre Excellence afin de tirer au clair les circonstances ayant provoqué les faits allégués ci-dessus et ce, conformément aux dispositions pertinentes de la Déclaration universelle des droits de l'homme, du Pacte international relatif aux droits civils et politiques et de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants.

272. Nous aimerions rappeler au Gouvernement de votre Excellence les principes fondamentaux énoncés par l'article 3 de la Déclaration universelle des droits de l'homme et



réitérés par l'article 6 du Pacte international relatif aux droits civils et politiques, où il est stipulé que tout individu a le droit à la vie et à la sûreté de sa personne, que ce droit doit être protégé par la loi, et que nul ne peut être arbitrairement privé de la vie.

273. Nous voudrions également rappeler au Gouvernement de votre Excellence l'applicabilité dans de telles situations des Principes de base sur le recours à la force et l'utilisation des armes à feu par les responsables de l'application des lois, résolution 1989/65 du 24 mai 1989 du Conseil économique et social. Ceux-ci prévoient que les responsables de l'application des lois, dans l'accomplissement de leurs fonctions, auront recours autant que possible à des moyens non-violents, en délimitant le recours à la force à certains cas exceptionnels comme la légitime défense ou pour défendre des tiers contre une menace imminente de mort ou de blessure grave. Nous souhaiterions également attirer votre attention sur le Code de conduite pour les responsables de l'application des lois, résolution 34/169 du 17 décembre 1979 de l'Assemblée générale qui stipule que les responsables de l'application des lois peuvent recourir à la force seulement lorsque cela est strictement nécessaire et dans la mesure exigée par l'accomplissement de leurs fonctions.

274. Par ailleurs, nous prions le Gouvernement de votre Excellence de diligenter promptement une enquête sur les violations des droits de l'homme, incluant les décès qui ont eu lieu le 28 et le 29 septembre 2009, commises lors de la manifestation à Conakry et au cours des opérations des forces de sécurité qui ont eu lieu suite à celle-ci, et de traduire les responsables en justice s'il est déterminé que les forces de sécurité ont eu recours à un usage excessif de la force, conformément aux principes relatifs à la prévention efficace des exécutions extrajudiciaires, résolution 1989/65 du 24 mai 1989 du Conseil économique et social. En particulier les principes 9 à 19 obligent les Gouvernements à mener des enquêtes approfondies et impartiales dans tous les cas où l'on soupçonnera des exécutions extrajudiciaires, arbitraires ou sommaires; à rendre publiques les conclusions d'enquêtes; et à veiller à ce que les personnes dont l'enquête aura révélé qu'elles ont participé à de telles exécutions soient traduites en justice. Des procédures et des services officiels d'enquête doivent être maintenus, et les plaignants, les témoins, les personnes chargées de l'enquête et leurs familles doivent être protégés contre les violences ou tout autre forme d'intimidation. Ces principes incluent aussi le devoir d'effectuer une autopsie adéquate, impartiale et indépendante, afin de déterminer les causes de décès des victimes potentielles. Tant qu'une telle autopsie n'a pas eu lieu aucune disposition ne peut être prise au sujet de la dépouille mortelle. La famille du défunt a également le droit d'être avisée de la cause du décès révélée par l'enquête.

275. Concernant les allégations de violence faite aux femmes, nous souhaiterions rappeler au Gouvernement de votre Excellence l'article 4 (b) de la Déclaration sur l'élimination de la violence à l'égard des femmes qui précise que les Etats devraient mettre en œuvre sans retard, par tous les moyens appropriés, une politique visant à éliminer la violence à l'égard des femmes et, à cet effet, s'abstenir de tout acte de violence à l'égard des femmes. De plus, l'article 4 (c et d) de cette même Déclaration précise que les Etats ont le devoir d'agir avec la diligence voulue pour prévenir les actes de violence à l'égard des femmes, enquêter sur ces actes et les punir conformément à la législation nationale, qu'ils soient perpétrés par l'Etat ou par des personnes privées. Les états doivent aussi prévoir dans la législation nationale pénale, civile, du travail ou administrative les sanctions voulues pour punir et réparer les torts causés aux femmes soumises à la violence; les femmes victimes d'actes de violence devraient avoir accès à l'appareil judiciaire et la législation nationale devrait prévoir des réparations justes et efficaces du dommage subi; les Etats devraient en outre informer les femmes de leur droit à obtenir réparation par le biais de ces mécanismes.

276. Pour ce qui a trait aux allégations de la détention continue de manifestants, nous faisons appel au Gouvernement de votre Excellence afin que les droits des personnes détenues soient respectés et qu'elles ne soient pas privées arbitrairement de leur liberté et

d'un procès équitable. Ces droits sont protégés par les articles 9 et 10 de la Déclaration universelle des droits de l'homme, ainsi que les articles 9 et 14 du Pacte international relatif aux droits civils et politiques.

277. Concernant les allégations de répression de la manifestation, nous souhaiterions rappeler au Gouvernement de votre Excellence les normes et principes fondamentaux pertinents énoncés à l'article 19 de la Déclaration universelle des droits de l'homme, et réitérés à l'article 19 du Pacte international relatif aux droits civils et politiques, qui précisent que: "Tout individu a droit à la liberté d'opinion et d'expression, ce qui implique le droit de ne pas être inquiété pour ses opinions et celui de chercher, de recevoir et de répandre, sans considérations de frontières, les informations et les idées par quelque moyen d'expression que ce soit".

278. En plus, nous souhaiterions également appeler le Gouvernement de votre Excellence à prendre toutes les mesures nécessaires pour s'assurer que le droit de réunion pacifique tel qu'énoncé à l'article 21 du Pacte international relatif aux droits civils et politiques, qui prévoit que : "Le droit de réunion pacifique est reconnu. L'exercice de ce droit ne peut faire l'objet que des seules restrictions imposées conformément à la loi et qui sont nécessaires dans une société démocratique, dans l'intérêt de la sécurité nationale, de la sûreté publique, de l'ordre public ou pour protéger la santé ou la moralité publiques, ou les droits et les libertés d'autrui" soit respecté.

279. En outre, nous rappelons au Gouvernement de votre Excellence la Déclaration des Nations Unies sur la protection de toutes les personnes contre les disparitions forcées qui détermine la protection nécessaire de la part de l'Etat, y compris: l'article 2 (aucun Etat ne doit commettre, autoriser ou tolérer des actes conduisant à des disparitions forcées); l'article 3 (tout Etat prend des mesures législatives, administratives, judiciaires et autres mesures efficaces pour prévenir et éliminer les actes conduisant à des disparitions forcées, sur tout le territoire relevant de sa juridiction); article 6 (aucun ordre ou instruction émanant d'une autorité publique, civile, militaire ou autre ne peut être invoqué pour justifier une disparition forcée); l'article 7 (aucune circonstance quelle qu'elle soit, qu'il s'agisse d'une menace de guerre, d'une guerre, d'instabilité politique intérieure ou de toute autre situation d'exception, ne peut être invoquée pour justifier des disparitions forcées); l'article 9 (le droit à un recours judiciaire rapide et efficace, pour déterminer l'endroit où se trouve une personne privée de liberté); l'article 10 (le droit à l'accès des autorités nationales compétentes à toutes les places de détention; le droit d'être gardé dans des lieux de détention officiellement reconnus, et être déféré à une autorité judiciaire, conformément à la législation nationale, peu après son arrestation; le droit aux informations exactes sur la détention de ces personnes et sur le lieu où elles se trouvent, rapidement communiquées aux membres de leur famille, à leur avocat ou à toute personne légitimement fondée à connaître ces informations ; le droit au registre officiel de toutes les personnes privées de liberté, tenu à jour dans tout lieu de détention.).

280. Le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires souhaiterait réitérer sa disponibilité à visiter la Guinée. A cet effet, il souhaite se référer à l'échange de lettres qu'il a eu avec le Gouvernement de votre Excellence en 2007, notamment à l'accord de principe du Gouvernement de votre Excellence au sujet de la tenue d'une telle visite.

281. Nous demandons instamment au Gouvernement de votre Excellence de prendre toutes les mesures nécessaires pour garantir que les droits et libertés des personnes qui seraient victimes des allégations susmentionnées soient respectés et que toute personne coupable des violations alléguées soit tenue responsable. Nous demandons également que votre Gouvernement adopte des mesures efficaces afin d'empêcher que ces actes se reproduisent.

282. Il est de notre responsabilité, en vertu des mandats qui nous ont été confiés par le Conseil des droits de l'homme, de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Etant dans l'obligation de faire rapport de ces cas au Conseil des droits de l'homme, nous serions reconnaissants au Gouvernement de votre Excellence de ses observations sur les points suivants :

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts? Si tel n'est pas le cas, quelles enquêtes ont été menées pour conclure à leur réfutation ?
2. Combien de personnes auraient été tuées et blessées lors de la manifestation du 28 septembre 2009 ainsi que pendant les opérations des forces de sécurité au cours des jours suivants ?
3. Combien d'incidents d'agression physique et sexuelle auraient été perpétrés contre des femmes ou fillettes durant les manifestations ou au cours des jours suivants, et quelles mesures ont été prises contre les responsables ? Quelles mesures ont été prises pour prendre en charge les victimes ?
4. Quelles sont les branches des forces de sécurité impliquées au cours de ces événements? Quels ordres ou instructions avaient-elles reçu, notamment quant à l'usage de la force ? Est-ce que des éléments étrangers ont participé aux côtés des forces de sécurité guinéennes à ces événements ?
5. Quelles mesures ont été adoptées et mises en œuvre par les autorités afin d'identifier les victimes et notifier leurs proches de leur décès?
6. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, investigations judiciaires et autres menées en relation avec les faits. Si de telles enquêtes n'ont pas été menées, veuillez expliquer pourquoi.
7. Si les allégations sont avérées, veuillez fournir toute information sur les poursuites et procédures engagées contre les auteurs ou responsables des violations.

## Honduras

### **Muerte de Pedro Mandiel y desaparición forzada de Gerson Evelar Vilches Almendares**

**Violación alegada:** Muertes producidas por ataques u homicidios por parte de fuerzas de seguridad del Estado, o grupos paramilitares, escuadrones de la muerte, u otras fuerzas privadas que cooperan con o son tolerados por el Estado

**Persona objeto del llamamiento:** 2 hombres

**Carácter de la respuesta:** No se recibió ninguna respuesta

**Observaciones del Relator Especial:** El Relator Especial lamenta que el Gobierno de Honduras no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

**Llamamiento urgente del 28 de julio de 2009,** mandado con el Presidente del Grupo de Trabajo sobre las desapariciones forzadas o involuntarias, y el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes.

283. En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con la tortura y muerte del Sr. **Pedro Mandiel** así como de la desaparición forzada del Sr. **Gerson Evelar Vilches Almendares**.

284. Se ha informado que el Sr. Pedro Mandiel, uno de los simpatizantes del presidente Zelaya que trataba de llegar a la frontera con Nicaragua para expresarle su apoyo, habría sido detenido la noche del 24 de julio de 2009 por agentes de la policía por presunto incumplimiento del toque de queda. Según la información recibida, existirían testigos que habrían presenciado cómo el Sr. Mandiel era introducido en un automóvil de la policía. Asimismo, se informó que, alrededor de las 9 horas del día siguiente, su cuerpo fue encontrado sin vida a unos doscientos metros de un retén policial y militar situado a la altura del desvío a Alacuca, en la carretera que conduce a la frontera de Las Manos. La información recibida también señala que su cuerpo tendría signos de tortura.

285. Además, se ha informado que el Sr. Vilches Almendares habría sido detenido el mismo día y bajo las mismas circunstancias. Según la información recibida, en los registros policiales constaría que el Sr. Vilches Almendares habría sido detenido y liberado esa misma noche. Sin embargo, su destino y paradero continúan desconocidos.

286. Sin que ello implique, en modo alguno, una conclusión sobre los hechos, nos permitimos recordar al Gobierno de Su Excelencia los principios fundamentales consagrados en la Declaración Universal de los Derechos Humanos, el Pacto Internacional de Derechos Civiles y Políticos, la Declaración sobre la Protección de todas las Personas contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes y la Convención contra la Tortura.

287. En este contexto, nos gustaría llamar la atención de su Gobierno al párrafo 1 de la Resolución del Consejo de Derechos Humanos 8/8, la cual “Condena todas las formas de tortura y otros tratos o penas crueles, inhumanos o degradantes, que están y seguirán estando prohibidos en todo momento y en todo lugar y que, por lo tanto, no pueden justificarse nunca, y exhorta a todos los gobiernos a que respeten plenamente la prohibición de la tortura y otros tratos o penas crueles, inhumanos o degradantes.

288. Quisiéramos recordar al Gobierno de su Excelencia el artículo 13 de la Convención sobre la Tortura, el cual señala que “todo Estado Parte velará por que toda persona que alegue haber sido sometida a tortura en cualquier territorio bajo su jurisdicción tenga derecho a presentar una queja y a que su caso sea pronta e imparcialmente examinado por sus autoridades competentes. Se tomarán medidas para asegurar que quien presente la queja y los testigos estén protegidos contra malos tratos o intimidación como consecuencia de la queja o del testimonio prestado.” En este contexto, quisiéramos también recordar al Gobierno de su Excelencia el párrafo 6 (b) y (e) de la Resolución 8/8 del Consejo de Derechos Humanos, aprobada en Junio de 2008, el cual insta a los Estados a que “adopten medidas constantes, decididas y eficaces para que toda denuncia de torturas o de otros tratos o penas crueles inhumanos o degradantes sea examinada rápida e imparcialmente por la autoridad nacional competente, para que las personas que fomenten, ordenen, toleren o cometan actos de tortura sean declaradas responsables y sancionadas severamente, incluidos los funcionarios a cargo del lugar de detención en que haya tenido lugar el acto prohibido [...], y que “velen por que las víctimas de la tortura o de otros tratos o penas crueles, inhumanos o degradantes obtengan reparación y reciban una indemnización justa y adecuada, así como servicios sociales y médicos apropiados de rehabilitación, y, a este respecto, alienta la creación de centros de rehabilitación para las víctimas de la tortura”.

289. Deseamos también llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos garantizan a todo individuo los derechos a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida. Además, según los artículos 2 y 10, los Estados se comprometen a respetar y a garantizar el derecho de toda persona privada de libertad a ser tratada humanamente y con el respeto debido a la dignidad inherente al ser humano.

290. Asimismo, quisiéramos llamar la atención del Gobierno de su Excelencia sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social que son particularmente significativos con respecto a las denuncias mencionadas precedentemente. En particular, los principios 9 a 19 obligan a los Gobiernos a proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias, incluyendo una autopsia adecuada; a publicar en un informe las conclusiones de estas investigaciones; y a velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones en cualquier territorio bajo su jurisdicción.

291. Asimismo, quisiéramos recordar al Gobierno de Su Excelencia la Declaración sobre la protección de todas las personas contra las desapariciones forzadas, la cual establece disposiciones para garantizar la protección de las personas, incluyendo:

- artículo 2 (ningún Estado cometerá, autorizará ni tolerará las desapariciones forzadas);
- artículo 3 (obligación de tomar medidas legislativas, administrativas, judiciales y otras medidas eficaces para prevenir o erradicar los actos de desapariciones forzadas);
- artículo 6 (ninguna orden o instrucción de una autoridad pública, sea ésta civil, militar o de otra índole, puede ser invocada para justificar una desaparición forzada);
- artículo 7 (ninguna circunstancia, cualquiera que sea, ya se trate de amenaza de guerra, estado de guerra, inestabilidad política interna o cualquier otro estado de excepción, puede ser invocada para justificar las desapariciones forzadas);
- artículo 9 (el derecho a un recurso judicial rápido y eficaz, como medio para determinar el paradero de las personas privadas de libertad);
- artículo 10 (toda persona privada de libertad deberá ser mantenida en lugares de detención oficialmente reconocidos y, con arreglo a la legislación nacional, presentada sin demora ante una autoridad judicial luego de la aprehensión);
- artículo 12 (obligación de establecer normas que permitan designar a los agentes del gobierno habilitados para ordenar privaciones de libertad, fijen las condiciones en las cuales tales órdenes pueden ser dadas, y prevean las penas de que se harán pasibles los agentes del gobierno que se nieguen sin fundamento legal a proporcionar información sobre una privación de libertad)

292. Quisiéramos instar al Gobierno de su Excelencia a que se lleven a cabo las investigaciones pertinentes para esclarecer la suerte y el paradero del Sr. Vilches Almendares y las circunstancias de la muerte del Sr. Mandiel, e investigar, procesar e imponer las sanciones adecuadas a los responsables. Asimismo, quisiéramos instarle a adoptar las medidas efectivas para evitar que tales hechos, de haber ocurrido, se repitan.

293. Teniendo en cuenta la urgencia del caso, agradeceríamos recibir del Gobierno de su Excelencia información acerca de las acciones emprendidas para proteger los derechos del Sr. Vilches Almendares.

294. Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes, siempre y cuando sean aplicables a los casos en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?

2. ¿Fue presentada alguna queja?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con los casos, incluyendo los resultados de los exámenes médicos llevados a cabo en el caso del Sr. Mandiel. Si éstas no hubieran tenido lugar o no hubieran sido concluidas, le rogamos que explique el por qué.
4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
5. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

295. Garantizamos que la respuesta del Gobierno de su Excelencia a cada una de estas preguntas será incluida en los informes que presentaremos a la atención del Consejo de Derechos Humanos para que la examine.

**Honduras: Muertes causadas por excesivo uso de la fuerza por parte de fuerzas de seguridad durante manifestaciones**

**Violación alegada:** Muertes como consecuencia del uso de la fuerza por parte de fuerzas de seguridad o personas que actúan bajo la directa o indirecta autoridad del Estado, cuando el uso de la fuerza es incompatible con los criterios de absoluta necesidad y proporcionalidad

**Persona objeto del llamamiento:** 2 hombres, 3 desconocidos

**Carácter de la respuesta:** No se recibió ninguna respuesta

**Observaciones del Relator Especial:** El Relator Especial lamenta que el Gobierno de Honduras no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

**Llamamiento urgente del 30 de septiembre de 2009,** mandado con el Presidente Relator del Grupo de Trabajo sobre la Detención Arbitraria, el Presidente Relator del Grupo de Trabajo sobre las Desapariciones Forzadas o Involuntarias, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, y la Relatora Especial sobre la situación de los defensores de derechos humanos.

296. En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con la situación descrita a continuación.

Según las informaciones recibidas:

Decenas de personas que se manifestaban ante la Embajada de Brasil en Tegucigalpa en favor de la restitución en el poder del presidente destituido Manuel Zelaya, habrían sido detenidas desde que éste regresó al país el 21 de septiembre de 2009. Se afirma que elementos policiales habrían recurrido a un uso excesivo de la fuerza en la disolución de las manifestaciones callejeras en favor del presidente Zelaya y en la detención a gran escala de los manifestantes. A algunos manifestantes los elementos policiales les habrían golpeado e incluso habrían sido víctimas de disparos. Otros habrían sido conducidos a centros de detención no autorizados, sin contar con ningún registro de su detención. Aunque la mayoría habrían sido ya liberados, otros permanecen en detención.

Asimismo, se ha recibido información de que cinco personas habrían resultado muertas en los disturbios políticos que han tenido lugar desde el 21 de septiembre. El 22 de septiembre José Jacobo Euceda Perdomo, de 18 años resultaba

muerto por disparos de la policía en San Pedro Sula. Las cuatro otras personas habrían muerto en Tegucigalpa, incluyendo al Sr. Francisco Alvarado, de aproximadamente 65 años de edad, quien habría muerto a consecuencia de heridas de bala recibidas durante una manifestación en favor del presidente Zelaya.

Se informa también que el 22 de septiembre de 2009, agentes policiales arrojaron botes de gas lacrimógeno al interior de la sede del Comité de Familiares de Detenidos Desaparecidos en Honduras (COFADEH) en el Barrio La Plazuela de Tegucigalpa, donde se encontraba un centenar de participantes en las manifestaciones dando su testimonio sobre la represión de las manifestaciones frente a la Embajada.

Ante esta situación, se ha expresado seria preocupación por la seguridad de los miembros de COFADEH y de otras organizaciones defensoras de los derechos humanos.

Asimismo, se ha tenido conocimiento del establecimiento del estado de sitio en todo el territorio nacional, suspendiéndose las garantías constitucionales de libertad de expresión, libertad de circulación y el derecho a reunión durante 45 días (consagradas en los artículos 69, 72, 81 y 84 de la Constitución Política, respectivamente). La suspensión de estos derechos fue aprobada por decreto ejecutivo de fecha 22 de septiembre de 2009, publicado el 26 de septiembre de 2009 en el Diario Oficial La Gaceta. Según el texto de dicho decreto ejecutivo, la Comisión Nacional de Telecomunicaciones (CONATEL), a través de la Policía Nacional y de las fuerzas armadas, queda autorizada a suspender cualquier radioemisora, canal de televisión o sistema de cable que no ajuste su programación a sus disposiciones.

Estas medidas habrían sido justificadas sobre la base de que “determinados medios de comunicación social, hablados y televisados, están utilizando sus frecuencias autorizadas para generar odio y violencia contra el Estado, perturbando la tranquilidad nacional, llamando a la insurrección popular, y dañando psicológicamente a su auditorio”. Es así que se ordena a las Fuerzas Armadas que apoyen “conjunta o separadamente, cuando la situación así lo requiera, a la Policía Nacional, debiendo poner en ejecución los planes necesarios para el orden y la seguridad pública”. El decreto ejecutivo autoriza la represión de “toda reunión pública no autorizada por las autoridades policiales y militares”.

Este decreto ejecutivo es especialmente preocupante, ya que varias estaciones de radio y televisión han interrumpido sus transmisiones ordinarias desde el regreso de Zelaya. Se ha tenido conocimiento del posible cierre de “Radio Progreso”, en el centro de la ciudad de El Progreso, al norte del país, la cual tiene una trayectoria de 53 años de funcionamiento. Además, Canal 36 y las señales de Radio Globo han sido objeto de interrupción casi constante.

En este contexto, se afirma que el 21 de septiembre de 2009, a alrededor de las 5:30 de la mañana, la señal de Canal 36 habría sido interrumpida mediante cortes de electricidad en sus instalaciones y en el sitio donde se ubican los transmisores. También, la señal de Radio Globo habría sido interrumpida constantemente con interferencias eléctricas, en tanto que la señal del programa televisivo “Hable como Habla” habría sido bloqueada en su emisión del mediodía. El 28 de septiembre habrían sido cerradas Radio Globo y Canal 36.

Esta información preocupa de manera particular, teniendo en cuenta el aumento de denuncias de ataques, agresiones e intimidación contra periodistas en Honduras, incluyendo la destrucción de sus equipos de trabajo. La libertad de expresión es un derecho fundamental que no permite excepciones ni restricciones,

por lo que se hace un llamado a las autoridades para que garanticen el libre ejercicio del derecho a la libertad de opinión y expresión, instándoles además a adoptar las medidas pertinentes para asegurar la integridad física y moral de las personas que, por su profesión, están particularmente vinculadas a la libertad de opinión y expresión y la libertad de reunión.

297. Sin implicar, de antemano, una conclusión sobre los hechos, quisiéramos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos garantizan a todo individuo los derechos a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida.

298. Asimismo, nos gustaría llamar la atención del Gobierno de Su Excelencia sobre el Código de conducta para funcionarios encargados de hacer cumplir la ley, resolución 34/169 de 17 de diciembre de 1979 de la Asamblea General. En particular, el artículo 3 establece que los funcionarios encargados de hacer cumplir la ley podrán usar la fuerza sólo cuando sea estrictamente necesario y en la medida en que lo requiera el desempeño de sus tareas. En este mismo sentido, nos gustaría referirnos también a los Principios básicos sobre el empleo de la fuerza y de armas de fuego por los funcionarios encargados de hacer cumplir la ley, adoptados por el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, La Habana, 27 de agosto a 7 de septiembre de 1990. Dichos principios establecen que los funcionarios encargados de hacer cumplir la ley, en el desempeño de sus funciones, utilizarán en la medida de lo posible medios no violentos y delimitarán el empleo de la fuerza a determinados casos excepcionales, incluidos los de defensa propia o de otras personas en caso de peligro inminente de muerte o lesiones graves.

299. Nos gustaría referirnos también a los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. En particular, los principios 9 a 19 obligan a los Gobiernos a proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias; a publicar en un informe las conclusiones de estas investigaciones; y a velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.

300. Además sin pretender pronunciarnos con antelación sobre el carácter arbitrario o no de las detenciones arriba mencionadas, nos permitimos hacer un llamamiento a las autoridades para adoptar todas las medidas necesarias para asegurar que los derechos de estas personas a no ser arbitrariamente detenidas y a un juicio justo ante un tribunal independiente e imparcial sean protegidos, de conformidad con los artículos 9 y 10 de la Declaración Universal de los Derechos Humanos y con los artículos 9 y 14 del Pacto Internacional de Derechos Civiles y Políticos.

301. En este contexto, deseamos llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de las Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidas y en particular los artículos 1 y 2. Éstos establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales en los planos nacional e internacional y que es la responsabilidad primordial y el deber de todos los Estados de proteger, promover y hacer efectivos todos los derechos humanos, adoptando las medidas necesarias para crear las condiciones sociales, económicas, políticas y de otra índole, así como las



garantías jurídicas requeridas para que toda persona sometida a su jurisdicción, individual o colectivamente, pueda disfrutar en la práctica todos esos derechos y libertades.

302. Además, quisiéramos referirnos a los artículos siguientes:

- el artículo 9, párrafo 3, apartado c), establece que toda persona tiene derecho, individual o colectivamente, entre otras cosas, a ofrecer y prestar asistencia letrada profesional u otro asesoramiento y asistencia pertinentes para defender los derechos humanos y las libertades fundamentales.
- el artículo 12, párrafos 2 y 3, estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración. A este respecto, toda persona tiene derecho, individual o colectivamente, a una protección eficaz de las leyes nacionales al reaccionar u oponerse, por medios pacíficos, a actividades y actos, con inclusión de las omisiones, imputables a los Estados que causen violaciones de los derechos humanos y las libertades fundamentales, así como a actos de violencia perpetrados por grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.

303. Además, nos permitimos hacer un llamamiento urgente al Gobierno de Su Excelencia para que adopte las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: “Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección”.

304. Desearíamos hacer un llamamiento al Gobierno de Su Excelencia para que adopte las medidas necesarias para el respeto del derecho de reunión pacífica de acuerdo con los principios enunciados en el artículo 21 del Pacto Internacional de los Derechos Civiles y Políticos: “Se reconoce el derecho de reunión pacífica. El ejercicio de tal derecho sólo podrá estar sujeto a las restricciones previstas por la ley que sean necesarias en una sociedad democrática, en interés de la seguridad nacional, de la seguridad pública o del orden público, o para proteger la salud o la moral públicas o los derechos y libertades de los demás.

305. Asimismo, con relación a los ataques contra la COFADEH, nos gustaría hacer referencia a la resolución 2005/9 mediante la cual la Comisión de Derechos Humanos instó a los gobiernos a que se abstuvieran de todo acto de intimidación o represalia contra: quienes traten de cooperar o hayan cooperado con representantes de los órganos de defensa de los derechos humanos de las Naciones Unidas y sus órganos de derechos humanos, hayan prestado testimonio ante ellos o les hayan proporcionado información; quienes recurran o hayan recurrido a los procedimientos establecidos bajo los auspicios de las Naciones Unidas para la protección de los derechos humanos y las libertades fundamentales, y todos los que les hayan prestado asistencia jurídica a tal fin; quienes presenten o hayan presentado comunicaciones con arreglo a los procedimientos establecidos en los instrumentos de derechos humanos y los familiares de víctimas de violaciones a los derechos humanos. Además, la Comisión pidió a todos los representantes de los órganos de derechos humanos de las Naciones Unidas y a los órganos creados en virtud de tratados encargados de supervisar la observancia de los derechos humanos que sigan adoptando medidas urgentes, de conformidad con sus mandatos, para tratar de

impedir que se produzcan intimidaciones o represalias y que se obstaculice de cualquier forma el recurso a los procedimientos de derechos humanos de las Naciones Unidas.

306. Además, quisiéramos referirnos a la resolución 7/12, aprobada sin votación, del Consejo de Derechos Humanos por la que éste instó a los Estados a que adopten medidas para proteger a los testigos de desapariciones forzadas o involuntarias, a los defensores de los derechos humanos que luchan contra las desapariciones forzadas y a los abogados y a las familias de las personas desaparecidas contra todo acto de intimidación o contra los malos tratos de que pudieran ser objeto.

307. Quisiéramos instar al Gobierno de su Excelencia a que adopte todas las medidas necesarias para proteger los derechos y las libertades de las personas mencionadas e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que tome las medidas efectivas para evitar que tales hechos, de haber ocurrido, se repitan.

308. Teniendo en cuenta la urgencia del caso, agradeceríamos recibir del Gobierno de su Excelencia una respuesta sobre las acciones emprendidas para proteger los derechos de las personas anteriormente mencionadas.

309. Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Fue presentada alguna queja?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con estos casos, incluyendo los resultados de los exámenes médicos llevados a cabo. Si éstas no hubieran tenido lugar o no hubieran sido concluidas, le rogamos que explique el por qué.
4. Por favor, proporcione información sobre las instrucciones que tengan las fuerzas de seguridad sobre el empleo de la fuerza durante manifestaciones.
5. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
6. Por favor, proporcione los detalles sobre cómo las acciones emprendidas por los agentes públicos respecto de este caso son compatibles con las normas y principios internacionales del derecho a la libertad de opinión y de expresión y el correspondiente derecho de reunión pacífica y asociación.
7. Por favor, proporcione información sobre si el decreto ejecutivo que suspende las garantías constitucionales es estrictamente necesario por las exigencias de la situación y es compatible con las restricciones permisibles en virtud del derecho internacional de los derechos humanos.

## India

### **Killings of Khukuli Khatun and Tutul Seikh by the Border Security Forces**

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

**Subject(s) of appeal:** 1 male, 1 female

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the response of the Government of India with respect to the deaths of Khukuli Khatun and Tutul Seikh. He looks forward to receiving the outcome of the investigation into their deaths, and the details of any prosecutions that result.

**Allegation letter dated 3 April 2009.**

310. In this connection, I would like to bring to your Government's attention information I have received concerning the alleged killing of Ms. Khukuli Khatun and Mr. Tutul Seikh by members of the Border Security Forces (BSF) in West Bengal.

According to information received:

On 19 November 2008, at about 3:30 p.m., Ms. Khukuli Khatun, a.k.a. Kakali, was shot in the stomach at point blank range by a BSF officer in front of her family's home. She was trying to help her mother and sister, who were allegedly being beaten by two BSF officers of the 42nd Battalion, Company F, because they tried to stop two BSF officers from beating another young man (the names of these persons are on record with me). The BSF prevented the villagers from taking Ms. Khukuli Khatun to the hospital immediately. She was taken to Chapra Block Primary Health Centre after the BSF left and from there transferred to Shaktinagar District Hospital, but died of her injuries at 6:00 p.m. Kotwali Police Station (Krishnanagar) registered an unnatural death case (no. 613/2008) and on 20 November 2008, a post-mortem examination was conducted. Ms. Khukuli Khatun's family also lodged a complaint under section 302 of Indian Penal Code and 25/27 of the Arms Act. Chapra Police Station registered the case and a BSF officer (his name is on record with me) was reportedly suspended from his duties in connection with the investigation.

Mr. Tutul Seikh, aged about 18 and resident of Katlamary Ramnagar para, was found dead by Raninagar police station officers on 2 January 2009, at around 5:00 a.m. in a paddy field. The previous evening, the police station had been informed that BSF had fired at 20-25 persons who were allegedly trying to smuggle cattle through the Indo-Bangladesh border. BSF reported that they were attacked by the smugglers. This version has been contested by witnesses of the events. Raninagar Police station opened an unnatural death case (no. 1/09). A post-mortem examination was conducted on 2 January 2009, but the results have not been disclosed. It is alleged that the bullet injury would show that the shot was fired at close range.

311. While I do not wish to prejudge the accuracy of these allegations, I would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR), to which India is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life (Article 6).

312. In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

313. I would also note the relevance in these cases of the UN Basic Principles on the Use of Force and Firearms by Law Officials. Principle 4 provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, Principle 5 provides that, “[w]hen the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment [...]” Besides, Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

314. I would further like to remind your Excellency’s Government of the principle whereby there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions).

315. Finally, I would like to stress that families of the deceased should be informed about the investigation and the findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17). Moreover, the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time (Prevention and Investigation Principles, Principle 20).

316. It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summaries of the cases accurate? Please refer to the status or results of any police, medical, or military investigation, or judicial or other inquiries carried out in relation to the alleged incidents.
2. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against, members of the Border Security Forces involved, as perpetrators or responsible commanders, in the deaths of Ms. Khukuli Khatun and Mr. Tutul Seikh.
3. Please state whether any compensation has been, or is intended to be, provided to the families of Ms. Khukuli Khatun and Mr. Tutul Seikh.
4. I recall my communications dated 2 May 2008, 29 July 2008 and 16 September 2008 seeking information on a total of ten cases of allegedly arbitrary killing by BSF officers. As of to date, they have regrettably remained without a reply. I would like to express my continued interest in receiving a response to the questions posed in those letters and in being updated on the progress of the investigations into the killings alleged in them.

#### **Response from the Government of India dated 31 July 2009**

317. The permanent mission of India to the office of the United Nations and other international organisations in Geneva presents its compliments to the High Commissioner for Human Rights and with reference to communication IND 6/2009 dated 3 April 2009 signed by Mr Philip Alston, the Special Rapporteur on extrajudicial, summary or arbitrary

executions, has the honour to inform that the Government of India has examined communications and found the allegations to be inaccurate and unfounded.

318. Mr Tukul Seikh was part of a group of 20-25 cattle smugglers who were trying to smuggle some cattle at about 0430 hours on 2 January 2009 from India to Bangladesh. When challenged by BSF patrol that was in the area owing to a tip-off, the smugglers did not pay heed and kept hurrying toward porous international border. In fact, some of them encircled the small four person BSF patrol party and attacked it with local sharp edged weapons (like *dah*) and bamboo sticks. The subject died when the BSF patrol opened fire in self-defence at close range. As is mandatory under BSF rules, a departmental staff court of inquiry was conducted after the incident which found the opening of fire by the patrol party was justified. Further, contrary to what has been mentioned in the allegation, the police case (1/09) was registered with Raninangar police station by the BSF itself as part of normal legal requirement of handing over of the dead body to the police station. It may be noted that the international border in this areas is highly porous and prone to illegal cross border activities, including cattle smuggling. As a result, the authorities (District Magistrate Murshidabad) have imposed strict restrictions prohibiting any movement of cattle from dusk to dawn within a belt of three kilometres from the international border, apart from grazing of cattle within 300 metres of the border. The presence of the subject with the cattle within this prohibited zone before dawn is a clear indicator of the mala fide intentions of the subject.

319. Ms Khukhuli Khatun was part of a group of people who were trying to smuggle fertilizer by throwing fertilizer packets over the border fence (the border is fenced in the area where the incident occurred) and later, when a two-person BSF patrol chased and caught one person of this group, encircled the patrol while pelting it with stones and sticks. In self defence one of the BSF constables cocked his rifle to disperse the smugglers. However, the constable slipped and fell down in the scuffle and his weapon went off hitting Ms Khatun in the stomach. She was evacuated to the nearest rural hospital at Chapra and later to Krishannagar hospital where she succumbed to her injuries. One of the two constables too was badly injured in the assault by the smugglers and evacuated to the same hospital at Chapra. A part of normal legal procedure, the BSF itself registered a police case with police station Chapra the same day. The case is under further investigation.

#### **India: Killing of Abdus Samad and Javed Ali Mahaldar by the Border Security Forces**

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

**Subject(s) of appeal:** 2 males

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the response of the Government of India with respect to the deaths of Abdus Samad and Javed Ali Bahadur. He looks forward to receiving the outcome of the investigations into the deaths of Mr. Samad and Mr. Ali, and the details of any prosecutions that result.

#### **Allegation letter dated 5 August 2009**

320. In this connection, I would like to bring to your Government's attention information I have received concerning the alleged killing of two men, Mr. Abdus Samad and Mr. Javed Ali Mahaldar, by members of the Border Security Force (BSF) in West Bengal.

According to information received:

Abdus Samad, a.k.a. Kalu Seikh, a 35 years old resident of Biswanathpur, Murshidabad district, was taken from his home at around 3.00 a.m. on 5 May 2009 by members of the BSF. He was beaten with riffle butts and lathis, had his hands tied behind his back and was dragged out of his house to the adjacent premises of Manik Chawk Primary School. He was subsequently brought to BSF Camp at Diar Manick Chawk, where the beatings continued. He died at around 5.00 a.m., after members of the BSF had taken him to another camp, the Ramnagar Border Out-Post Camp (BOP), where basic medical assistance was available.

Without being aware of Mr. Samad's death, his family lodged a complaint at about 7.00 a.m. on 5 May, at Lalgola Police Station, regarding his torture and disappearance, but the complaint was not accepted by the police. Nevertheless, at 11.00 a.m., Abdus Samad's family received a written communication from Lalgola Police saying that he was dead and that an inquest would be conducted at Ramnagar BOP camp of BSF. At the camp the family saw Mr. Abdus Samad's body covered with injuries and blood. The inquest took place at 4.00 p.m. in the presence of the police personnel of Lalgola Police Station and an Executive Magistrate. They registered the case as an unnatural death (Case no. 4/2009 dated 5 May 2009) and sent the body to Lalbagh Sub-Divisional Hospital for a post mortem examination. After observing some abnormalities, the Superintendent of the Hospital decided to send the body to Berhampore New General Hospital on 6 May 2009, saying that he was not able to do the examination himself.

Abdus Samad's wife, Ms. Rimi Bewa, filed several complaints regarding her husband's death: one in the court of Chief Judicial Magistrate, Berhampore, Murshidabad, on 6 May 2009; another one before the Deputy Inspector General, BSF, Roshanbagh, Compagny Officer, Lalbagh Camp, Murshidabad; and also a written complaint, a First Information Report, at the police of Lalgola Police Station, dated 7 May 2009 (Case no. 236/2009).

Jabed Ali Mahaldar, a bidi worker aged 27, and a friend were beaten with lathis and riffle butts by members of the 108 Battalion of BSF as they were fishing at the river Ganges (Padma). Mr. Mahaldar's friend was able to escape, but he was unable to do so as a result of the beating. Members of the BSF tied his hands behind his back and brought him to Nimtita BOP camp, where he was beaten again and kicked until 9.00 p.m. According to witnesses, several swellings haematoma were visible on his body and his head bore a 2" deep cut. At 9.30 p.m., Mr. Mahaldar was brought to the Mahishadal Block Primary Healty Center, where BSF members tried to force the duty medical officer to certify him as having died even though he was still alive. Despite the BSF demands, the doctor transferred him to the Jangipur Hospital for treatment. On his arrival at the hospital with BSF members, he was declared "brought dead" by the medical officers.

321. While I do not wish to prejudge the accuracy of these allegations, I would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR), to which India is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life (Article 6).

322. In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

323. I would also note the relevance in these cases of the UN Basic Principles on the Use of Force and Firearms by Law Officials. Principle 4 provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, Principle 5 provides that, “[w]hen the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment [...]” Besides, Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

324. I would further like to remind your Excellency’s Government of the principle whereby there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions).

325. Finally, I would like to stress that families of the deceased should be informed about the investigation and the findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17). Moreover, the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time (Prevention and Investigation Principles, Principle 20).

326. It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against, members of the Border Security Forces involved, as perpetrators or responsible commanders, in the deaths of Mr. Abdus Samad and Mr. Javed Ali Mahaldar.
3. Please state whether any compensation has been, or is intended to be, provided to the families of Mr. Abdus Samad and Mr. Javed Ali Mahaldar.
4. I recall my communications dated 2 May 2008, 16 September 2008 and 3 April 2009 seeking information on allegedly arbitrary killing by BSF officers. As of to date, they have regrettably remained without a reply. I would like to express my continued interest in receiving a response to the questions posed in those letters and in being updated on the progress of the investigations into the killings alleged in them.

**Response from the Government of India dated 4 December 2009:**

327. [...] Mr. Abdus Samad was a member of a group of smugglers that was spotted through a night-vision device by a BSF patrol at about 04.10 hours on 5 May 2009 along India-Bangladesh border, trying to negotiate the barbed-wire border fence. When challenged, the group tried to flee under the cover of darkness. The subject, who had hidden himself in a nearby paddy field, was spotted again but tried to escape by trying to assault

one of the patrol constables with a sharp-edged weapon and flashing torch light on the eyes of the constable in order to blind him temporarily. The subject was, however, overpowered and brought to a nearby BSF post at about 05.05 hrs, along with 2.3 kgs of morphine that was recovered from him. When the subject was observed to be restless, he was taken initially to another nearby BSF post that had some medical facilities and later to the nearest civil hospital where the duty physician declared him dead. The BSF filed a report with the police on 5 May 2009 and a post-mortem was conducted on 6 May 2009. As required under the procedure, the case is under investigation by the police and a staff court of inquiry was ordered by the BSF.

328. Mr. Javed Ali was a smuggler who, along with another miscreant, was spotted by some local fishermen at about 14.30 hours on 30 April 2009 moving suspiciously towards the border river between India and Bangladesh. While the local fishermen shouted to alert the BSF patrol that was nearby, the subject and his fellow accomplice jumped into the river to swim across to Bangladesh. However, the local fishermen and other civilians present nearby got hold of the subject and beat him mercilessly since they suspected these smugglers of having stolen their fishing net and three boats earlier. The BSF patrol soon reached the spot and rescued the subject from the scene. About 7.5 kg of cannabis was recovered from him. The subject was taken to a nearby primary health care center where he was declared dead. A police complaint was duly registered on 1 May 2009 and the investigation is in progress. While, *prima facie*, no BSF personnel have been found to be directly involved in the death of the subject, appropriate disciplinary proceedings will be initiated in case any BSF personnel is implicated in the police investigation.

329. The Permanent Mission of India requests that the response of the Government of India be presented in full to the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.

#### **India: Killings of Chungkam Sanjit and Thockchom Rebina by state forces**

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality and

**Subject(s) of appeal:** 1 female, 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of India has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

#### **Allegation letter dated 14 August 2009**

330. In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding two extrajudicial executions allegedly committed by Police Commandos in Manipur State.

According to information received:

Mr. Chungkam Sanjit and Ms. Thockchom Rebina, both of whom belonged to the Meitei indigenous community, were killed, and five others injured, on 23 July 2009 when Manipur Police Commandoes opened fire at Khwairamband Bazaar in the heart of Imphal, Capital of Manipur State in India's North East. These allegations are of particular concern to the extent that they are alleged to be part of a wider campaign of state violence against the people of Manipur.

Killing of Mr. Chungkam Sanjit: According to the allegations I have received, Mr. Shanjit left JN Hospital to search for medicines for his ailing father at



Khwairamband Bazaar, Imphal. Reports indicate that Mr. Sanjit was frisked and briefly interrogated by police in a public call office. Photographic evidence of the incident suggests that he was taken by the police from the public call office to a pharmacy further along the street, and soon after the police brought his body out and loaded it onto a truck. He had sustained a number of gunshot wounds to his abdomen. According to the Government of Manipur and the Manipur Police Commandoes, Mr. Chungkham Sanjit was killed in a retaliatory firing after he shot at them whilst fleeing, with the subsequent recovery of a 9mm pistol and 4 live rounds of ammunition from him. However, photographic evidence shows Mr. Chungkham Sanjit to be calm when arrested, and to be unarmed. The police also alleged that he was a member of People's Liberation Army (PLA), one of the resistance groups launching armed struggle for the right to self determination of Manipur. Manipur Chief Minister Okram Ibobi Singh has since admitted that Mr. Sanjit was known to have retired from the PLA in 2006.

**Killing of Ms. Thockchom Rebina:** According to the information received, Ms. Thockchom Rebina was killed by a stray bullet to her head when police fired at a fleeing youth whilst pursuing him. She was reportedly shopping at Khwairamband Market with her three year old son. Five other people were seriously injured by stray bullets during the incident.

331. While I do not wish to prejudge the accuracy of these allegations, I would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities." Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. The UN Basic Principles on the Use of Firearms by Law Enforcement Officials explain that intentional lethal use of firearms may only be made when strictly unavoidable (Para. 9). Additionally, para. 7 of the Basic Principles states that the abusive use of firearms by law enforcement officials must be punished as a criminal offence. Indeed, these rules are entailed by the legal duty to respect the right to life recognized in Article 6(1) of the ICCPR.

- Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances". This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

332. I urge your Excellency's Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths of Mr. Chungkam Sanjit and Ms. Thockchom Rebina, with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

333. It is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the death of the above-mentioned victims.
3. Please provide the full details of any disciplinary action and prosecution undertaken with regard to police officers found responsible.
4. Please indicate whether compensation has been provided to the families of the victims.

## **Indonesia**

### **Impunity for killing of Munir Said Thalib**

**Violation alleged:** Impunity, compensation and the rights of victims

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Indonesia has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 1 April 2009**, sent with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders.

334. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the ongoing investigation and prosecution of persons suspected of involvement in the murder of Mr. Munir Said Thalib, who was killed by poisoning on a Garuda flight from Jakarta to Amsterdam on 7 September 2004. The Special Rapporteur on the independence of judges and lawyers and the then Special Representative of the Secretary-General on the situation of human rights defenders sent an urgent appeal to your Excellency's Government regarding the killing of Mr. Munir Said Thalib on 3 December 2004. The Special Rapporteur on extrajudicial, summary or arbitrary executions sent an allegation letter regarding the investigation and judicial proceedings in this case on 30 November 2006. Your Excellency's Government replied to the latter communication on 19 January 2007.

335. The communication by the Special Rapporteur on extrajudicial, summary or arbitrary executions followed a decision of the Supreme Court of 3 October 2006. The Supreme Court had overturned the conviction on murder charges, in first and second instance, of Mr. Pollycarpus Budihari Priyanto, a Garuda pilot and agent of the State Intelligence Agency, as the person who materially poisoned Munir Said Thalib. According to information received since then, after the acquittal the Criminal Investigation Department gathered new evidence and interrogated new witnesses, including several staff members of the intelligence agency. This evidence and witness testimony were used in the Supreme Court's review of the acquittal of Mr. Priyanto. He was subsequently tried again, convicted on murder charges and is currently serving a 20-years prison sentence. Two Garuda employees have also been convicted for facilitating the presence of Mr. Priyanto on

the flight and sentenced to one year imprisonment. We welcome the investigatory and prosecutorial efforts which made the successful prosecution of the above-mentioned three individuals possible.

336. In its communication to the Special Rapporteur of 19 January 2007, however, your Excellency's Government also stated that "it has been the government's task and focus for some time now to uncover the masterminds behind this murder [...] who have for so long [...] remained at large". We share your Government's view that the successful investigation and prosecution of those who have ordered, planned and otherwise been complicit in the murder of Mr. Munir Said Thalib is of the utmost importance. It is in respect of a recent serious setback in these efforts that we are now writing to your Excellency's Government.

According to the information received:

Retired Major General Muchdi Purwopranjono, former Deputy Head of the State Intelligence Agency, was charged with plotting and ordering the killing of Mr. Munir Said Thalib. Major General Muchdi Purwopranjono was the first person charged for planning and ordering the killing. He was arrested on 19 June 2008, and in August 2008 the court proceedings started before the District Court in South Jakarta. On 31 December 2008, the District Court acquitted Major Muchdi on all charges and ordered his release.

Sworn statements to the Criminal Investigation Department by agents of the State Intelligence Agency (Badan Intelijen Negara, or BIN) were among the key evidence to the prosecution case against Major General Muchdi Purwopranjono. At trial, however, these witnesses from the State Intelligence Agency withdrew their previous sworn testimony to the Criminal Investigation Department. The District Court judges noted the difference between the prior statements and the current testimony. They warned that the discrepancies would be noted in the transcript of proceedings and reminded the witnesses of the maximum punishment if they give false testimony. However, the judges did not order the arrest of witnesses or recommend their prosecution under the laws relating to false testimony (Article 174 paragraph (1) and (2) of the Criminal Procedure Code).

In addition to the systematic retraction at trial of prior witness statements by State Intelligence Agency members, the investigation and prosecution continues to suffer from a lack of cooperation by the State Intelligence Agency. The Agency failed to make key witnesses available to the above-mentioned independent investigation team. The police was also not able to obtain the content of the more than 40 calls from the phone of Mr. Priyanto to Major General Muchdi.

Moreover, during the trial of Major General Muchdi Purwopranjono, organized groups of militia and thugs intimidated Ms. Suciwati, the widow of Munir Said Thalib, and other human rights defenders in the court room.

In its communication of 19 January 2007 to the Special Rapporteur on extrajudicial, summary or arbitrary executions, your Excellency's Government stresses that under article 24 of the Indonesian Constitution and Law no. 14/1970 judges are independent and free from all influence emanating from government authority. This principle is also reflected in the Basic Principles on the Independence of the Judiciary (adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985) which, in principle 1, second sentence, prescribe the duty of all governmental and other institutions to respect and observe the independence of the judiciary. Only if this principle is met, one can ensure that judicial proceedings are conducted fairly and that the rights of the parties

are respected (principle 6 of the Basic Principles). It is the Government's duty to ensure adequate conditions which enable the judiciary to independently administer justice. This duty might also include taking proactive steps to protect the integrity of the judicial process against interference by third parties, including other institutions and services serving the State.

337. While we do not wish to prejudge the accuracy of the reports received, in the case of the trial of Major General Muchdi Purwopranjono, the reported systematic retraction of previous sworn statements by State Intelligence Agency staff suggests that there might have been interference with the integrity of the judicial process. This concern is compounded by the circumstance that State Intelligence Agency staff who testified to the police investigation had reportedly been accompanied by the State Intelligence Agency's lawyer during the police interrogations, which reinforces the police's assurances that these statements were genuine, made without intimidation or undue pressure. The alleged failure of the State Intelligence Agency to turn over to the investigators all the requested evidence and to facilitate interviews with all relevant staff similarly interferes with the integrity of the judicial process. Also the presence of organized groups in and around the court room threatening violence against participants in the judicial proceedings constitutes an interference with the judicial process which requires protective action on the side of the Government. We call on your Excellency's Government to take all necessary steps to ensure that the further investigation and prosecution of those accused of involvement in the murder of Munir Said Thalib proceed without undue interference.

338. Mr. Munir Said Thalib was a prominent human rights defender whose activity in the struggle against enforced disappearance was publicly known. The attack on his life and the continuing impunity of those who planned and ordered his killing is not only a violation of his rights and those of his relatives, it also constitutes a general threat against all those struggling against enforced disappearances in Indonesia, individually or as an association. His Excellency President Yudhoyono has acknowledged the importance of this case by reportedly calling it a "test of our history". It is therefore of the utmost importance that the circumstances surrounding Mr. Munir Said Thalib's death are thoroughly and impartially elucidated and that all those responsible are brought to justice in fair proceedings free from any interference.

339. In this respect, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. In particular, article 1 states that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels". Of special relevance to the cases at hand, article 12 paras 2 and 3 of the Declaration provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone against any violence, threats, retaliation, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

340. We would like to conclude by reiterating the words of the then Special Representative of the Secretary General on the situation of human rights defenders in the report on her visit to Indonesia from 5 to 12 June 2007: "... [h]uman rights defenders in Indonesia and the international community are expecting that the Government will ensure justice in the case of Munir and that the perpetrators of this crime will be brought to justice" (A/HRC/7/28/Add.2, paragraph 85).

341. We would appreciate a response within sixty days. We undertake to ensure that your Government's response to this communication is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

**Indonesia: Death in custody of Bayu Putra Perdana and Susanto**

**Violation alleged:** Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention

**Subject(s) of appeal:** 2 males

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Indonesia has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 4 September 2009**, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

342. In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning two cases of death resulting from injuries sustained in police custody. The victims in these two cases are named Mr. Bayu Putra Perdana and Mr. Susanto.

According to the information received,

On 2 April 2009 at 2 p.m., Mr. Bayu Putra Perdana was arrested in the Galur area of Cempaka Putih by men introducing themselves as officers of the North Jakarta police force. In the evening of that day, police officers from the North Jakarta police force searched his home. Their affiliation with that police station is confirmed by the fact that they left a phone number belonging to an officer of the North Jakarta police force. In the afternoon and evening of that same day, Mr. Bayu Putra Perdana's family inquired with police officers at several police stations in the North Jakarta area. One witness reportedly heard Mr. Bayu Putra Perdana screaming in pain (at the North Jakarta police station) in the course of the afternoon. A senior detective at the North Jakarta police station (his name is on record with the Special Rapporteurs) told Mr. Perdana's father that his son was being held in Bogor, in neighbouring West Java.

On 4 April 2009, Mr. Perdana's father was informed that his son had been shot dead by the police as he tried to escape during a crime scene reconstruction. When he saw his son's body at the hospital, however, Mr. Perdana's father found his son's corpse covered with other wounds, including on his wrists and hands, and more than ten stab wounds on his legs.

On 9 July 2009, police officers in Kreung Raya, Aceh, received a complaint accusing Mr. Susanto of having stolen a tire at a car workshop. They first tried to arrest him at a coffee shop in the Kreung Raya Market. Mr. Susanto managed to escape. The police then called for reinforcements, and Mr. Susanto was arrested in Lampoh Raya and taken to the Krueng Raya Police Station. Although three shots were reportedly fired by the police during the arrest, eyewitnesses state that at the time of his arrest Mr. Susanto was mostly unharmed. Three hours later, Mr. Susanto presented extensive injuries and was taken to the nearest clinic by the police. The medical personnel at the clinic declared his condition critical and ordered that he be immediately transferred to the Zainal Abidin Hospital. Mr. Susanto died at 10 p.m. When his family received his body, he had deep wounds on his right leg, a stab wound on his left toe, a roughly stitched wound on the back of his head and bruises around his eyes.

343. While we do not wish to prejudge the accuracy of the allegations, we would like to draw your Excellency's Government's attention to the fundamental principles applicable under international law to these cases. Article 7 of the International Covenant on Civil and

Political Rights, to which Indonesia is a party, provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. As a consequence, when an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility (*see*, for instance, the Human Rights Committee’s views in the case of *Mr. Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2).

344. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3, stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

345. The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

346. We urge your Excellency’s Government to carry out expeditious, independent and transparent inquiries into the circumstances surrounding the deaths of Mr. Bayu Putra Perdana and Mr. Susanto, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate their families.

347. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summaries of the cases accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate whether compensation has been provided to the families of Mr. Bayu Putra Perdana and Mr. Susanto.

**Indonesia: Concern over legislation imposing the death penalty for non-serious crimes**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** Group concern

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Indonesia has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 2 October 2009**, sent with the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its causes and consequences.

348. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the adoption of the new Islamic Criminal Code (Qanun Jinayah) in Aceh.

According to the information received,

On 14 September 2009, the Aceh Legislative Council adopted a new Islamic Criminal Code which imposes severe sentences for consensual extra-marital sexual relations, rape, homosexuality, alcohol consumption and gambling. Among other sanctions, the Code imposes the punishment of stoning to death for adultery; 100 cane lashes for sexual intercourse outside marriage; between 100 and 300 cane lashes or imprisonment for rape; and 100 lashes for homosexuality.

In addition, the new Code legalizes marital rape and provides that a woman alleging that she is a victim of rape will be found guilty of sex outside marriage unless she can provide four male witnesses testifying to the lack of consent on her part; impunity will be given to those who commit rape at the command of superiors.

The National Commission against Violence on Women has called for a judicial review of Law No. 11/2006 of the Government of Aceh concerning the sources the Aceh Legislative Council has used to adopt the Aceh Islamic Criminal Code. Moreover, this Code applies to both Muslims and non Muslims.

It is furthermore alleged that although the Code is applicable to the population as a whole in practice women are far more likely to become victims of stoning due to patriarchal and discriminatory practices and policies, as well as biological differences such as pregnancy.

349. While we do not wish to prejudge the accuracy of these allegations, we should like to recall that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

350. We would also like to draw the attention of your Excellency's Government to Resolution 8/8 of the Human Rights Council. It states that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture. We would also like to draw your Government's attention to the report by the Special Rapporteur on torture to the 60<sup>th</sup> session of the General Assembly, in which he concluded, with reference to the jurisprudence of UN treaty bodies, that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (A/60/316, para. 28). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20

(1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime of as an educative or disciplinary measure.

351. In the report of the Special Rapporteur on torture on his mission to Indonesia (A/HRC/7/3/Add.7), he expressed concern “about penalties provided for by Sharia law, such as public flogging, incorporated into the 2005 Aceh Criminal Code...”. He further added that “women are disproportionately affected by corporal punishment provided for by the Aceh Criminal Code, which is based on Sharia law.”

352. With regard to the provision allegedly dictating that the death penalty by stoning shall be imposed on those found guilty of adultery, we recall that Article 6(2) of the Covenant provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision shows that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). The Human Rights Committee has expressly stated that the imposition of the death penalty for adultery is incompatible with the Covenant (see, e.g., CCPR/C/79/Add.25).

353. Furthermore, we would like to draw the attention of your Excellency’s Government to General Assembly resolution 63/181 in which the Assembly urges States “to ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights” (para. 9 b). We would also like to recall that the General Assembly in the same resolution urges States “to step up their efforts to eliminate intolerance and discrimination based on religion or belief, [...] devoting particular attention to practices that violate the human rights of women and discriminate against women” (para. 12 a). Furthermore, the General Assembly invites all actors to address “situations of violence and discrimination that affect many women as well as other individuals on the grounds or in the name of religion or belief or in accordance with cultural and traditional practices” (para. 16 b).

354. Moreover, we would like to refer to para. 10 of General Comment No. 22 on freedom of thought, conscience and religion, in which the Human Rights Committee emphasized that “[i]f a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it”.

355. We would also like to bring to the attention of your Excellency’s Government Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, which stipulates that States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to



ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.

356. We would also like to draw the attention of your Excellency's Government to Article 1 of the United Nations Declaration on the Elimination of Discrimination against Women, which stipulates that discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity. Article 2 of the Declaration states that all appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular: (a) The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law; and (b) The international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.

357. In the event that your investigations support or suggest the above allegations to be correct, we urge your Excellency's Government to take all necessary measures to guarantee that the Code complies with the above international instruments.

358. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government in this regard.

359. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Is the Government taking any action to request the Supreme Court to review the Code?

#### **Indonesia: Death in Custody of Mr. Carmadi.**

**Violation alleged:** Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Indonesia has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 16 December 2009,** sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

360. In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the death in custody of Mr. Carmadi.

According to the information received,

Mr. Carmadi was arrested on 14 April 2009 by Mr. Aiptu Sutrisno and another police officer dressed in civilian clothes. Mr. Carmadi was taken to the Tegal

Police Station, were he had to give a statement concerning an attack on a village which had taken place several days before. The police then took Mr. Carmadi to the hospital to meet one of the victims of the attack. At the hospital, the victim's brother allegedly indicated that Mr. Carmadi had not been involved. Nevertheless, Mr. Carmadi was allegedly beaten and was forced to confess under duress. He suffered injuries mainly on the left side of his body, on his tongue and ear. When his family visited him at the police station, they also noted that his head was bleeding and that he had injuries in his upper body. He received no medical treatment.

On the same day, the police delivered an arrest warrant for Mr. Carmadi to his parents. Subsequently, he was transferred to the Slawi Police Station. In the evening, Mr. Carmadi's father was summoned to the police station. Once he arrived, he was informed that Mr. Carmadi had fainted during the investigation. He was then taken to the hospital, where he died. On 17 April, an autopsy was performed at the hospital and his body was released for burial.

After Mr. Carmadi's death, his family lodged a complaint with the Head of the Criminal Investigation Division. On 4 May, the family went to the Internal Affairs Department, where they were informed that the autopsy concluded that Mr. Carmadi had committed suicide. After seeing the report, the family was able to witness that the results of the autopsy and the information provided by the police did not match. The family then filed complaints with the National Police Commission, the District Police in Tegal Central Java and the National Commission for Human Rights. No progress has been made in the investigation.

361. While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Excellency's Government's attention to Article 13 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which requires that "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given". In this context, we would also like to draw your Excellency's Government's attention to paragraph 6 (b) and (e) of Human Rights Council Resolution 8/8 adopted in June 2008 which urges States "to take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold persons, who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed [...] and "to ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation [...]"

362. We however urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Carmadi are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

363. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?

2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate whether compensation has been provided to Mr. Carmadi or to his family.

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

### **Risk of execution of Abu Moslem Sohrabi (a minor)**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

### **Urgent Appeal sent on 31 March 2009**

364. In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding Mr. Abu Moslem Sohrabi, a man reportedly sentenced to death as qesas (retribution) for a killing committed in 2001, when he was aged 17. My previous communication to your Excellency's Government regarding this case, dated 13 August 2008, remains unanswered.

365. My attention has now been drawn to reports indicating that the review of his sentence ordered by Branch 33 of the Supreme Court in July 2008 has recently resulted in the death sentence being affirmed. He would, as a consequence, be at risk of execution.

366. While I do not wish to prejudge the accuracy of the information received, I reiterate that any further executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child, to which the Islamic Republic of Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

367. I therefore again urge your Excellency's Government to expeditiously lift or commute the death sentences imposed against Mr. Abu Moslem Sohrabi, as well as all other persons awaiting execution for offences committed before they reached age 18. All other efforts undertaken by your Government to prevent these executions are insufficient to meet its obligations under international treaties it is a Party to.

368. It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report

on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? Was the question of Abu Moslem Sohrabi's age considered in the review process and, if so, on what grounds was it decided to uphold the death sentence.
2. Please explain the steps taken by your Excellency's Government to lift or commute the death sentences imposed against Abu Moslem Sohrabi.

**Iran: Execution on charges of "mohareb" ("enmity against God") for participation in clashes between the police and Ahl-e Haqq followers in 2004.**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 2 males

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 28 April 2009,** sent with the Special Rapporteur on freedom of religion or belief.

369. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the execution of Mr. Mehdi Qasemzadeh, a follower of the Ahl-e Haqq religion, and the possibly imminent execution of another member of the group, Mr. Yunes Aghayan. Both men were reportedly convicted on charges of "mohareb" ("enmity against God") on the basis of their participation in clashes between the police and Ahl-e Haqq followers in 2004.

According to the information received:

In September 2004, clashes between members of a group of Ahl-e Haqq and police resulted in the death of five Ahl-e Haqq members and at least three police. Apparently, the clashes were triggered by the refusal of Ahl-e Haqq followers to take down religious slogans at the entrance to their cattle farm in Uch Tepe, West Azerbaijan Province.

In the following months, members of Ahl-e Haqq were arrested and charged with "mohareb" (Yunes Aghayan was arrested around November 2004). Five men, Yunes Aghayan, Mehdi Qasemzadeh, Sehend Ali Mohammadi, Bakhshali Mohammadi, and Ebadollah Qasemzadeh were tried before Branch 2 of the Mahabad Revolutionary Court and sentenced to death. The death sentences against Yunes Aghayan and Mehdi Qasemzadeh were upheld by the Supreme Court in April 2005. The death sentences against Sehend Ali Mohammadi, Bakhshali Mohammadi, and Ebadollah Qasemzadeh were overturned by the Supreme Court in September 2007. They are serving 13-year prison sentences in Yazd Province.

Mehdi Qasemzadeh was executed on, or around, 28 February 2009. Yunes Aghayan is held on death row in Oromieh Prison in West Azerbaijan Province.

370. Although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that the "sentence of death may be imposed only for the most serious crimes in accordance with the law".

371. As we have explained in previous communications to your Excellency's Government, the imposition of the death sentence on charges of "mohareb" is highly problematic. We are concerned that this charge, which according to our information in Iran is directed mainly against political dissidents, critics of the Government and persons accused of espionage, might not be sufficiently well defined to satisfy the very strict standards of legality set by Article 6(2) of the Covenant for the imposition and carrying out of the death penalty. In order for the sentence of death to be imposed "in accordance with the law", the law in question must be sufficiently precise to clearly allow distinction between conduct punishable with the capital sentence and conduct not so punishable. (See the communications of 31 August 2006 concerning the imposition of the death penalty against Ali Motirijjad and others (reproduced in A/HRC/4/20/Add.1, pages 165f), of 26 July 2007 concerning the imposition of the death penalty against Abdolwahed (Hiwa) Butimar and Adnan Hassanpour (reproduced in A/HRC/8/3/Add.1, pages 210f), and of 18 July 2008 in the cases of Farzad Kamangar, Ali Heydariyan and Farhad Vakili).

372. On the basis of these concerns, we have repeatedly sought from your Excellency's Government a definition of mohareb under Iranian law. While your Government has provided substantial information on the factual allegations on which the mohareb charges against Adnan Hassanpour, Farzad Kamangar, Ali Heydariyan and Farhad Vakili were based, which is highly appreciated, it has regrettably not answered our query regarding the definition of mohareb.

373. This is particularly important because Article 6(2) of the Covenant not only requires strict respect for the principle of legality in capital punishment cases, but also limits the death penalty to the "most serious crimes". In interpreting this provision, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it "considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant" (CCPR/C/79/Add.25, paragraph 9).

374. The information provided by your Excellency's Government regarding the charges against Adnan Hassanpour, Farzad Kamangar, Ali Heydariyan and Farhad Vakili does not indicate that they were accused of any incidents of intentional taking of life (this is not to diminish in any way the seriousness of the charges of handling of explosives on behalf of an allegedly terrorist group leveled against Farzad Kamangar, Ali Heydariyan and Farhad Vakili according to your Government's communication of 8 April 2009). Similarly, while the clashes between Ahl-e Haqq followers and the police in September 2004 reportedly resulted in the death of several policemen, the charges of mohareb against Yunes Aghayan and Mehdi Qasemzadeh raise the concern that they could have been sentenced to death without being found guilty of any intentional killing.

375. We therefore urge your Excellency's Government to take all necessary measures to guarantee that Yunes Aghayan is not deprived of his life in violation of the obligations your Excellency's Government has entered into under international law. Considering the irremediable nature of capital punishment, this can only mean suspension of the death sentence against him until the question whether the acts he was found guilty of satisfy international criteria for what constitutes "most serious crimes" has been clarified. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by

your Excellency's Government to safeguard the rights of Yunes Aghayan in compliance with your Government's international legal obligations.

376. We would also like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights.

377. In addition to the above, we would like to recall that religious minorities remain, by and large, the main victims of violations of the right of freedom of religion or belief and other acts of religious intolerance. In this regard, we would like to emphasize that States have an obligation under international human rights law to guarantee the right of minorities to profess and practice their own religion.

378. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate the specific conduct Yunes Aghayan and Mehdi Qasemzadeh were found guilty of and the legal basis of the death sentences imposed against them. Please indicate how these are compatible with international norms, specifically with the requirement in article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, that the "sentence of death may be imposed only for the most serious crimes in accordance with the law".
3. In this context, please explain the definition of "mohareb" under Iranian law.

**Iran: Risk of execution of Abu Moslem Sohrabi (a minor)**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal sent on 31 March 2009**

379. In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding Mr. Abu Moslem Sohrabi, a man reportedly sentenced to death as qesas (retribution) for a killing committed in 2001, when he was aged 17. My previous communication to your Excellency's Government regarding this case, dated 13 August 2008, remains unanswered.

380. My attention has now been drawn to reports indicating that the review of his sentence ordered by Branch 33 of the Supreme Court in July 2008 has recently resulted in the death sentence being affirmed. He would, as a consequence, be at risk of execution.

381. While I do not wish to prejudge the accuracy of the information received, I reiterate that any further executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the

Convention on the Rights of the Child, to which the Islamic Republic of Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

382. I therefore again urge your Excellency's Government to expeditiously lift or commute the death sentences imposed against Mr. Abu Moslem Sohrabi, as well as all other persons awaiting execution for offences committed before they reached age 18. All other efforts undertaken by your Government to prevent these executions are insufficient to meet its obligations under international treaties it is a Party to.

383. It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? Was the question of Abu Moslem Sohrabi's age considered in the review process and, if so, on what grounds was it decided to uphold the death sentence.
2. Please explain the steps taken by your Excellency's Government to lift or commute the death sentences imposed against Abu Moslem Sohrabi.

**Iran: Risk of execution of. Amir Khaleghi and Safar Angooti (minors)**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 2 males

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal sent on 6 May 2009**

384. In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding Mr. Amir Khaleghi, and Mr. Safar Angooti, both apparently now aged 18, who are allegedly at risk of imminent execution for offences committed when they were minors.

According to information received:

On January 2007, during a fight, Amir Khaleghi, aged 16 at the time, fatally injured another boy, Ali Malekpour, under the influence of alcohol. Once sobered up, he turned himself in at the Jamkaran police station. In spite of the circumstances, he was convicted of a "qesas" crime (premeditated murder) by Branch 74 of Tehran province's general criminal court and sentenced to death; the decision was subsequently confirmed by Branch 27 of the Supreme Court. In February 2009, the head of judiciary postponed his execution for two months.

In 2008, at the age of 17, Safar Angooti was sentenced to death by a court in Tehran. The Court found him guilty of murdering a rival suitor, whom he stabbed for talking to the girl he cared about.

385. While I do not wish to prejudge the accuracy of the information received, I reiterate that any executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which I have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child, to which the Islamic Republic of Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

386. I would further like to reiterate that:

- Merely taking gradual measures to decrease the carrying out of death sentences against offenders who were juveniles is an utterly inadequate approach to complying with your Excellency's Government's obligations under international law, which can only be fulfilled by immediately stopping all executions for crimes committed by persons who were not aged 18 at the time of the offence. Laws permitting the death sentence to be imposed on juvenile offenders are inherently inconsistent with the international legal obligations assumed by the Islamic Republic of Iran and should be promptly repealed.
- For the purposes of your Excellency's Government's obligation under international law to end the imposition of capital punishment for offences committed by persons below eighteen years of age, the distinction between the qesas claim of the victim's family and the public interest to punish murder is immaterial. International law bans the imposition of the death penalty for offences committed by children in both cases.
- International law, in particular Article 6(4) of the International Covenant on Civil and Political Rights, guarantees the right to seek pardon or commutation of the sentence from the State authorities. Where the diyah pardon is available, it must be supplemented by a separate, public system for seeking an official pardon or commutation.

387. I have set forth the arguments underlying these rules of international law on a number of occasions, most recently in my communication to your Excellency's Government of 13 August 2008 regarding the cases of juvenile offenders Soghra Najafpoor, Behnood Shojaee, Mohammad Feda'i and seven others.

388. I would respectfully reiterate my appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law and to take steps to bring its legislation in compliance with Article 37(a) of the Convention on the Rights of the Child and Article 6 of the International Covenant on Civil and Political, to which it is a party. In particular, I urge your Government to expeditiously lift or commute the death sentences imposed against Amir Khaleghi and Safar Angooti as well as all other persons awaiting executions for offences committed before they reached age 18. All other efforts undertaken by your Government to prevent these executions are insufficient to meet its obligations under international treaties it is a Party to.

389. It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters.

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.



2. Please explain the steps taken by your Excellency's Government to lift or commute the death sentences imposed against Amir Khaleghi and Safar Angooti.

3. I also recall my communications dated 5 January 2007, 31 January 2007, 29 February 2008, 27 March 2008, 2 May 2008, 13 and 27 August 2008 seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?

#### **Iran: Post-election violence killings of 5 students and 7 others**

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

**Subject(s) of appeal:** 12 unknown

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 18 June 2009,** sent with the Working Group on arbitrary detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

390. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the killing of students Fatemeh Barati, Kasra Sharafi, Mobina Ehterami, Kambiz Sho'a'i and Mohsen Imani along with at least seven other protesters and the arbitrary detention of dozens of opposition activists following recent elections in Iran.

According to information received:

Following the re-election of President Mahmoud Ahmadinejad, on 13 June 2009, tens of thousands of opposition supporters have taken to the streets of Tehran and other cities throughout the country to call for annulment of the election results. While protests have been largely peaceful, violent clashes with security forces have ensued resulting in the death of at least twelve people. Agents of the Revolutionary Guards, paramilitary Basij, and State Security Force (SSF) have reportedly been employing extreme force to suppress protesters by opening fire during demonstrations and using pepper spray and batons to disperse demonstrations. Reports also claim that plain-clothed security forces have been using batons to beat non-violent individuals.

On 15 June 2009, at least seven people were killed during demonstrations in Tehran. Shots were fired at opposition supporters who had defied an official ban to march through the city centre to Azadi (Freedom) Square. Shooting erupted after a group at the protest reportedly attempted to attack a military location in western Tehran. Reports claim that Basij militiamen, linked to Iran's Revolutionary Guard, may have been responsible for the shooting which resulted in the death of seven protesters.

On 14 June, up to five students including Fatemeh Barati, Kasra Sharafi, Mobina Ehterami, Kambiz Sho'a'i and Mohsen Imani were shot dead when security agents reportedly stormed a dormitory at Tehran University and opened fire. Numerous students were arrested and many others suffered serious injuries during

the raid. In another incident on the same day, approximately 100 riot police pursued some 300 students on grounds belonging to the University of Tehran. Pepper spray and tear gas was reportedly used to restrain the student protesters. There are also reports of people arrested at demonstrations in provincial cities such as Zahedan, Tabriz, Mashhad, Babol, and Shiraz.

On 13 June, approximately 170 people were arrested during clashes between security forces and hundreds of demonstrators around the Ministry of the Interior and other areas in central Tehran. Those arrested reportedly included leading political figures who were accused by the authorities of having ‘orchestrated’ the unrest. Some have since been released. Police on motorcycles also reportedly beat opposition supporters who had staged a sit-in in Vanak Square, Tehran to protest the results of the elections.

Access to online news services, and internet sites including social networking internet sites, such as You Tube and Facebook, have reportedly been blocked since the election results were announced.

391. Concern is expressed that the arrests and the use of excessive police force against opposition supporters following the recent elections in Iran may be a direct attempt to stifle freedom of assembly and expression in the country. In view of the events outlined above, concern is expressed for the physical and psychological integrity of demonstrators as well opposition activists.

392. We would like to refer your Government to the principles of international law governing the use of force when policing protests. The International Covenant on Civil and Political Rights (“ICCPR”), to which Iran is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

393. We would also like to draw your Government’s attention to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, Principle 5 provides that, “Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.” (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

394. Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

395. Furthermore, all States have “the obligation (...) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”, as reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4). The Commission added that this obligation includes the obligation “to identify and bring to justice those responsible, (...) to grant adequate compensation within a reasonable time to the victims or their families and to

adopt all necessary measures, including legal and judicial measures, in order to (...) prevent the recurrence of such executions”. Also relevant for these cases is Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, according to which “Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation.”

396. Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

397. We should also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression of the above mentioned persons, in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and reiterated in article 19 of the International Covenant on Civil and Political Rights which provides that “ Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

398. In this context, we would further like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the International Covenant on Civil and Political Rights, which provides that “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others”.

399. In the event that your investigations support or suggest the above allegations to be correct, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person(s) are respected and accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

400. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the abovementioned persons in compliance with the above international instruments.

401. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide the details on how the actions undertaken by public officials regarding this case are compatible with the international norms and standards of the

right to freedom of opinion and expression and the related right to peaceful assembly and association.

4. In the event that it is found that the arrests and detention were unlawful, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

5. What were the instructions given to the security forces before and during the demonstrations? How did the security forces ensure compliance with the requirements of necessity and proportionality?

**Iran: Risk of execution of Mohammad Reza Haddadi (a minor)**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 23 July 2009**

402. I am writing to you in relation to new information we have received regarding the reportedly imminent execution of Mr. Mohammad Reza Haddadi, who was sentenced to death on 6 January 2004 for the kidnapping and murder of **Mohammed Bagher Rahmat**, a taxi driver, in August 2003. At the time of the alleged offense, Mr. Haddadi was said to be 15 years old.

403. I would like to recall the communication regarding this matter addressed to your Government on 29 February 2008. It drew attention to serious concerns that the death sentence imposed on Mr. Mohammad Reza Haddadi was in violation of your Government's obligations under Article 37(a) of the Convention on the Rights of the Child and Article 6(5) of the International Covenant on Civil and Political Rights. Regrettably, your Government has so far failed to reply to this communication.

According to recent allegations brought to my attention:

Although the Supreme Court confirmed the death sentence on 3 July 2005, the Head of the Judiciary postponed the execution in October 2008. On 27 May 2009, the Head of the Judiciary stayed the execution a second time and ordered Branch 17 of the Supreme Court to review the case. Despite the fact that no review has taken place, the execution has reportedly already been scheduled.

404. Although the death penalty is not, per se, prohibited under international law, I would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. It is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. As Article 14(5) of the ICCPR provides, "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." Since the Head of the Judiciary has ordered a review of Mr. Haddadi's case, no execution should be carried out before the completion of the review.

405. Furthermore, since Mr. Haddadi was only 15 years old at the time of the alleged offense, I would like to remind your Excellency's Government that the execution of a juvenile offender would be incompatible with the international legal obligations of the Islamic Republic of Iran. Article 37(a) of the Convention on the Rights of the Child expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the ICCPR provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

406. I would therefore respectfully request Your Excellency's Government to take all necessary steps to commute the sentence of execution in order to ensure compliance with the applicable standards of international human rights law.

407. It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters.

1. Is it accurate that Mohammad Reza Haddadi execution has been scheduled and, if so, for what date?
2. Please explain how your Excellency's Government considers Mr. Haddadi's death sentence to be consistent with the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.

#### **Iran: Risk of execution of Hossein Haghi (a minor)**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

#### **Urgent appeal dated 8 August 2009**

408. In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding Mr. Hossein Haghi, apparently now aged 22, who is allegedly at risk of imminent execution for offences committed when he was a minor.

According to information received:

On 12 August 2003, Hossein Haghi, aged 16 at the time, fatally wounded another boy, Mehdi Khalili. Hossein Haghi and a friend had intervened in order to stop a fight between two other boys. It is alleged that Hossein Haghi was being hit and retained when he grabbed a knife to defend himself. Mehdi Khalili was killed during the fight by a knife wound to the chest. When arrested, Hossein Haghi admitted to holding a knife and stabbing Mehdi Khalili. During the trial, however, he denied stabbing him to death.

On 8 February 2004, he was found guilty of premeditated murder by Branch 74 of the Criminal Court, and sentenced to qesas. Following several petitions the verdict was quashed by the head of the Judiciary in September 2008, and the case was sent for retrial. Branch 71 of the Teharan Criminal Court, which retried the case, once again sentenced him to death. The sentence was approved by Branch 27 of the

Supreme Court and passed on to the Office for the Implementation of Sentences at the end of the month of August.

409. While I do not wish to prejudge the accuracy of the information received, I reiterate that any executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which I have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child, to which the Islamic Republic of Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

410. I wish to thank your Excellency for your letter dated 15 July 2009 in response to my letter of 23 August 2007, in respect to another case in which the accused juvenile offender had been sentenced to qesas. Your letter indicates that through efforts of the Judiciary, the case had entered the reconciliation case and that as a result of the victim's guardians giving their consent the execution had been stopped and the accused released. While I welcome this outcome, I remain concerned that such efforts to decrease the carrying out of death sentences against offenders who were juveniles is an utterly inadequate approach to complying with your Excellency's Government's obligations under international law. These can only be fulfilled by immediately stopping all executions for crimes committed by persons who were not aged 18 at the time of the offence. Laws permitting the death sentence to be imposed on juvenile offenders are inherently inconsistent with the international legal obligations assumed by the Islamic Republic of Iran and should be promptly repealed.

411. I would further like to reiterate that:

- For the purposes of your Excellency's Government's obligation under international law to end the imposition of capital punishment for offences committed by persons below eighteen years of age, the distinction between the qesas claim of the victim's family and the public interest to punish murder is immaterial. International law bans the imposition of the death penalty for offences committed by children in both cases.
- International law, in particular Article 6(4) of the International Covenant on Civil and Political Rights, guarantees the right to seek pardon or commutation of the sentence from the State authorities. Where the diyah pardon is available, it must be supplemented by a separate, public system for seeking an official pardon or commutation.

412. I have set forth the arguments underlying these rules of international law on a number of occasions, most recently in my communication to your Excellency's Government of 6 May 2009 regarding the cases of juvenile offenders Amir Khaleghi, and Safar Angooti.

413. I would respectfully reiterate my appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law and to take steps to bring its legislation in compliance with Article 37(a) of the Convention on the Rights of the Child and Article 6 of the International Covenant on Civil and Political, to which it is a party. In particular, I urge your Government to expeditiously lift or commute the death sentences imposed against Hossein Haghi as well as all other persons awaiting executions for offences committed before they reached age 18. All other efforts undertaken by your Government to prevent these executions are insufficient to meet its obligations under international treaties it is a Party to.

414. It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters.

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.
2. Please explain the steps taken by your Excellency's Government to lift or commute the death sentences imposed against Hossein Haghi.
3. I also recall my communications dated 5 January 2007, 31 January 2007, 29 February 2008, 27 March 2008, 2 May 2008, 13, 27 August 2008, 30 January 2009, 17 February 2009, 6 March 2009 and 6 May 2009, seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?

**Iran: Risk of execution of Abbas Hosseini (a minor)**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent appeal dated 1 October 2009**

415. In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the imminent execution of Mr. Abbas Hosseini. According to the information received the date for the execution of the death penalty has been set for 5 October 2009. I have previously written to your Excellency's Government on this matter in communications dated 21 April 2005, 17 September 2008 and 6 March 2009. However, I have yet to receive any reply on issues raised therein.

416. I reiterate as in my previous communications that Mr Abbas Hosseini was a minor at the time of the commission of the offence of murder for which he was sentenced to death. Mr Hosseini was sentenced to death for the offence of murder on 3 June 2004 by verdict No.13/277 of Branch 43 of the Mashhad Special Court. On 28 October 2004, Branch 41 of the Supreme Court affirmed the judgment of the Juvenile Court in Mashhad. The Supreme Court judgment issued on 29 December 2008, following a hearing, expressly recognized that Mr Hosseini was a minor at the time of committing the offence but nevertheless confirmed the death sentence.

417. There have been efforts to engage in a process of convincing the family of the victim to accept payment of compensation (diyeh) from the family of Mr Hossein. In this regard, on 7 May 2005, the Head of the Judiciary reportedly ordered that the execution should not proceed while the file was being reviewed by the central judiciary in Tehran. These discussions have not been successful as the family of the victim has refused to accept the payment of compensation (diyeh). Currently, the family of Mr Hosseini is unable to further engage with the family of the victim as it is reportedly in a mourning period for the death of one its sons.

418. In this connection, I wish to draw to the attention of your Excellency's Government that carrying out the execution of Mr Abbas Hosseini would be incompatible with the

international obligations that the Islamic Republic of Iran has undertaken under various instruments which I have been mandated to bring to the attention of governments.

419. I have in my previous communications acknowledged the efforts made by your Excellency's Government to avoid the execution of Mr Hosseini by undertaking review of the case and repeatedly postponing the execution in order to make provision for discussion between the families. Although this is commendable, your Excellency's Government nevertheless retains the obligations it has undertaken under international law, especially the Convention on the Rights of the Child and International Covenant on Civil and Political Rights. All efforts short of lifting or commuting the death sentence against Mr Hosseini are insufficient to meet its obligations under international treaties it is a Party to, specifically under Article 37(a) of the Convention on the Rights of the Child and Article 6(5) of the Covenant.

420. I respectfully urge your Excellency's Government to take all measures necessary to comply with the commitments it has undertaken under international law. These measures were, in my view, accurately reflected in the recommendations issued by the United Nations Committee on the Rights of the Child, which called on the Islamic Republic of Iran in January 2005 to "immediately suspend the execution of all death penalties imposed on persons for having committed a crime before the age of 18, to take the appropriate legal measures to convert them to penalties in conformity with the provisions of the Convention and to abolish the death penalty as a sentence imposed on persons for having committed crimes before the age of 18, as required by article 37 of the Convention." (See CRC/C/15/Add. 254, 28 January 2005, at par. 30)

421. In view of the urgency of this matter and of the irreversibility of the punishment of the death penalty, it is imperative that your Excellency's Government should take all steps necessary to prevent the execution of Mr Abbas Hosseini, which if carried out will be inconsistent with acceptable standards of international law. Further, the unsuccessful negotiations so far, for compensation (*diyeh*) to the victim's family should not form the basis for carrying out the execution of the death penalty. I therefore urge your Excellency's Government to lift or commute the death sentence imposed against Mr Abbas Hosseini.

422. It is my responsibility under the mandate provided to me by the Human Rights Council and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Council, I would be grateful for your cooperation and your observations. I undertake to ensure that your Government's response is accurately reflected in the reports I will submit to the Human Rights Council for its consideration.

**Iran: Risk of execution of Behnood Shoojaee and Safar Angooti (minors)**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 2 males

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 8 October 2009**

423. In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the allegedly imminent execution of Mr **Behnood Shoojaee** and Mr **Safar Angooti** for offences they committed while they



were still minors. According to information I have received, 11 October 2009 has been set as the execution date for Behnood Shoojaee and 21 October 2009 for Safar Angooti. I have previously written to your Excellency's Government concerning Mr. Behnood Shoojaee in two communications dated 27 December 2007 and 13 August 2008 and concerning Mr Safar Angooti in a communication dated 6 May 2009. I acknowledge receiving a response from your Excellency's Government regarding the case of Behnood Shoojaee on 15 July 2009

424. As indicated in my previous communications and not denied in the response received from your Excellency's Government, Mr Behnood Shoojaee was convicted by a court in Tehran of murdering another boy during a street fight when he was 17 years old. Mr Safar Angoti was sentenced to death in 2008 by a court in Tehran having been found guilty of a murder committed at the age of 17.

425. While I do not wish to prejudge the accuracy of the information received, I reiterate that any further executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which I have been mandated to bring to the attention your Excellency's Government. Article 37(a) of the Convention on the Rights of the Child, to which Islamic Republic of Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Islamic Republic of Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

426. In view of the urgency of this matter and of the irreversibility of the punishment of the death penalty, it is imperative that your Excellency's Government should take all steps necessary to prevent the execution of Mr Behnood Shoojaee and Mr Safar Angooti. I therefore again urge your Excellency's Government to suspend the executions reportedly already scheduled and expeditiously lift or commute the death sentences imposed against Mr Safar Angooti and Mr. Behnood Shoojaee, as well as all other persons awaiting execution for offences committed before they reached age 18.

427. I acknowledge the assurances contained in the letter of your Excellency's Government dated 15 July 2009 to the effect that, in the case of Behnood Schoojaee as in other cases, the pertinent authorities of the Islamic Republic of Iran have been doing their utmost to move the victim's guardians to accept the payment of diyeh in place of execution. However, as I have pointed out both in previous letters to your Excellency's Government and in a recent report to the Human Rights Council (A/HRC/11/2, paras. 35-36), all efforts undertaken by your Excellency's Government to prevent executions of juvenile offenders short of lifting or commuting the death penalty are insufficient to meet its obligations under international treaties it is a Party to.

428. It is my responsibility under the mandate provided to me by the Human Rights Council and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Council, I would be grateful for your cooperation and your observations. I undertake to ensure that your Government's response is accurately reflected in the reports I will submit to the Human Rights Council for its consideration.

**Iran: Risk of execution on conviction of "mohareb" (enmity against God) of Habibollah Latifi, Ehsan (Esmā'il) Fattahian and Sherko Moarefi.**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal: 3 males**

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 13 October 2009**

429. I would like to draw the attention of your Excellency's Government to information I have received regarding the allegedly imminent execution of three men convicted and sentenced to death on the charge of "mohareb" (enmity against God), Messrs. **Habibollah Latifi, Ehsan (Esma'il) Fattahian** and **Sherko Moarefi**.

According to information received

Habibollah Latifi, Ehsan (Esma'il) Fattahian and Sherko Moarefi were convicted and sentenced to death for "mohareb" on charges believed to relate to their alleged membership of PJAK (the Free Life Party of Kurdistan), a forbidden armed group. They are reportedly currently held at a prison in Sanandaj, the capital of Kordestan province. A judge in Sanandaj has received instructions from the judicial authorities in Tehran to prepare for the executions. The three men have been moved to solitary confinement in preparation for the pending executions.

430. I have previously written to your Excellency's Government (communications dated 31 August 2006, 26 July 2007, 24 April 2008, 18 July 2008 and 28 April 2009) drawing attention to concerns regarding the compatibility of the imposition of the death penalty on the charge of "mohareb" with international law obligations accepted by the Islamic Republic of Iran.

431. The concern in relation to the utilization of this charge, which reports indicate is directed mainly against political dissidents, critics of the Government and persons accused of espionage, is that it might not be sufficiently well defined to satisfy the very strict standards of legality set by article 6(2) of the of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a party. This provision stipulates that "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law". Two issues relevant to the case of Messrs. Habibollah Latifi, Ehsan (Esma'il) Fattahian and Sherko Moarefi arise from this provision:

(a) For the sentence of death to be imposed "in accordance with the law", the law in question must be sufficiently precise to clearly allow distinction between conduct punishable with the capital sentence and conduct not so punishable. (A/HRC/11/2/Add.1) and

(b) The death penalty is limited to the "most serious crimes." As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it "considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant" (CCPR/C/79/Add.25, paragraph 9).

432. On the basis of these principles, I have repeatedly sought from your Excellency's Government a definition of mohareb under Iranian law. While your Government has

provided substantial information on the factual allegations on which the mohareb charges were based in some of the cases brought to its attention (Adnan Hassanpour, Farzad Kamangar, Ali Heydariyan and Farhad Vakili), which is highly appreciated, it has regrettably not answered my query regarding the definition of mohareb.

433. The information provided by your Excellency's Government regarding the charges against Adnan Hassanpour, Farzad Kamangar, Ali Heydariyan and Farhad Vakili does not indicate that they were accused of any incidents of intentional taking of life (this is not to diminish in any way the seriousness of the charges of handling of explosives on behalf of an allegedly terrorist group leveled against Farzad Kamangar, Ali Heydariyan and Farhad Vakili according to your Government's communication of 8 April 2009). Similarly, while PJAK has reportedly launched deadly attacks against security forces, the charges of mohareb against Habibollah Latifi, Ehsan (Esma'il) Fattahian and Sherko Moarefi raise the concern that they could have been sentenced to death without being found guilty of any intentional killing.

434. I therefore urge your Excellency's Government to take all necessary measures to guarantee that Habibollah Latifi, Ehsan (Esma'il) Fattahian and Sherko Moarefi are not deprived of their lives in violation of the obligations your Excellency's Government has entered into under international law. Considering the irreversible nature of capital punishment, this can only mean suspension of the death sentence against them until the question whether the acts they were found guilty of satisfy the international criteria as to what constitutes "most serious crimes" has been clarified. In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Habibollah Latifi, Ehsan (Esma'il) Fattahian and Sherko Moarefi in compliance with your Government's international legal obligations.

435. Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate the specific conduct that Habibollah Latifi, Ehsan (Esma'il) Fattahian and Sherko Moarefi have been found guilty of and the legal basis of the death sentences imposed against them. Please indicate how these are compatible with international norms, specifically with the requirement in article 6(2) of the ICCPR, to which Iran is a party, that the "sentence of death may be imposed only for the most serious crimes in accordance with the law
3. Please indicate the definition of the charge of "mohareb" (enmity against God) and provide the requisite elements of the offence.

#### **Iran: Imminent execution of seven men belonging to the Ahwazi Arab community**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 7 males

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 29 October 2009**, sent with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

436. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the reportedly imminent execution of seven men belonging to the Ahwazi Arab community in Iran. Their names are Messrs. Ali Saedi, aged 25, Walid Naisi, aged 23, Majid Fardipour (name in Arabic: Majid Mahawi), aged 26, Doayr Mahawi, aged 50, Maher Mahawi, aged 21, Ahmad Saedi, aged 28, and Yousuf Leftehpour, aged 25.

According to information received

The seven men were arrested on or around 12 August 2007. They were held in incommunicado detention at an unknown location by intelligence services between three to fifteen months. It is feared that during this period they may have been tortured in order to extract confessions from them. The accused were later transferred to Karoun Prison in Ahvaz city, where it is reported they are currently being held.

On or around 30 September 2009, they were tried, convicted and sentenced to death by a branch of the Revolutionary Court in Ahvaz for the offences of "acting against national security" and the killing of a Shi'a cleric, Sheikh Hesam al-Sameyri in June 2007. The seven men did not have access to counsel either before or during the trial.

437. While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully remind your Excellency's Government that the International Covenant on Civil and Political Rights (ICCPR), to which the Islamic Republic of Iran is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6).

438. Although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. We would respectfully remind your Excellency's Government that in capital punishment cases the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the ICCPR admits of no exception. Relevant to the case at hand, these guarantees include the right to be assisted by a lawyer of one's own choosing and the right not to be compelled to confess guilt.

439. Article 14(3)(b) of the ICCPR enshrines the right to "have adequate time and facilities for the preparation of [one's] defence and to communicate with counsel of [one's] own choosing". The Basic Principles on the Role of Lawyers (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990) further elaborate that "[a]ll persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings" (Principle 1). With regard to criminal justice matters, Principle 5 on Basic Principles on the Role of Lawyers adds that Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

440. With regard to concerns that the seven men may have been tortured in order to extract confession whilst in incommunicado detention, we would like to draw the attention of your Excellency's Government to article 14(3)(g) of the ICCPR, providing that no one shall "be compelled to testify against himself or to confess guilt." Paragraph 6c of Human

Rights Council resolution 8/8 of 2008 similarly urges States “to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”.

441. With regard to the alleged prolonged incommunicado detention of the seven men, we would recall that General Assembly Resolution A/RES/61/153 of 14 February 2007 (paragraph 12) “reminds all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment”. The General Assembly therefore “urges all States to respect the safeguards concerning the liberty, security and dignity of the person”. Prolonged incommunicado detention furthermore negates the abovementioned guarantees of the right to a fair trial, such as being assisted by a lawyer.

442. Only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency’s Government to take all necessary measures to guarantee that the rights under international law of Messrs Ali Saedi, Walid Naisi, Majid Fardipour (Majid Mahawi), Doayr Mahawi, Maher Mahawi, Ahmad Saedi, and Yousuf Leftehpour are respected. Considering the irreversible nature of capital punishment, this can only mean suspension of the death sentence against the seven men until the question of whether fair trial guarantees were respected has been clarified and the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled.

443. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the seven men mentioned herein in compliance with your Excellency’s Government’s international legal obligations.

444. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegation that Messrs Ali Saedi, Walid Naisi, Majid Fardipour (Majid Mahawi), Doayr Mahawi, Maher Mahawi, Ahmad Saedi, and Yousuf Leftehpour were subjected to torture while in incommunicado detention. If no inquiries have taken place or if they have been inconclusive please explain why.
3. Please indicate whether and at what stage of the proceedings Messrs Ali Saedi, Walid Naisi, Majid Fardipour (Majid Mahawi), Doayr Mahawi, Maher Mahawi, Ahmad Saedi, and Yousuf Leftehpour had access to counsel and whether they were given the option of choosing their own counsel?

**Iran: Risk of execution of Mohammad Reza Haddadi (a minor)**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male (a minor)

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 8 December 2009**

445. In this connection, I would like to draw the attention of your Government to information I have received in relation to the case of Mr. Mohammad Reza Haddadi, a man reportedly sentenced to death for a killing committed when he was aged 15.

446. Information I have recently received indicates that Mr. Haddadi's execution is scheduled for tomorrow, 9 December 2009. Reportedly, Mr. Haddadi has been moved to the "quarantine" section of Adelabad prison in preparation for his execution. Neither his lawyer nor his parents have, however, been informed of the new execution date.

447. I would like to recall the communications regarding this case addressed to your Government on 29 February 2008 and 23 July 2009. They drew attention to serious concerns that the death sentence imposed on Mr. Mohammad Reza Haddadi was in violation of your Government's obligations under Article 37(a) of the Convention on the Rights of the Child and Article 6(5) of the International Covenant on Civil and Political Rights, which provide that capital punishment shall not be imposed for offences committed by persons below eighteen years of age at the time of the offence. Regrettably, your Government has so far failed to reply to these communications.

448. My communication of 23 July 2009 also drew the attention of your Government to the principle whereby in capital cases, because of the irreversible nature of the death penalty, it is particularly important that all fair trial standards contained in international human rights law are fully respected. This includes fullest respect for due process guarantees in post-conviction proceedings. It is my understanding that, as part of due process in post-conviction proceedings, the law of the Islamic Republic of Iran requires prior notification of the execution date to the lawyer and the family members of the prisoner. If indeed the execution of Mr. Haddadi has been scheduled for 9 December 2009, this requirement would appear to have been violated.

449. I would therefore respectfully request your Government to take all necessary steps to ensure that Mr. Haddadi is not executed tomorrow. Moreover, in order to ensure compliance with the absolute ban of the death sentence against juvenile offenders in international human rights law, the death sentence will have to be commuted.

**Iran: Concern about executions based on charges of homosexuality**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 7 males and 3 minors

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 22 December 2009**

450. In this connection, I would like to draw the attention of your Government to information I have received regarding several cases of men sentenced to death on charges of homosexuality.

According to the information received:

Articles 108 to 111 of the Islamic Penal Code of Iran provide for the death penalty for sexual intercourse with penetration between “mature, sane and consenting” men (lavat). Article 114 requires that lavat be proven by the testimony of four male eyewitnesses. Under article 120 of the Code, however, if there are no four male eyewitnesses supporting a charge of lavat, the judge may issue a verdict and death sentence “on the basis of the knowledge which he has acquired through generally accepted methods”.

Nemat Safavi was arrested on charges of lavat in June 2006, when he was aged 16. The Criminal Court of Ardabil found him guilty and sentenced him to death in 2008. In November 2009, the Supreme Court quashed the sentence and sent the case back to a different section of the Criminal Court of Ardabil.

Ghaseem Bashkool, a university student born in 1984, and another man were arrested on charges of lavat on 31 May 2007. The First District of the Criminal Court of Ardabil found the two men guilty of lavat and sentenced them to death. Reportedly, the conviction was based on “the knowledge of the judge”. The current state of the proceedings against him is unknown.

In or briefly before February 2008, Hamze Chavoshi (aged 19 at the time) and Loghman Hemzepour (aged 18 at the time) were arrested on charges of lavat. The current state of the proceedings against them is unknown.

In July 2008, the Second District of the Criminal Court of Tabriz found Mahdi Pooran (reportedly aged 17), Hamid Taghi, Ebrahim Hamidi, and Mehdi Rezaii guilty of lavat and sentenced them to death. The four defendants are accused by a fifth man of having raped him. Reportedly, there is enmity between the alleged victim’s family and the family of Ebrahim Hamidi. The alleged victim initially stated that there were no witnesses to the rape. At the trial, however, three male relatives of the alleged victim were introduced as witnesses to the rape. As that did not meet the requirement of four male witnesses, the judge convicted the four defendants on the basis of “the knowledge of the judge”. The case is currently pending before the Supreme Court.

On an unspecified date the Criminal Court of Shiraz found Mohsen Ghabraii guilty of lavat and sentenced him to death. The judgment has been upheld on appeal by the Supreme Court and there is a risk that execution might be imminent.

451. While I do not wish to prejudge the accuracy of these allegations, I would like to recall that article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”. In interpreting article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As I have observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Already in 1993, the Human Rights Committee (CCPR/C/79/Add.25) noted in its concluding observations on the periodic report under the Covenant of your Excellency’s Government that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant.

452. With regard to the cases of Nemat Safavi and Mahdi Pooran, I would further like to draw your Government’s attention once again to the fact that any further judgments

imposing the death sentence and executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which I have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child, to which Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

453. It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? Please provide detailed information on the current state of criminal proceedings on charges of lavat against Nemat Safavi, Ghaseem Bashkool and the man arrested together with him, Hamze Chavoshi and Loghman Hemzepour, Mahdi Pooran, Hamid Taghi, Ebrahim Hamidi, and Mehdi Rezaii, and Mohsen Ghabraii.
2. Is the information summarized above concerning the relevant provisions of the Islamic Penal Code of Iran accurate? Please explain the concept of a guilty finding based on “the knowledge of the judge”.
3. Please provide statistics as to the number of persons sentenced to death for the offence of lavat and the number of those executed in the past five years.

**Iran: Excessive use of force against demonstrators in post-election clashes**

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

**Subject(s) of appeal:** Group concern: approximately 14 males, 2 minors and 44 unknown

Character of reply: No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent appeal dated 29 December 2009,** sent with the Working Group on arbitrary detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

454. We write to your Government in relation to reports regarding the use of excessive force by the security forces and the Basij militia against demonstrators on 27 December 2009, alleged arbitrary arrests and the suppression of (at least initially) peaceful assemblies. We urge your Government to ensure respect for international law guaranteeing the right to life, the right to physical and mental integrity, freedom of opinion and expression and freedom from arbitrary detention. We seize this opportunity also to follow up on our communication of 18 June 2009 concerning the use of excessive force against demonstrators and opposition supporters following the 13 June 2009 elections in Iran.

According to information received regarding the events of 27 December 2009:

Widespread protests broke out in Tehran, Mashhad, Isfahan, Shiraz, Tabriz, Qom and several other cities in Iran on 27 December 2009. Reports and videos



indicate that Basij militia and security forces attacked protesters using excessive force and live ammunition. Near Daneshjoo Park in Tehran, for instance, members of the Basij militia beat demonstrators with batons, wood sticks and metal pipes, killing at least one person. As this demonstrator's dead body was moved through the crowd, other demonstrators started attacking the Basij members, brought several of them down from their motorcycles, and set vehicles of the security forces on fire. In an unspecified location, security forces tied a young protestor to the back of a van and dragged him on the asphalt. Other demonstrators attacked the van, took the passengers out and set the van on fire.

In Enqelab Street and at Pol-e College in Tehran security forces used live ammunition against protesters. Three persons were reportedly killed at Pol-e college. Mr. Seyd Ali Moussavi, aged 35 and nephew of Mr. Mir Hossein Moussavi, an opposition candidate for president in the recent elections, was shot in the back, apparently injuring his heart, and killed by security forces at around noon in Enqelab Square.

Reports further indicate that four protesters were killed in Tabriz. Reports vary as to the overall death toll on 27 December 2009, fifteen dead being the highest number indicated in reports we have received.

About 300 persons were arrested on 27 December 2009. They include three advisers to Mir Hossein Moussavi, namely Messrs. **Alireza Beheshti**, **Ghorban Behzadian-Nejad** and **Mohammad Bagherian**, and two aides to the former President Mr. Mohammad Khatami, Messrs. **Morteza Haji** and **Hasan Rasooli**. In the early morning hours of 28 December, Mr. **Ebrahim Yazdi**, aged 78, a former foreign minister and now leader of the Freedom Movement of Iran, was arrested.

According to information received regarding the events from 15 June to the end of August 2009 (the first two paragraphs restate information already contained in our communication of 18 June 2009, which has remained without a response):

On 13 June 2009, approximately 170 people were arrested during clashes between security forces and hundreds of demonstrators around the Ministry of the Interior and other areas in central Tehran. Those arrested reportedly included leading political figures who were accused by the authorities of having 'orchestrated' the unrest. Some had been released by 18 June 2009. Police on motorcycles also reportedly beat opposition supporters who had staged a sit-in in Vanak Square, Tehran, to protest the results of the elections.

On 14 June, up to five students including **Fatemeh Barati**, **Kasra Sharafi**, **Mobina Ehterami**, **Kambiz Sho'a'i** and **Mohsen Imani** were shot dead when security agents reportedly stormed a dormitory at Tehran University and opened fire. Numerous students were arrested and many others suffered serious injuries during the raid. In another incident on the same day, approximately 100 riot police pursued some 300 students on grounds belonging to the University of Tehran. Pepper spray and tear gas were reportedly used to restrain the student protesters. Protestors were arrested also at demonstrations in provincial cities such as Zahedan, Tabriz, Mashhad, Babol, and Shiraz.

On 15 June, members of the Basij militia opened fire in the Velenjak, Jordan and Darous districts of Tehran. A video taken on 15 June 2009 shows a member of the Basij firing towards demonstrators from a building used by the Basij. At least seven persons were killed on that day.

On 20 June, Ms. Neda Agha Soltani was shot on Khosravi street in Tehran. The bullet hit her chest just below the collar bone, and she died within a minute.

Although she was immediately taken to Shariati hospital, where her death was confirmed, no autopsy was carried out before she was buried at Behesht-e Zahra cemetery. A member of the Basij militia is reported to have exclaimed at the scene of the shooting “I did not mean to kill her!” His identity is known in Iran, as his ID card was grabbed by witnesses and a picture of it posted online.

Also on 20 June, opposite the Navvab metro station in Tehran, members of the Basij militia opened fire from the roof of the Lolagar mosque at persons in the street with Kalashnikovs and Heckler & Koch G3 guns. A young boy was hit in the head and his brain spattered on the platform outside the metro station. A young man was hit in the throat by a tear gas bullet and died on the spot.

On 22 June, the Office of the Prosecutor General stated that it had started an investigation into the killings on 20 June. More than half a year later, no results of that investigation have been made public.

On 25 June, Basij militia on the roof of the Lolagar mosque shot and killed Mr. Ya’qoub Barvayeh, a student aged 27. The Basij militia removed the body. His family were told two days later where he was buried.

On 30 July 2009, Ali Reza Tavassoli, aged 12, was killed by blows in the head inflicted by Basij militia men at a demonstration to commemorate the 40th day since the death of Neda Agha Soltani. Members of the Basij militia removed his body from hospital.

The authorities reported that 36 persons died during the unrest following the elections, including members of the Basij militia, but family members of persons who went missing and who inquired with the authorities, report that they were shown albums containing photographs of hundreds of corpses in makeshift morgues.

According to one source, 200 demonstrators were killed in Tehran and 173 in other cities.

On 25 August 2009, a Member of the Article 90 Commission of the Parliament requested an official investigation into reports that 44 bodies of killed protesters had been buried secretly at night in anonymous graves in section 302 of the Behesht-e Zahra cemetery in Tehran. The chief administrator of the cemetery stated that the bodies were those of unknown victims of car accidents and drug overdoses. He was subsequently removed from his post by the Tehran city administration. The outcome of the investigation into the reports of anonymous graves section 302 of the Behesht-e Zahra cemetery is not known.

455. Without expressing at this stage an opinion on the facts, we would like to draw the attention of your Government to the principles of international law relevant to the situation described in the reports we have received. Article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which Iran is a party, provide that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Article 21 of the Covenant provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”.

456. Regarding the use of force when policing protests, the Covenant provides that every individual has the right to life and security of the person, and that no person shall be

arbitrarily deprived of his or her life (Article 6). Article 7 of the Covenant and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stress that each Government has the obligation to protect the right to physical and mental integrity of all persons.

457. These norms are further elaborated in the United Nations Basic Principles on the Use of Force and Firearms by Law Officials. Principle 4 provides that, “[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, Principle 5 provides that, “[w]henver the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”

458. Furthermore, as stated in the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (in particular Principle 9), there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions...” In Resolution 8/3, the Human Rights Council added that this obligation includes the obligation “to identify and bring to justice those responsible ...to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”.

459. Finally, without expressing at this stage an opinion on whether the arrests of protestors on 27 December 2009 are arbitrary or not, we would like to appeal to your Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

460. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

461. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary accurate?
2. How many persons were killed during demonstrations and other protests from 14 June to 28 December 2009? Please provide a list containing their names, the place in which they died, and, if they were buried by the authorities, the location of their place of burial.
3. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to the deaths of Fatemeh Barati, Kasra Sharafi, Mobina Ehterami, Kambiz Sho'a'i and Mohsen Imani, Neda Agha Soltani, Ya'qoub Barvayeh, Ali Reza Tavassoli and Seyd Ali Moussavi, as well as of all other persons killed during demonstrations and other protests from 14 June to 28 December 2009. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. What were the instructions given to the security forces, including the Basij militia, before and during the demonstrations? How did the security forces ensure compliance with the requirements of necessity and proportionality?

5. It is our understanding that the Basij are a paramilitary force which is part of the Revolutionary Guard. Please explain the legal basis, institutional affiliation, command structure, recruitment mechanisms and oversight mechanisms of the Basij militia. Please explain the training Basij militia members receive to prepare them for the policing of assemblies.

**Iran: Concern about imposition of the death penalty against persons found guilty of “moharebeh” (enmity against God)**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 37 unidentified and others

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent appeal dated 14 January 2010**

462. I write to express my concern about reports concerning the imposition of the death penalty against persons found guilty of “moharebeh” (enmity against God). This matter has been the subject of previous communications between your Excellency’s Government and my mandate. Two recent executions of Kurdish Iranian activists reportedly sentenced to death on charges of moharebeh and calls from senior officials in your Government for the infliction of the death penalty against opposition politicians prompt me to once again raise my longstanding concerns in this respect, which have not been alleviated by the responses received from your Excellency’s Government in reply to previous communications.

463. I summarize the information received in five parts: first, the definition of moharebeh under the Islamic Penal Code of Iran; second, death sentences against and executions of Kurdish Iranian activists on charges of moharebeh; third, the infliction of death sentences in the trials regarding the protests that ensued after the announcement of the results of the 13 June 2009 elections in Iran; fourth, the reported execution of three persons sentenced to death on charges of moharebeh in Khuzestan province; and, fifth, the calls for the use of the death penalty against the political opposition following the unrest on 27 December 2009.

According to information received

I. Article 186 of the Islamic Penal Code of Iran defines the offence of moharebeh in the following terms:

“Any person resorting to arms to cause terror or fear or to breach public security and freedom will be considered as a mohareb and to be corrupt on earth.”

Article 190 of the Islamic Penal Code of Iran establishes the sanctions that can be imposed on those guilty of moharebeh: execution, crucifixion for three days (not entailing death), amputation of the right hand first and then of the left foot, and exile.

According to Article 191, a judge can impose any of the above penalties regardless of whether the mohareb has killed or injured anyone, has taken somebody’s property or has done none of the above.

II. In or around February 2008, Mr. **Fasih Yasamani**, aged 28, was arrested during clashes between security forces and PJAK (the Free Life Party of Kurdistan) in the village of Hendevan near Khoy, West Azerbaijan province. His family did not receive any news about him for two months following his arrest. It is assumed that he was detained in a facility of the Ministry of Intelligence in Khoy during that period. He was subsequently tried before the Khoy Revolutionary Court, found guilty of being a member of PJAK and sentenced to death for moharebeh. It is believed that the death sentence was upheld by the Appeals Court for West Azerbaijan province and the Supreme Court. On 6 January 2010, he was executed by hanging in Khoy prison. PJAK denied Mr. Yasamani was a member of the group. Neither Mr. Yasamani nor his lawyer or family had been given advance notice of the scheduling of the execution.

Mr. **Ehsan (Esma'il) Fattahian**, a Kurdish prisoner convicted on charges of "moharebeh", was executed on 11 November 2009. He had been accused of "armed struggle against the regime", convicted and sentenced to ten years imprisonment by Branch I of the Revolutionary Court in Sanandaj, Kordestan province. On appeal, the Kordestan Appeal Court found him guilty of moharebeh on the ground of membership of an armed Kurdish opposition group (reports differ as to whether the group he was found to belong to is PJAK or Komala), and sentenced him to death. It is unclear whether Mr. Fattahian was allowed to appeal against the death sentence. Mr. Fattahian denied any involvement in armed struggle and maintained that he was only a political activist. Following the execution, the authorities took Mr. Fattahian's mortal remains to Kermanshah and buried him there. His family was informed of the place of burial the following day. I had drawn the attention of your Excellency's Government to his case, specifically to the concerns raised by the imposition of the death sentence on charges of moharebeh, in an urgent communication less than a month before the execution, on 13 October 2009, which has regrettably remained without a reply.

In my communication of 13 October 2009, I also drew the attention of your Excellency's Government to information I received regarding the cases of Messrs. **Habibollah Latifi** and **Sherko Moarefi**, who were convicted and sentenced to death for "moharebeh" on charges believed to relate to their alleged membership of PJAK. I have now been informed that Mr. Moarefi, aged 30, who was tried before the Revolutionary Court in Saqqez, Kordestan province, was not allowed to receive any visits from his lawyer or his family since his arrest on 31 October 2008. He is reportedly currently held at a prison in Sanandaj, the capital of Kordestan province. Mr. Latifi, aged 27, a law student at Azad University in Ilam province, was detained and allegedly tortured at a Ministry of Intelligence detention facility after his arrest in October 2007. He was tried by the Sanandaj Revolutionary Court in July 2008. Allegedly neither his family nor his lawyer were allowed to attend the trial. He was sentenced to death on charges of moharebeh, which were reportedly based on accusation that he had been involved in planting bombs, in addition to being linked to PJAK.

Mr. **Ali Saremi** (or Sarami), aged 62, was arrested by Ministry of Intelligence officials in September 2007 after speaking at a ceremony on 29 August 2007 at the Khavaran cemetery in Tehran commemorating the victims of the alleged execution of thousands of prisoners, mostly supporters of the People's Mojahedin Organization of Iran (PMOI), in 1988. His arrest might also be related to a visit to Camp Ashraf in Iraq which he undertook in April 2007 (members of his family live in Camp Ashraf). He was subsequently detained in Ward 209 of Evin prison and is currently detained in Gohardasht prison. On 29 December 2009 he was sentenced to death for moharebeh after being convicted of membership of the PMOI.

Ms. **Zeynab Jalaliyan**, aged 27 from Maku, West Azerbaijan province, was sentenced to death by the Kermanshah Revolutionary Court in or around January 2009. At the time of her trial, she had been detained incommunicado at a Ministry of Intelligence detention facility for eight months. She had no access to her lawyer. Ms. Jalaliyan was found guilty of moharebeh, apparently on charges related to alleged membership of an illegal Kurdish group, possibly PJAK, and sentenced to death. The death sentence has been confirmed on appeal.

Messrs. **Farzad Kamangar**, **Ali Heydarian**, and **Farhad Vakili** were arrested in 2006 and sentenced to death on charges of moharebeh by the Tehran Revolutionary Court in 2008. The Supreme Court confirmed the death sentence against Mr. Kamangar on 11 July 2008. As your Excellency's Government's reply of 8 April 2009 to my communication of 18 July 2008 indicates, the factual allegations against the three men are that they handled explosives on behalf of the PKK in preparation of a bomb attack in Tehran. With regard to the allegations that Mr. Kamangar had been detained incommunicado and subjected to torture which required his hospitalization, your Excellency's Government stated that the three defendants "enjoyed their right of fair trial as well as enough time for review and examination of their cases through legal proceedings. Any allegation on their torture of incommunicado detention is categorically baseless and a fabrication of lies". Numerous reports I have received vigorously deny that Mr. Kamangar, who reportedly was a teacher and social worker, had any links to the PKK.

In a communication of 26 July 2007, I had drawn the attention of your Excellency's Government to information that Messrs. **Adnan Hassanpour** and **Abdolwahed Butimar** had been sentenced to death on charges of moharebeh. According to the information I had received, Mr Hassanpour is a Kurdish journalist and an advocate of cultural rights for members of the Kurdish Iranian community residing in Iran, while Mr Butimar is an environmental activist and director of the environmental organization, The Green Mountain Society. In its reply, your Excellency's Government denied that the prosecution had any connection to journalistic activities and stated that the charges related to actions against national security through the purchase and possession of war arms, delivery of weapons to PJAK, and espionage.

Other Kurdish prisoners reportedly sentenced to death on charges of "moharebeh" and possibly at risk of execution include Messrs. **Rostam Arkiya**, **Rashim Akhkandi**, **Hossein Khaziri** (or Khezri), **Sayed Sami Hosseini**, **Sayed Jammal Mohammedi**, **Mostafa Salimi**, **Anwar Rostami**, **Mohammad Amin Agoushi**, **Ahmad Pouladkhani**, **Hassan Talai**, **Iraj Mohammadi**, **Farhad Chalesh** (a Turkish national) and **Ramezan Ahmad** (a Syrian national).

III. Starting on 1 August 2009, about 150 persons, mostly arrested during the protests that followed the announcement of the results of the 13 June 2009 elections in Iran, were brought before a Revolutionary Court in Tehran and tried on charges of having "participated in riots, acting against national security, disturbing public order, vandalizing public and government property and having ties with counter-revolutionary groups". The defendants, who were dressed in prison pajamas and were in poor physical conditions, had, at least in most cases, not been given advance warning of the commencement of their trial. Most of the accused had no legal representation.

As confirmed by the judiciary on 17 November 2009, five death sentences were imposed during these trials.

On 8 October 2009, **Mohammad-Reza Ali-Zamani**, aged 37, was convicted of “enmity against God for membership of and activities to further the aims of the terrorist grouplet Anjoman-e Padeshahi-e Iran (API) [the Kingdom Assembly of Iran]” and sentenced to death. The API is a political movement advocating for the return of the monarchy in Iran which reportedly has carried out violent attacks. Another member of the API, identified by the authorities as **A.P.** and believed to be Arash Rahmanipour, was also sentenced to death. A third member of the API, **Hamed Rouhinejad**, who was already detained in Evin prison at the time of the elections, was also brought before the Revolutionary Court in Tehran on 1 August 2009 and accused together with about 100 other detainees of having “participated in riots, acting against national security, disturbing public order, vandalizing public and government property and having ties with counter-revolutionary groups”. He was subsequently sentenced to death in connection with these charges.

A fourth man, identified as **N.A.** and believed to be Naser Abdolhasani, was sentenced to death for membership of the People’s Mujahedin of Iran (PMOI). Finally, **Reza Kazemi**, who was arrested on 13 June 2009, was also sentenced to death by the Revolutionary Court in Tehran on charges related to the unrest that broke out after the announcement of the election results.

IV. On 19 November 2009, Mr. Davoud Sadeghi, spokesman of the judicial authorities of Khuzestan province, reportedly stated that since 21 March 2009 (the beginning of the new year according to the Iranian calendar), 30 persons had been executed in Ahwaz, Khuzestan province. **Three of those executed in Ahwaz** (who remained unnamed) had been sentenced to death on charges of moharebeh.

V. Since the protests of 27 December 2009, the day of the Ashura festivities, there have been calls by senior officials in your Excellency’s Government and senior clerics calling, explicitly or implicitly, for the imposition of the death penalty on charges of moharebeh against the leaders of the protests. On 5 January 2010, the Interior Minister, H.E. Mostafa Mohammad Najjar, reportedly stated that “after Ashura, anyone who takes part in riots will be considered as mohareb and an opponent of national security.”

Previously, on 29 December 2009 Abbas Vaez-Tabasi, a representative of the Supreme Leader, stated on State television that “those who are behind the current sedition in the country ... are mohareb and the law is very clear about punishment of a mohareb”. On 30 December Ayatollah Alam ol-Hoda, a member of the Assembly of Experts, allegedly warned demonstrators that they would be considered mohareb if they did not give up their opposition. Ayatollah Alam ol-Hoda reportedly stated that “today enmity with God’s prophet means enmity with his manifestation, the Supreme Theologian [the Leader of the Revolution, Ayatollah Khamenei]” and exhorted the demonstrators to “come back to the side of the Supreme Leader,” otherwise they would “regret the punishments” waiting for them. The National Commander of the Police, Mr. Ahmadi Moghaddam, also stated on 30 December that the actions of the protesters amounted to moharebeh.

On 1 January 2010, during Friday Prayers in several major Iranian cities, such calls were reiterated. Ayatollah Sayed Yousef Tabataienezad, during Friday Prayers in Isfahan, stated that “the disruptive group fought with God by coming onto the streets ... they are *mofsed felarz* [guilty of denying the Prophet and spreading debauchery] and the Judiciary should know that their actions are obvious debauchery and according to God and the Koran the punishment is execution.” In Tehran Ayatollah Janati, the Secretary of the Guardian Council, stated with regard to protesters that they “obviously are *mofsed felarz*” and called on the judiciary to act as swiftly in imposing punishment against opposition protesters as it did in the wake

of the 1979 Revolution. In Shiraz, Ayatollah Haj Sheikh Asadollah Imani, also a member of the Assembly of Experts, stated in the course of the Friday Prayers that “anarchists should know that if they cause anarchy or contribute to it, they are *mohareb* and *mortad*, and the Judiciary should punish them properly.”

On 4 January 2010, the Prosecutor for Tehran, Mr. Abbas Jafari-Dolatabadi, stated that five persons arrested on 27 December 2009 had been charged with *moharebeh*. Their names are **Ali Mehrnia**, aged 70, **Parviz Varmazyari**, aged 54, **Majid Rezaii**, **Alireza Nabavi** and **Ali Massoumi**. They are reportedly members of the People’s Mojahedin Organization (PMOI). Already on 30 December 2009, the national Prosecutor-General, Hojjatoleslam Mohseni Eje’i, had announced in a closed session of the Parliament that “the Judiciary is seriously determined to execute at least three detainees of the Ashura events who have been found to be *moharebs*”.

On 4 January 2010, a group of 36 members of Parliament (the Majlis) proposed a motion to amend the Code of Criminal Procedure so that those convicted of *moharebeh* would be executed within five days of their conviction.

464. Without prejudging the accuracy of the reports received and summarized above, I note that these reports do corroborate the concerns I had previously expressed to your Excellency’s Government (communications dated 31 August 2006, 26 July 2007, 24 April 2008, 18 July 2008, 28 April 2009, and 12 October 2009) with regard to the compatibility of the imposition of the death penalty on the charge of *moharebeh* with international law obligations accepted by the Islamic Republic of Iran.

465. Article 6(2) of the of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a party, stipulates that “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law.” Two issues relevant to the imposition of the death penalty on charges of *moharebeh* arise from this provision:

(a) For the sentence of death to be imposed “in accordance with the law”, the law in question must be sufficiently precise to clearly allow distinction between conduct punishable with the capital sentence and conduct not so punishable.

(b) The death penalty is limited to the “most serious crimes”. As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency’s Government, it expressly stated in its concluding observations that it “considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant” (CCPR/C/79/Add.25, paragraph 9).

466. The definition of *moharebeh* in Article 186 of the Islamic Penal Code of Iran would appear to require only that the accused resorted to arms for the purposes of causing “terror or fear or [breaching] public security and freedom.” Article 191, moreover, would appear to explicitly clarify that the death sentence on charges of *moharebeh* can be imposed even where the conduct did not result in any death or injury. The definition of the offence under the Islamic Penal Code would therefore appear not to be compatible with the “most serious crime” requirement for capital offences in international law.

467. The responses of your Excellency’s Government to some of the cases I brought to its attention in the past confirm this conclusion. Your Excellency’s Government’s



communications regarding the cases of Farzad Kamangar, Ali Heydarian, Farhad Vakili, Adnan Hassanpour and Abdolwahed Butimar, in particular, suggest that, even assuming they were guilty as charged, they were not convicted of participating in any killings. Farzad Kamangar, Ali Heydarian and Farhad Vakili, for instance, were, according to the information provided by your Excellency's Government on 8 April 2009, arrested before they carried out the bomb attack they were allegedly planning.

468. In this respect, I would further note that I am aware of reports indicating that organizations such as the People's Mojahedin Organization (PMOI), the Free Life Party of Kurdistan (PJAK), and Anjoman-e Padeshahi-e Iran (API) have engaged in armed attacks against security forces, officials and government facilities, including attacks resulting in the loss of life. As mentioned above, however, under the "most serious crime" requirement, the mere charge of affiliation with groups engaged in violent activities against governmental persons or institutions is not in itself sufficient to overcome the strict limitations the Covenant places on the use of capital punishment.

469. The reported recent statements by senior Government officials and clerics, moreover, appear clearly to indicate an intention on the part of the authorities to use the charge of moharebeh against any, peaceful or violent, activity expressing opposition to the Government. The imposition of the death penalty for activities constituting the peaceful exercise of the freedoms of opinion and expression, assembly and association, enshrined in articles 19, 21 and 22 of the Covenant, is under all circumstances incompatible with your Government's obligations under international law.

470. The circumstance that many of the persons found guilty of moharebeh were allegedly sentenced to death following very secretive trials and with severe restrictions on the assistance of defence counsel, in violation of article 14 of the Covenant, further compounds these concerns regarding the use of moharebeh charges (in addition to being a violation of accused persons rights on its own terms). Adversarial proceedings and public scrutiny are essential to ensuring that penal sanctions are imposed "in accordance with the law", particularly in the context of charges carrying a strong political connotation.

471. I therefore urge your Excellency's Government to take all necessary measures to guarantee that no one is executed on the basis of a judgment finding him or her guilty of moharebeh, that all death sentences imposed on charges of moharebeh are reviewed, and that the death penalty is no longer imposed on charges of moharebeh.

472. Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters

1. Are the facts alleged in the above summaries of the cases accurate? Are the statements attributed to Government officials, members of the Assembly of Experts and of the Guardian Council accurately reflected above?
2. Please indicate the specific conduct that Fasih Yasamani, Habibollah Latifi, Ehsan (Esma'il) Fattahian, Sherko Moarefi, Zeynab Jalaliyan, Ali Saremi, Rostam Arkiya, Rashim Akhkandi, Hossein Khaziri (or Khezri), Sayed Sami Hosseini, Sayed Jammal Mohammedi, Mostafa Salimi, Anwar Rostami, Mohammad Amin Agoushi, Ahmad Pouladkhani, Hassan Talai, Iraj Mohammadi, Farhad Chalesh, Ramezan Ahmad, Mohammad-Reza Ali-Zamani, A.P., Hamed Rouhinejad (who reportedly was already detained in Evin prison at the time of the elections), N.A., and Reza Kazemi have been found guilty of. Please explain which elements of the specific conduct they were found guilty of are constitutive of the offence of moharebeh.

3. Please indicate the specific conduct the five men reportedly arrested on 27 December 2009 and charged with moharebeh, Ali Mehrnia, Parviz Varmazyari, Majid Rezaii, Alireza Nabavi and Ali Massoumi, are accused of having engaged in. Is it accurate that on 30 December 2009, at a time when the Tehran Prosecutor had not yet finalized the indictments against these men, the national Prosecutor-General, Hojjatoleslam Mohseni Eje'i, announced in a closed session of the Parliament that "the Judiciary is seriously determined to execute at least three detainees of the Ashura events who have been found to be moharebs?"

4. Please indicate the names of the three men executed on charges of moharebeh in Ahwaz, Khuzestan province, since 21 March 2009. What specific conduct were they found guilty of?

5. Is the definition of "moharebeh" under the Islamic Penal Code of Iran correctly restated above? If not so, please provide the correct translation. Are there any jurisprudential statements which need to be taken into account to correctly understand the scope of the offence of moharebeh under the Islamic Penal Code of Iran?

**Iran: Risk of execution on charges of adultery of Sareimeh Ebadi and Bu-Ali Janfeshani**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 female and 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent appeal dated 27 January 2010,** sent with the Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its cause and consequences.

473. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding a woman and a man who have been sentenced to death by stoning for adultery.

According to the information received:

A criminal court in Oroomiyeh, West Azerbaijan Province, sentenced Sareimeh Ebadi and Bu-Ali Janfeshani to death on charges of adultery. The death sentence followed a trial in which they were allegedly denied the right to select their own defense attorneys. On 6 January 2010 (or 8 January, according to other reports received), Branch 12 of the West Azerbaijan Court of Appeals upheld the death sentence. Both defendants are held in Oroomiyeh central prison.

474. While we do not wish to prejudge the accuracy of these allegations, we would like to recall that article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in

the loss of life (A/HRC/4/20, para. 53). Already in 1993, the Human Rights Committee (CCPR/C/79/Add.25) noted in its concluding observations on your Excellency's Government's periodic report under the Covenant that the imposition of the death penalty for adultery is incompatible with the Covenant, and thus with Iran's obligations under international law.

475. Turning to the alleged denial of the defendants' right to appoint attorneys of their own choosing, while we do not wish to prejudge the accuracy of the information received, we would respectfully remind your Excellency's Government that in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the International Covenant on Civil and Political Rights admits of no exception. Relevant to the case at hand, these guarantees include the right to be assisted by a lawyer of one's own choosing and to have adequate time and facilities to prepare one's defence.

476. We would also like to recall that stoning constitutes an inhuman and degrading treatment. In this regard, we would like to draw your Excellency's Government's attention to Resolution 2005/39 of the Commission on Human Rights, which reminded Governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture. We would also like to draw your Excellency's Government's attention to the report of the Special Rapporteur on torture to the 60th session of the General Assembly, in which, with reference to the jurisprudence of UN treaty bodies, he concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment, and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (A/60/316, para.28). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime of as an educative or disciplinary measure.

477. We would moreover like to recall that, as a State Party to the International Covenant on Civil and Political Rights, your Excellency's Government has undertaken to ensure equality between men and women in the enjoyment of all civil and political rights, including the right to life and the right not to be subjected to torture or to cruel, inhuman or degrading punishment. While in this case it would appear that both the man and the woman involved in the alleged adultery have been sentenced to death by stoning, we continue to be concerned about the reported imbalance between the number of men and women sentenced to death on charges of adultery, which raises certain questions in terms of possible discrimination in relation to both criminal enforcement and sentencing in adultery cases (see our communication to your Excellency's Government of 30 July 2008). It would be important to have gender disaggregated data on the use of the death penalty for adultery in the Islamic Republic of Iran.

478. We urge your Excellency's Government to take all necessary measures to ensure that the rights under international law of Sareimeh Ebadi and Bu-Ali Janfeshani are respected. Considering the irremediable nature of capital punishment and the fact that the death sentence for adultery is incompatible with your Government's obligations under international law, this can only mean suspension of the executions and eventually commutation of the death sentences.

479. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report

on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following questions:

1. Are the facts alleged in the above summaries accurate?
2. Please provide statistics as to the number of persons sentenced to death and the number executed in the past three years for the offence of adultery. In particular, indicate how many men and how many women were sentenced to death and executed for the offence of adultery.

## **Iraq**

### **Excessive use of force by Iraqi security forces during an operation in Camp Ashraf**

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

**Subject(s) of appeal:** 11 unknown

**Character of reply:** Allegations rejected but without adequate substantiation

**Observations of the Special Rapporteur:** The Special Rapporteur notes the response of the Government of Iraq, and regrets that the response fails to address any of the issues raised in the Special Rapporteur's communication. In particular, the Government's response does not explain why it believes that the use of force that resulted in the deaths of 11 Camp Ashraf residents and injuries to hundreds more comports with the requirements of strict necessity and proportionality in law enforcement operations. Nor does the Government explain, as it was requested to do, what instructions were provided to its security forces for the operation, and how the choice of means and methods used met the requirements of applicable human rights law. The response also does not address allegations that the Government's security forces prevented medical care from reaching the injured during, and for several days after, the operation. Finally, the Government's response does not explain whether it undertook any investigation into the legality of, and responsibility for, the alleged killings.

**Allegation letter dated 1 October 2009**, sent with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

480. We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 8/3, 6/29 and 8/8.

481. In this connection, we would like to bring to your Excellency's Government attention information we have received with regard to the **alleged excessive use of force by Iraqi security forces during an operation on 28 and 29 July 2009 in Camp Ashraf, resulting in the death of eleven residents of Camp Ashraf and the wounding of over 200.**

According to allegations received:

On 28 and 29 July, hundreds of Iraqi army soldiers and police officers conducted an operation in Camp Ashraf with the goal of establishing a police station

within the camp. Humvees and bulldozers were used to destroy fences and walls surrounding the camp. It is reported that the Iraqi armed forces also drove recklessly at high speeds through gathered crowds running over some of the individuals. When the Iraqi security forces tried to enter the camp, they clashed with hundreds of unarmed residents who had formed a human chain. They subsequently clashed with camp residents within the camp. The Iraqi security forces made use of different means in order to disperse the crowd including water canons, batons, batons with nails, metal rods, cricket bats, chains, sickles, axes, teargas and sound grenades. It is reported that the Iraqi security forces also made use of firearms against the camp residents and that the shooting was targeted.

The operation resulted in the death of eleven camp residents including six by gunshot (details on the causes of death are provided in the Annex) and the wounding of several hundred, some of which sustained grave injuries. Those injured include 23 individuals presenting gunshot wounds and 25 presenting injuries sustained from being hit or run over by vehicles. It is reported that some of the dead were intentionally killed having been struck by a single bullet to the head or chest.

The security forces allegedly prevented Iraqi doctors from entering Camp Ashraf during the operation and for several days afterwards. Multinational forces were only allowed to evacuate the wounded on the third day. The Camp Ashraf ambulance was also shot at several times during the attack as doctors present in the camp were trying to take wounded residents to Camp Ashraf hospital. It is reported that lack of timely access to medical treatment may have contributed to the death of some of the eleven camp residents.

Furthermore, Iraqi armed forces allegedly took a large number of goods belonging to the residents including generators, fans, tables, chairs and cars.

Some 800 to 1000 members of the Iraqi security forces participated in the operation. They reportedly originate from a number of units including army units based around Camp Ashraf and from Baghdad, police units from Diyala province and Iraqi army Special Forces.

482. While we do not wish to prejudge the accuracy of these reports, we would like to refer your Excellency's Government to the principles of international law governing the use of force when policing rallies and protests. The International Covenant on Civil and Political Rights ("ICCPR"), to which Iraq is a party, prohibits cruel, inhuman or degrading treatment or punishment (Article 7), which, as the Special Rapporteur on Torture has highlighted in one of his reports (E/CN.4/2006/6) includes the prohibition of excessive use of violence: "Disproportionate or excessive exercise of police powers amounts to cruel, inhuman or degrading treatment or punishment and is always prohibited." (para. 38) Furthermore, Article 6 of ICCPR provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

483. In particular, Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials ("Basic Principles"), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or

affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.” Besides, Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

484. We would like to remind your Excellency’s Government of the principle whereby all States have “the obligation (...) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”, as recently reiterated by the Human Rights Council in Resolution 8/3 on “Extrajudicial, summary or arbitrary executions” (OP 4). The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, (...) to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to (...) prevent the recurrence of such executions”. Also relevant for these cases is Principle 17 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (“Prevention and Investigation Principles”) provides that “[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law.”

485. Furthermore, Article 12 of the International Covenant on Economic Social and Cultural Rights also provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on the part of all States parties to ensure that health facilities, goods, and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

486. We urge your Excellency’s Government to take all necessary measures to guarantee that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopts effective measures to prevent the recurrence of these acts.

487. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the allegations in the above summary of the events accurate? If not so, please share all information and documents proving their inaccuracy.
2. What were the instructions given to the security forces before and during the operation conducted by the Iraqi security forces on 28 and 29 July 2009? How did the security forces ensure compliance with the requirements of necessity and proportionality? How does the choice of methods and means used by the Iraqi forces during the operation comply with these requirements?
3. What measures have been taken to ensure that the population in Camp Ashraf has access to healthcare in a sustainable way?
4. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to the above-mentioned events (including the cases listed in the attached Annex). Please explain the steps taken to ensure that these investigations comply with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

5. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against, persons found to be responsible, as perpetrators or as responsible commanders, for the alleged killings listed in the attached Annex.

**Response from the Government of Iraq dated 14 October 2009 (translated from Arabic)**

488. The following is the position of the Iraqi Government on the file pertaining to Camp New Iraq (formerly Camp Ashraf) since its assumption of responsibility for security:

1. After assuming responsibility for security on 30 June 2009 and imposing its sovereignty over the whole territory of Iraq, including Camp New Iraq, the Iraqi Government informed representatives of the residents of the Camp at a number of meetings attended by representatives of the United States Embassy in Iraq of its decision to open a police station in the Camp. The response of the Organization's leadership was to reject the decision and to deny entry to the security forces.

2. The Committee held a number of meetings with relevant international organizations, including the International Committee of the Red Cross and the Office of the United Nations High Commissioner for Human Rights, in order to explain the Committee's decision to open an Iraqi police station. The Committee's decisions and the right of the Iraqi Government to impose its sovereignty over the whole territory of Iraq, including the opening of an Iraqi police station in Camp New Iraq, were endorsed.

3. On 27 July 2009 the Iraqi Government's decision to open a police station was implemented. Before the Camp was entered, negotiations were held for more than two hours, in the presence of the American side, with the leadership of the Organization in the Camp concerning the entry of the staff of the police station. The negotiations ended with the Camp leadership's rejection of the decision to open the police station, and the security forces then proceeded to carry out their duty. The military leadership had ordered that weapons should not be loaded. The security forces met with opposition from the residents of the Camp, who used sticks, stones, sound grenades, swords and knives, and were sprayed with chlorine gas. The security forces achieved their aim of reaching the place within the Camp that had been selected for the police station.

4. The results of the entry operation were as follows:

(a) Sixty-two members and 7 officers of the security forces were injured and more than 20 Iraqi vehicles were seriously damaged;

(b) Thirty-six Camp residents were arrested when they left the Camp and attacked the security forces; they are now subject to the jurisdiction of the Iraqi judicial authorities in Diyala and have been placed in an appropriate detention centre that complies with human rights principles; they have been examined daily by doctors but refuse to be transferred to government hospitals and are on hunger strike;

(c) The 36 detainees have been visited by the International Committee of the Red Cross and by a United Nations human rights delegation, which undertook a detailed examination of the services being provided by the Iraqi Government to the detainees and the residents of the Camp;

(d) The utility authorities within the Camp (water supply station, electricity supply station, New Iraq Hospital) continue to provide services to the residents of the Camp;

(e) Foodstuffs, humanitarian supplies and medicines continue to be delivered;

(f) Vehicles and military equipment used by the residents of the Camp against the security forces have been seized; an inventory has been compiled and they have been impounded within the Camp pending investigations to identify the relevant official documents;

(g) Military equipment (Katyusha rocket launcher, artillery launcher, artillery platform, night vision goggles, etc.) was found at one of the sites used by the residents of the Camp in the place known as Karim Gate after it was evacuated. This fact was documented in the presence of the American side.

**Iraq: Use of the death penalty without adequate safeguards**

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

**Subject(s) of appeal:** Group concern: 168 males, 1 female and 12 unknown

**Character of reply:** Translation awaited

**Observations of the Special Rapporteur:** The Government of Iraq replied to the communication below on 22 December 2009. The Special Rapporteur appreciates the response but unfortunately had not received a translation of it from the relevant services at the time this report was finalized. He is unable, therefore, to make observations, and expects they will be included in the next report. However, a copy of the original response letter is available online at the following address: [http://www2.ohchr.org/english/issues/executions/docs/Irak\\_22.12.09\\_6.2009.pdf](http://www2.ohchr.org/english/issues/executions/docs/Irak_22.12.09_6.2009.pdf).

**Allegation letter dated 21 October 2009**, sent with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

489. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the use of the death penalty in Iraq since May 2009. Reports that were made available to us indicate that on 3 May 2009, 12 death row inmates were hanged and, again, on 10 June, 18 men and 1 woman, Qassima Hamid, were hanged in secret. We are also informed that currently as many as 1,000 persons may be on death row in Iraq, of whom 150 are reported to have exhausted all judicial remedies and to be at imminent risk of execution. We have neither been informed of the names of these persons nor of the charges on which they were convicted, nor have we been made aware of any details of their trials.

490. Although international law does not prohibit the death penalty, it nonetheless mandates that it must be regarded as an exception to the fundamental right to life, and must as such be applied in the most restrictive manner. It is essential that capital punishment, whenever it is resorted to, should fully respect all fair trial standards contained in international human rights law in the relevant proceedings with the sentence being pronounced only following a regular judicial process.

491. We would also like to reiterate our concerns raised with your Excellency's Government in a previous communication dated 23 December 2008, concerning Majeed Ibrahim Hamo and Saeed Khalil in relation to fair trial rights in capital punishment cases. As we have received no response from your Excellency's Government, we have no reason to conclude that these concerns are no longer valid. Based on what we consider to be reliable reports on pre-trial and trial procedures currently followed before the Central Criminal Court of Iraq and other criminal courts of Iraq, as well as appeals procedures before the Court of Cassation, we remain very concerned that minimum fair trial standards,



especially in relation to capital offences, have not yet been met. We therefore note the following:

(1) It is of particular concern that the prohibition of the use of evidence - including confessions - gathered under duress or torture, and the right not to be compelled to testify against oneself or to confess guilt, are inadequately respected in Iraq, rendering the imposition of the death penalty arbitrary. We also recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States “to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Iraq is a party.

(2) Defendants are also reported to be frequently denied the right to an adequate defence. They are denied access to evidence against them, as well as to their counsel within a reasonable period of time that would enable them to mount an effective defence. These procedural defects amount to a violation of article 14(3)(b) of the ICCPR. Trial observations indicate that there is a lack of adequate access to court-appointed counsel prior to the initial investigative hearings. Further access to privately employed defence counsel is not facilitated, notwithstanding article 123 of the Code of Criminal Procedure which provides for the right to be represented by legal counsel when being questioned during the pre-trial period. In a great many cases the system allocating court appointed counsel works against defendants, since they are not represented by the same counsel at the investigative or trial stage, eroding further their chances of securing an effective defense.

(3) Finally, in relation to the reported recent secret executions, we are concerned that lack of prior notification may affect the rights of convicted prisoners awaiting executions. Indeed, as the Special Rapporteur on extrajudicial, summary or arbitrary executions pointed out in out in a report to the Commission on Human Rights on Transparency and the imposition of the death penalty (E/CN.4/2006/53/Add.3), a lack of transparency regarding the timetable for execution may undermine the due process rights of the accused, in particular the right to seek pardon or commutation of the sentence in a timely manner as guaranteed under article 6 of the ICCPR. In addition, it is argued in detail in the same report that “[r]efusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation.” The practice of informing prisoners of their impending execution only moments before they die, and families only later, is “inhuman and degrading and undermine[s] the procedural safeguards surrounding the right to life.” (para. 32).

492. Only full respect for stringent due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates human rights standards. We therefore urge your Excellency’s Government to take all necessary steps to ensure that the rights under international law of accused persons and prisoners are fully respected. Unless your Excellency’s Government is able to demonstrate respect for these essential procedural and substantive protections, which flow from the international obligations accepted by Iraq, the death sentences imposed must be commuted.

493. In order to carry out the mandates entrusted to us by the Human Rights Council, and to be able to effectively monitor the implementation of the relevant standards, we would be grateful if you would provide us with the following information:

1. Are the allegations above accurate? If not so, please share all information and documents proving their inaccuracy, as well as information on any execution that may have taken place since 10 June 2009.

2. Please provide a complete list of the persons who have been executed this year after imposition of the death sentence in prisons controlled by the Ministry of Justice and the Ministry of Interior respectively, and the crimes for which they were convicted.
3. Please provide a complete list of the persons currently in detention under a death sentence, with the dates of their sentence, the offences of which they were found guilty, and the remedies used by them as well as those still available to them.
4. Please explain the measures taken or planned by the Government of Iraq to bring its practice of the death penalty, insofar as it chooses to retain capital punishment, into line with the principles of prior notification and transparency, so that the right of due process in post-conviction proceedings is respected.
5. Please explain the measures adopted by your Excellency's Government to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.
6. Please provide details of the measures in place to comply with Iraq's international obligations on fair trial including the right to an adequate defence and access to counsel.

## **Israel**

### **Civilians killed during air strikes against the Ibrahim al-Maqadna mosque in Jabalya town**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State and violations of the right to life during armed conflicts, especially of the civilian populations and other non-combatants, contrary to international humanitarian law

**Subject(s) of appeal:** 12 males

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Israel has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 3 April 2009,** sent with the Special Rapporteur on freedom of religion or belief.

494. In this connection, we would like to bring to your Government's attention information we have received concerning **Mohammed al-Tanani, Sa'id Salah Battah, Ahmed Isma'il al-Buhdri, Ahmed Tubail, Omar 'Abdul Hafez al-Seelawi, Hani Mohammed al-Seelawi, Abdul Rahman al-Masamha, Ra'ed 'Abdul Rahman al-Masmha, Rajeh Ziada, Mohammed Mousa al-Seelawi, Bahaa' al-Ashqar and Hassan Hijju** who have reportedly been killed during air strikes against the Ibrahim al-Maqadna mosque in Jabalya town in the northern Gaza strip.

According to the allegations:

On 3 January 2009, at approximately 5.20 p.m., while dozens of Palestinian civilians were doing their evening prayer, the Israeli army fired a missile at the entrance to the Ibrahim al-Maqadna mosque near Kamal Adwan Hospital in Jabalya town in the northern Gaza strip. Reportedly, the Israeli army suspected that the mosque was housing militants.

As a result, twelve Palestinian civilians, including four children and a man and his son, were killed and thirty others were wounded. Later, three of the wounded died of their wounds, so the number of deaths mounted to fifteen. The twelve victims who were killed instantly are Mohammed al-Tanani (aged 18), Sa'id Salah Battah (aged 22), Ahmed Isma'il al-Buhdri (aged 23), Ahmed Tubail (aged 16), Omar 'Abdul Hafez al-Seelawi (aged 35), Hani Mohammed al-Seelawi (aged 10), Abdul Rahman al-Masamha (aged 47), Ra'ed 'Abdul Rahman al-Masmha (aged 21), Rajeh Ziada (aged 18), Mohammed Mousa al-Seelawi (aged 10), Bahaa' al-Ashqar (aged 20) and Hassan Hijju (aged 14).

In addition to the above incident, many other mosques were allegedly completely or partially damaged in the governorates of Rafah, Gaza, Khan Younis, Dier El Balah during the recent conflict in the Gaza strip.

495. While we do not wish to prejudge the accuracy of these reports, we would like to refer Your Excellency's Government to its treaty obligations under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and also the relevant rules applicable to all armed conflicts under international humanitarian law and human rights law. Both the treaty obligations of Your Excellency's Government and applicable customary rules of international humanitarian law governing the conduct of hostilities include prohibitions on attacks against the civilian population and civilian objects, and require respect for the principles of proportionality and precautions in attack.

496. Civilians are all persons who are not members of the armed forces of a party to the conflict and are protected against attack unless and for such time as they take a direct part in hostilities. Civilian objects, including places of worship, are also immune from attack, unless their nature, location or use, make an effective contribution to military action and whose destruction offers a definite military advantage. In addition, during military operations, special care must be taken to avoid damage to buildings dedicated to religion.

497. In the event of a lawful attack on a military objective, the principle of proportionality prohibits such attacks when it can be expected to cause incidental loss of civilian life or injury to the civilians which would be excessive in relation to the concrete and direct military advantage expected. Compliance with this rule should be assessed for each attack taken individually and not for an overall military operation. We would note that this approach is also reflected in the Judgment of the Israeli Supreme Court of 14 December 2006 (*The Public Committee against Torture in Israel et al. v. The Government of Israel et al.*; HCJ 769/02), which observed that "when the damage to innocent civilians is not proportionate to the benefit of the attacking army, the attack is disproportionate and forbidden."

498. The obligations to take all necessary precautions to spare the civilian population and to limit to the maximum extent any incidental civilian loss of life include taking all appropriate measures to ensure: that the target of the attack is indeed a military objective; that the chosen means and methods of warfare will avoid civilian loss of life or limit incidental civilian loss of life; and, that a careful assessment of the conformity of the attack to the principle of proportionality is made. The timing of an attack should also be taken into account when assessing the conformity of the attack with the principles of distinction and proportionality.

499. We would also like to appeal to Your Excellency's Government to ensure that the exercise of the right to freedom of religion or belief is respected in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights.

500. Further, we would like to recall that in its recently adopted resolution 63/181, the General Assembly urges States “to step up their efforts to protect and promote freedom of thought, conscience, religion or belief, and to this end, [...] to exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights law, to ensure that religious places, sites, shrines and symbols are fully respected and protected.”

501. Further, we would like to refer to the report E.CN.4/2005/61 (see paras. 49-50) submitted to the Commission on Human Rights in which it was pointed out that members of religious or belief communities, whenever they find themselves in places of worship, are in a situation of special vulnerability given the nature of their activity. More generally, as mentioned, *inter alia*, in paragraph 4 of the Human Rights Committee's general comment No. 22 (1993), places of worship are an essential element of the manifestation of the right to freedom of religion or belief to the extent that the great majority of religious or belief communities need the existence of a place of worship where their members can manifest their faith. Moreover, unlike other forms of violations of the right to freedom of religion or belief, attacks or other forms of restriction on places of worship or other religious sites and shrines in many cases violate the right not only of a single individual, but the rights of a group of individuals forming the community that is attached to the place in question.

502. Finally, we would like to recall that there is “a duty on States to investigate alleged violations of the right to life “promptly, thoroughly and effectively through independent and impartial bodies” (Human Rights Committee, general comment No. 31, “Nature of the legal obligation on States Parties to the Covenant” (2004), (CCPR/C/21/Rev.1/Add.13), para. 15.) This duty arises out of the general obligation of States to ensure the right to life of each individual, a right that is non-derogable regardless of circumstance (ICCPR, art. 4(2)); armed conflict and occupation do not, therefore, discharge the State’s duty to investigate and prosecute alleged human rights abuses.

503. In the event that your investigations support or suggest the above allegations to be correct, we, in addition, urge Your Excellency’s Government to take all necessary measures to guarantee that religious places and sites are fully respected and protected, and to prevent the recurrence of these acts.

504. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged on behalf of the victims mentioned above with regard to the incident which occurred on 3 January 2009?
3. Please explain how the principle of precaution was respected in the case of the targeting of the Ibrahim al-Maqadna mosque, on 3 January 2009, in particular the launching of the attack during evening prayers and the assessment of conformity of the attack with the principles of distinction and proportionality.
4. Please provide the details and where available, the results, of any investigation or inquiries carried out in relation to this case.

## Italy

### Deaths in custody of seven men

**Violation alleged:** Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention

**Subject(s) of appeal:** 7 males

**Character of reply:** No response (recent communication)

**Observations of the Special Rapporteur:** The Special Rapporteur looks forward to receiving a response concerning these allegations.

**Allegation letter dated 12 February 2010,** sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

505. We would like to bring to your Excellency's Government's attention information we have received concerning seven cases of death in custody in Italy. We list the information received in the order of the alleged date of death, starting with the most recent case:

Mr. **Stefano Cucchi**, aged 31, was arrested on suspicion of drugs possession in a park in Rome at 11.30 p.m. on 15 October 2009. The carabinieri who had arrested him took him to his parents' home, where they searched his room, and then to their holding cells. In the morning, the carabinieri took him to the Rome Tribunal, where around 12:00 noon he was subjected to a fast track trial (*processo per direttissima*). Mr. Cucchi had a weight of only around 40 kilograms and declared at the hearing that he was anorexic, epileptic and HIV-positive. According to members of his family, they noted at the hearing that he had a badly swollen face and bruises around his eyes. A visit at the tribunal's medical service and another visit at Regina Coeli prison in Rome, where Mr. Cucchi was taken after the trial, confirmed that he had facial injuries and difficulties walking. On the same day, Mr. Cucchi was taken to Fatebenefratelli hospital, where he was found to have two broken vertebrae. The following day, 17 October 2009 (a Saturday), Mr. Cucchi was again taken from the prison to Fatebenefratelli hospital and from there, at around 1.15 p.m. to the custodial section of Pertini hospital in Rome. His parents were informed of his arrival at the hospital only at around 9:00 p.m. and, having immediately driven to hospital, were denied their request to see Mr. Cucchi and told to return on Monday 19 October morning. On 19 October morning, Mr. Cucchi's parents were denied the visit on the ground that the required permit from the prison authorities had not been received yet. The following day, they were told that a permit from the competent judge was required to visit their son or speak to the doctors treating him. The next day, Wednesday, 21 October 2009, Mr. Cucchi's father had obtained a judicial permit to visit his son, but lacked the required endorsement from the prison authorities. On 22 October at 6.20 a.m. Mr. Cucchi died in hospital. The medical certificate speaks of a "presumed natural death", but the public prosecution service has opened an investigation.

On 11 September 2008, a **detainee of Velletri prison**, aged 41; his name has not been reported to us; died at Velletri hospital. The man, who was taken to the hospital from the prison, had allegedly been beaten by police officers after having been arrested on suspicion of having stolen a bicycle. The autopsy report noted internal bleeding due to severe damage to the spleen and two broken ribs. The man reportedly accused the police of his state shortly before dying.

On 5 February 2008, a **detainee in the prison of Imperia** (his name has not been reported to us), aged 29, died in his cell. A natural cause of death has been

excluded and the public prosecution has opened an investigation, but no results are known.

In December 2007, a **man** was found dead in his cell in **Lecce prison** (his name has not been reported to us) three days after having been taken into custody there. The office of the prosecutor opened a homicide investigation, but the results are not known as of today.

Mr. **Aldo Bianzino** died in his cell in Capanne prison in Perugia on 14 October 2007. He had been arrested at home two days earlier on charges of growing marijuana. The autopsy report found injury to the liver and internal bleeding “of traumatic origin”. A prison guard is currently on trial in Perugia on charges of having failed to alert medical services when Mr. Bianzino, in the night before his death, was calling for help. A second investigation against unknown perpetrators on charges of voluntary homicide is ongoing.

On 25 September 2005, 18-years-old Mr. **Federico Aldrovandi** died in Ferrara after an encounter with four police agents, who beat him with their batons (breaking two batons), and made him lie on the ground with his hands cuffed behind his back. The results of the medical forensic examination show bruises and haematoma all over Mr. Aldrovandi’s body, including a cut to the back of the head, squashed testicles, a deep wound to one buttock and scratches on the face. In July 2009, the Ferrara Tribunal found the four police agents guilty of culpable homicide by excessive use of force and sentenced them to three years and six months imprisonment. The police officers were not detained during the proceedings and not imprisoned after being sentenced. They continue to be on duty (as they have been since the death of Mr. Aldrovandi), as appeals proceedings in their case are ongoing. Police regulations provide that they will be suspended from duty only after a possible confirmation of their conviction in appeals proceedings is upheld in third and final instance by the Cassation Court. Due to a general clemency measure applicable to their case and possibly to the statute of limitations, the four convicted police officers are highly unlikely to even partially serve the prison sentence.

Mr. **Marcello Lonzi**, aged 29, died in Livorno prison in July 2003, his face badly bruised and his body covered with blood. While a first autopsy attributed his death to a cardiac arrest, a second autopsy excluded natural death and highlighted traces of ill-treatment on Mr. Lonzi’s body. Two prison guards and an inmate are charged with homicide, but six years after the homicide the first instance trial is still ongoing.

506. While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Excellency’s Government’s attention to the fundamental principles applicable under international law to these cases. Article 7 of the International Covenant on Civil and Political Rights, to which Italy is a party, provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. As a consequence, when an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In this respect, we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraphe 9.2):

- “While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the

Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant.”

507. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

508. The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Italy is a party.

509. We further note that, more than twenty years after ratification of the Convention against Torture, Italy does not have specific provisions in its criminal law making torture and complicity in torture criminal offences and providing for “appropriate penalties which take into account their grave nature”, as required by article 4 of the Convention.

510. We are aware of your Excellency’s Governments submissions to the Committee Against Torture, arguing that the “Italian legal system provides sanctions for all conducts that can be considered to fall within the definition of torture, as set forth in Article 1 of the said Convention, and that these sanctions are ensured, more extensively, even through a complex system of incriminating facts and aggravating circumstances: The Italian system considers the concept of torture within a wide range of conducts.” (CAT/C/ITA/Q/4/Rev.1/Add.1, para. 17)

511. As noted also by the Committee Against Torture in its concluding observations on Italy’s most recent periodic report, however, there remain considerable concerns that the provisions of Italian criminal law referred to (including battery, bodily injuries, threats) do not capture the full gravity of the crime of torture, that acts of torture are therefore subject to the statute of limitations (CAT/C/ITA/CO/4, para. 19), and that perpetrators of torture may benefit from general clemency measures.

512. With specific regard to the case of Mr. Aldrovandi, we accept that the presumption of innocence applies until a defendant has been found guilty by final judgment. We would observe, however, that the circumstance that the police officers sentenced in first instance to three-and-a-half years of imprisonment for the deadly ill-treatment of a person in their custody, should continue to serve in the police force also reflects insufficient consideration of the gravity of acts of torture, inhuman and degrading treatment.

513. Finally, we recall that, as also noted by the Committee Against Torture, “[i]n connection with a prima facie case of torture and ill-treatment, the suspect should as a rule be subject to suspension or reassignment during the process of investigation” (CAT/C/ITA/CO/4, para. 19(b)). Similarly, the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions state that “[t]hose potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over

complainants, witnesses and their families, as well as over those conducting investigations.”

514. It is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the case summaries accurate?
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to each of the cases.
3. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanding officers, in the cases summarized above. In this respect, please explain what disciplinary or other administrative measures the four police officers found guilty of homicide in the case of Mr. Aldrovandi, as well as the police and penitentiary officials suspected in the other cases summarized above, have been subjected to. If no such measures were adopted, please explain why this was not considered necessary or appropriate.
4. Please explain how the statute of limitations and general clemency measures adopted by the legislature affect the prosecution, the trial and the serving of any sentences of imprisonment imposed in the cases above, in particular in the case of the homicide of Mr. Aldrovandi.
5. Please explain how the adoption of the draft law on the “protection of citizens against the indeterminate duration of trials” (also known as the “expeditious trial” (“processo breve”) bill), currently before the Parliament, would affect prosecution and trial in the cases summarized above of alleged ill-treatment by police or prison officials resulting in death. The draft law, which (according to our understanding) provides that the judge has to declare the termination of an ongoing trial if it is not concluded within the time limits provided, contains a list of particularly serious offences excluded from its application. It would appear that only few of the offences which according to the submission by your Excellency’s Government to the Committee Against Torture would cover acts of torture, are among the particularly serious offences excluded from the application of the draft law. Trials against officials suspected of torture or inhuman treatment would thus be at risk of termination if they are not concluded with the strict deadlines provided by the bill. Is this understanding correct?
6. Please provide the details of any compensation payments made to the families or dependants of any of the victims in the cases summarized above.

## **Japan**

**Imminent risk of execution of Yamaji Yukio, Shinozawa Kazuo, Zoda Hiroshi, Maegami Hiroshi and Ogata Hikei.**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 5 males

**Character of reply:** Cooperative but incomplete response



**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the general information provided by the Government of Japan. The Special Rapporteur regrets, however, that no information is provided with respect to the specific cases of Yamaji Yukio, Shinozawa Kazuo, Zoda Hiroshi, Maegami Hiroshi and Ogata Hikei, or the case of Makino Tadashi, who has now been executed. To the extent that this reflects a concern about individual privacy, the Special Rapporteur regrets that the Government has not acknowledged or addressed his proposal to reproduce information about specific cases in an anonymised form in public reports. The Government's continuing refusal to discuss individual cases renders it exceedingly difficult to have a meaningful dialogue, let alone a constructive one, with the Government about violations of the right to life. This would appear to be a concern for privacy that is warranted less by the rights of the individual concerned than of a Government that does not wish to be held to account.

515. The Special Rapporteur continues to be deeply concerned about the Government's continuing refusal to implement the recommendations of both the Human Rights Council and the Committee Against Torture that it end the practice of telling prisoners of impending execution only on the day the execution takes place. As these and other international bodies have repeatedly recognized and the Special Rapporteur has reiterated, the practice undermines is inhuman, degrading and does not accord with the necessary procedural safeguards for the right to life.

516. Finally, the Special Rapporteur regrets that the Government has not addressed the crux of his concern about other likely violations of the procedural safeguards of the right to life. Specifically, with respect to the Special Rapporteur's recommendation that the Government establish a mandatory system of review in capital cases, the Government's response that some defendants have exercised their appellate right does not address the concern that an increasing number of defendants, including five at issue in this communication, have chosen not to do so. Similarly, the Government's response that it is concerned about hypothetical repeated requests for retrial or review does not address the concern that requests are not in fact being made. The Special Rapporteur urges the Government, as the Human Rights Committee and the Committee Against Torture have also done, to establish a mandatory system of review.

**Urgent Appeal dated 19 March 2009**, sent with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

517. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding five men allegedly at imminent risk of execution: Mr. **Yamaji Yukio**, born 1983, Mr. **Shinozawa Kazuo**, born 1952, Mr. **Zoda Hiroshi**, born 1976, Mr. **Maegami Hiroshi**, born 1971, and Mr. **Ogata Hikei**, born in 1980. The five men were convicted of murder between 2002 and 2007 and sentenced to death. Mr. Shinozawa Kazuo never lodged an appeal against his sentence; the other four have abandoned their appeals.

518. We would also like to express our appreciation for the reply of your Excellency's Government dated 20 November 2008, to the communication of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 7 October 2008 regarding the case of Mr. **Makino Tadashi**. We regret, however, that your Government decided not to provide the information he sought with regard to the individual case of Mr. Tadashi. In the meantime, we have received reports that Makino Tadashi was hanged on 29 January 2009 together with three other men whose identities are not known to us.

519. While your Excellency's Government did not discuss the specific case of Makino Tadashi in its reply, we take note of the general information regarding the secrecy surrounding executions contained in your communication of 20 November 2008. Your

Excellency's Government explains that "[a]n inmate sentenced to death is notified of his/her execution on the day it is due to take place." Family members are also not given advance notice of the execution date. Your Excellency's Government explains that this practice is followed to avoid subjecting the death row prisoner and his family to serious emotional distress and the risk of becoming "emotionally unstable". It concludes that "the current practice is unavoidable" and does not violate the International Covenant on Civil and Political Rights.

520. In this respect, we draw the attention of your Excellency's Government to the very recent Concluding Observations of the Human Rights Committee, on your Government's fifth periodic report (CCPR/C/JPN/CO/5, adopted on 18 December 2008). The Human Rights Committee expressed its concern that prisoners sentenced to death "are executed without prior notice before the day of execution." It therefore recommended that "[t]he State party should also ensure that inmates on death row and their families are given reasonable advance notice of the scheduled date and time of the execution, with a view to reducing the psychological suffering caused by the lack of opportunity to prepare themselves for this event."

521. Previously, the Committee Against Torture had already expressed its "deep concern" about "[t]he unnecessary secrecy and arbitrariness surrounding the time of execution, allegedly in order to respect the privacy of inmates and their families. In particular, the Committee regrets the psychological strain imposed upon inmates and families by the constant uncertainty as to the date of execution, as prisoners are notified of their execution only hours before it is due to take place." (Conclusions and recommendations of the Committee Against Torture on the initial report of Japan, 3 August 2007, CAT/C/JPN/CO/1, para. 19).

522. As the Special Rapporteur on extrajudicial, summary or arbitrary executions argued in the communication to your Excellency's Government of 7 October 2008 in the case of Makino Tadashi, and in greater detail in a report to the Human Rights Council on Transparency and the imposition of the death penalty (E/CN.4/2006/53/Add.3, para. 32), the practice of informing prisoners of their impending execution only moments before they die, and families only later, is not only inhuman and degrading treatment, it also undermines the procedural safeguards surrounding the right to life.

523. Both the Human Rights Committee and the Committee Against Torture have in fact expressed even broader concerns about the post-conviction proceedings in death penalty cases in Japan. Of particular relevance to the cases of Yamaji Yukio, Shinozawa Kazuo, Zoda Hiroshi, Maegami Hiroshi and Ogata Hikei, who have all chosen not to pursue their right to appeal, the Human Rights Committee "note[d] with concern that an increasing number of defendants are convicted and sentenced to death without exercising their right of appeal" (CCPR/C/JPN/CO/5, para. 17). Both the Human Rights Committee and the Committee Against Torture have asked your Excellency's Government to introduce a mandatory system of review in capital cases (CCPR/C/JPN/CO/5, para. 17, and CAT/C/JPN/CO/1, para. 20).

524. The two Committees also noted interference with the right to assistance by legal counsel in post-conviction proceedings in capital cases. The Human Rights Committee remarked that "meetings of death row inmates with their lawyer in charge of requesting a retrial are attended and monitored by prison officials until the court has decided to open the retrial" and asked your Excellency's Government to "ensure the strict confidentiality of all meetings between death row inmates and their lawyers concerning retrial." (CCPR/C/JPN/CO/5, para. 17). The Committee Against Torture expressed serious concern with respect to "[t]he limitations imposed on death row prisoners concerning confidential access to their legal representatives, including the impossibility to meet with them in private, while on appeal requesting retrial; the lack of alternative means of confidential

communication and the lack of access to state defence counsel after the final sentence is handed down” (CAT/C/JPN/CO/1, para. 20(a)). In this regard, we would add that in General Comment no. 32, the Human Rights Committee observed that “[i]n cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings.” (CCPR/C/GC/32, para. 38). Effective assistance by a lawyer in turn presupposes the possibility of private meetings between lawyer and client.

525. Furthermore, the Human Rights Committee and the Committee Against Torture have expressed the concern that the right to seek pardon or commutation of the death sentence are not genuinely available to death row prisoners in Japan. They highlighted that a retrial procedure or a request for pardon do not lead to suspension of the execution of the death sentence, which fundamentally undermines these remedies, particularly considering that executions are not announced in advance to those concerned (CCPR/C/JPN/CO/5, para. 16, and CAT/C/JPN/CO/1, para. 20(c)). The Committee Against Torture noted the truly impressive statistical fact that there has been no case of commutation of a death sentence in the last 30 years (CAT/C/JPN/CO/1, para. 20(e)).

526. Each of the above concerns regarding the fairness of post-conviction proceedings in death penalty cases, and particularly their sum, suggests that there is a substantial risk of a violation of the procedural safeguards of the right to life of Yamaji Yukio, Shinozawa Kazuo, Zoda Hiroshi, Maegami Hiroshi and Mr. Ogata Hikei. We would therefore respectfully call on your Excellency’s Government to take all necessary steps to ensure that their right to due process in post-conviction proceedings, including unrestricted access to legal counsel and access to a genuine and transparent procedure to seek pardon or commutation of sentence, is fully respected. A refusal to provide Yamaji Yukio, Shinozawa Kazuo, Zoda Hiroshi, Maegami Hiroshi and Mr. Ogata Hikei, their families and lawyers, with timely and reliable information on when any planned execution will take place is highly likely to lead to violations of due process rights. It would also constitute, as clearly stated by the Human Rights Committee and the Committee Against torture, inhuman and degrading treatment.

527. It is moreover our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above regarding the cases of Yamaji Yukio, Shinozawa Kazuo, Zoda Hiroshi, Maegami Hiroshi and Mr. Ogata Hikei accurate? Is it correct that that Makino Tadashi was executed on 29 January 2009?
2. Does your Excellency’s Government have information on the reasons underlying the decision of Yamaji Yukio, Shinozawa Kazuo, Zoda Hiroshi and Maegami Hiroshi to abandon their appeals, and of Shinozawa Kazuo not to lodge an appeal?
3. Please explain the measures taken or planned by the Government of Japan to bring its practice of the death penalty, insofar as it chooses to retain capital punishment, into line with the principles and recommendations set forth in the Concluding Observations of the Human Rights Committee of 18 December 2008 (CCPR/C/JPN/CO/5), the Conclusions and Recommendations of the Committee Against Torture of 3 August 2007 (CAT/C/JPN/CO/1), and the report on Transparency and the imposition of the death penalty (E/CN.4/2006/53/Add.3) of the Special Rapporteur on extrajudicial, summary or arbitrary executions.

528. With regard to the first and second question above, we are aware of your Government’s policy, reiterated in its communication to the Special Rapporteur on extrajudicial, summary or arbitrary executions of 20 November 2008, not to discuss

individual cases of persons sentenced to death. We submit, however, that a meaningful and constructive dialogue on allegations of human rights violations, particularly violations of the right to life, cannot be completely detached from the analysis of individual cases. To protect the privacy of the persons concerned, information relating to their individual cases could be reproduced in anonymised form in our public reports.

**Response of the Government of Japan dated 15 April 2009**

1. Are the facts alleged above regarding the cases of Yamaji Yukio, Shinozawa Kazuo, Zoda Hiroshi, Maegamin Horoshi and Mr. Ogata Hekie accurate? Is it correct that that Makino Tadashi was executed on 29 January 2009

(Answer)

The Government of Japan refrains from referring to any individual inmate sentenced to death. As a matter of fact, Makino Takashi sentenced to death was executed on 29 January 2009

2. Does your Excellency's Government have information on the reasons underlying the decision of Yamaji Yukio, Shinozawa Kazuo, Zoda Hiroshi and Maegami Hiroshi to abandon their appeals, and of Shinozawa Kazuo not to lodge an appeal?

(Answer)

The government of Japan does not have any knowledge about the reasons behind the litigation acts of the defendants.

3. Please explain the measures taken or planned by the Government of Japan to bring its practice of the death penalty, insofar as it chooses to retain capital punishment, into line with the principles and recommendations set forth in the Concluding Observations of the Human Rights Committee of 18 December 2008 (CCPR/C/JPN/CO/5), the Conclusions and Recommendations of the Committee Against Torture of 3 August 2007 (CAT/C/JPN/CO/1), and the report on Transparency and the imposition of the death penalty (E/CN.4/2006/53/Add.3) of the Special Rapporteur on extrajudicial, summary or arbitrary executions.

(Answer)

1. In the Japanese criminal proceeding, the appeal to a higher court is broadly applicable to conviction and sentencing under three-tiered judicial system. The defense counsel, who shall be appointed in all the death penalty cases, is also given the right of appeal. Moreover, appeals to a higher court have been actually filed in many cases where a death penalty is sentenced. Bearing these circumstances in mind, we do not think that it is necessary to establish mandatory review system.

2. In addition, when an execution order is issued, the circumstance is thoroughly examined in the request of retrial and appeal of pardon, paying regard to the graveness to the penalty.

529. On the other hand, suppose the execution order was not issued while the procedure of retrial request is pending, it would be impossible to execute the death penalty forever in so far as the inmate sentenced to death repeats retrial requests. We could not expect an achievement of appropriate criminal proceedings in such a scenario.

530. Thus the Government of Japan believes that it would be inappropriate should we decide not to issue an execution order to an inmate sentenced to death while the procedure of request of retrial or appeal of pardon is pending.

3. An inmate sentenced to death is notified of his/her execution on the day it is due to take place. The reason behind this practice is because the Government of Japan is

concerned that he\she could become emotionally unstable and suffer from serious emotional distress if he\she were notified in advance. In addition, the similar concern could be raised in the following scenarios: if his\her family members were to be notified in advance of the execution date, they could suffer from unnecessary mental distress. In addition, if an inmate were to learn of his\her execution date through a visit between an inmate and his\her family members who have been notified of the date, he\she could become emotionally unstable and suffer from serious emotional distress. For these reasons, the Government of Japan considers that the above-mentioned practice does not violate the International Covenant on Civil and Political Rights.

4. Considering the treatment of inmates sentenced to death, they are appropriately treated under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees. The Government of Japan will continue to make efforts to improve their treatment.

## **Libyan Arab Jamahiriya**

### **Death in custody of human rights defender Fathi El-Jahmi**

**Violation alleged:** Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention

**Subject(s) of appeal:** 1 male

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur:** The Special Rapporteur notes the response of the Government of the Libyan Arab Jamahiriya. In the absence of a copy of the psychiatric evaluation the Rapporteur is unable to conclude that the deceased was in fact suffering from a mental illness, as indicated by the Government but strongly denied by other sources.

**Allegation letter dated 25 June 2009,** sent jointly with Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

531. In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the death of Mr **Fathi El-Jahmi** while deprived of his liberty. Mr El-Jahmi was an activist advocating political reform in Libya.

532. Mr El-Jahmi was the subject of an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 4 February 2008 and an urgent appeal sent by the then Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 22 April 2004. To date, no reply to either these communications has been received.

According to the new information received:

On 21 May 2009, Mr. El-Jahmi reportedly died in a hospital in Amman, Jordan. He had allegedly been transferred by Libyan security agents from the Tripoli Medical Centre some weeks earlier for emergency medical care while he was allegedly in a comatose or semi-conscious state and his breathing reliant on a ventilator. Following his death, Libyan security agents reportedly supervised the repatriation of Mr. El-Jahmi's body to Benghazi, Libya, where he is said to have been buried without an autopsy having taken place.

Following a visit of a physician of the non-governmental organization Physicians for Human Rights in March 2008, a report on Mr. El-Jahmi in detention concluded, “[n]ot only was he inappropriately confined in hospital for many months – he was also placed in a psychiatric facility without cause, and the Libyan Government never provided any evidence to support such an intervention”.

Concern is expressed that the death of Mr Fathi El-Jahmi, while deprived of his liberty, might be related to a failure to provide adequate medical assistance because of his status as human rights defender.

533. While we do not wish to prejudge the accuracy of these allegations, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

534. Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

535. When the State deprives an individual of his/her liberty, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. In this respect, we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermot Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2):

- “While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermot committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant.”

536. In order to overcome the presumption of State responsibility for the death of a person who was deprived of his/her liberty, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). The 61st

Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), states that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Commission added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the Libyan Arab Jamahiriya is a party.

537. We therefore urge your Excellency’s Government to take all necessary measures to guarantee that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopts effective measures to prevent the recurrence of these acts.

538. Moreover, it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to my attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please share the medical records of Mr. El-Jahmi from the Tripoli Medical Centre where he was detained as well as the Medical Centre in Amman where he received medical care.
6. Please indicate why Mr El-Jahmi was moved to a psychiatric facility.

**Response of the Government of the Libyan Arab Jamahiriya dated 10 December 2009 (translated from Arabic)**

539. The following is our reply to the enquiries made regarding the legal situation of Fathi el-Jahmi:

Question: Are the facts alleged in the above summary of the case accurate?

Answer: The alleged facts are inaccurate inasmuch as the person in question received treatment at the Tripoli Medical Centre and he was admitted to the hospital at his own request. He received excellent care since the hospital is one of the best in the Jamahiriya. International human rights organizations praised the care that he was receiving in the hospital because they visited him while he was there. A delegation from Human Rights Watch was the last to visit him in the hospital on 26 April 2009. The organization issued a positive assessment of the health services that were being provided.

Question: Has a complaint been lodged?

Answer: The facts are inaccurate and no complaint has been lodged.

Question: Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

Answer: As the alleged facts and the accompanying questions are inaccurate, there is no reason to carry out any inquiries.

Question: In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

Answer: The alleged facts are inaccurate.

Question: Please share the medical records of Mr. El-Jahmi from the Tripoli Medical Centre where he was detained as well as the Medical Centre in Amman where he received medical care.

Answer: The medical records are regarded as personal data concerning the patient, and the law does not permit their disclosure to anyone apart from the patient or his family.

Question: Please indicate why Mr. El-Jahmi was moved to a psychiatric facility.

Answer: During the trial of the person in question, his lawyer requested that he be examined by a psychiatrist to assess his mental capacity, and the court ordered an examination. After examining him, the doctor issued a detailed report and concluded that the person concerned was criminally responsible for his acts and required long-term psychiatric treatment and constant observation.

The court decided, in response to a request by his lawyer and the public prosecutor's office, to have his case reviewed by a panel composed of three doctors specializing in psychiatry and mental illness. The doctors carried out their assignment after swearing an oath before the court to perform their duties faithfully and in accordance with the law. The panel concluded that the person concerned was not criminally responsible.

On 17 September 2006 the court held that the criminal proceedings could not be pursued because the accused was not responsible for his acts and ordered that he be admitted to Al-Razi psychiatric hospital to receive the treatment required for his recovery.

He was transferred to the Tripoli Medical Centre to receive medical treatment for chronic illnesses from which he was suffering.

## **Madagascar**

### **Décès de trois personnes a cause de l'usage excessif de la force par la Commission Nationale Mixte d'Enquête (CNME) et à des milices armées**

**Violation alléguée:** Morts en conséquence du recours à la force par les forces de sécurité ou toute autre personne agissant sur autorité directe ou indirecte de l'Etat, ne répondant pas aux exigences de nécessité absolue et de proportionnalité

**Objet de l'appel:** 1 femme, 2 hommes

**Caractère de la réponse:** Pas de réponse

**Observations du Rapporteur Spécial:** Le Rapporteur Spécial regrette que le Gouvernement du Madagascar n'ait pas coopéré avec le mandat qui lui a été conféré par l'Assemblée Générale et le Conseil des droits de l'homme.



**Carte d'allégation envoyée le 7 Septembre 2009**, conjointement avec le Rapporteur spécial sur la torture et autres traitements cruels, inhumains et dégradants. .

540. Dans ce contexte, nous souhaiterions attirer l'attention de votre Gouvernement sur des allégations que nous avons reçues concernant deux cas d'exécution et un cas de torture, qui seraient imputables à la Commission Nationale Mixte d'Enquête (CNME) et à des milices armées.

Selon les informations reçues:

Mme **Hajanirina Abelia Madeleine Zafindraivo**, âgée de 34 ans, aurait eu le crâne fracassé par une balle perdue, imputable à des forces de l'ordre, le 24 avril 2009, alors qu'elle tentait de fermer la librairie pour laquelle elle travaillait à Ambohitato. L'incident serait survenu alors que les forces de l'ordre tiraient sur des passants et certains manifestants du quartier.

**Andrianaivo Raveloson**, un homme d'une cinquantaine d'année résidant à Ambohibao, aurait été arrêté chez lui le mercredi 6 mai 2009, pour motif d'atteinte à la sûreté de l'Etat. Les lieux de travail et domiciles de tous les membres de sa famille auraient également fait l'objet de perquisition. Après son arrestation, il aurait été sévèrement torturé par des membres du CNME, et ce pour porter le même nom de famille que le leader légaliste, avec lequel cette famille n'aurait aucun lien. Il serait mort quelque temps plus tard des conséquences de ces traitements.

M. **Jacques Harris Arijoana**, un militaire âgé de 54 ans, aurait été arrêté sans mandat le 29 avril 2009, à l'Hotel Carlton d'Antananarivo. Par la suite, il aurait été torturé au CNME, à Ambohibao, à l'aide d'une matraque faite de gros bois rond. Des traces de torture seraient perceptibles sur son dos, ses genoux et ses chevilles. Un médecin aurait examiné M. Arijoana, qui est également diabétique, et certaines de ses blessures auraient été soignées. Un examen au scanner fut demandé afin de mieux évaluer l'état de santé de M. Arijoana, mais celui-ci n'aurait pas été effectué.

541. Sans vouloir à ce stade nous prononcer sur les faits qui nous ont été soumis, nous souhaiterions néanmoins intervenir auprès de votre Excellence afin de tirer au clair les circonstances ayant provoqué les faits allégués ci-dessus et ce, conformément aux dispositions pertinentes de la Déclaration universelle des droits de l'Homme, du Pacte international relatif aux droits civils et politiques et de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants.

542. Dans ce contexte, nous aimerions rappeler au Gouvernement de votre Excellence les principes fondamentaux énoncés par l'article 3 de la Déclaration universelle des droits de l'Homme et réitérés par l'article 6 du Pacte international relatif aux droits civils et politiques, où il est stipulé que tout individu a le droit à la vie et à la sûreté de sa personne, que ce droit doit être protégé par la loi, et que nul ne peut être arbitrairement privé de la vie. En outre, l'article 7 du Pacte stipule que "nul ne sera soumis à la torture ni à des peines ou traitements cruels, inhumains ou dégradants".

543. Nous voudrions également rappeler au Gouvernement de votre Excellence l'applicabilité dans de telles situations des Principes de base sur le recours à la force et l'utilisation des armes à feu par les responsables de l'application des lois, résolution 1989/65 du 24 mai 1989 du Conseil économique et social. Ceux-ci prévoient que les responsables de l'application des lois, dans l'accomplissement de leurs fonctions, auront recours autant que possible à des moyens non-violents, en délimitant le recours à la force à certains cas exceptionnels comme la légitime défense ou pour défendre des tiers contre une menace imminente de mort ou de blessure grave. Nous souhaiterions également attirer votre attention sur le Code de conduite pour les responsables de l'application des lois, résolution 34/169 du 17 décembre 1979 de l'Assemblée générale qui stipule que les responsables de

l'application des lois peuvent recourir à la force seulement lorsque cela est strictement nécessaire et dans la mesure exigée par l'accomplissement de leurs fonctions.

544. Finalement, nous souhaiterions attirer l'attention de votre Gouvernement sur l'article 12 de la Convention contre la torture, qui stipule que « Tout Etat partie veille à ce que les autorités compétentes procèdent immédiatement à une enquête impartiale chaque fois qu'il y a des motifs raisonnables de croire qu'un acte de torture a été commis sur tout territoire sous sa juridiction. » et l'article 7 qui veut que des cas de torture soient soumis aux autorités compétentes pour l'exercice de l'action pénale. Nous voudrions également attirer l'attention de votre Gouvernement sur le paragraphe 3 de la Résolution 8/8 du Conseil de Droits de l'Homme, qui exhorte les Etats « À prendre des mesures durables, décisives et efficaces pour que toutes les allégations de torture ou autres peines ou traitements cruels, inhumains ou dégradants soient examinées promptement et en toute impartialité par l'autorité nationale compétente, et que ceux qui encouragent, ordonnent, tolèrent ou commettent des actes de torture, notamment les responsables du lieu de détention où il est avéré que l'acte interdit a été commis, en soient tenus responsables, traduits en justice et sévèrement punis, et à prendre note à cet égard des Principes relatifs aux moyens d'enquêter efficacement sur la torture et autres peines ou traitements cruels, inhumains ou dégradants et d'établir la réalité de ces faits (Protocole d'Istanbul), qui peuvent contribuer utilement à lutter contre la torture;» (6b).

545. Il est de notre responsabilité, en vertu du mandat qui nous a été confié par le Conseil des droits de l'homme de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Etant dans l'obligation de faire rapport de ces cas au Conseil des Droits de l'Homme, nous serions reconnaissants au Gouvernement de Votre Excellence de ses observations sur les points suivants :

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts? Si tel n'est pas le cas, quelles enquêtes ont été menées pour conclure à leur réfutation ?
2. Quelles sont les branches des forces de sécurité impliquées au cours de ces événements? Quels ordres ou instructions avaient-elles reçus, notamment quant à l'usage de la force.
3. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, investigations judiciaires et autres menées en relation avec les faits. Si de telles enquêtes n'ont pas été menées, veuillez expliquer pourquoi.
4. Si les allégations sont avérées, veuillez fournir toute information sur les poursuites et procédures engagées contre les auteurs ou responsable de la violence.

## **Mexico**

### **Muerte de un inmigrante y lesiones de otros seis en el Estado de Chiapas**

**Violación alegada:** Muerte como consecuencia del uso de la fuerza por oficiales estatales o personas que actúan bajo la autoridad directa o indirecta del Estado, cuando el uso de la fuerza no es conforme con los criterios de absoluta necesidad e proporcionalidad

**Persona objeto del llamamiento:** 7 desconocidos

**Carácter de la respuesta:** No se recibió ninguna respuesta

**Observaciones del Relator Especial:** El Relator Especial lamenta que el Gobierno de México no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

**Llamamiento urgente del 14 Octubre 2009**, enviado con el Relator Especial sobre los derechos humanos de los migrantes y el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes

546. En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con el **deceso de un migrante irregular y las lesiones personales ocasionadas a seis migrantes cerca de Comitán, en el estado de Chiapas.**

De conformidad con la información recibida:

El 18 de Septiembre, las fuerzas de seguridad mexicanas dispararon contra una camioneta pick-up que transportaba a siete migrantes irregulares de nacionalidades ecuatoriana y salvadoreña cuando cruzaban la frontera cerca de Comitán, en el estado de Chiapas.

Según la información proporcionada, el conductor de la camioneta pick-up en donde se transportaban los migrantes irregulares habría aminorado la marcha al acercarse a un control de seguridad, pero habría acelerado al ver la orden de alto de la Policía. Los agentes de control de seguridad habrían salido tras ellos y presuntamente habrían abierto fuego contra el vehículo, que, alcanzado por reiterados disparos, habría dejado de funcionar a los pocos minutos.

Como resultado, uno de los siete migrantes, el señor Víctor Alexander Melgar Lemus, nacional de El Salvador, habría muerto y los seis restantes habrían resultado heridos. Tres de los migrantes sobrevivientes habrían escapado de las autoridades mexicanas después de los disparos ocurridos en un control militar. Los tres migrantes que habrían quedado a disposición de las autoridades mexicanas habrían sido interrogados por agentes de policía y militares y presuntamente reportarían haber sido pateados y golpeados con las culatas de sus armas. Uno de los migrantes habría sido golpeado directamente en una herida de bala. Dos de los migrantes se hallarían presuntamente bajo vigilancia policial en un hospital donde estarían siendo atendidos, y el otro, un ciudadano ecuatoriano, se hallaría recluido en espera de su repatriación.

Se teme por la seguridad de los migrantes que están recibiendo atención médica, frente a posibles acciones encaminadas a impedir la denuncia de violencia de carácter policial ya que, aunque la Comisión Nacional de Derechos Humanos de México habría abierto una investigación sobre los hechos, no se habrían iniciado investigaciones sobre el uso desproporcionado de la fuerza por parte de las autoridades de control policial. Se teme también que los migrantes sobrevivientes puedan ser repatriados a sus países de origen antes de que los hechos hayan sido completamente clarificados.

547. Sin que de alguna manera constituya prejuicio sobre los hechos o el fondo del asunto, nos permitimos hacer un llamamiento al Gobierno de su Excelencia para buscar una clarificación de los hechos con miras a garantizar el respeto de los derechos humanos de los migrantes, de conformidad entre otros, con la Declaración Universal de los Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Éste último instrumento jurídico fue ratificado por el Gobierno de su Excelencia en Junio de 1981 y reconoce entre otros los derechos a la vida y la seguridad personales de quienes se hallan bajo la jurisdicción de los Estados, tal como lo señala el Comité de Derechos Humanos, en el párrafo tercero de su observación general No.31 sobre “La índole de la obligación jurídica general impuesta a los Estados Partes en el Pacto”, en el que recuerda, entre otros, que “[a] los Estados Partes se les impone una obligación general de respetar los derechos del Pacto y de asegurar su aplicación a todos los individuos en su territorio y sometidos a su jurisdicción”.

548. Nos gustaría también llamar la atención al Gobierno de su Excelencia sobre los principios 4 y 5 de los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de Hacer Cumplir la Ley. Según el principio 4 “[l]os funcionarios encargados de hacer cumplir la ley, en el desempeño de sus funciones, utilizarán en la medida de lo posible medios no violentos antes de recurrir al empleo de la fuerza y de armas de fuego”. En este mismo sentido, el principio 5 señala que “Cuando el empleo de las armas de fuego sea inevitable, los funcionarios encargados de hacer cumplir la ley, a) Ejercerán moderación y actuarán en proporción a la gravedad del delito y al objetivo legítimo que se persiga; b) Reducirán al mínimo los daños y lesiones y respetarán y protegerán la vida humana; c) Procederán de modo que se presten lo antes posible asistencia y servicios médicos a las personas heridas o afectadas; d) Procurarán notificar lo sucedido, a la menor brevedad posible, a los parientes o amigos íntimos de las personas heridas o afectadas”. (Adoptados por el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, celebrado en La Habana (Cuba) del 27 de agosto al 7 de septiembre de 1990).

549. En relación a los malos tratos presuntamente infligidos a los migrantes por agentes de policía y militares, permítanos, Excelencia, solicitar igualmente una clarificación de los hechos en relación con el Código de conducta para funcionarios encargados de hacer cumplir la ley adoptado por la Asamblea General de Naciones Unidas en su resolución 34/169, del 17 de diciembre de 1979, en particular, sus artículos 2 y 3 que señalan respectivamente que “en el desempeño de sus tareas, los funcionarios encargados de hacer cumplir la ley respetarán y protegerán la dignidad humana y mantendrán y defenderán los derechos humanos de las personas” y que “podrán usar la fuerza sólo cuando sea estrictamente necesario y en la medida en que lo requiera el desempeño de sus tareas”.

550. Quisiéramos recordar al Gobierno de su Excelencia el párrafo 3 de la Resolución 8/8 del Consejo de Derechos Humanos, el cual exhorta a los Estados a que “todas las denuncias de torturas u otros tratos o penas crueles, inhumanos o degradantes deben ser examinadas sin dilación y de manera imparcial por las autoridades nacionales competentes y que quienes instigan, ordenan, toleran o perpetran actos de tortura, incluidos los funcionarios encargados del lugar de detención donde se determine que se ha cometido el acto prohibido, deben ser declarados responsables de sus actos y severamente castigados, y toma nota a este respecto de los Principios relativos a la investigación y documentación eficaces de la tortura y otros tratos o penas crueles, inhumanos o degradantes (Principios de Estambul), que constituyen un instrumento útil en la lucha contra la tortura.”

551. Estaríamos muy agradecidos si el Gobierno de su Excelencia pudiera suministrararnos información sobre las medidas tomadas por las autoridades competentes, de conformidad con las normas internacionales citadas, para asegurar que los derechos de las personas anteriormente citadas sean respetados.

552. Es nuestra responsabilidad, de conformidad con los mandatos establecidos por la Comisión de Derechos Humanos, extendido por el Consejo de Derechos Humanos y reforzado por las resoluciones pertinentes de la Asamblea General, intentar conseguir clarificación sobre los hechos que se ha llamado nuestra atención e informar al respecto al Consejo de Derechos Humanos.

553. Estaríamos muy agradecidos si el Gobierno de su Excelencia pudiera proporcionarnos información sobre los asuntos mencionados a continuación, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones descritas?
2. Por favor proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de exámenes médicos, en caso de que se hubieran llevado a cabo.

3. Por favor proporcione información sobre las diligencias judiciales y, las sanciones de carácter penal, en caso de que hayan sido adoptadas contra el o los presuntos culpables.

4. Por favor proporcione información sobre las disposiciones legislativas, administrativas o de otro carácter que han sido o serán adoptadas con miras a prevenir la ocurrencia futura de hechos similares.

5. Quisiéramos agradecer al Gobierno de su Excelencia por la información detallada que ha proporcionado en su carta del 29 de abril de 2009 en relación con la muerte de Norma Dután Parrapi, Levis Clarisa Moina y Kevin Pérez Carias, otros tres migrantes aparentemente matados por la Policía Estatal Preventiva en Chiapas en enero de 2009 en circunstancias similares a las del deceso de Víctor Alexander Melgar Lemus. Preguntaríamos que se nos mantenga informando del progreso de las investigaciones y del proceso penal mencionado en la respuesta su Gobierno, del progreso de la queja iniciada por la Comisión Nacional de los Derechos Humanos, y de los esfuerzos para compensar las familias de los migrantes difuntos.

**México: asesinatos de José Galindo Robles, José Bladimir, Antuna García y Mariano Abarca Roblero**

**Violación alegada:** Muertes producidas por ataques u homicidios por parte de fuerzas de seguridad del Estado, o grupos paramilitares, escuadrones de la muerte, u otras fuerzas privadas que cooperan con o son tolerados por el Estado

**Persona objeto del llamamiento:** 4 hombres

**Carácter de la respuesta:** No se recibió ninguna respuesta

**Observaciones del Relator Especial:** El Relator Especial lamenta que el Gobierno de México no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

**Carta de alegación con fecha de 18 diciembre 2009,** enviada con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, la Relatora Especial sobre la situación de los defensores de derechos humanos y el Relator Especial y el Relator Especial sobre los efectos nocivos para el goce de los derechos humanos del traslado y vertimiento de productos y desechos tóxicos y peligrosos.

554. En este contexto, quisiéramos señalar a la atención del Gobierno de su Excelencia la información que hemos recibido en relación con los asesinatos de los Sres. **José Galindo Robles, José Bladimir, Antuna García y Mariano Abarca Roblero.**

Según las informaciones recibidas:

El Sr. José Galindo Robles era el director de la Radio Universidad de Guadalajara y había ganado varios premios importantes, incluyendo el **Premio Nacional de Periodismo Ambiental** por su reportaje sobre el vertimiento de desechos tóxicos en el Río Santiago por parte de empresas privadas.

El 24 de noviembre de 2009, el cuerpo del Sr. José Galindo Robles habría sido encontrado en su casa en Guadalajara, Jalisco, con las manos atadas con un cable y su cuerpo envuelto en una cobija. La Oficina del Procurador habría informado que la causa de la muerte del Sr. José Galindo Robles habría sido una contusión profunda y una fractura en el cráneo.

El Sr. José Bladimir Antuna García era periodista con el periódico local El Tiempo de Durango. El 2 de noviembre de 2009, el cuerpo del Sr. José Bladimir Antuna García habría sido encontrado cerca del hospital en Durango. El Sr. Antuna

García habría sido secuestrado esa misma mañana mientras caminaba a su lugar de trabajo. Una nota habría sido encontrada al lado de su cuerpo que decía “Esto me pasó por dar información a los militares y escribir lo que no se debe. Cuiden bien sus textos antes de hacer una nota. Atentamente Vladimir”. La semana antes de su muerte, habría publicado un artículo sobre la corrupción policial en Durango y habría investigado el asesinato no resuelto de otro periodista de El Tiempo de Durango, el Sr. Carlos Ortega Samper, que había sido secuestrado y asesinado el 3 de mayo de 2009.

El Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Relatora Especial sobre la situación de los defensores de los derechos humanos expresaron su preocupación en relación con el asesinato del Sr. Carlos Ortega Samper en una comunicación conjunta que fue enviada al Gobierno de su Excelencia el 15 de mayo de 2009. Lamentamos no haber recibido una respuesta del Gobierno de su Excelencia a dicha comunicación.

El Sr. Mariano Abarca Roblero era integrante del Frente Cívico de Chicomuselo y de la Red Mexicana de Afectados por la Minería (REMA). Realizaba actividades de protesta contra la explotación minera en México y formaba parte del movimiento organizado por habitantes de Chicomuselo para oponerse a la explotación de la compañía minera canadiense Blackfire Exploration Ltd.

El 27 de noviembre de 2009, aproximadamente a las 20:00 horas de la tarde, el Sr. Abarca Roblero habría sido asesinado por un hombre armado no identificado mientras hablaba con un colega afuera de su casa en Chicomuselo, Chiapas. El asesino se les habría acercado en motocicleta y les habría disparado varias veces. El Sr. Abarca Roblero habría muerto inmediatamente y su colega habría sido herido en el incidente.

Recientemente, el Sr. Abarca Roblero habría recibido varias amenazas de muerte por parte de algunos empleados de la compañía minera Blackfire Exploration Ltd. Habría denunciado estas amenazas ante el Ministerio Público pero las autoridades no habrían adoptado las medidas de protección necesarias para garantizar su integridad física.

Varias organizaciones en Chiapas realizan actividades en protesta contra la explotación de recursos naturales alegando que ésta afecta los derechos humanos de la población local. Se alega que los integrantes de estas organizaciones también podrían estar en riesgo. Recientemente, miembros del Comité de Derechos Humanos Oralia Morales en el Municipio de Frontera Comalapa y del Comité de Derechos Humanos 10 de Enero también habrían recibido amenazas por parte de empleados de Blackfire Exploration Ltd.

Se teme que los asesinatos de los Sres. José Galindo Robles, José Bladimir Antuna García y Mariano Abarca Roblero y las amenazas contra los integrantes de las organizaciones antimineras en Chiapas como Dos Valles Valientes, el Comité de Derechos Humanos 10 de Enero y el Comité de Derechos Humanos Oralia Morales estén relacionados con su trabajo como periodistas y defensores de derechos humanos. Asimismo, se expresa una profunda preocupación de que los asesinatos de los Sres. Galindo Robles y Antuna García formen parte de un patrón de asesinatos de periodistas que investigan e informan sobre temas políticamente susceptibles en México y que representen un intento de impedir y silenciar al periodismo independiente en el país.

555. Sin implicar, de antemano, una conclusión sobre los hechos, nos permitimos hacer un llamamiento urgente al Gobierno de su Excelencia para que tome las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de

acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: “Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección”.

556. En este contexto, quisiéramos recordarle al Gobierno de su Excelencia que el asunto de los asesinatos y las amenazas contra periodistas y defensores de derechos humanos en México fue considerado durante el examen periódico universal (EPU) sobre México en febrero de 2009. Después de este examen, el Gobierno de su Excelencia aceptó seis recomendaciones específicamente relacionadas con la protección de los periodistas, el personal de los medios de comunicación y los defensores de derechos humanos. Se recomendó que el Gobierno de su Excelencia garantice que los crímenes y las violaciones cometidas en contra de los periodistas, el personal de los medios de comunicación y los defensores de derechos humanos sean investigados y procesados, que los responsables sean castigados, que las denuncias de amenazas, acoso e intimidación a los defensores de derechos humanos, periodistas y abogados reciban una pronta respuesta, que se tomen las medidas adecuadas para su protección, que aumente la eficacia de las “medidas cautelares” para garantizar su seguridad y que redoble los esfuerzos para garantizar que la investigación de los ataques a las voces de la libertad de expresión sea un asunto federal. Instamos al Gobierno de su Excelencia a que implemente estas recomendaciones como asunto de prioridad.

557. Quisiéramos asimismo llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos, y en particular los artículos 1 y 2. Éstos establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y que es la responsabilidad primordial y el deber de todos los Estados de proteger, promover y hacer efectivos todos los derechos humanos, adoptando las medidas necesarias para crear las condiciones sociales, económicas, políticas y de otra índole, así como las garantías jurídicas requeridas para que toda persona sometida a su jurisdicción pueda disfrutar en la práctica todos esos derechos y libertades.

Además, quisiéramos referirnos a los artículos siguientes:

- el artículo 6, apartados b) y c), estipula que toda persona tiene derecho, individualmente y con otras, conforme a lo dispuesto en los instrumentos de derechos humanos y otros instrumentos internacionales aplicables, a publicar, impartir o difundir libremente a terceros opiniones, informaciones y conocimientos relativos a todos los derechos humanos y las libertades fundamentales y a estudiar y debatir si esos derechos y libertades fundamentales se observan, tanto en la ley como en la práctica, y a formarse y mantener una opinión al respecto, así como a señalar a la atención del público esas cuestiones por conducto de esos medios y de otros medios adecuados.
- el artículo 12, párrafos 2 y 3, estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona frente a toda violencia, amenaza, represalia, discriminación, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la Declaración. A este respecto, toda persona tiene derecho, individual o colectivamente, a una protección eficaz de las leyes nacionales al reaccionar u oponerse, por medios pacíficos, a actividades y actos, con inclusión de las omisiones, imputables a los Estados que causen

violaciones de los derechos humanos y las libertades fundamentales, así como a actos de violencia perpetrados por grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.

558. El Gobierno de su Excelencia tiene la responsabilidad de investigar de manera exhaustiva cualquier asesinato de un defensor de derechos humanos y enjuiciar a los responsables para que quede claro que el Gobierno condena firmemente los ataques contra los defensores de derechos humanos y que los responsables de violaciones contras ellos serán identificados y sancionados en conformidad con las normas internacionales.

559. En este contexto, quisiéramos llamar la atención del Gobierno de su Excelencia sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias (resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, los principios 4 y 9 a 19 obligan a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte. Los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.

560. Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos y la Asamblea General, intentar clarificar los hechos traídos a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos si pudiéramos obtener su cooperación y sus observaciones sobre los siguientes asuntos:

1. Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, proporcione información detallada sobre las investigaciones y diligencias judiciales y administrativas practicadas.

## **Mongolia**

### **Death penalty safeguards concerns for Mr. Buuveibaatar**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** Receipt acknowledged

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the Government of Mongolia's acknowledgement of his communication. The Special Rapporteur also appreciates the information provided by the Government about the status of Mr. Buuveibaatar's case, and looks forward to a full response to the questions raised in the Special Rapporteur's communication.

**Urgent appeal dated 4 August 2009,** sent with the Working Group on arbitrary detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

561. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding Mr. Buuveibaatar, aged 33.

According to the information received,



Mr. Buuveibaatar was sentenced to death by the Bayangol District Court in Ulaanbaatar. The day after the murder he allegedly committed, he was arrested and taken to Bayangol District police station, where he was interrogated overnight without the presence of a lawyer. He was beaten in custody, and confessed to the crime during the interrogation.

Mr. Buuveibaatar's death sentence was upheld by the Supreme Court, and his family has applied for a presidential pardon. So far, there has been no response to the petition. It was alleged that executions in Mongolia are carried out in secret and neither the families nor the lawyers of those on death row receive prior notification.

562. Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Buuveibaatar is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee Mr. Buuveibaatar's right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

563. Furthermore, we would like to recall that although international law does not prohibit the death penalty, it mandates that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Capital punishment cases must thoroughly respect all due process guarantees as set out in Article 14 of the International Covenant on Civil and Political Rights to which Mongolia is a State party. This obligation admits no exception. Relevant to the case at hand, the right to a fair trial includes the right not to be compelled to confess guilt and the right to be assisted by legal counsel.

564. A central element of the right to a fair hearing is the right to be assisted by legal counsel. In this respect, we would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Principle 1, which reads: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings".

565. We should also like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Buuveibaatar. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

566. We would like to draw your Government's attention to article 15 of the Convention against Torture provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." We also recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States "to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in Article 7 of the International Covenant on Civil and Political Rights.

567. To sum up only full respect for stringent due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which

violates human rights standards. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights under international law of Mr. Buuveibaatar are fully respected. Unless your Excellency's Government is able to demonstrate respect for these essential procedural and substantive protections, which flow from the international obligations accepted by Mongolia, in the cases involving Mr. Buuveibaatar, the death sentence imposed must be commuted.

568. In the event that your investigations support or suggest the above allegations to be correct, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Buuveibaatar are respected and accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

569. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

570. Moreover, it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to my attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Mr. Buuveibaatar other than the reported application for presidential pardon?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

#### **Response from the Government of Mongolia dated 1 September 2009**

571. As stated in the letter of appeal sent by the Special Rapporteurs, the case of Mr. O. Buuveibaatar was ruled by the court of Bayangol District, and the defendant has appealed to the Supreme Court of Mongolia and sought the Presidential Pardon on which no response has yet been received.

572. The case materials on Mr. O. Buuveibaatar are yet to be reviewed by the Prosecutors Office. Furthermore, hitherto no decision has yet been taken by the relevant authorities in relation to the petition made by him. Therefore, for the time being it is not possible to provide concrete answers on the four matters raised in the communication received from the Special Rapporteurs.

## **Myanmar**

### **Deaths of Saw Win Thein and Doung Nyo due to excessive use of force by military**

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

**Subject(s) of appeal:** 2 males

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the response of the Government of Mongolia, but notes the response provides no explanation of the circumstances that justified or led to the deaths of Saw Win Thein and Doung Nyo beyond describing them as killed in “an engagement” with state forces. The Special Rapporteur regrets that the Government has not provided the information requested by the Special Rapporteur concerning whether any investigation was conducted into the two deaths, and if not, the reason for the lack of any inquiry.

**Allegation letter dated 13 January 2010**

573. In this connection, we would like to draw the attention of your Excellency’s Government to information we have received regarding the deaths of Mr. **Saw Win Thein**, aged 40, and Mr. **Doung Nyo**, aged 26 years.

574. According to information received, on 26 September 2009 Myanmar Army soldiers from the Military Operations Command 11, Light Infantry Battalion 220, from Mae Pray Kee, fired for unknown reasons into a villager’s farm hut outside of Baw Kee village. During the attack two men were killed namely, Saw Win Thein, from Ta U Kee village, and Doung Nyo, from Noh Ber Baw village. It is reported that Doung Nyo was a member of the “Free Burma Rangers” in Thaton District from 2004 to 2006, when he was called to head his township administration office.

575. While we do not wish to prejudge the accuracy of these allegations, we would like to request your Excellency’s Government to seek clarification of the circumstances regarding the deaths of Mr. Saw Win Thein and Mr. Doung Nyo. In this connection, we would like to refer your Excellency’s Government to the fundamental principles applicable under international law to this case. The United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary executions, in particular Principle 9, stipulate that there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions...” This principle was reiterated by the Human Rights Council at its 8<sup>th</sup> Session in Resolution 8/3 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Council added that this obligation includes the obligation “to identify and bring to justice those responsible ...to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”.

576. We therefore, urge your Excellency’s Government to take all necessary measures to ensure that the deaths of Mr. Saw Win Thein and Mr. Doung Nyo are promptly, independently and thoroughly investigated and further to ensure the accountability of any person responsible for their deaths.

577. Moreover, it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to my attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summaries of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

4. Please indicate whether compensation has been provided to the families of Messrs. Saw Win Thein and Doung Nyo.

#### **Response from the Government of Myanmar dated 5 March 2010**

578. The Permanent Mission of the Union of Myanmar to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and with reference to the latter's Note dated 13 January 2010 regarding the deaths of Mr Saw Win Thein, aged 40, and Mr. Doung Nyo, aged 26 years, has the honour to inform the reply received from the authorities concerned as follows;

(a) The incident mentioned in the letter of the United Nations High Commissioner for Human Rights (OHCHR) is in fact a skirmish which took place in Kayin State to conduct military operation and safeguard order in that territory.

(b) In Kayin State where insurgents still exist are designated as grey areas. On 26 September 2009, performing the duties of operation and territorial safeguarding in Ta U Kee and Baw Kee areas a company from Light Infantry Battalion 220 had an engagement with five insurgents. After the skirmish two bodies of persons whose name were listed in the insurgent structure were seized along with a mobile radio transreceiver and accessories to make improvised control mines.

## **Nepal**

### **Impunity for the death of Maina Sunuwar (a minor)**

**Violation alleged:** Impunity, compensation and the rights of victims

**Subject(s) of appeal:** 1 female (minor)

**Character of reply:** No response (recent communication)

**Observations of the Special Rapporteur:** The Special Rapporteur looks forward to receiving a response concerning these allegations.

**Allegation letter dated 22 February 2010,** sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

579. We write in relation to reports regarding continued impunity for the torture and killing of Ms. Maina Sunuwar, a fifteen-year-old student, by the (then Royal) Nepalese Army, and in particular regarding the situation of Major Niranjan Basnet. We and other Special Procedure mandate holders have addressed previous communications to your Excellency's Government on this matter on 2 March 2004, 7 July 2004, 14 October 2004, 3 November 2005 and 22 August 2008.

580. The facts of Maina Sunuwar's death were established in the report of a Nepalese Army (NA) Court of Inquiry Board as follows:

581. On the morning of 17 February 2004 a "12-person covert team" of the NA, led by (then Captain) Major Niranjan Basnet, went to the home of Ms. Devi Sunuwar, who they suspected of being a Maoist cadre, in Kharelthok Village Development Committee, Kavre district. Not having found Devi Sunuwar, they arrested her daughter Maina, aged 15, and took her to the Shri Birendra Peace Operations Training Centre in Panchakhal.

582. As further established in detail in the report of the Court of Inquiry Board, at the Birendra Peace Operations Training Centre, Maina Sunuwar was subjected to torture in order to extract information on Maoist activities. She was submerged in a large pot of water six or seven times, each time for about a minute (para. 11 of the Court of Inquiry Board report). Subsequently, she was given electrical shocks to her wet feet and wrists. This was done by two soldiers on the orders of Colonel (then Lt. Colonel) Bobby Khatri, Captain Sunil Adhikari and Captain Amit Pun, in the presence of Major (then Captain) Niranjana Basnet (paras 10 and 13 of the Court of Inquiry Board report). When the soldier who was materially “administering electrical current” to Maina Sunuwar refused to continue because she started bleeding from her wrists, Captain Sunil Adhikari and Captain Amit Pun ordered a non-commissioned officer to continue (para. 15 of the Court of Inquiry Board report).

583. After an hour and a half, the torture was stopped. Maina Sunuwar was blindfolded and her hands tied. When she started vomiting and foaming at the mouth, the sentries informed Major Niranjana Basnet, who in turn informed Colonel Bobby Khatri. A medical orderly was called, but when he arrived Maina Sunuwar was already dead (para. 16 of the Court of Inquiry Board report).

584. Maina Sunuwar’s body was then taken to a location approximately 50 meters from the fence of the barracks, where a pit was dug to bury her secretly. Before burial her dead body was shot in the back and pictures taken of it, in order to fabricate evidence of a shooting upon flight. The police were called and drafted a report of the incident as told by the military officers without visiting the place where the alleged shooting took place and without inspecting Maina Sunuwar’s body (paras. 17-20 of the Court of Inquiry Board report).

According to the information received, thereafter:

Colonel Bobby Khatri, Captain Sunil Adhikari and Captain Amit Pun were brought to trial before a Court Martial as recommended by the Court of Inquiry Board. On 8 September 2005, the Court Martial found the three officers guilty of negligence, concluding that Maina Sunuwar’s death was not the “result of intentional torture but [that she] died unfortunately and accidentally due to wrongful techniques used out of carelessness, fickleness and irrationality during the interrogation and due to her own physical weakness.” The Court Martial sentenced them to six months detention, imposed a total fine of 100,000 rupees on the three officers and declared them ineligible for promotion for one to two years. The three officers were released immediately following the Court Martial decision because of the time spent confined to the barracks while awaiting trial.

In November 2005, the family of Maina Sunuwar filed a First Information Report with the police naming Colonel Bobby Khatri, Captain Sunil Adhikari, Captain Amit Pun, and Major Niranjana Basnet. The Nepalese Army refused any cooperation with the police investigation.

The family of Maina Sunuwar also brought a writ of mandamus to the Supreme Court, which in September 2007 ordered that the case must be investigated and brought before the Kavre District Court. In January 2008, the District Court issued arrest warrants for the four officers. In September 2009, the District Court ordered the Nepalese Army to produce the witness statements it gathered during the Court Martial procedure and to suspend Major Niranjana Basnet, and ordered the District Attorney to produce the defendants and witnesses. The Nepalese Army continued to refuse cooperation. Instead, it deployed Major Basnet with the UN Peacekeeping Operation in Chad.

Major Basnet was, however, repatriated by the UN when his involvement in the case was revealed. Upon his arrival in Tribhuvan Airport on 12 December 2009,

he was taken under control of the Nepalese Army and accompanied to barracks instead of being handed over to the police or judicial authorities. On 13 December 2009, the Nepal Police requested the Army to hand him over, but he remains in army barracks as of today. Senior Government officials, notably the Minister of Defence, have publicly stated that the Army should not comply with the order of the District Court to hand over Major Niranjan Basnet into police custody.

585. While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). In its General Comment on Article 6, the Human Rights Committee has observed “that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.”

586. We note that States Parties to the ICCPR are under an obligation to fully investigate and bring to justice the perpetrators of torture and arbitrary executions (ICCPR Arts. 2, 6 and 7; Human Rights Committee, General Comment 31 (2004), para. 18). Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances”. This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. As the Special Rapporteur on extrajudicial, summary or arbitrary executions observed in his communication to your Excellency’s Government of 22 August 2006 (which remains without a response from your Excellency’s Government), “the obligation to prosecute and punish is not a mere formality. Inadequate punishment for grave human rights violations does an injustice to the victims and contributes to a culture of impunity that leads to further violations.”

587. The Nepalese Army Court of Inquiry Board, which established the facts regarding the torture and death of Maina Sunuwar as described above, the Supreme Court decision of September 2007, and the arrest warrants issued by the Kavre District Court are important steps by Nepalese authorities to live up to these obligations under international human rights law. We urge your Excellency’s Government to ensure that the Nepalese Army hands Major Basnet over to the civilian authorities and that Colonel Khatri, Captain Adhikari and Captain Pun are arrested, and that they are brought to trial on charges of torture resulting in the killing of Maina Sunuwar.

588. We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

589. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?

2. Please indicate the measures undertaken by your Excellency's Government to ensure compliance of the Nepalese Army with court orders to properly prosecute and punish the alleged perpetrators, including to produce the witness statements gathered during the Court Martial procedure.

3. Please indicate the measures undertaken by your Excellency's Government to ensure compliance of the Nepalese Army with the court orders to hand over Major Niranjana Basnet to the competent police and judicial authorities, and to suspend him.

## Nigeria

### Killings by security forces during fighting in Northern Nigeria

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** Group concern: 10 males and 878 unknown

Character of reply: No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Nigeria has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 7 September 2009,** sent with the Special Rapporteur on freedom of religion or belief

590. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding a number of extrajudicial executions allegedly committed by the, including the killing of Mr. Mohammed Yusuf, Mr. Alhaji Buji Fai, and eight unidentified persons in security force custody.

According to information received:

From 26 July 2009, members of a group called *Boko Haram* rioted and attacked police stations and other Government buildings as well as places of worship in the Northern Nigerian states of Bauchi, Yobe, Kano, and especially Borno. Reports suggest that *Boko Haram* sought to impose their interpretation of Shari'a law in Nigeria, and that they intended to threaten or attack individuals who did not agree with or observe *Boko Haram's* interpretation of Shari'a.

Government security forces launched an operation to stop the group's violent activities, and fighting between *Boko Haram* members and Government forces ensued for five days. By 3 August 2009, at least 780 bodies had been picked up from the streets of Maiduguri (Borno state) alone. Another 98 deaths were reported from Yobe and Bauchi states. The total number of dead is to date unclear, as is the number of dead who were *Boko Haram* members, police, military, or civilians.

*Killing of Mr. Mohammed Yusuf:* Mr. Mohammed Yusuf, the leader of the *Boko Haram* group, was apprehended by the military on 30 July 2009. He was captured by Col. Ben Ahanotu, commander of the military operations against *Boko Haram*, and transferred over to police in Maiduguri (Borno state) that same day. Photographic evidence of Mr. Yusuf's capture by the military indicates that he was alive and did not have any injuries at that time, except for a wound in his arm which had been treated. After his transfer to police custody, Mr. Yusuf was stripped naked, interrogated, and then shot at close range numerous times by police. A few hours later, the body was shown to journalists. According to some police accounts

of the death, including by the Police Commissioner of Borno state, Mr. Christopher Dega, Mr. Yusuf was not shot by police, but sustained injuries during his capture by the military, and subsequently died from those wounds. However, Regional Police Assistant Inspector-General stated that Mr. Yusuf was killed by police while trying to escape from custody.

*Killing of Mr. Alhaji Buji Fai:* On 31 July 2009, a former Commissioner of Religious Affairs in Borno state, Mr. Alhaji Buji Fai, was killed by police. He was accused of having close ties to, or being a supporter of, the *Boko Haram* group. He was arrested on 31 July 2009 in a joint military-police operation (“Operation Flush”), and taken to Police Force Headquarters in Maiduguri. According to information received, he was there stripped of his shirt, interrogated, and executed at the entrance to the police station.

*Killing of three individuals:* On 28 July 2009 three unidentified individuals – suspected *Boko Haram* members – were arrested by members of the security forces in Maiduguri. They were taken to an area just outside the police headquarters in Maiduguri, and ordered to kneel on the ground. They were asked questions by the security forces. Each of the three were then reportedly shot at close range, while unarmed and kneeling.

*Killing of five individuals:* On 29 July 2009, members of the security forces disarmed and detained five alleged members of *Boko Haram* in a suburb of Maiduguri called Customs Bridge. The detained individuals were ordered to lie down. One of the security force members yelled “fire”, and the soldiers shot and killed the five men.

591. While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved (see, e.g., Principles 4 and 9 of the UN Basic Principles on the Use of Firearms by Law Enforcement Officials). Under no circumstances does the law permit the use of lethal force against unarmed individuals detained by a state’s security forces.

592. Moreover, when the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. As a consequence, when an individual dies while in State custody, there is a presumption of State responsibility. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

593. We also would like to recall your Excellency’s Government that Human Rights Council resolution 6/37 urges States to “take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence”.



594. We urge your Excellency's Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths of all those killed during the fighting, including Mr. Mohammed Yusuf, Mr. Buji Fai, and the eight unidentified individuals, with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

595. It is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following questions:

1. How many individuals have been killed in the fighting that broke out in Northern Nigeria on 26 July 2009? How many members of the *Boko Haram* group were killed by Government security forces? How many members were arrested? How many members died in police or military custody?
2. What steps have been taken to investigate whether the killings that occurred during the fighting were carried out lawfully or otherwise? How many, if any, civilians were killed by Government security forces?
3. Are the allegations with respect to the deaths of Mr. Mohammed Yusuf, Mr. Buji Fai, and the eight unidentified individuals accurate? Please provide information on the circumstances of their deaths.
4. What steps have been taken to investigate the deaths in custody of each of the individuals in question 3? Please provide the results of any forensic, medical, police or other inquiries into the deaths. What steps have or will be taken to ensure that the alleged perpetrators of the killings are properly investigated, prosecuted, and punished?
5. Please indicate if any measures are envisaged to prevent the recurrence of violent clashes, including inter-religious ones.

#### **Nigeria: Deaths in sectarian clashes in Jos, Plateau State**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** Group concern: 200 unknown

Character of reply: No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Nigeria has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 22 January 2010,** sent with the Special Rapporteur on freedom of religion or belief.

596. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **continued violent clashes between Christians and Muslims communities in Jos, Plateau State**, specifically clashes which occurred on 7 March 2010, which reportedly resulted in the killing of at least 200 persons.

597. We have previously written to your Excellency's government in a communication dated 22 January 2010, concerning violent clashes that have occurred in Plateau State between 2001 and 2010. In that communication we sought from your government

information on the inquiries into the inter-communal clashes and their outcomes, on the measures taken to hold those responsible for killings accountable, and on the measures taken to prevent further outbreaks of deadly inter-communal violence in Plateau State. We are yet to receive a reply from your Excellency's Government.

According to new information received:

On 7 March 2010, men armed with guns, machetes, and knives attacked residents of the villages of Dogo Nahawa, Zot, and Ratsat, 10 kilometers south of Jos, the capital of Plateau State. The attackers hunted down and attacked Christian residents, killing and burning them as they fled. It is reported that at least 200 people have been killed including women and children.

The present attack appears to be in retaliation for the violent clashes that occurred in the town of Kura Karama on 19 January 2010, against Muslim communities in which more than 150 people were killed. It is believed that some of the attackers had previously lived in the same villages but had re-located due to inter-communal tensions.

We are informed that communal clashes in Jos are a recurring phenomenon. In September 2001, a major outbreak of violence claimed as many as 1,000 lives; in May 2004, about 700 were killed in the town of Yelwa in the southern part of Plateau State and in November 2008, about 700 people were killed in Jos.

We are informed that your Excellency's Government had responded to the January 2010 clashes by deploying additional troops to the areas of Jos and surrounding communities. However, the troops have been largely limited to the major towns and not deployed in the smaller communities.

598. While we do not wish to prejudge the accuracy of the reports received, we would like to recall the relevant international human rights obligations that your Excellency's has undertaken. In particular, we would refer to the International Covenant on Civil and Political Rights ("ICCPR"), to which Nigeria is a party, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

599. We recognize that some important measures were taken to provide security in the area of Jos. It appears, however, from the information received that these measures were not adequate. As noted by the Special Rapporteur on summary executions in his mission report on Nigeria, there remains a problem of failure by the security forces to react quickly, let alone pre-emptively, to situations of inter-communal tension, thereby allowing the violence to escalate (para 75 (E/CN.4/2006/53/Add.4)). We wish to bring to the attention of your Excellency's Government the responsibility that States have to protect persons from human rights violations committed by non-state actors. In this regard the Human Rights Committee has pointed out that the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There are circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights. This applies when a State Party permits or fails to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. (*para 8) General Comment No. 31 [80] the Nature of the General Legal Obligation Imposed on States Parties to the Covenant*

600. We remain concerned over the lack of investigation and prosecution of those responsible for the communal clashes. In general, it appears that after such communal clashes a few arrests are made and prosecutions of minor players follow. In some cases, an inquiry is also held, but the resulting report remains confidential and without meaningful follow up. In this regard, we wish to bring to the attention of your Excellency's Government the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which stipulate that "There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses". (Principle 9) Further it is provided that "Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice". (Principle 18). The Human Rights Committee has observed that failure to investigate and failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. Such failures lead to impunity which can encourage a repetition of the crimes by others in subsequent incidents. *(Para 15) General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*

601. The Special Rapporteur on summary executions has submitted in his report to the Human Rights Council that crimes, including murder, carried out by individuals can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators as well as to address any attitudes or conditions within society which encourage or facilitate such crimes. Once a pattern becomes clear in which the response of the Government is clearly inadequate, its responsibility under international human rights law becomes applicable. Through its inaction the Government confers a degree of impunity upon the killers (E/CN.4/2005/7, Para 71/ 72)

602. We would further like to remind your Excellency's Government that Human Rights Council resolution 6/37 urges States to "take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence".

In this context, the Special Rapporteur on freedom of religion or belief recommended in her mission report (E/CN.4/2006/5/Add.2, paras. 113-115):

- "The Government should also abide by its basic obligation to ensure the protection and security of religious groups which may be targeted and which should be entitled to practise their religions freely and without any obstacles, including those created by non-State actors. The Government should reassess the efficiency of its mechanisms in order to be able to intervene in a timely and proper manner when such violence occurs. Early warning mechanisms should also be strengthened. The mechanisms created by the Government to promote interreligious dialogue should be strengthened and extended. In particular, they should ensure that religious leaders of all communities can participate and involve the civil society. Mechanisms at the local level should be created in as many places as may require them because of the composition of the population, past experience, or any other indication of possible religious tensions. The Government should also increase its support for such

initiatives coming from the civil society and disseminate principles of good practice.”

603. We urge your Excellency’s Government to consider the need for thorough-going reforms and long term preventive measures targeted to address the root causes of communal clashes and preventing future recurrences.

604. It is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Please provide information on measures that your Excellency’s Government has undertaken at Federal and State Government level, to address the root causes of communal violence and to prevent reoccurrence of further clashes.
2. Please provide information on measures that were undertaken by the government to protect the people living in the Plateau State following the attacks on 19 January 2010 and the adequacy of these measures.
3. Please provide the details and, where available, the results of any criminal investigation, prosecution and trial carried out in relation to killings committed.

## **Occupied Palestinian Territory**

### **Death sentence against civilian imposed by military court**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of the Occupied Palestinian Territory has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 16 November 2009,** sent with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

605. In this connection, we would like to draw the attention of your Excellency’s Government to information we have received regarding the case of **Saleem Mohammed Saleem al-Nabahin**, who was recently sentenced to death by a military court in Gaza.

According to the information we have received:

Mr. Saleem Mohammed Saleem al-Nabahin, aged 27, is a resident of al-Boreij refugee camp in Central Gaza governorate. Hamas security forces took Mr. Saleem al-Nabahin into custody at an unspecified date in mid-2008. In detention, he was subjected to torture at the hands of members of the Gaza Internal Security Forces and of the Izz al-Din al Qassam Brigades. A confession to the charges of collaboration with the enemy was extracted under torture.

Mr. Saleem al-Nabahin was put on trial before the Permanent Military Court in Gaza on charges of “collaboration with hostile parties” under article 131 of the Palestinian Liberation Organization’s Revolutionary Penal Code of 1979. On 8 October 2009, the Military Court found him guilty and sentenced him to death by hanging.

On 13 October 2009, Mr. Saleem al-Nabahin filed an appeal against the judgment and sentence. Under the Revolutionary Penal Code which was applied by the court in this case the appeal lies not to a higher court but to the Head of the Militant Judiciary in his personal capacity.

606. While we do not wish to prejudge the accuracy of the allegations reported above, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to this case under international law.

607. We would like to remind your Excellency's Government that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

608. According to the information we have received, article 131 of the Revolutionary Penal Code provides that the death penalty shall apply to anyone who

(a) Approaches a state or party hostile to the revolution, or collaborates with it, or with any one working for it, with the goal of carrying out hostile acts against the revolution.

(b) Approaches a foreign hostile state, or collaborates with it or with any one working for and helping it in carrying out its warfare operations to harm the Palestinian revolution's warfare operations." (This is an unofficial translation).

609. We are concerned that this provision, which appears to allow the death penalty to be imposed against anyone who approaches any entity hostile to "the revolution" with the "goal of carrying out hostile acts against the revolution", permits the imposition of the death sentence for conduct which does not involve intentional killing, as required by international law restricting the death penalty to the most serious crimes.

610. Moreover, the description of the conduct punishable by death appears to be overly broad and vague, falling significantly short of the standards of strict legality required by international law. A further concern brought to our attention is that the Palestinian Liberation Organization's Revolutionary Penal Code of 1979 allegedly cannot constitute a valid basis for a conviction and death sentence as it was never put before and adopted as law by the legislature of the Palestinian National Authority.

611. With regard to the trial of Mr. Saleem Mohammed Saleem al-Nabahin by a military court, we wish to bring to the attention of your Excellency's Government that international law also requires that in capital punishment cases the defendants' right to "a fair and public hearing before an independent and impartial tribunal" (article 10 of the Universal Declaration on Human Rights) is scrupulously respected. The Human Rights Committee, in its general comment no. 32 to article 14 International Covenant on Civil and Political Rights, gives valuable guidelines in this respect. It notes that "[w]hile the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned." The Committee also notes that "the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14."

612. Furthermore, the former Commission on Human Rights has stated that “States that have military courts or special criminal tribunals for trying criminal offenders to ensure that such courts are an integral part of the general judicial system and that such courts apply due process procedures that are recognized according to international law as guarantees of a fair trial including the right to appeal a conviction and sentence” (Official records of the General Assembly, Fifty Sixth Session, Supplement 40 (A/56/40) para 76). In this connection, we would also like to refer to paragraph 51 of the general comment no. 32, in which the Human Rights Committee stated that “[t]he right of appeal is of particular importance in death penalty cases.” As the appeal filed by Mr. Saleem Mohammed Saleem al-Nabahinby does not, according to the information received, lie to a higher court, but to the Head of the Militant Judiciary in his personal capacity, we would like to express our serious doubts as to the availability of an effective right of appeal. .

613. A further fundamental principle of the right to a fair trial is the right not to be compelled to confess guilt. Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that “[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” This provision reflects a principle of customary international law and was reiterated in paragraph 6c of Human Rights Council resolution 8/8 of 2008. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in article 5 of the Universal Declaration of Human Rights.

614. To conclude, only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency’s Government to take all necessary steps to ensure that the rights under international law of Mr. Saleem al-Nabahin are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

615. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters.

1. Are the facts alleged in the above summary of the case accurate?
2. What is the alleged conduct Mr. Saleem al-Nabahin was found guilty of which underlies the charges of “collaborating with the enemy”?
3. What is the legal status of the Palestinian Liberation Organization’s Revolutionary Penal Code of 1979?
4. Please explain the legal basis, composition, appointment procedures and guarantees of independence and impartiality governing Permanent Military Courts in Gaza such as the one which sentenced Mr. Saleem al-Nabahin to death. Please provide information as to why Mr. Saleem al-Nabahin was tried by a military court.
5. What remedies remain available to Mr. Saleem al-Nabahin? Is it accurate that the only appeal available to Mr. Saleem al-Nabahin lies not to a higher court but to the Head of the Militant Judiciary “in his personal capacity”? If so, what procedures will the Head of the Militant Judiciary follow to reach his decision on the appeal?
6. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegation that Mr. Saleem al-Nabahin was subjected to torture in

order to compel him to confess. If no inquiries have taken place, or if they have been inconclusive, please explain why.

7. Please provide information as to how the principle that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made is implemented in the Gaza.

8. Please provide information on the further developments in the case of Mr. Saleem al-Nabahin.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration. Finally, we would like to inform your Excellency's Government that we have addressed a communication of the same contents to Dr Yousef, Gaza, Palestine.

**Occupied Palestinian Territory- (Hamás): Death sentence against civilian imposed by military court**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the de facto authorities in Gaza have failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 16 November 2009,** sent with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

616. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the case of Saleem Mohammed Saleem al-Nabahin, who was recently sentenced to death by a military court in Gaza.

According to the information we have received:

Mr. Saleem Mohammed Saleem al-Nabahin, aged 27, is a resident of al-Boreij refugee camp in Central Gaza governorate. Hamas security forces took Mr. Saleem al-Nabahin into custody at an unspecified date in mid-2008. In detention, he was subjected to torture at the hands of members of the Gaza Internal Security Forces and of the Izz al-Din al Qassam Brigades. A confession to the charges of collaboration with the enemy was extracted under torture.

Mr. Saleem al-Nabahin was put on trial before the Permanent Military Court in Gaza on charges of "collaboration with hostile parties" under article 131 of the Palestinian Liberation Organization's Revolutionary Penal Code of 1979. On 8 October 2009, the Military Court found him guilty and sentenced him to death by hanging.

On 13 October 2009, Mr. Saleem al-Nabahin filed an appeal against the judgment and sentence. Under the Revolutionary Penal Code which was applied by the court in this case the appeal lies not to a higher court but to the Head of the Militant Judiciary in his personal capacity.

617. While we do not wish to prejudge the accuracy of the allegations reported above, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to this case under international law.

618. We would like to remind your Excellency's Government that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

619. According to the information we have received, article 131 of the Revolutionary Penal Code provides that the death penalty shall apply to anyone who

(a) Approaches a state or party hostile to the revolution, or collaborates with it, or with any one working for it, with the goal of carrying out hostile acts against the revolution.

(b) Approaches a foreign hostile state, or collaborates with it or with any one working for and helping it in carrying out its warfare operations to harm the Palestinian revolution's warfare operations." (This is an unofficial translation).

620. We are concerned that this provision, which appears to allow the death penalty to be imposed against anyone who approaches any entity hostile to "the revolution" with the "goal of carrying out hostile acts against the revolution", permits the imposition of the death sentence for conduct which does not involve intentional killing, as required by international law restricting the death penalty to the most serious crimes.

621. Moreover, the description of the conduct punishable by death appears to be overly broad and vague, falling significantly short of the standards of strict legality required by international law. A further concern brought to our attention is that the Palestinian Liberation Organization's Revolutionary Penal Code of 1979 allegedly cannot constitute a valid basis for a conviction and death sentence as it was never put before and adopted as law by the legislature of the Palestinian National Authority.

622. With regard to the trial of Mr. Saleem Mohammed Saleem al-Nabahinby by a military court, we wish to bring to the attention of your Excellency's Government that international law also requires that in capital punishment cases the defendants' right to "a fair and public hearing before an independent and impartial tribunal" (article 10 of the Universal Declaration on Human Rights) is scrupulously respected. The Human Rights Committee, in its general comment no. 32 to article 14 International Covenant on Civil and Political Rights, gives valuable guidelines in this respect. It notes that "[w]hile the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned." The Committee also notes that "the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14."

623. Furthermore, the former Commission on Human Rights has stated that "States that have military courts or special criminal tribunals for trying criminal offenders to ensure that such courts are an integral part of the general judicial system and that such courts apply due process procedures that are recognized according to international law as guarantees of a fair



trial including the right to appeal a conviction and sentence” (Official records of the General Assembly, Fifty Sixth Session, Supplement 40 (A/56/40) para 76). In this connection, we would also like to refer to paragraph 51 of the general comment no. 32, in which the Human Rights Committee stated that “[t]he right of appeal is of particular importance in death penalty cases.” As the appeal filed by Mr. Saleem Mohammed Saleem al-Nabahinby does not, according to the information received, lie to a higher court, but to the Head of the Militant Judiciary in his personal capacity, we would like to express our serious doubts as to the availability of an effective right of appeal. .

624. A further fundamental principle of the right to a fair trial is the right not to be compelled to confess guilt. Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that “[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” This provision reflects a principle of customary international law and was reiterated in paragraph 6c of Human Rights Council resolution 8/8 of 2008. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in article 5 of the Universal Declaration of Human Rights.

625. To conclude, only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency’s Government to take all necessary steps to ensure that the rights under international law of Mr. Saleem al-Nabahin are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

626. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters.

1. Are the facts alleged in the above summary of the case accurate?
2. What is the alleged conduct Mr. Saleem al-Nabahin was found guilty of which underlies the charges of “collaborating with the enemy”?
3. What is the legal status of the Palestinian Liberation Organization’s Revolutionary Penal Code of 1979?
4. Please explain the legal basis, composition, appointment procedures and guarantees of independence and impartiality governing Permanent Military Courts in Gaza such as the one which sentenced Mr. Saleem al-Nabahin to death. Please provide information as to why Mr. Saleem al-Nabahin was tried by a military court.
5. What remedies remain available to Mr. Saleem al-Nabahin? Is it accurate that the only appeal available to Mr. Saleem al-Nabahin lies not to a higher court but to the Head of the Militant Judiciary “in his personal capacity”? If so, what procedures will the Head of the Militant Judiciary follow to reach his decision on the appeal?
6. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegation that Mr. Saleem al-Nabahin was subjected to torture in order to compel him to confess. If no inquiries have taken place, or if they have been inconclusive, please explain why.

7. Please provide information as to how the principle that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made is implemented in the Gaza.

8. Please provide information on the further developments in the case of Mr. Saleem al-Nabahin.

627. We undertake to ensure that your response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration. Finally, we would like to inform you that we have addressed a communication of the same contents to H.E. Dr. Riad Al-Malki, Minister for Foreign Affairs, Palestinian National Authority.

## **Pakistan**

### **Killings of journalists**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** 2 males

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the response of the Government of Pakistan. He notes that the Government does not specify whether it has opened an investigation into the death of Mr. Janullah Hashimzada, and looks forward to receiving that information, together with the details of any investigation and resulting prosecution. The Special Rapporteur also looks forward to receiving the information he has requested about the investigations the Government describes as having opened into the killings of Mr. Sadiq Bacha, Mr. Musa Khan Khel, Mr. Muhammad Imran, Mr. Saleem Tahir Awan, Mr. Abdul Razzak Johra, and Mr. Qari Muhammad Shoaib, and the attempted abduction of Mr. Sani Yousafzai and Ms. Motoki Yatsukura. He also looks forward to receiving information about any resulting prosecutions.

**Allegation letter dated 2 September 2009,** sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

628. We would like to draw the attention of your Excellency's Government to information we have received in relation to the killings of Mr. Janullah Hashimzada, chief editor of Afghanistan's Shamshad Television based in the Pakistani city of Peshawar, and Mr. Sadiq Bacha Khan, correspondent for Aaj TV and former president of the Mardan Press Club. These killings follow lethal attacks against three journalists in the North-West Frontier Province (NWFP) in the first two months of 2009: Mr. Muhammad Imran, trainee cameraman with Express TV, Mr. Saleem Tahir Awan, freelance reporter with the local dailies Eitedal and Apna Akhbar, and Mr. Musa Khankhel, reporter for Geo TV and the English-language newspaper The News.

According to information received:

On 24 August 2009, Mr. Janullah Hashimzada was travelling from the Afghan border of Torkham to Peshawar in a minibus when the vehicle was intercepted by masked assailants, reportedly in a Toyota Corolla. They allegedly forced the minibus to stop and fired at Mr. Hashimzada with assault rifles at least six times. Another employee of Shamshad television, Mr. Ali Khan, was seriously injured in the attack. Both journalists were immediately taken to the Civil Hospital

in Jamrud, where the doctors declared Mr. Hashimzada dead on arrival. Mr. Khan is reportedly in Hayatabad Medical Complex in Peshawar. Reports claim that Mr. Hashimzada had told journalists in Peshawar that he had been receiving threatening phone calls and that he was being followed. It has been suggested that he was targeted for possessing too much information regarding the militants, the Taliban and the Pakistani intelligence agencies.

On 14 August 2009 at around 7:20 a.m., Mr. Sadiq Barcha Khan was ambushed and shot at least 15 times outside the Aaj TV office in Mardan, a town in NWFP. He reportedly died as a result of his injuries on the way to a hospital in Peshawar. Reports claim that Mr. Khan was assigned to cover the funeral of an army official who had been killed days earlier by drug traffickers in another region.

Previously, on 4 January 2009, Mr. Muhammad Imran and Mr. Saleem Tahir Awan were killed when a suicide bomber blew himself up in front of the Government Polytechnic College in Dera Ismail Khan in NWFP.

On 18 February 2009, Mr. Musa Khankhel was shot dead by unidentified gunmen while on assignment covering a peace march led by Muslim cleric Sufi Muhammad in the Swat valley.

629. While we do not wish to prejudice the accuracy of these allegations, we would like to reiterate our concern regarding the safety of journalists working in the border area of Pakistan and Afghanistan, who are routinely exposed to violence and intimidation. According to reports, in the last two years alone 11 journalists have been killed in Pakistan, six of them in the NWFP. In this connection, we have previously expressed our concern regarding the killings of two journalists (Mr. Abdul Razzak Johra and Mr. Qari Muhammad Shoaib) and the attempted abduction of two others (Mr. Sami Yousafzai and Ms. Motoki Yatsukura) in our communication sent to your Excellency's Government on 8 January 2009. As yet a response has not been received from your Excellency's Government.

630. We would once again like to urge your Excellency's Government to take effective measures to prevent further killings of journalists. In this respect, it is very important that the persons responsible for the killings, both as material perpetrators and as instigators, are rapidly identified, arrested and brought to justice.

631. In this connection, we would like to refer your Excellency's Government to the relevant principles of international law. The Universal Declaration of Human Rights provides that "everyone has the right to life, liberty and security of person" (Article 3). As reiterated in Human Rights Council resolution 8/3 (OP 4), to protect and ensure this right all States have "the obligation ... to conduct exhaustive and impartial investigation into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions". Where a State fails to take all appropriate measures to deter, prevent and punish the perpetrators of a pattern of attacks against a group in society, such as journalists, criminal acts, including murder, can also give rise to State responsibility (Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7, para. 71.)

632. We would also like to recall that taking effective measures to protect journalists and to prosecute those responsible of killings or death threats against them is a precondition to ensuring the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights, which provides that: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." We are concerned that

killings of journalists, particularly if they remain unpunished, create a climate of impunity and result in preventing independent reporting and stifling freedom of expression.

633. In this context, we deem it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which calls upon states to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

634. It is our responsibility under the mandate provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the cases accurate?
2. Please provide the details, and where available the results, of any criminal investigation or other inquiries which may have been carried out in relation to the killings of Mr. Janullah Hashimzada, Mr. Sadiq Bacha Khan, Mr. Muhammad Imran, Mr. Saleem Tahir Awan and Mr. Musa Khankhel. We would also like to reiterate our request for information on the progress of criminal investigations and other inquiries into the attempted abduction and killing of persons mentioned in our previous communication dated 8 January 2009 (Mr. Abdul Razzak Johra, Mr. Qari Muhammad Shoaib, Mr. Sami Yousafzai and Ms. Motoki Yatsukura). In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. If no inquiries have taken place or if they have been inconclusive, please explain why.
3. Please provide the details of any other measures that have been implemented to ensure the safety of journalists in Pakistan, particularly in NWFP.

**Response of the Government of Pakistan dated 13 October 2009:**

635. The matter of alleged killings of five journalists was referred to concerned law enforcement and administrative authorities in Pakistan. It is informed that these journalists were mainly killed in those areas where extremists challenged the writ of the government in the recent past. Accordingly, the government had to launch law enforcement operation on popular demand against these extremists. It is important to note that activities of the journalists supported state-run law enforcement operation, in particular in shaping public opinion against the extremists.

636. It is believed that these journalists namely Mr. Jan Ullah Hashimzada of AAJ TV, and Mr. Musa Khan Khel of GEO TV, were killed by the extremists as the journalists made an extra effort to expose their brutal actions among the local communities, while Mr. Muhammad Imran and Mr. Saleem Thair Awan were died in a suicide blast. Lastly, Mr. Sadiq Bacha was killed on the basis of previous enmity between the parties. Brief particulars of these cases are given below:

637. Jan Ullah Hashimzada: On 24<sup>th</sup> August 2009, some unknown persons fired at Jan Ullah Hashimzada in Jamrud (tribal territory), as a result of which Jan Ullah Hashimadza died. It is believed that Mr. Hashimadza was killed by the extremists.

638. Sadiq Bacha: On 14 August 2009 at 0700 hours, Changeez Khan and Babar Khan sons of Tahir Khan of Mohallah Bajauri Hoti, District Mardan killed Sadiq Bacha of "AAJ TV". As per investigation, it was learnt that there was previous enmity on family issues between the parties and the accused party took revenge by killing Mr. Bacha. The accused made their escape from the spot after occurrence. As far as killing by drug traffickers is

concerned, no evidence could be verified. A case vide FIR No. 623 dated 14<sup>th</sup> August 2009 u/s 302/324/34 PPC has been registered at Police Station Hoti Mardan and efforts/investigations are underway to apprehend the culprits.

639. Musa Khan Khel: On 18<sup>th</sup> February 2009, upon reaching agreement between the Provincial Government and Maulana Sofi Muhammad (TNSM Chief) to implement “Shari Nizam-i-Adal Regulations”, Maulana Sofi Muhammad led a procession to Matta Swat for restoration of peace in the areas. A large number of members of print and electronic media had assembled for coverage of the event including Musa Khan Khel. Mr. Khel was kidnapped by unidentified men who took him to Detpanai, where they shot him dead. At that time, the area was in de-facto control of extremists. A case FIR No. 17 dated 18 February 2009 u/s 302 PPC was registered at Police Stations Matta. The case is still under investigation and the incident seems to be the misdeed of extremists and target killing. It has been learnt that altercations took place between Musa Khan Khel and Muslim Khan, the extremists’ spokesman, several times on the phone for fair reporting of the former.

640. Muhammad Imran and Saleem Tahir Awan: On 14<sup>th</sup> January 2009, a heavy police contingent was staying in Poly-Technical College Dera Ismail Khan in connection with Muharram (religious procession) duty. A suicide blast took place in a hotel near the college. A number of Police men and public were killed and injured including Muhammad Imran of Muryali, Camera man “Express TV” and Muhammad Saleem Tahir (a columnist) of Basti Ustrana DI Khan. Muhammad Saleem Tahir was also serving as Senior Clerk in Naib Tehsildar office Pahar Pur DI Khan. A case vide FIR No. 6 dated 4<sup>th</sup> January 2009 u/s 302/324/353/120-B/ 427 PPC/3 ESA/7ATA was registered at Police Station Cantonment DI Khan. The case is still under investigation.

641. Most of the cases, referred above, took place where the extremists attempted to challenge the government’s writ and, inter alia, tried to suppress voice of the local communities. Accordingly, the Government had to start full-fledged law enforcement operation in order to protect common civilians including journalists.

642. It is important to note that local communities of those areas hold the extremists responsible for such killings. However, at the same time, the relevant authorities are conducting comprehensive and impartial investigation into these cases in order to identify and bring to justice those responsible.

643. The Government of Pakistan reiterates its commitment to protecting journalists and prosecuting those responsible of killings or death threats against them in order to ensure the right of freedom of opinion and expression. We will continue our efforts in this regard.

644. Relevant authorities in Pakistan are in process of examining alleged abduction and killings of persons, as referred in your earlier communication dated 8 January 2009 (Mr. Abdul Razzak Johra, Mr. Qari Muhammad Shoaib, Mr. Sami Yousafzai and Ms. Matoki Yatsukura). Details will be shared with the Special Procedures upon receipt.

**Pakistan: Death in custody of Abid Javed Francis.**

**Violation alleged:** Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention

**Subject(s) of appeal:** 1 male

**Character of reply:** No response (recent communication)

**Observations of the Special Rapporteur:** The Special Rapporteur looks forward to receiving a response concerning these allegations.

**Allegation letter dated 11 February 2010,** sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

645. In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the death of Mr. Abid Javed Francis.

According to the information received:

Mr. Abid Javed Francis, member of the minority Christian community, was arrested by a Station House Officer and an Assistant Sub Inspector from Ferozabad police station (their names remain on record with the Special Rapporteurs), before Eid. He was publicly beaten during the arrest, and taken to the Ferozabad police station, where he was reportedly subjected to torture. At the station, the police reportedly requested Rs 10.000 in bribes from his family. On 24 November, as a result of the refusal by his family to pay the bribe, Mr. Francis was charged with harboring illegal arms and stealing a motorbike (FIR 273/2009 and FIR 1274/2009). He was later presented before a magistrate at the city court in Karachi, where the police was granted physical remand for two days. Mr. Francis was subsequently transferred to the Aziz Bhati Park Police Station, where he was once again subjected to torture. He was once again asked to pay a bribe and upon refusal to pay, was charged with theft (FIR 673/2009). Mr. Francis was then transferred to the ACLC at Shrifabad Police Station, where he was tortured in front of his mother and his mother-in-law. On 26 November, he was presented before a magistrate's court and, despite his visible injuries, was sent to Karachi central prison under judicial remand.

Mr. Francis' mother tried to visit him in prison over the Eid period, but her requests were denied when she refused to pay bribes to the prison staff. On 7 December, she was able to visit him, and found him on a stretcher in an outside area, wearing only his underpants and hooked to a glucose drip. Mr. Francis was taken to the civil hospital in Karachi, where he was pronounced dead on 10 December. The post mortem indicated severe injuries to his head and upper body. The cause of death was a hematoma on the left side of his head.

The victim's family filed a petition before the session and district judge in District East Karachi, but no investigation has been carried out.

646. While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Excellency's Government's attention to the fundamental principles applicable under international law to these cases. Article 5 of the Universal Declaration of Human Rights provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 3 of the Declaration states that "everyone has the right to life, liberty and security of person." When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility (see, for instance, the Human Rights Committee's views in the case of *Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2).

647. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

648. The Council added that this includes the obligations "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the

victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring and end to impunity and prevent the recurrence of such executions”..

649. We urge your Excellency’s Government to carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the death of Mr. Abid Javed Francis, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate his family. In this respect we note that Human Rights Council Resolution 8/8, paragraph 6 (b) and (e), urges States to hold responsible not only those who perpetrate torture, but also those “who encourage, order, tolerate or perpetrate acts of torture [...], to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed”.

650. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on this case to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate whether compensation has been provided to the family of Mr. Abid Javed Francis.

## Philippines

### **Killing of human rights defender Eliezer Billanes**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** 1 male

**Character of reply:** Receipt acknowledged

**Observations of the Special Rapporteur:** The Special Rapporteur looks forward to receiving a substantive response from the Government of the Philippines regarding the death of Mr. Eliezer Billanes.

**Allegation letter dated 7 April 2009,** sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.

651. In this connection, we would like to bring to your Government’s attention information we have received concerning the killing of Mr **Eliezer Billanes**, a human rights defender and anti-mining activist. Mr Billanes was among others the Chairman of Socskargends – AGENDA, a regional anti-mining alliance in southern Mindanao; the Chairman of South Cotabato Alliance for Nationalism and Democracy (SOCPAND), the

Secretary-General and Program Director of Samahan ng Magsasaka sa Timog Kutabato (SAMATIKU).

According to the information received:

On 9 March 2009, at approximately 4pm in the afternoon, Mr Eliezer Billanes was shot dead in the public market of Koronadal City, South Cotabato, Mindanao Island, by two unidentified masked gunmen riding a scooter.

On the day of the murder, Mr Billanes had attended a meeting with Lt. Eduardo Florentino, the commander of the 27th Infantry Battalion's Charlie Company, based in Tupi, South Cotabato, and three other officials. The subject of the meeting had been the personal security of Mr Eliezer Billanes, who had received several threats, including allegedly from the military, due to his vocal stance against Sagittarius Mines Inc. During this meeting, Mr Billanes had voiced strong opposition to the presence of the 27th Infantry Battalion in his village.

The police chief of Koronadal City, Superintendent Froilan Quidilla has opened an investigation into the murder of Mr Billanes. South Cotabato Governor Daisy Avance-Fuentes declared that she would personally look into the murder of Mr Billanes. Lt Eduardo Florentino of the 27th Infantry Battalion denied any hand in the killing, in an interview for Radio Mindanao Network. He also said that the military had some leads in the case, but "could not reveal them for fear of jeopardizing the ongoing operation".

652. While we do not wish to prejudge the accuracy of these allegations, we do express concern that the killing of Mr Eliezer Billanes may be in connection with his peaceful activities in defence of human rights, especially his environmentalist and anti-mining advocacy.

653. In this respect, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels".

654. The murder of Mr Billanes is also of the greatest concern from the point of view of the right to freedom of expression. We should like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and reiterated in article 19 of the International Covenant on Civil and Political Rights which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

655. We would further like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the Covenant, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

656. The Covenant also provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes,



including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators.” (E/CN.4/2005/7, para. 71.) In Resolution 8/3 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4), the Human Rights Council reiterates that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring and end to impunity and prevent the recurrence of such executions”. This obligation on the State is all the more pressing when there is a pattern of attacks against a group, here human rights defenders, which can be seen as being in a confrontational relationship with the authorities.

657. These principles are echoed in article 12 paras 2 and 3 of the Declaration on Human Rights Defenders, which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. Everyone is entitled to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

658. Furthermore, we would like to note the recommendations adopted as a result of the review of the Philippines at the first session of the Universal Periodic Review, which the Government of the Philippines accepted: “[t]o ensure that members of the security forces are trained on human rights and on their responsibility to protect human rights and human rights defenders (Canada); [t]o completely eliminate extrajudicial killings (Holy See) and [t]o intensify its efforts to carry out investigations and prosecutions on extrajudicial killings and punish those responsible (Switzerland). (A/HRC/8/28, para 58).

659. Finally, it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examination, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

#### **Response from the Government of the Philippines dated April 2009**

660. I wish to refer to your joint letter dated 07 April 2009, concerning the killing of Mr. Eliezer Billanes, an anti-mining advocate and chairman of Socskargends-AGENDA (a regional anti-mining alliance in Southern Mindanao), South Cotabato People’s Alliance for Nationalism and Democracy (SOCPAND) and *Samahan ng mga Magsasaka sa Timog Kutabato* - SAMATIKU (South Cotabato Farmers Association).

661. Please be informed that the case is under joint investigation by the Philippine National Police of South Cotabato and Koronadal city. Authorities are taking all possible measures for the early solution of the case, to establish the identity of suspects, and to put those perpetrators to justice. Any updates/developments concerning the case will be transmitted to your office.

**Philippines: Killing of Katog Sapalon by state forces**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** 1 male

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the preliminary response of the Government of the Philippines. He looks forward to receiving the details of the investigation into the death of Mr. Katog Sapalon, including an explanation of the discrepancy between the accounts of Philippine Army soldiers, who claim Mr. Sapalon died in cross-fire, and of Mr. Sapalon's wife, who describes her husband being grabbed "for no apparent reason" by armed men while eating breakfast, and who then describes watching her husband killed by those armed men at the back of their home. The Special Rapporteur also looks forward to receiving the details of any prosecution or other disciplinary proceeding resulting from the investigation, and information about any compensation provided to Mr. Sapalon's family.

**Allegation letter dated 3 August 2009,** sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

662. In this connection, we would like to bring to your Government's attention information we have received concerning the death of Mr. **Katog Sapalon**.

According to the information received:

At around 7:30 a.m. on 3 June 2009, Mr. Katog Sapalon and his wife were preparing breakfast when soldiers arrived at their home. Five heavily-armed men, who later identified themselves as soldiers, approached them and began interrogating Mr. Sapalon. The soldiers allegedly wanted him to confess his involvement with a rebel group, the Moro Islamic Liberation Front (MILF). During the questioning, they punched and kicked him with their fists, feet and the butts of their rifles.

Despite the fact that Mr. Sapalon pleaded with the soldiers, telling them that he was not a MILF member, he was shot at close range in front of his family. He was hit in several parts of his body, including his eye and head, and died instantly.

After several hours, Mr. Sapalon's body was taken by the soldiers to the 6th Infantry Battalion, Philippine Army in Barangay Gubat Datu, Odin Sinsuat. A village chairperson later went to the camp to claim the body, and he was buried on the same day.

663. Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Sapalon. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

664. In this context, we would like to draw your Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

665. We would also like to refer Your Excellency's Government to the fundamental principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Articles 3 and 6 of these instruments, respectively, provide that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life. Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved (see, e.g., Principles 4 and 9 of the UN Basic Principles on the Use of Firearms by Law Enforcement Officials).

666. We would also note the relevance in this case of the UN Basic Principles on the Use of Force and Firearms by Law Officials. Principle 4 provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment." Besides, Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

667. We would also like to draw the attention of Your Excellency's Government to the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular Principle 9 which states that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances". This principle was reiterated by the Human Rights Council as recently as at its 8<sup>th</sup> Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions".

668. Therefore, we urge your Government to take all necessary measures to ensure the accountability of any person responsible for the death and alleged torture of Mr. Katog Sapalon an. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

669. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged?

3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the family of the victim.

**Response from the Government of the Philippines dated 26 October 2009**

670. Information provided by the Philippine National Police on the killing of Mr. KATOG (KADTOG) SAPALON, muslim farmer from Datu Odin Sinsuat, Maguindanao

671. Investigation conducted by Datu Odin Sinsuat (DOS) Municipal Police Station, Maguindanao Police Provincial Office and coordination made with the 6<sup>th</sup> Infantry Battalion (IB), Philippine Army (PA) revealed that on 03 June 2009 on or about 4:30 a.m., a platoon from 9<sup>th</sup> Scout Ranger Company, PA led by 1Lt. Cardenas reinforced the Alpha Company of 6<sup>th</sup> IB, PA at Barangay (village) Makir, Datu Odin Sinsuat, Maguindanao to conduct clearing operations against lawless elements of the Moro Islamic Liberation Front (MILF) in the vicinity of Barangay Makir.

672. At about 7:15 a.m. of the same day, an exchange of gun fire ensued at the vicinity of the mountainous area of Barangay Sifaran, Datu Odin Sinsuat, Maguindanao between the elements of the 6<sup>th</sup> IB, PA against more or less ten (10) MILF rebels that lasted for about five (5) minutes. The enemy withdrew towards an unknown direction leaving behind their casualty identified as Alan Abdulla, member of the 105<sup>th</sup> Base Command of the MILF based on the recovered identification card and his other personal belongings.

673. On the same day at around 1:40 p.m., elements of the 6<sup>th</sup> IB, PA based at Sitio Gubat, Barangay Makir, Datu Odin Sinsuat, Maguindanao led by 2Lt Ordonio turned-over to DOS Municipal Police Station at Poblacion Dalican, Maguindanao one (1) male cadaver identified as KADTOG SAPALON who sustained multiple gunshot wounds that caused his instantaneous death allegedly emanating from crossfire between government troops and MILF rebels. Subsequently, investigators of DOS Municipal Police Station coordinated with the wife of the victim. Baimadekay Kabumbalan Sapalon narrated in her sworn testimony that on 03 June 2009 she was with her three (3) children and her husband and they were having their breakfast inside their shanty when she noticed approaching armed men wearing fatigue uniforms, believed to be members of the Philippine Army. Said armed men barged inside their house and without any apparent reason forcibly dragged her husband and brought him to the back of their shanty. Thereafter she saw three (3) of the armed men open fire their guns toward her husband, who died instantly with multiple gun shot wounds.

674. The wife of Mr. Sapalon executed an affidavit of non-interest to file criminal complaint against the respondents duly notarized by Atty, Cairon P. Pangunutan, Associate Prosecution Attorney II of Maguindanao Prosecution Office (formerly Shariff Kabunsuan Province), Office of the Regional Governor Compound, Cotabato City on 16 September 2009.

675. The case is under investigation to establish the veracity as to whether or not the victim died in a legitimate encounter or was murdered as alleged.

**Philippines: Killings of, and death threats against, journalists**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** 5 males

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the response of the Government of the Philippines, including the documents that form the basis for initial decisions to prosecute suspects in the killings of Mr. Crispin Perez Jr., Mr. Antonio Castillo, Mr. Jonathan Petalvero, and Mr. Godofredo Linao.

676. With respect to the killing of Mr. Perez Jr., the Special Prosecutor looks forward to receiving details about the outcome of the prosecution of the police officer alleged to have killed Mr. Perez Jr. With respect to the cases of Mr. Castillo, Mr. Petalvero, and Mr. Linao, the Special Rapporteur looks forward to receiving information about whether the alleged perpetrators, almost all of whom are allegedly known only by aliases, were further investigated, identified, and prosecuted, and the outcome of any such prosecutions.

677. The Special Rapporteur regrets that the Government has not responded to his request for information about protective measures taken to ensure the right to life of Mr. Mario Alviso, and looks forward to receiving this information.

**Urgent appeal dated 7 August 2009**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.

678. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the killings of Mr. Crispin Perez Jr., Mr. Antonio Castillo, Mr. **Jonathan Petalvero**, Mr. **Godofredo Linao**, as well as alleged threats against Mr. **Mario Alviso**.

According to information received:

On 9 June 2009 at around 10:00 a.m., Mr. Crispin Perez Jr., a lawyer, former vice-governor of Occidental Mindoro province and a radio commentator at the local government-owned radio station dwDO, was shot by an unknown gunman outside his home in San Jose City in Occidental Mindoro province. He later died in hospital as the result of his injuries. Shortly before his death, Mr. Perez had criticised local mining activities and the signing of a supply contract between a local cooperative and a private power firm.

On 12 June 2009 at around 9:00 a.m., Mr. Antonio Castillo, a columnist for Bigwas, was shot at close range by two men on a motorcycle on the national highway in Marcella village, Uson town, Masbate province. Mr. Castillo was reportedly rushed to a hospital, but died three hours later as a result of his injuries. As yet a motive for the killing of Mr. Castillo has not been established, but reports claim that he had reported and commented on alleged corruption at the community level.

On 27 June 2009, Mr. Jonathan Petalvero, a radio host on DXFM station, was shot dead by a masked gunman at a restaurant in the town of Bayugan on Mindanao Island. He was declared dead upon arrival at hospital. Mr. Petalvero was known for his critical commentaries on alleged local corruption.

On 27 July 2009 at around 1 a.m., Mr. Godofredo Linao received a text message inviting him to a restaurant in Barobo town, Surigao Del Sur province. An

unidentified gunman then reportedly shot Mr. Liano four times after he parked his motorcycle and crossed the road to the restaurant. Whilst the motive of the killing remains unclear, some reports suggest that Mr. Liano was targeted for his broadcasts which often focused on alleged corruption within the local government.

On 28 July 2009, Mr. Mario Alviso, manager of Radyo Nitin, received a text message from an unidentified sender the day after Mr. Liano's murder, stating that the killing was "just a sample" of what could be done, and that "he would be next".

Concern is expressed that the aforementioned events may represent a direct attempt to prevent independent reporting in the Philippines thus stifling freedom of expression in the country. Further concern is expressed for the physical and psychological security of media professionals in the Philippines.

679. While we do not wish to prejudice the accuracy of these allegations, we would like to refer Your Excellency's Government to the fundamental principles applicable under international law to this case. The International Covenant on Civil and Political Rights ("ICCPR") provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.) In Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), the Human Rights Council reiterates that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring and end to impunity and prevent the recurrence of such executions". This obligation on the State is all the more pressing when there is a pattern of attacks against a group, in this case journalists, which can be seen as being in a confrontational relationship with some authorities.

680. With respect to the alleged threats against Mr. Mario Alviso we would like to bring to your attention that Article 6(1) of the ICCPR requires States to provide effective protection to those whose lives are in danger. As expressed in Principle 4 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this requires that individuals in danger of such executions, including those who receive death threats, be guaranteed effective protection through judicial or other means.

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

682. Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

683. We should also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression of the above mentioned persons, in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and reiterated in article 19 of the ICCPR which provides that " Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

684. We also deem it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which calls upon states to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

685. In the event that your investigations support or suggest the above allegations to be correct, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Mario Alviso are respected and accountability of any person responsible for the killings of Mr. Crispin Perez Jr., Mr. Antonio Castillo, Mr. Jonathan Petalvero, Mr. Godofredo Linao, is ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

686. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

687. Moreover, it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to my attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by the victims or on their behalf?

3. Please indicate which protection measures have been adopted to ensure the right to life of Mr. Mario Alviso.
4. Please provide the details, and where available the results, of any judicial investigation, or any criminal charges, medical examinations, and other inquiries carried out in relation to Mr. Crispin Perez Jr., Mr. Antonio Castillo, Mr. Jonathan Petalvero and Mr. Godofredo Linao.
5. Please provide information concerning the national legislation related to freedom of expression, especially freedom of the Press, its conformity with Article 19 of the International Covenant on Civil and Political Rights and with other relevant provisions included in international treaties.

**Response from the Government of the Philippines dated 28 October 2009**

688. With reference to your joint letter dated 07 August 2009 concerning cases of killings and threats on members of the media, please be informed that on 03 August 2009 the Task Force against political violence also known as Task Force 211 of the Department of Justice, announced the filing of charges against a certain “Doy” in the killing of Mr Godofredo Linao. The case was filed at the Regional Trial Court (RTC) of Lianga Sur, docketed as Criminal Case Number I-2295.

689. Prior to that, a case against the suspect in the killing of Mr Jonathan Petalvero was filed on 30 July 2009 at the Regional Trial Court (RTC) Branch 7 of Bayugan, Agusan del Sur and docketed as Criminal Case No. 3012.

690. Further details of the above as well as information on other cases will be provided to your office once information is received from the concerned authorities.

**Response from the Government of the Philippines dated 23 November 2009**

691. SUBJECT : Killing of Messrs. Crispin Perez Jr. , Antonio Castillo, Jonathan Petalvero and alleged threat to Mr. Alvin Alviso

- 1) Mr. Crispin Perez Jr.

According to reports, Mr. Perez was shot by an unidentified male who posed as a client at the victim’s residence in Poblacion 7, San Jose, Mindoro Occidental on 09 June 2009. An investigation ensued which resulted in the filing of a complaint before the Department of Justice (DOJ) against a police officer - PO2 Darwin Quimoyog on 02 July 2009. The case is now submitted for resolution. Two possible motives for the killing were explored during the course of investigation: 1) political motive – in relation to the profession of Mr. Perez as a lawyer and media practitioner; and 2) the involvement of his wife in several estafa cases. Authorities ruled that political motive could be the primary reason for the killing.

- 2) Mr. Antonio Castillo

According to reports, Mr. Castillo was on his home when he was shot by suspects along the National Highway in Barangay Marcella, Uson, Masbate on 12 June 2009 at around 9:00 a.m. A complaint for murder was filed against suspects before the Provincial Prosecution Office of Masbate and based on a resolution dated 14 October 2009 there was a finding of probable cause. Information for Murder was filed before the Regional Trial Court of Masbate City against a certain alias “Joy Joy” and “John Doe”.

- 3) Mr. Jonathan Fetalvero

Mr. Fetalvero was shot and killed on 25 June 2009 at about 7:00 p.m. while having a drinking spree at June 8 Lechon Manok and Fastfood in Rotonda, Poblacion, Bayugan,



Agusan del Sur. According to reports, the victim was not a media practitioner but a regular resource speaker in the program of Vice Mayor Genesis Efren. The Chairman of the Kapisanan ng mga Brodkaster ng Pilipinas- KBP (association of broadcasters in the Philippines) Agusan del Sur Chapter issued a certification to this effect. Furthermore, the victim was allegedly planning to run as councilor of Bayugan for the 2010 elections. Based on testimonies of witnesses, a complaint was filed against a certain alias “Ger” before the Prosecutor’s Office in Bayugan, Agusan del Sur. A warrant of arrest was issued 11 August 2009 against the suspect.

4) Mr. Godofredo Linao, Jr.

Mr. Linao was shot while onboard his motorcycle in front of Bogak Lodge in Purok 1, Barobo, Surigao del Sur on 27 July 2009 at around 1:15 a.m. Aside from working as a commentator/disk jockey in two (2) radio stations, the victim worked as political aide/spokesperson to Vice Governor Librado Navarro of Surigao del Sur. On the basis of description given by witnesses a sketch of the primary suspect was prepared which was designated as alias “Doy”. Information for Murder was filed on 31 July 2009 against alias “Doy” and a certain “John Doe.” Thereafter, an amended complaint against Joel Namoc a.k.a. Poloy and three (3) other “John Does” were filed at the Regional Trial Court Branch 28 of Lianga, Surigao del Sur. A warrant of arrest was issued for the arrest of the suspects on 03 September 2009.

692. The Government provided case files relevant to each of the foregoing cases, which are available at [http://www2.ohchr.org/english/issues/executions/docs/Philippines\\_23.11.09\\_6.2009.pdf](http://www2.ohchr.org/english/issues/executions/docs/Philippines_23.11.09_6.2009.pdf).

**Philippines: Killings of human rights defenders Romulo Mendova and Cecilo Pelito Lucero.**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** 2 males

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of the Philippines has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 8 October 2009,** sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.

693. We would like to draw the attention of your Excellency’s Government to reports we have received regarding several cases of alleged killings in Northern Samar. The names of the alleged victims are Mr **Romulo Mendova** and Father **Cecilo Pelito Lucero**.

According to information received:

(a) On 5 September 2009, Mr Romulo Mendova, a peasant activist, was shot dead in Base, Samar by two unidentified men riding a motorcycle.

(b) On 6 September 2009, Father Cecilo Pelito Lucero, aged 48, was traveling with two companions in the direction to Catarman. At the highway near the cemetery of Barangay Layuhan in San Jose town, approximately 30 unidentified armed men ambushed the car. Father Cecilo Pelito Lucero sustained multiple gunshots that caused his immediate death. Father Cecilo Pelito Lucero was the

Coordinator of the Human Rights Desk of the Diocesan Social Action Center of the Catholic Diocese of Catarman, a member of the Promotion of Church People's Response and Chairman of the Task Force Peace and Order of the Diocese of Catarman. He had received a number of threats from the military and was under surveillance for his role in reporting on human rights violations by the military in Northern Samar.

694. While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the deaths of Father Cecilo Pelito Lucero and Mr Romulo Mendova. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. We would like to refer your Excellency's Government to the fundamental principles applicable under international law to this case. The International Covenant on Civil and Political Rights ("ICCPR") provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

695. We would also like to draw the attention of your Excellency's Government to the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Principle 4 provides that "effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats". Further Principle 9 states that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions..." This principle was reiterated by the Human Rights Council at its 8<sup>th</sup> Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible ...to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions".

696. As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71).

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

698. Furthermore, we would like to bring to the attention of your Excellency's Government article 12, paras 2 and 3, of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the

Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

699. We therefore, urge your Government to take all necessary measures to ensure the accountability of any person responsible for the deaths of Mr Romulo Mendova and Father Cecilo Pelito Lucero. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

700. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summaries of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate what measures the State is taking to protect human rights defenders who receive threats.

#### **Philippines: Maguindanao Massacre**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** Group of individuals (57 persons, including 24 women)

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the responses provided by the Government of the Philippines about the actions taken by various Government branches and agencies to investigate and prosecute the alleged perpetrators of the Maguindanao massacre. He commends the Government on the steps taken thus far, and urges it to ensure that the investigations remain, at all stages, independent, comprehensive, and that they meet the highest professional standards. He also appreciates the Government's stated willingness to provide updated information about on-going investigations and looks forward to receiving that information, as well as information about prosecution outcomes.

701. The Special Rapporteur regrets, however, that the Government has not provided the requested information about the private militia of the family of the Governor of Maguindanao Province, the measures taken to disband the militia, and the relationship between the private militia and government security forces in Maguindanao. He considers measures to end domination of the political processes by elite families as essential for democracy in the Philippines, and looks forward to receiving the requested information.

702. The Special Rapporteur also regrets that the Government did not provide the requested information on measures to prevent election-related violence. He notes that such violence continued up to the May 2010 elections, and he looks forward to receiving information about measures to address the context and conditions in which such violence takes place, in order to prevent future election-related killings.

**Allegation letter dated 30 November 2009**, sent with the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

703. We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 8/3,7/36 and 8/8.

According to the information received:

In the morning of 23 November 2009, a convoy of supporters of Mr. Esmael Mangundadatu, the vice-mayor of Buluan town in Maguindanao province, was travelling on the road to Shariff Aguak, one of the main towns of Maguindanao, on the way to an electoral office to register Esmael Mangundadatu as a candidate in the elections for governor of Maguindanao province next year. The convoy, which did not include the candidate himself, was led by his wife and formed of local politicians, lawyers and journalists.

At around 9 a.m., in a rural area near the villages of Salman and Malating, the convoy was abducted by a group of more than 100 gunmen, suspected to be members of a militia at the services of the family of the Governor of Maguindanao province. Some reports indicate that among the abductors there were members of the police and of the Armed Forces of the Philippines. The gunmen took the entire convoy to a location around ten kilometres from the main road, where they killed at least 57 persons, including 24 women (the reports we have received do not indicate clearly how many survivors there were). Some reports indicate that the abductors tortured the victims before executing them, including subjecting the female victims to sexual violence. The bodies were buried in mass graves on a hilltop in Sitio Masalay, Barangay Salman, in Ampatuan, Maguindanao province.

The victims include the wife of Esmael Mangundadatu, Genalyn, and two of his sisters, Eden and Farida Sabdula. There are also at least two lawyers among the victims, Concepcion Brizuela and Cynthia Oquendo.

The names of 30 journalists working for local or national newspapers, radio stations and TV stations reported to be among the victims are: Benjie Adolfo, Ronnie Perante and Rubello Bataluna of Gold Star Daily; Lindo Lupogan of Daily Gazette; Rosell Morales of News Focus; Alejandro “Bong” Reblando of the Manila Bulletin; Henry Araneta of radio DZRH; Ernesto “Bart” Maravilla of Bombo Radyo Koronadal; Napoleon Salaysay of Mindanao Gazette; Ian Subang of Pilipino Star Ngayon and Dadiangas Times; Leah Dalmacio of Forum and Mindanao Focus; Gina de la Cruz and Marites Cablitas of Today; Andres “Andy” Teodoro of the Mindanao Inquirer; Bienvenido Lagarte of the Sierra News; Marife “Neneng” Montaña of the weekly Saksi; Rey Merescon of MindaNews; Eugene Dohillo, Joy Duhay, Victor Nuñez, Macario Ariola and Jimmy Cabillo, all five of UNTV; freelance reporters Humberto Mumay, Fernando “Rani” Razon, Noel Decena, John Caniba, Joel Parcon, Marife Montano, Art Belia Jun Gatchalian, and Jun Legarta.

One of the journalists who survived the attack had allegedly been receiving threats to his life since 2004. The threats reportedly began after he wrote a newspaper article which exposed details of summary executions in Maguindanao that were allegedly linked to the family of the Governor of the Province. He allegedly received information of a plot to kill him, involving policemen, and attempts were made on his life. However, no investigation into his allegations was undertaken and he was not offered any protection by the authorities.

On 27 November 2009, Andal Ampatuan Jr, mayor of the town Datu Unsay and son of the Governor of Maguindanao Province, was arrested as a suspect. Reports indicate that his father, Andal Ampatuan Sr, who is currently serving his third term as Governor, had been grooming Andal Ampatuan Jr to succeed him in office as a result of the 2010 elections.

The National Police Director has suspended from or relieved of their positions several of the commanding officers of the police in Maguindanao province, while other members of Maguindanao police have been arrested. The Armed Forces of the Philippines have announced that the Ampatuan family's private militia will be disbanded.

The Acting Secretary of Justice in your Excellency's Government has announced that prosecutors are processing the admission to the witness protection program of 20 or more witnesses to the killings.

Without prejudging the accuracy of these reports, we would like to welcome the initial steps taken by your Government to bring those responsible for the killings to justice.

The International Covenant on Civil and Political Rights ("ICCPR"), to which the Philippines is a party, provides that every individual has the right to life and security of the person (article 6) and the right to physical and mental integrity (article 7). In Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), the Human Rights Council reiterates that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions".

704. While the reports summarized above indicate that holders of public office are suspected of being responsible for the killings and that members of the police or the armed forces might have been among the perpetrators, we would primarily like to draw the attention of your Excellency's Government to its due diligence obligations under international law. As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.) The same principle was set forth by the Human Rights Committee with regard to torture: "It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7 [of the Covenant, i.e. torture and other cruel, inhuman and degrading treatment or punishment], whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity." (paragraph 2 of General Comment No. 20, adopted at the 44th session of the Human Rights Committee, 1992).

705. We note in this respect reports indicating that national and local elections in the Philippines have, in recent years, always been accompanied by a considerable number of killings related to the election campaigns. Reports we have reviewed state that, in 2007, 100 persons were killed from the beginning of the election campaign in January to 9 May 2007. 53 of them were candidates. According to information we have received, 189 persons were killed and 279 wounded in violence related to the 2004 elections for President of the Philippines. The campaign for the 2001 elections for Congress and local offices saw 98 persons killed, the 1998 elections 77, the 1995 elections 108, the 1992 elections 89, the 1988 local elections 188, and the 1986 presidential elections 153. Reports state that only very few of these more than 1,000 killings were successfully investigated and prosecuted. This pattern of lethal violence and impunity makes it all the more urgent for your Excellency's Government to expeditiously bring to justice those responsible and to prevent the recurrence of such executions.

706. We also note that the killing of 30 journalists on 23 November 2009 took place against a more general background in which "journalists are killed with increasing frequency" and their killers enjoy "a lamentable degree of impunity", as the Special Rapporteur on extrajudicial, arbitrary or summary executions stated in the report on his visit to the Philippines (A/HRC/8/3/Add.2, para.38).

707. In this regard, we recall that taking effective measures to protect journalists and to prosecute those responsible of killings or death threats against them is a precondition to ensuring the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

708. We would also like to bring the attention of your Excellency's Government to General Comment No. 25 adopted by the Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service, which stresses that freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected (CCPR/C/21/Rev.1/Add.7, para.12).

709. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case and the statistics regarding killings during previous election campaigns accurate?
2. Please provide the details, and where available the results, of any criminal investigation or other inquiries which may have been carried out in relation to the killings on 23 November 2009, and, in due course, the results of any prosecutions undertaken. Insofar as compatible with the needs of their protection, please describe the measures taken to ensure that witnesses and family members of the victims are not subject to any intimidation or retaliation.
3. With respect to the private militia of the family of the Governor of Maguindanao Province, which the Armed Forces of the Philippines have reportedly announced would be disbanded, please explain the legal status of that militia and the measures adopted by the competent authorities in its regard, both before 23 November 2009 and thereafter. Please describe the relationship between the

governmental security forces in Maguindanao Province and the private militia of the Governor's family.

4. Please describe the measures adopted by your Excellency's Government to prevent further killings in the course of the 2010 local and national election campaigns.

### **Response from the Government of the Philippines dated 10 December 2009**

#### **Government Actions on the Maguindanao Massacre**

710. On November 24, 2009, Her Excellency President Gloria Macapagal-Arroyo declared a state of emergency in the provinces of Maguindanao, Sultan Kudarat and Cotabato City through Proclamation Order No. 1946. PGMA also ordered the Philippine National Police (PNP), Armed Forces of the Philippines (AFP) and the National Bureau of Investigation (NBI) to investigate the incident. The Commission on Human Rights (CHR) has also been asked to join in the inquiry to ensure transparency and impartiality.

#### **Armed Forces of the Philippines (AFP)**

711. In compliance with the President's orders, Acting Military Chief of Staff Maclang, directed the establishment of checkpoints and chokepoints and the deployment of troops from the 601<sup>st</sup> Infantry Brigade to the crime scene. The AFP also helped in the exhumation of the bodies in the grave sites.

712. The AFP has taken over the provincial capitol of Maguindanao and the municipal halls of Shariff Aguak and Ampatuan towns to prevent possible escalation of violence. On November 26, 2009, at least 600 troops deployed about 4:30 in the morning to the provincial capitol and municipal halls disarmed all detailed forces there, mostly members of the CAFGU. Two high ranking military officials were relieved as part of the investigation on the alleged involvement of government troops in the massacre. They are MGen. Alfredo Cayton, the 6<sup>th</sup> ID Chief and Col. Medardo Geslani, 601<sup>st</sup> IB.

713. On December 3, 2009, the AFP deployed more troops in Shariff Aguak town to guard the members of the Ampatuan clan, whose members are said to be under threat, and to secure the peace and order in the province. The deployment of the 33<sup>rd</sup> IB from Lanao Del Sur is part of the preparations for the service of warrants against members of the Ampatuan family.

#### **Department of Justice (DOJ)**

714. Justice Secretary Agnes VST Devanadera ordered the National Bureau of Investigation (NBI) to conduct its own investigation into the massacre. She created a special panel of prosecutors that would handle cases arising from the investigation. She also ordered prosecutors in the area and nearby provinces to coordinate with the families of victims and the law enforcement agencies for the prosecution of those responsible in the incident.

715. On November 26, 2009, Datu Unsay Mayor Andal Ampatuan Jr. was subjected to an inquest held at the General Santos Airport. The inquest was presided by Secretary Devanadera together with Chief State Prosecutor Jovencito Zuno.

716. On December 1, 2009, Andal Ampatuan Jr. was charged with Twenty Five (25) counts of murder before the Regional Trial Court of Cotabato City. The other accused are Ulo Ampatuan, Bahnarian Ampatuan, Kanor Ampatuan, Muhamed Sanki, Tammy Masukat and PO1 Abbey Guiaden. Several policemen surrounded the courthouse while the prosecutors were inside. The Department of Justice also asked for a transfer of venue of the

hearing of the case in Manila to ensure the security of all the parties especially the witnesses in the case.

717. On December 3, 2009, government prosecutors named ten (10) more suspects in the Maguindanao massacre. The new suspects, including three (3) members of the Ampatuan clan, were also placed in the BI watchlist. They are: Ulo Ampatuan, Kanor Ampatuan, Tony Kenis Ampatuan, Abdullah Sangki, Muhamed Sangki Tammy Masukat, Tumi Timba Abas, Abbey Guiadem, Esmael Canapia and Takpan Dilun.

#### **National Bureau of Investigation (NBI)**

718. The National Bureau of Investigation (NBI) conducted its own investigation of the incident following an order issued by the Secretary of Justice. After the first inquest last Thursday, Nov 26, Mayor Andal Ampatuan Jr was brought to Manila and he is currently detained at the NBI Headquarters. The forensic experts of the NBI have conducted autopsy on the bodies of the victims for a total of 20.

#### **Bureau of Immigration (BI)**

719. Following a memorandum from the Secretary of Justice, the Bureau of Investigation has put nine (9) members of the Ampatuan family on its watchlist. They are: Andal Ampatuan Jr., Andal Ampatuan Sr., Zaldy Ampatuan, Nords Ampatuan, Akmad Ampatuan Sr., Akmad Ampatuan Jr., Saudi Ampatuan Jr., Bahnarian Ampatuan, and Sajid Islam Ampatuan.

#### **Philippine National Police (PNP)**

720. Aside from ordering the immediate investigation of the Maguindanao incident, PDG Jesus Versoza placed police nationwide on alert to prevent any other election-related violence. Versoza ordered police regional, provincial and station commanders to monitor political rivalries in their jurisdictions. The Civil Security Group (CSG) has revoked all gun licences issued to Ampatuan Jr.

721. On November 28, 2009, six (6) aides of Governor Zaldy Ampatuan were disarmed by members of Task Force Davao after they were found carrying high powered firearms in Davao City.

722. PSSupt. Agusana Maguid, Maguindanao police chief; PCI Sukarno Dicay, deputy chief police; PSI Ariel Diongson, group director 1508<sup>th</sup> Provincial Mobile Group; and SPO2 Badawi Bakal, officer-in-charge of the Datu Ampatuan Police Station were relieved from their respective posts and were brought at the CIDG headquarters in Camp Crame. Maguid was relieved due to command responsibility while Dicay, Diongson, and Bakal were relieved after they were seen at the scene during the massacre. Aside from the four, three more policemen were relieved from their posts. They were PCSupt. Paisal Umpa, ARMM police chief; PI Armando Mariga, group director of the 1506<sup>th</sup> Police Mobile Group, and PI Saudi Mokamad, group director of the 1507<sup>th</sup> PMG.

723. Policemen detailed in three Maguindanao towns were relieved while those in the 19 other towns were reshuffled.

724. Law enforcement agencies have been instructed to provide security to Justice Secretary Devanadera, the prosecutors and the judge who will hear the case.

#### **Department of Interior and Local Government (DILG)**

725. The President gave full powers of supervision to Department of Interior and Local Government Secretary (DILG) Ronnie Puno over the incident. On December 1, 2009, Secretary Puno ordered an immediate evaluation of a complaint filed by Buluan Vice



Mayor Esmael Mangudadatu seeking the investigation of Gov. Zaldy Ampatuan of ARMM for alleged failure to protect “civil, human and political rights of the victims of the massacre.” Puno gave the lawyers of DILG 24 hours to submit their recommendation on the complaint by Mangudadatu.

### **Supreme Court (SC)**

726. There are only three Regional Trial Court Branches for the whole province of Maguindanao and Cotabato City. Only two are filled up but the judges assigned are presently abroad. The Supreme Court empowered Judge Guerrero of nearby province of Sultan Kudarat to sit temporarily on one vacant RTC branch to accept cases in connection with Maguindanao massacre. Another judge from a nearby province, Judge Palmones of Kidapawan City, was authorised by the Supreme Court to accept applications for search warrants.

### **Response from the Government dated 25 January 2010**

727. [Providing a copy of the summary report of the Department of Justice (DOJ) in connection with the Mangundanao massacre (below), and adding, in the cover transmission, that:]

728. As of 06 January 2010, fifty-six (56) murder charges have already been filed against Datu Andal Unsay Ampatuan, Jr. The other accused are still undergoing preliminary investigation. Rebellion charges have also been filed against Andal Ampatuan, Sr. and other members of the Ampatuan clan.

### **Summary report of the Department of Justice on the Muguindanao massacre**

729. When the Manguindanao incident happened on 23 November 2009, Her Excellency Gloria Macapangal-Arroyo mobilized the different agencies/offices of the government to ensure that an immediate and proficient investigation of the case will be completed.

730. On the part of the Department of Justice, the Secretary of Justice immediately ordered the National Bureau of Investigation (NBI) to conduct its own investigations of the massacre. NBI experts were sent to the crime scene. The forensic experts of the NBI have conducted autopsy on the bodies of the victims.

731. A few hours after the incident, Task Force 211 (TF211) immediately communicated with the lawyers of the Mungudadatus to get their cooperation in gathering witnesses for the crime. Undersecretary Ricardo R. Blancaflor, Chairman of the TF211, conferred with the lawyer of the Mungudadatus, who promised to obtain the cooperation of the eye witnesses and other relevant witnesses. The following day, TF211 coordinated with the Philippines National Police (PNP), Scene of the Crime Operatives (SOCO) units and instructed/coordinated with the NBI Team of Region 12 to conduct a parallel investigation.

732. Also on 24 November 2009, the special panel of prosecutors was formed to handle cases arising out of the incident. The following day, the panel was further reorganized and two groups were formed to ensure the immediate and efficient inquest/preliminary investigation of the cases.

733. Many of the media members who were massacred were personal friends of the Chairman of the TF211, and they have been actively involved in the resolution of a local media killing case in General Santos City.

734. Usec. Blancaflor, in a meeting with the survivors of the incident, convinced them to execute affidavits that were eventually used by the NBI to charge Datu Andal Ampatuan, Jr. TF211 likewise gave financial assistance to the families of the deceased media practitioners.

735. On 25 November 2009, Secretary of Justice, Agnes VST Devenadera, arrived in Maguindanao. Additional NBI Medico Legal and investigation team were also brought from Manila to augment the local NBI. By November 25, the DOJ team was able to build-up a case against Datu Andal Ampatuan, Jr., that when he arrived in General Santos airport in the afternoon of 26 November, he was immediately arrested and subjected to inquest. The inquest was immediately terminated and Datu Andal Ampatuan, Jr. was brought to Manila at the NBI Detention Center. The complaint for Multiple Murder referred for inquest and filed before DOJ Manila was docketed as XVI-INQ-09K-00103 ENTITLED "NBI-Mangudadatu et al. vs. Datu Andal Ampatuan Sr. et al."

736. On 1 December 2009, Andal Ampatuan, Jr. was charged with twenty-five (25) counts of murder before the Regional Trial Court (RTC) of Cotabato City. The Department of Justice also asked for a transfer of venue of the hearing of the case in Manila to ensure the security and safety of all the parties especially the witnesses in the case. On 9 December 2009, additional murder charges were filed before the Cotabato RTC.

737. The Supreme Court granted the request for transfer of venue thus, cases were transferred to RTC Quezon City. Criminal Case Nos. Q-09-162148-72 for twenty-five (25) counts of murder and Criminal Case Nos. Q-09-162216-31 for sixteen (16) counts of murder are now being heard before the Hon. Jocelyn A. Solis-Reyes of RTC Branch 221 of Quezon City. Hearings will be held in Camp Crame.

738. On 5 January 2010, Datu Andal Unsay Ampatuan, Jr. was arraigned and pleaded not guilty. Bail hearing has started and one (1) witness for the prosecution was presented. Hearings are scheduled on 13 and 20 January 2010.

**On the cases pending preliminary investigation:**

739. On 02 December 2009, a complaint for Multiple Murder was filed for preliminary investigation in DOJ Manila and docketed as XVI-09L-00816 entitled "CIDG-CIDU vs Gov. Datu Andal Unsay Ampatuan Sr. et al." The following day, another complaint for Multiple Murder was referred for inquest and docketed as XVI-INQ-09L-00104 entitled "CIDG vs. Esmail Canapia and Takipan Dilun."

740. On 18 and 28 December, preliminary investigation hearings were held in DOJ Manila.

**On the Rebellion Charges:**

741. On 07 December 2009 at 11:00 p.m. in the evening inquest proceedings for Rebellion was held in Catabato City. Among those charged was Gov. Andal Ampatuan Sr., ARMM Gov. Zaldy Ampatuan, five (5) other members of the Ampatuan family and seventeen (17) others. The basis of the filing of the complaint are affidavits of witnesses who testified on the role of Amputuans in planning and implementing the withdrawal of allegiance from the Philipine Government and affidavits of witnesses who testified that the Ampatuans ordered government offices to close down in protest of the crackdown of the military against the Ampatuan family.

742. On 09 December 2009, at 3:30 p.m., the Information for Rebellion was filed before the Regional Court of Cotabato City docketed as C.C. No. SA 198.

743. Charges against additional respondents are currently undergoing preliminary investigation in DOJ Manila. Hearings were held on 08 December 2009 and 12 January 2010.

## **Bureau of Immigration (BI)**

744. By virtue of an order by the Secretary of Justice dated 27 November 2009, the Bureau of Immigration included in its watch list nine (9) members of the Amputuan family. On 04 December 2009, ten (10) additional suspects were added and on 18 December 2009, several additional names were also included in the Bureau's watch list.

## **Russian Federation**

### **Killing of Judge Aza Gazgireyeva**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** 1 female

**Character of reply:** Translation awaited

**Observations of the Special Rapporteur:** The Government of the Russian Federation replied to the communication below on 27 August 2009. The Special Rapporteur appreciates the response but unfortunately had not received a translation of it from the relevant services at the time this report was finalized. He is unable, therefore, to make observations, and expects they will be included in the next report. However, a copy of the original response letter is available online at the following address: [http://www2.ohchr.org/english/issues/executions/docs/AL\\_Russia\\_6.2009\\_Gov\\_Reply.pdf](http://www2.ohchr.org/english/issues/executions/docs/AL_Russia_6.2009_Gov_Reply.pdf).

**Allegation letter dated 25 June 2009**, sent with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers.

745. In this connection, we would like to bring to your Government's attention information we have received concerning Ms. Aza Gazgireyeva, late deputy head of the Supreme Court of the Republic of Ingushetia.

On 10 June 2009, Ms. Aza Gazgireyeva was shot dead in the town of Nazran while taking her children to school.

It is reported that the killing of Ms. Gazgireyeva may be linked to her peaceful activities in defence of human rights, i.e. her professional activities as a judge. Ms. Gazgireyeva, who has worked for 25 years as a judge, was member of a panel examining civil and criminal cases at the Supreme Court. While she did not handle criminal cases involving illegal armed forces herself, she examined related appeals and made some procedural decisions in that regard. She was also involved in cases related to corruption. Reports indicate that Ms. Gazgireyeva's had received threats before.

In April 2008, Ms. Gazgireyeva's predecessor, Khasan Yandiyev, who handled cases of large-scale corruption, was shot and killed.

Information received indicates that an investigation has been commenced by the Investigative Committee of the Prosecutor's Office.

746. While we do not wish to prejudge the accuracy of these allegations, we do express our concern that the killing of Ms. Gazgireyeva may be linked to her professional activities as a judge and points to insufficient guarantees and preventive measures to ensure the security of judges in the Republic of Ingushetia.

747. As the Special Rapporteur on the independence of judges and lawyers indicated in his most recent report to the Human Rights Council (A/HRC/11/41, para. 78), the security of judges is a subject too often neglected in the face of multiple and multifaceted attacks against members of the judiciary in a number of countries. The Human Rights Committee, in paragraph 19 of its General Comment No. 32, stated that it is necessary to protect judges against conflicts of interest and intimidation. To this end, the security of judges should be adequately guaranteed by law, as it is also enshrined in the Basic Principles on the Independence of the Judiciary.

748. Pointing to the killing of Ms. Gazgireyeva's predecessor, Khasan Yandiyev, which occurred in April 2008, the Special Rapporteur recommended in his mission report to your Excellency's Government to consider the adoption of preventive security measures for increased protection of judges (report on his mission to the Russian Federation, A/HRC/11/41/Add.2, para. 83 and 99). This was also reiterated in his most recent thematic report where he said that special attention be paid to adopting preventive security measures for judges handling cases of large-scale corruption, organized crime, terrorism, crimes against humanity, or any other cases exposing them to higher risk (A/HRC/11/41, para. 99).

749. In this report, the Special Rapporteur also pointed to Recommendation No. R (94) 12, adopted by the Committee of Ministers of the Council of Europe, to which the Russian Federation is a member. The recommendation gives specific examples of security measures, such as providing for security guards on court premises or police protection for judges who may become or are victims of serious threats.

750. Furthermore, as the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.) In Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), the Human Rights Council reiterates that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring and end to impunity and prevent the recurrence of such executions".

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

752. Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats,

retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

753. We urge your Government to take all necessary measures to that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

754. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide substantive detailed information of any prosecutions which have been undertaken.
4. Please provide detailed substantive information on the security measures which had been adopted and implemented to protect judges in the Republic of Ingushetia after the killing of judge Yandiyev in April 2008.
5. Please explain whether any preventive security measures had been put into place to ensure the security of Ms. Gazgireyeva.
6. Please provide detailed substantive information on security measures for judges which have been put into place following the killing of Ms. Gazgireyeva.

**Russian Federation: Killing of human rights defender Natalia Estemirova**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** 1 female

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the detailed response of the Government of the Russian Federation with respect to the investigation into the death of Ms. Natalia Estemirova. The Special Rapporteur looks forward to receiving from the Government information about the results of the investigation, as well as the details of any resulting prosecutions, and of the measures taken by the Government to prevent the recurrence of such killings.

**Urgent appeal dated 20 July 2009,** sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on violence against women, its causes and consequences.

755. In this connection, we would like to bring to your Government's attention information we have received concerning the killing of Ms Natalia Estemirova. Ms Estemirova was a prominent human rights defender and researcher working with the Russian NGO Memorial. Ms Natalia Estemirova received several prizes for her outstanding work, including the "Right to Life" award from the Swedish Parliament; the Robert Schuman Medal of the European Parliament and the Anna Politkovskaya prize.

According to the information received:

On the morning of 15 July 2009, Ms Natalia Estemirova was kidnapped in front of her house in Grozny. According to eyewitness reports, Ms Estemirova was dragged into a white vehicle and driven away by unknown individuals.

Her body was later found in the woods near the city of Nazran, in Ingushetia. She had sustained two gunshots to her head and chest.

We wish to express our concern that the kidnapping and subsequent murder of Ms Natalia Estemirova may be directly related to her activities in the defense of human rights, in particular her fact-finding carried out into human rights abuses, such as summary executions, enforced disappearances and torture committed in the Chechen Republic. We acknowledge the expressions of outrage and assurances by your Excellency's Government that all necessary steps will be taken to apprehend and punish Mrs. Estemirova's killers. However, we remain concerned that the killing of Ms Natalia Estemirova forms part of a pattern of similar cases, including the murder of Ms Anna Politkovskaya, Mr Stanislav Markelov and Ms Anastasia Baburova, which, coupled with the prevailing impunity, has the potential of gravely stifling independent human rights work and freedom of expression in the country.

756. While we do not wish to prejudice the accuracy of these allegations, we would like to refer Your Excellency's Government to the fundamental principles applicable under international law to this case. The International Covenant on Civil and Political Rights ("ICCPR") provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

757. As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.) In Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), the Human Rights Council reiterates that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions as stated in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions". In particular, we would like to refer your Excellency's Government to principles 4 which obliges Governments to guarantee effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions.

758. In this connection, we would also like to remind your Excellency's Government of its duty under article 2 paragraph 3 of the International Covenant on Civil and Political Rights to conduct independent and impartial investigations into serious human rights violations and to ensure that effective domestic remedies be made available in this regard.

759. Furthermore, we would like to recall article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

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

761. We would also like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

762. On the basis of the above, we urge your Excellency's Government to take all necessary measures to guarantee that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

763. We also request the Russian Federation to extend an invitation to us, in order to enable those Special Procedures mandate holders who have requested invitations to conduct country visits with a view to making independent and impartial assessments of the human rights situation in Russia, including Chechnya and other Republics of Northern Caucasus, and to assisting the authorities in their endeavours to bring the perpetrators of human rights violations to justice.

764. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

3. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

4. Please provide the details of any measures taken by your Government to prevent the recurrence of such executions, in accordance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

**Response from the Government of the Russian Federation dated 27 August 2009  
(translated from Russian)**

765. Information from the Russian Federation in response to the joint inquiry of the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning the murder of N.K. Estemirova

766. Reference: UA G/SO 214 (67–17) G/SO 214 (107–9) G/SO 214 (3–3–16) G/SO (33–27) G/SO 214 (53–24) G/SO (89–15) RUS 7/2009

767. Further to your request for details and on the status and progress of the investigation into the murder of N.K. Estemirova, a member of the Memorial human rights centre, we wish to transmit the following information.

768. The preliminary investigation established that on 15 July 2009, Ms. Estemirova, a member of the Memorial human rights centre, Grozny branch, left her apartment at about 7.35 a.m. and was making her way to public transport to go to work at the Memorial office, located at 84 Mayakovsky Street in Grozny. At Building No. 10, 133 Khmel'nitsky Street, unidentified persons dragged her into a white VAZ 2107 vehicle and drove away to an unknown destination.

769. The Leninsky inter-district investigative team for Grozny, a unit of the investigative department for the Chechen Republic working under the Investigative Committee attached to the Procurator's Office of the Russian Federation, instituted criminal proceedings under article 126, paragraph 2 (a) and (c), of the Russian Criminal Code on 15 July 2009.

770. It was on that day that, at 4.30 p.m., Ms. Estemirova's body was found with two gunshot wounds to her head and two to the torso in a wooded area some 200 metres from the Kavkaz federal highway near the village of Gazi-Yurt in the Nazran district, Republic of Ingushetia. Her passport and her purse containing personal items, including two switched-off mobile phones, were found lying beside her.

771. On the same day, 15 July 2009, the Nazranovsky inter-district investigative team for Nazran, a unit of the investigative department for the Republic of Ingushetia working under the Investigation Committee of the Procurator's Office of the Russian Federation, opened a criminal case under article 105, paragraph 1, and article 222, paragraph 1, of the Russian Criminal Code.

772. On 16 July 2009, the criminal cases were transferred to the Central Investigative Department for the Southern Federal District under the Investigative Committee attached to the Procurator's Office of the Russian Federation and combined into one case.

773. Searches were carried out on the grounds of Building No. 10, 133 Khmel'nitsky Street, Grozny; at the site where the body was discovered; in the office of the Grozny



branch of Memorial; and at Ms. Estemirova's place of residence, where material evidence that is now undergoing the necessary forensic analysis was gathered.

The investigation has involved:

- Carrying out three re-enactments of the crime to establish how long it might take a light vehicle to go from the spot where Ms. Estemirova was abducted to the site where her body was found
- Obtaining and analysing video surveillance footage to find the white VAZ 2107 and a green VAZ 2112 resembling the one that accompanied the vehicle used in the crime against Ms. Estemirova
- Identifying vehicles that may be relevant to the investigation and authorizing bodies of the Russian Ministry of Internal Affairs to trace their owners and check for involvement in the crime
- Showing witnesses photographs of makes of the vehicles that drove away from the spot where Ms. Estemirova was abducted on the morning of 15 July 2009
- Re-enacting what might have been seen from the apartment from which a person had witnessed vehicles coming and going
- Obtaining vehicle registration records
- Confiscating and incorporating in the case materials DVDs of video surveillance footage from several checkpoints; the information on the DVDs is currently being reviewed and analysed
- Arranging for 16 different forensic analyses, the initial results of which are being reviewed and compared with other evidence obtained in the case
- Gathering and analysing information on Ms. Estemirova's mobile phone contacts

774. Moreover, 263 witnesses have been questioned.

775. A range of investigative and operational activities to identify the perpetrators of the crime is currently under way.

776. The Investigative Committee of the Procurator's Office of the Russian Federation is overseeing the progress and outcome of the investigation.

#### **Russian Federation: Killing of journalist Abdulmalik Akhmedilov**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** 1 male

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the response of the Government of the Russian Federation with respect to the investigation into the death of Mr. Abdulmalik Akhmedilov. The Special Rapporteur looks forward to receiving from the Government information about the results of the investigation, as well as the details of any resulting prosecutions.

**Allegation letter dated 28 August 2009,** sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

777. In this connection, we would like to bring to your Government's attention information we have received in relation to the killing of Mr. Abdulmalik Akhmedilov, newspaper editor of Hakikat (the Truth) and Sogratl.

According to information received:

On 11 August 2009 at around 13:00, Mr. Akhmedilov was found dead in his car near Dagestan's capital, Makhachkala, with bullet wounds to the stomach. Although the details surrounding the killing are still unclear, reports suggest that Mr. Akhmedilov's murder was linked to his work as a journalist. As deputy-editor of the Avar-language weekly Hakikat, Mr. Akhmedilov was known for his critical reporting on attempts by the local and federal authorities to suppress political and religious "extremism", as well as his investigative articles about the unsolved assassinations of high-ranking officials in Dagestan. Reports claim that on the day of his murder, Mr. Akhmedilov took his car to a local shop to buy an item for his wife. A suspicious vehicle without a number plate was allegedly seen driving in the area prior to the shooting.

Concern is expressed that Mr. Akhmedilov may have been targeted as a result of exercising his right to freedom of opinion and expression. Further concern is expressed regarding the safety of journalists in the Russian Federation and Dagestan in particular. Most recently, the killings of two journalists from Dagestan, Mr. Gadzhi Abashilov and Mr. Ilyas Shurpayev, were the subject of an allegation letter sent to your Excellency's Government on 3 April 2008. We appreciate the response from your Excellency's Government received on 30 April 2008, but we would like to seek further clarification regarding concrete measures taken to ensure the physical and psychological integrity of journalists.

778. While we do not wish to prejudge the accuracy of these allegations, we deem it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which calls upon states to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

779. The Special Rapporteur would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

780. We urge your Government to take all necessary measures to guarantee that the right to freedom of opinion and expression are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

781. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged on behalf of Mr. Akhmedilov?

3. Please provide the details, and where available the results, of any judicial investigation, or any criminal charges, medical examinations, and other inquiries carried out in relation to this case.

4. Please provide information concerning the national legislation related to freedom of expression, especially freedom of the Press, its conformity with Article 19 of the International Covenant on Civil and Political Rights and with other relevant provisions included in international treaties.

**Response of the Government of the Russian Federation, dated 19 November 2009  
(translated from Russian)**

782. Information from the Russian Federation in connection with the joint inquiry from the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the United Nations Human Rights Council concerning the killing of the journalist M.D. Akhmedilov

783. Reference: AL G/SO 214 (67-17) G/SO 214 (33-27) RUS 9/2009

784. On 11 August 2009, at 1.15 p.m., M.D. Akhmedilov was driving through a suburban housing estate in Makhachkala in the car belonging to him, a VAZ 2112. At that point unknown persons in a car drew level with him, shot him dead with a firearm while on the move and then escaped from the scene of the incident.

785. The investigative section for the Lenin district of Makhachkala of the investigative department of the Investigative Committee attached to the Procurator's Office of the Russian Federation for the Republic of Dagestan instituted criminal proceedings in this matter on the basis of the crime provided for in article 105, paragraph 1 (murder) and article 222, paragraph 1 (unlawful circulation of a weapon) of the Criminal Code of the Russian Federation.

786. Given who the victim was and the circumstances of the crime, several possible leads have been put forward and are being tested. The lead linked to M.D. Akhmedilov's professional activities is being given priority.

787. In order to clear up this crime, a standing task force has been set up, whose members are conducting the necessary operative investigations to find out who was involved in the murder.

788. The results of the inquiries are being monitored in the Office of the Procurator-General of the Russian Federation.

**Russian Federation: Killings of human rights defender Zarema Sadulayeva and Alik (Umar) Lechayevich Dzhabrailov**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** 1 male and 1 female

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the detailed response of the Government of the Russian Federation with respect to the investigation into the deaths of Ms. Zarema Sadulayeva and Mr. Alik (Umar) Lechayevich Dzhabrailov. The Special Rapporteur looks forward to receiving from the Government information about the results of the investigation, as well as the details of any resulting prosecutions.

**Allegation letter dated 14 September 2009**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

789. In this connection, we would like to bring to your Excellency's Government attention information we have received concerning the assassination of human rights defender, Ms. **Zarema Sadulayeva** and her husband Mr. **Alik (Umar) Lechayevich Dzhabrailov**. Ms. Sadulayeva was the director of the non-governmental organization Save the Generation, an organization which works to provide physical and psychological support for vulnerable children in Chechnya. The organization also works closely with UNICEF, promoting and protecting the rights of disabled people and providing education and training in relation to landmines.

According to information received:

On 10 August 2009, at approximately 2:00 p.m., unidentified armed men, who claimed to be members of the security services entered the offices of Save the Generation, and ordered Ms. Sadulayeva and Mr. Dzhabrailov to accompany them. Shortly afterwards, the men returned to the offices and took Mr. Dzhabrailov's mobile phone and his car.

On 11 August 2009, at approximately 4 a.m., the bodies of Ms. Sadulayeva and her husband, Mr. Dzhabrailov, were discovered in the boot of a car on Mansurov Street, near Grozny. They had sustained gunshot wounds to the head and chest.

An investigation into the murder has reportedly been opened.

Grave concern is expressed that the assassination of Ms. Sadulayeva and her husband Mr. Dzhabrailov are directly related to the work Ms. Sadulayeva carried out in defense of human rights. Further concern is reiterated that these murders are part of an ongoing pattern of attacks and intimidation of human rights defenders in the country. These murders are the latest in a series of attacks on human rights defenders, journalists and lawyers in Chechnya which have a seriously intimidating and detrimental effect on the work of human rights defenders in the country. Just over a month ago, Ms. Natalia Estemirova, a member of the non-governmental organization Memorial was abducted and murdered. Over the last twelve months, human rights defenders Ms. Anna Politkovskaya, Mr. Stanislav Markelov and Ms. Anastasia Baburova were also assassinated.

790. While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles applicable under international law to this case. The International Covenant on Civil and Political Rights ("ICCPR") provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

791. As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.) In Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), the Human Rights Council reiterates that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to adopt all necessary measures, including legal and judicial measures, in order to bring and end to impunity and prevent the recurrence of such executions as stated in the

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions”. In particular, we would like to refer your Excellency’s Government to principle 4 which obliges Governments to guarantee effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions.

792. We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

793. Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5, points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations;
- article 6, point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters;
- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

794. We would further like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to

seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

795. We urge your Government to take all necessary measures to guarantee that accountability of any person guilty of the killings of Ms. Sadulayeva and Mr. Dzhabrailov is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

796. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged on behalf of Ms. Sadulayeva and Mr. Dzhabrailov?
3. Please provide the details, and where available the results, of any investigation, medical examination and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been or will be undertaken. Have or will penal, disciplinary or administrative sanctions been/be imposed on the alleged perpetrators?

**Response of the Government of the Russian Federation dated 17 November 2009  
(translated from Russian)**

797. Information from the Russian Federation in connection with the joint inquiry from the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of the United Nations Human Rights Council regarding the circumstances surrounding the deaths of Z.A. Sadulayeva and A.L. Dzhabrailov

798. Reference: AL G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (53-24) RUS 12/2009

799. On 10 August 2009, a local resident, L.K. Dzhabrailov, contacted the Lenin district duty section of the Department of Internal Affairs in Grozny and reported that at 2 p.m. his son A.L. Dzhabrailov and his daughter-in-law Z.A. Sadulayeva had been abducted from the office of the United Nations Children’s Fund (UNICEF) (86, Mayakovsky Road, Grozny) by five unknown persons armed with automatic firearms.

800. The unknown persons drove the couple away in a VAZ 2110, but one of the assailants drove off in A.L. Dzhabrailov’s VAZ 2107, which was parked near the office.

801. On 11 August 2009, the Lenin inter-district investigative section of the Grozny investigative department of the Investigative Committee attached to the Procurator’s Office of the Russian Federation responsible for the Chechen Republic instituted criminal proceedings in connection with this incident on the basis of the crime defined in article 126, paragraph 2 (a) and (g) of the Criminal Code of the Russian Federation.

802. On the same day, when the car was examined at the entrance to the grounds of the Republic's rehabilitation centre in Grozny, the corpses of Z.A. Sadulayeva and A.L. Dzhabrailov were found displaying signs of a violent death from gunshot wounds.

803. In connection therewith the Zavodsk inter-district investigative section of the Grozny investigative department of the Investigative Committee attached to the Procurator's Office of the Russian Federation responsible for the Chechen Republic instituted criminal proceedings on the grounds of the crimes defined in article 105, paragraph 2 (a) and (g) and article 222 of the Criminal Code of the Russian Federation.

804. On 12 August 2009 the above-mentioned criminal cases were joined and referred for further investigation to the department for the investigation of especially important cases of the investigative department of the Investigative Committee attached to the Procurator's Office of the Russian Federation responsible for the Chechen Republic.

805. The investigation established that A.L. Dzhabrailov had previously belonged to an illegal armed gang and that in 2006 he had been sentenced to four years' imprisonment for membership of an illegal armed gang and for unlawful possession of firearms. He had been released early on 8 February 2008.

806. Given whom the victims were and the circumstances of the crime, the investigation is working on various leads. The version that the killing of A.L. Dzhabrailov and Z.A. Sadulayeva was linked to her recent professional activity has, however, been deemed improbable insofar as the organization which she headed was a charity that operated in accordance with its rules and political issues were not part of its remit. The version connected with A.L. Dzhabrailov's past (the crime was committed by unknown persons out of revenge) is more probable.

807. The requisite investigations and inquiries are being conducted in order to establish who committed this crime.

## **Saudi Arabia**

### **Fair trial concerns about death penalty sentence against Muhammad Basheer al-Ramaly.**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Saudi Arabia has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 25 June 2009,** sent with the Special Rapporteur on the independence of judges and lawyers.

808. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding Mr Muhammad Basheer al-Ramaly.

According to the information received:

Mr Muhammad Basheer al-Ramaly was recently sentenced to death by beheading, and subsequent crucifixion of his body, by the General Court of Hail,

after he was convicted of the kidnapping and rape of four people in February 2009. The Court of Cassation is currently reviewing his sentence.

According to reports, Mr Muhammad Basheer al-Ramaly did not enjoy a fair trial, nor did he have access to a lawyer. It is further reported that he is mentally ill.

Mr Muhammad Basheer al-Ramaly is currently detained in Hail prison.

809. While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles set forth in the Universal Declaration of Human Rights. Articles 3 and 6 of these instruments, respectively, provide that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life.

810. We would also like to refer Your Excellency's Government to the Universal Declaration on Human Rights, in particular its articles 10 and 11, which provide for the right to a fair trial, including the right to legal assistance and prohibit the retroactive creation of criminal offences.

811. In this connection, we would like to bring to your Excellency's Government attention to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular:

- principle 5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
- principle 7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

812. These principles are further stated in the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1989/64 of 24 May 1989. In particular, paragraph 1(a) recommends that States afford special protection to persons facing charges for which the death penalty is provided, allowing time and facilities for the preparation of their defence. Paragraphs 4 to 8 of Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1984/50 of 25 May 1984 further provide that capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts, that it may only be carried out pursuant to a final judgement rendered by a competent court after a legal process which provides all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages, the right to appeal and to seek pardon or commutation of sentence.

813. With regard to the mental health of Mr Muhammad Basheer al-Ramaly, we would also like to refer Your Excellency's Government to the following norms and principles:

- Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1984/50 of 25 May 1984. In particular, paragraph 3 provides that the death penalty shall not be carried out on persons who have become insane.
- Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1989/64 of 24 May 1989. In particular, paragraph 1(d) recommends that States further strengthen the protection of the rights of those facing the death penalty, eliminating the death penalty for



persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.

- Declaration on the Rights of Mentally Retarded Persons, General Assembly resolution 2865 (XXVI) of 20 December 1971. In particular, article 6 provides that, if prosecuted for any offence, a mentally retarded person shall have the right to due process of law with recognition of their degree of mental responsibility.

814. Only full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law protecting the right to life from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights and freedoms under international law of Mr Muhammad Basheer al-Ramaly are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

815. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr Muhammad Basheer al-Ramaly in compliance with the above international instruments.

816. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate? If not, please share all information and documents proving their inaccuracy.
2. Please provide the legal basis for his death sentence and how these measures are compatible with international human rights norms and standards as contained, inter alia, in the Universal Declaration for Human Rights and the Basic Principles on the Role of Lawyers.
3. Please provide details regarding the trials of Mr Muhammad Basheer al-Ramaly, including responses to the following: what are the offences charged; how many hearings took place and on what dates; were the hearings open to the public; was he assisted by legal counsel, if so, at what stages of the proceedings?
4. Has the family of Mr Muhammad Basheer al-Ramaly, been informed of his current place of detention and of his procedural position? Have family members been allowed to visit him?

#### **Saudi Arabia: Death sentence against Ali Agirdas**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Saudi Arabia has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 23 November 2009,** sent with the Special Rapporteur on the independence of judges and lawyers.

817. In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the allegedly imminent execution of Mr. Ali Agirdas, aged 29, of Turkish nationality.

According to information received

Mr Ali Agirdas was arrested in Riyadh on 24 February 2007, for drug smuggling. He was convicted and sentenced to death on 18 June 2008, by a General Court in Riyadh. The sentence was upheld on appeal and his case is now being considered by the Supreme Judicial Council.

Mr Agirdas speaks limited Arabic, however during interrogation he was not provided with an interpreter and it is alleged that the interrogator presented him with a document which he said would help him in his case but it was, allegedly, a written confession. During his trial, Mr Agirdas was informed by the presiding judge that he had signed a confession in Arabic which stated that at the time of arrest, he knew that he was carrying drugs. He was convicted on the basis on this confession. During his trial Mr Agirdas was not represented by counsel but was provided with an interpreter. On appeal he was represented by counsel. He is currently being held at Al-Hair prison in the capital city of Riyadh.

We are further informed that in Saudi Arabia prisoners are executed without prior notification to them or their families.

818. While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to the present case under international law.

819. With regard to the imposition of the death penalty on charges of drug smuggling we would like to remind your Excellency's Government that although the death penalty is not prohibited by provisions of international law enshrining the right to life, such as Article 3 of the Universal Declaration on Human Rights, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). This would exclude charges of drug smuggling from those for which the death penalty can be imposed under international law.

820. We would further remind your Excellency's Government that in capital punishment cases the obligation to provide criminal defendants "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights) admits of no exception. Relevant to the case at hand, the right to a fair trial includes the right to be assisted by legal counsel at all stages of proceedings. In this respect, we would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Principle 1, which reads: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings".

821. In relation to the allegation that Mr Agirdas did not have an interpreter during interrogation and that he subsequently signed a confession that became the basis of his conviction, we would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6

September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 in particular principle 6 which provides that the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. Further the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 16 which provides “When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice”.

822. With regard to lack of prior notification in implementing the death penalty, the Special Rapporteur on extrajudicial, summary or arbitrary executions stated in a report to the Human Rights Council on Transparency and the imposition of the death penalty that “There is no justification for post-conviction secrecy, and [...] a lack of transparency both undermines due process rights and constitutes inhuman and degrading treatment or punishment. Persons sentenced to death, their families, and their lawyers should be provided with timely and reliable information on the procedures and timing of appeals, clemency petitions, and executions.” (E/CN.4/2006/53/Add.3, para. 37). He further indicated that “[r]efusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation.” (para. 32).

823. Only full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law protecting the right to life from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency’s Government to take all necessary steps to ensure that the rights under international law of Mr Ali Agirdas are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

824. Finally we would like to remind your Excellency’s Government of a previous communication dated 28 January 2009, regarding the cases of 16 Iraqi men allegedly at risk of execution, to which we are yet to receive a reply. Concerns had been raised in that communication that the accused had reportedly been sentenced to death following trials in which they did not enjoy the fundamental fair trial guarantees, such as access to a lawyer, and statements extorted under torture were allegedly used against them.

825. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.
2. Please indicate whether Mr Agirdas was given the option of choosing counsel and please explain the steps taken by your Excellency’s Government to ensure that his due process rights continue to be protected.
3. In so far as your Excellency’s Government chooses to retain capital punishment, please explain the measures taken or planned to ensure that the convict’s due process rights are not violated during pre and post-conviction proceedings.

4. Please provide details of the steps being undertaken by your Excellency's Government ensure that the death penalty is imposed only in cases where it can be shown that there was an intention to kill which resulted in the loss of life.

**Saudi Arabia: Death sentences based on charges of witchcraft or charlatanism.**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 3 males and 1 female

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Saudi Arabia has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 6 January 2010,** sent with the Special Rapporteur on the independence of judges and lawyers.

826. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the independence of judges and lawyers ... .

827. We would like to draw the attention of your Government to information we have received regarding several cases of persons sentenced to death on charges of witchcraft or charlatanism.

According to the information we have received:

Mr. Ali Sibat is a citizen of Lebanon and father of five children. On 7 May 2008, while he was on a pilgrimage in Medina, agents of the Mutawa'een (religious police) arrested Mr. Sibat in his hotel room. It would appear that the arrest was related to the circumstance that Mr. Sibat had in the past presented a TV show on the Lebanese satellite station Sheherazade, where he gave advice and predictions about the future. In detention, Mr. Sibat was asked to write down what he did for a living in Lebanon. This document was then presented to first instance criminal court in Medina as Mr. Sibat's confession to charges of witchcraft. At no time during pre-trial detention or at trial was Mr. Sibat assisted by a lawyer. On 9 November 2009, the first instance criminal court in Medina found Mr. Sibat guilty of witchcraft and sentenced him to death. It would appear that appeals proceedings in his case are still pending.

The trial of Mr. Sibat is not an isolated case. On 15 November 2009, the trial of a citizen of Saudi Arabia (his name was not reported to us) on charges of sorcery started before a court in Jeddah. The man is accused of having smuggled a book on witchcraft into the Kingdom of Saudi Arabia and is alleged to have confessed to the charges of witchcraft. The outcome of the trial is not yet known to us.

In a less recent case, a female Saudi citizen, Ms. **Fawza Falih**, was sentenced to death by beheading on charges of witchcraft. The religious police arrested her on 4 May 2005, repeatedly beat her in detention so that she had to be hospitalized, and forced her to sign by finger print a confession which she, being illiterate, could not read. Among her accusers was a man who alleged that she had rendered him impotent by means of witchcraft. In a second incident imputed to her, a divorced woman reportedly returned to her husband at the time predicted by Ms. Falih.

During the pre-trial phase, Ms. Fawza Falih was denied access by the legal counsel hired by her family and was not brought before any judicial body. She was not allowed to attend most of the sessions in her trial and specifically excluded from the trial sessions in which witnesses against her testified. A relative who had been acting as her representative was also excluded from the trial. At trial, Ms. Fawza Falih informed the judges of the ill-treatment she had been subjected to and retracted her confession. She was nonetheless sentenced to death by the first instance court. An appeals court quashed the death sentence for witchcraft as a hadd (offence against God), which carries a mandatory death sentence, on the ground that this conviction could not be upheld in the absence of a confession. On 6 June 2007, however, the first instance court sentenced her to death again, qualifying the offence not as a hadd, but as an offence against the public interest. Ms. Falih is detained awaiting execution in Quraiyat prison.

Persons suspected of and initially charged with sorcery are sometimes tried on charges of apostasy, which also carries the death sentence. As we indicated in a communication to your Excellency's Government 18 November 2008, to which regrettably no reply was received to date, Mr. **Mustafa Ibrahim**, a citizen of Egypt, was arrested in May 2007 in Arar, where he worked as a pharmacist. The charges against him appear to include that he separated a married couple through sorcery and that he committed apostasy by degrading a copy of the Qur'an. It is not known when his trial took place, whether he was assisted by a lawyer, whether he appealed against his first instance sentence. On 2 November 2007, Mustafa Ibrahim was executed in Riyadh. According to the announcement of the execution by the Ministry of the Interior, he was convicted of practicing sorcery and witchcraft.

In July 2009, a **man known as "the magician of female TV presenters"** (his real name is not known to us) was tried in a court in Hail on charges related to alleged sorcery. Members of the Mutawa'een had raided his dwelling on 22 February 2009 and found it covered in some 100,000 words of graffiti, including names of TV presenters and distorted verses from the Qur'an. Very little is known about his trial, but the court reportedly convicted him on apostasy rather than sorcery charges because he was considered "a beginner in the work of sorcery."

828. While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to these cases under international law.

829. With regard to the charges of apostasy, sorcery and witchcraft, we would like to remind your Excellency's Government that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). According to the information we have received, the charges brought against Ali Sibat, Fawza Falih, Mustafa Ibrahim and the other persons sentenced to death on charges related to accusations of sorcery did not involve any loss of life.

830. Moreover, international law requires that "capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission" (Safeguards guaranteeing protection of the rights of those facing the death penalty approved by Economic and Social Council resolution 1984/50 of 25 May 1984). We understand that the Kingdom of Saudi Arabia does not have a written criminal law and that there is no binding definition of the offence of witchcraft. The absence of a clear definition of the

offences charged undermines the accused's ability to effectively defend him- or herself against the charges and makes it exceedingly difficult to assess whether the death penalty has in fact been imposed for a crime for which it is prescribed by law.

831. We would further remind your Excellency's Government that in capital punishment cases the obligation to provide criminal defendants "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights) admits of no exception. Relevant to the cases at hand, the right to a fair trial includes the right to be assisted by legal counsel at all stages of proceedings. In this respect, we would also like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Principle 1, which reads: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings".

832. The right to a fair hearing further requires that the defendants not be forced to make confessions by violence or the threat of violence, and that the defendant be given the opportunity to examine the witnesses against him or her. These guarantees would appear to have been violated in some of the cases summarized above, particularly in the case of Ms. Falih.

833. Only full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights under international law of Ali Sibat, Fawza Falih, Mustafa Ibrahim and the other persons sentenced to death on charges related to accusations of sorcery are fully respected. This can only mean that the death penalty against them is lifted and that they are given the possibility to defend themselves (assuming the authorities decide to pursue the charges) in a fair and public trial, including with the assistance of legal counsel.

834. It is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters.

1. Are the facts alleged in the above summary of the cases accurate?
2. Is it accurate that there is no binding definition of "witchcraft", "sorcery" or "charlatanism" under the laws of the Kingdom of Saudi Arabia? If not so, please provide the definition.
3. Please provide details regarding the trials of Ali Sibat, Fawza Falih, Mustafa Ibrahim, the man known as "the magician of female TV presenters", and the man tried on charges of sorcery before a court in Jeddah on 15 November 2009: how many hearings took place and on what dates; were the hearings open to the public; where the defendants present when witnesses against them testified and were they allowed to examine those witnesses; were the defendants assisted by legal counsel, if so, at what stages of the proceedings?
4. How many persons have been sentenced to death on charges of "witchcraft", "sorcery" or "charlatanism" in Saudi Arabia in the course of the last five years? How many of those sentenced to death on such charges have been executed?

## Senegal

### Mort en garde à vue de six hommes

**Violation alléguée:** Morts en garde à vue à cause de torture, négligence, ou usage de la force; ou crainte de mort pendant la garde à vue à cause de conditions de détention que menace la vie.

**Objet de l'appel:** 6 hommes

**Caractère de la réponse:** Pas de réponse

**Observations du Rapporteur Spécial:** Le Rapporteur Spécial regrette que le Gouvernement du Sénégal n'ait pas coopéré avec le mandat qui lui a été conféré par l'Assemblée Générale et le Conseil des droits de l'homme.

**Lettre d'allégation envoyée le 8 Avril 2009,** avec le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants.

835. Dans ce contexte, nous souhaiterions attirer l'attention de votre Gouvernement sur des informations que nous avons reçues concernant M. **Modou Bakhom**, âgé de 32 ans, Mme **Aïda Camara**, M. **Boubacar Kambel Dieng**, M. **Karamokho Thioune**, M. **Dominique Lopy**, âgé de 23 ans, et M. **Alioune Badara Diop**, âgé de 38 ans.

Selon les informations reçues :

Dans la nuit du 23 janvier 2009, Modou Bakhom, aurait été arrêté par des agents de la brigade de la gendarmerie de Karang. Pendant son interrogatoire, des cris auraient été entendus. Il aurait été transféré en garde à vue dans une chambre de sûreté. Le 24 janvier 2009, M. Mamadou Bakhom aurait été déclaré mort.

Aïda Camara, arrêtée dans le cadre d'un meurtre, se serait suicidée par pendaison dans sa cellule au Commissariat central de Dakar, le 27 novembre 2008.

Le 21 juin 2008, Boubacar Kambel Dieng et Karamokho Thioune auraient été menottés et enfermés dans une salle non éclairée par la police sénégalaise après un match de football. Ensuite ils auraient été maltraités pendant une dizaine de minutes. Une enquête aurait été entamée en octobre 2008 à l'encontre des responsables.

Dominique Lopy serait décédé dans la nuit du 14 avril 2007, un jour après son arrestation par la police de Kolda. Au cours d'un interrogatoire, il aurait été sévèrement battu par la police, dont résultaient de nombreuses blessures. Aucune arrestation n'aurait été effectuée et les résultats de l'autopsie n'auraient toujours pas été publiés.

Le 13 décembre 2007, Alioune Badara Diop serait décédé dans les locaux du Commissariat de la police de Ndong, à Kaolack, après avoir été maltraité pendant la garde à vue. Une autopsie aurait été effectuée et les principaux acteurs de ces événements auraient été inculpés et mis sous contrôle judiciaire.

836. Sans vouloir à ce stade nous prononcer sur les faits qui nous ont été soumis, nous souhaiterions néanmoins intervenir auprès de votre Excellence afin de tirer au clair les circonstances ayant provoqué les faits allégués ci-dessus. Nous aimerions rappeler au Gouvernement de votre Excellence les principes fondamentaux applicables à ces cas. L'article 3 de la Déclaration universelle des droits de l'Homme et l'article 6 du Pacte international relatif aux droits civils et politiques, stipulent que tout individu a le droit à la vie et à la sûreté de sa personne, que ce droit doit être protégé par la loi, et que nul ne peut être arbitrairement privé de la vie. En outre, l'article 7 du Pacte stipule que "nul ne sera soumis à la torture ni à des peines ou traitements cruels, inhumains ou dégradants", une

prohibition stipulée également par la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants.

837. De plus, nous voudrions attirer l'attention de votre Gouvernement sur le principe établi en droit international des droits de l'homme d'une présomption irréfragable de responsabilité de l'Etat pour les violations du droit à la vie et le droit à l'intégrité physique et morale, survenus dans les cas de détention (voir aussi le récent rapport du Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires à l'Assemblée générale, A/61/311, paragraphe 49 à 54). La raison de cette présomption a été énoncée par le Comité des droits de l'homme dans l'affaire *Dermit Barbato c. Uruguay* (communication no. 84/1981 du 21/10/1982, paragraphe 9.2). La conclusion du Comité des droits de l'homme se lisait comme suit :

- « Le Comité ne peut se prononcer de façon définitive sur la question de savoir si Hugo Dermit s'est suicidé, s'il a été poussé au suicide ou s'il a été tué par des tiers pendant sa détention, mais il est obligé de conclure qu'en tout état de cause, les autorités uruguayennes sont responsables, soit par action, soit par omission, de n'avoir pas pris les mesures voulues pour protéger la vie de l'intéressé, comme le paragraphe 1 de l'article 6 du Pacte leur en fait l'obligation. »

838. Nous prions donc votre Gouvernement de diligenter une enquête sur les décès mentionnés précédemment et de traduire les responsables en justice, s'il est déterminé que les forces de sécurité ont eu recours à un usage excessif de la force, conformément aux principes relatifs à la prévention efficace des exécutions extrajudiciaires, résolution 1989/65 du 24 mai 1989 du Conseil économique et social. En particulier les principes 9 à 19 obligent les Gouvernements à mener des enquêtes approfondies et impartiales dans tous les cas où l'on soupçonnera des exécutions extrajudiciaires, arbitraires ou sommaires; à rendre publiques les conclusions d'enquêtes; et à veiller à ce que les personnes dont l'enquête aura révélé qu'elles ont participé à de telles exécutions sur tout le territoire tombant sous leur juridiction soient traduites en justice. Des procédures et des services officiels d'enquête doivent être maintenus, alors que les plaignants, les témoins, les personnes chargées de l'enquête et leurs familles doivent être protégées contre les violences ou toute autre forme d'intimidation.

839. Il est de notre responsabilité, en vertu du mandat qui nous a été confié par le Conseil des droits de l'homme de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Etant dans l'obligation de faire rapport de ces cas au Conseil des Droits de l'Homme, nous serions reconnaissants au Gouvernement de votre Excellence de ses observations sur les points suivants :

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts? Si tel n'est pas le cas, nous vous prions de fournir toute information ou documents prouvant leur inexactitude.
2. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, examens médicaux, investigations judiciaires et autres menées en relation avec les faits.
3. Si les allégations sont avérées, veuillez fournir toute information sur les poursuites et procédures engagées contre les auteurs ou responsables de la violence. En ce qui concerne les cas d'Alioune Badara Diop, de Dominique Lopy, de Boubacar Kambel Dieng et de Karamokho Thioune, veuillez nous fournir des informations sur l'avancement des procédures judiciaires entamées à l'encontre des policiers inculpés dans cette affaire.



## Serbia

### Impunity for the killing of journalist Slavko Ćuruvija

**Violation alleged:** Impunity, compensation and the rights of victims

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Serbia has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 3 April 2009,** sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

840. In this connection, we would like to bring to your Government's attention information we have received concerning progress in the investigation of the killing of Mr. a very well-known journalist and newspaper editor, ten years ago. On 11 April 1999, two masked men approached Slavko Ćuruvija from behind on the street in front of his home in Belgrade and fired 17 bullets into his back and head. A communication of the then Special Rapporteur on extrajudicial, summary or arbitrary executions to your Excellency's Government seeking information on this case (E/CN.4/2000/3/Add.1, para 95) has regrettably remained without response.

841. According to the information we have received, the murder was preceded by significant public tension between Slavko Ćuruvija and the then President of the Federal Republic of Yugoslavia, Slobodan Milošević. At the time, the NATO bombing campaign against Serbia in connection with the Kosovo crisis was ongoing. Mr. Ćuruvija had criticized President Milošević's policies and called upon him to resign. He reportedly also was in open conflict with Mirjana Marković, a senior politician and the wife of the President.

Five weeks before his murder, on 8 March 1999, Mr. Ćuruvija was sentenced to five months' imprisonment for "disturbing the public" through a text published in his daily newspaper, in which he accused President Milošević of repressive policies. One week before the murder, Ms. Marković reportedly accused Mr. Ćuruvija of being the "main state enemy who was responsible for NATO's bombing campaign," and concluded that he would be "tried by the people" for his betrayal of the national cause. Five days before the assassination, on 6 April 1999, a state-owned paper published an article calling Slavko Ćuruvija a traitor who called for, and supported, NATO's bombing of Serbia. The article announced that his treason would not be forgotten.

Although the case has been under investigation for ten years, it is alleged that nobody has been brought to trial for the murder. Witnesses have reportedly identified L.P. (full name on record with us), a criminal gang member who was allegedly also working for State Security, as one of the two assassins. He was killed with a gun shot in the back of his head in 2000. Another element reportedly revealed in the course of criminal investigation into the case was that, in the months leading up to his murder, Slavko Ćuruvija and his spouse had been under round-the-clock surveillance conducted by a detachment of 27 members of the State Security service. A State Security document detailing his movements on the day of assassination reportedly shows that (for reasons that remain to be explained) the surveillance team was withdrawn 30 minutes before the assassination was carried out. Several State Security officials are suspected by journalists and civil society of involvement in the murder, but none of them was ever charged.

842. While we do not wish to prejudge the accuracy of these reports, we would like to highlight the continuing importance, notwithstanding the ten years that have passed since April 1999, of fully investigating this murder and ending impunity for those responsible. Slavko Ćuruvija's killing was, according to many observers, the highest-profile attack on freedom of expression in Serbia's recent history.

843. The violation of Slavko Ćuruvija's right not to be arbitrarily deprived of his life protected by Article 6 of the International Covenant on Civil and Political Rights implies a duty of the State "to conduct exhaustive and impartial investigations" into this suspected case of extrajudicial, summary or arbitrary execution (Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4)).

844. Impunity for the murder of Slavko Ćuruvija is also of great and ongoing concern from the point of view of the right to freedom of expression. Impunity for attacks against journalists, particularly in cases where there are elements justifying allegations of State involvement in the killing of a journalist, may discourage independent reporting. We would therefore appeal to your Excellency's Government to take all necessary steps to bring to justice those responsible for the death of Slavko Ćuruvija. This would be an important measure to strengthen the right to freedom of opinion and expression in accordance with article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. They provide that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

845. The tenth anniversary of the killing of Slavko Ćuruvija on 11 April 2009, offers an opportunity for your Excellency's Government to reiterate its commitment to the right to life, to the fight against impunity, and to freedom of expression.

846. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your observations on the results of the criminal investigations or other inquiries which have been carried out in relation to the killing of Slavko Ćuruvija.

## **Somalia**

### **Concerns about death penalty safeguards in sentences against Ifraah Ali Aden, Ahmed Mohamed Mohamoud and Bashir Mohamed Isse**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 female and 2 males

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Somalia has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 5 June 2009,** sent with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on violence against women, its causes and consequences.

847. We are writing to draw the attention of your Excellency's Government to information we have received regarding the death sentence issued in two cases, respectively against Ms. **Ifraah Ali Aden**, who is reportedly pregnant and incarcerated in Bossaso

central prison, and against Messrs. **Ahmed Mohamed Mohamoud** and **Bashir Mohamed Isse**.

According to the information received:

The Court of First Instance in the City of Bossaso sentenced Ms. Ifraah Ali Aden to death on 27 April 2009, for the murder of Ms. Suad Mohamed Aware, another of her husband's wives. The victim was the daughter of the President of that same court. However, he did not sit on the bench during the trial. Ms. Aden is reported to be four or five months pregnant.

Ms. Aden was sentenced to death within 24 hours after the alleged killing and did not have the necessary time to consult with a lawyer and prepare her defence. In this regard, it is unclear whether Ms. Aden had access to adequate legal representation. Ms. Aden's relatives report that she may have acted in self-defence.

Messrs. Ahmed Mohamed Mohamoud and Bashir Mohamed Isse were sentenced to death on 29 April 2009 by a temporary Islamic Shari'a Court appointed, by virtue of decree No: MW/DPS/27/09 dated 28/04/09 of the President of Puntland, State of Somalia, to hear and reach a verdict on the case that caused the death of the Governor of Karkar Yasin Said Hussein and the injury of Mohamud Abdi Mohamed that took place in Dudhub village in Karkar Region on 26/04/09. As such, the Islamic Shari'a Court is not part of the ordinary judicial structure of Somalia. In addition, two of the persons appointed were not judges, but religious scholars.

Messrs Ahmed Mohamed Mohamoud and Bashir Mohamed Isse were only appointed a lawyer during the hearing and did not allegedly have enough time to consult with him.

In its sentence, the court only referred to the possibility that "The President has the right to alleviate the death sentence to imprisonment and thereafter the heirs have the right to present their request for compensation." It did not, however, inform the accused of their right to appeal.

848. While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to this case under international law.

849. We would like to remind your Excellency's Government that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious criminal provisions indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Based on the reports we have received about Ms. Aden's case, in which there are claims that she may have acted in self-defence (claims that are unlikely to have been adequately explored in the 24 hours between the alleged killing and the imposition of the death sentence), there is reason to believe she may not have acted with the requisite intent.

850. We would further remind your Excellency's Government that under Articles 6 and 14 of the International Covenant on Civil and Political Rights (ICCPR), to which Somalia is a party, death sentences may only be carried out pursuant to a final judgment rendered by a competent, independent and impartial court, established by the law, in accordance with the requirements of due process. Due process requirements include, at a minimum, the accused's right: to be informed of the charges; to be given adequate time and facilities for

the preparation of a defence; to be assisted by legal counsel of her own choosing; and, to obtain review of any conviction and sentence by a higher court. Effective exercise of the right to an appeal also requires that the defendant be provided with legal counsel and time to prepare adequately for the appeal. The right to be assisted by a legal counsel is also set forth in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular:

- Principle 1: 1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
- Principle 5: Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

851. We would also like to refer Your Excellency's Government to the Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular principles 2, 5, 6 and 10 which prescribe that:

- The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
- Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
- The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
- Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualification in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. (...)

852. The reports we have received indicate that Ms. Aden was not afforded any of the rights mentioned above. Moreover, it appears that she was judged by colleagues of the victim's father, who is the President of the Court of First Instance.

853. We would also like to bring to the attention of your Excellency's Government article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, which provides that States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake to, inter alia: (f) take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; and (g) to repeal all national penal provisions which constitute discrimination against women. Further to the above, the same Convention also provides in article 15 that "States Parties shall accord to women equality with men before the law". We are concerned that in Ms. Aden's case these and other human rights provisions may not have been fully respected.

854. Only full respect for stringent due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates human rights standards. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights of Ms. Aden under international law are fully respected. Considering the irreversible nature of the death penalty, this would mean that the death penalty is not carried out unless, and until, Ms. Aden is provided a fair trial and full appeal rights in accordance with the requirements of due process.

855. We also remind your Excellency's Government that Article 6(5) of the ICCPR provides that the death penalty shall not be carried out against pregnant women and that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.

856. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on this case to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details of any investigation into Ms. Aden's alleged conduct and of the trial proceedings conducted against her, including: the conduct she was charged with and found guilty of; whether she was represented by legal counsel; the amount of time she was afforded to prepare a defence and the resources available to ensure the adequacy of the defence; whether she was afforded the opportunity to present evidence and witnesses; whether she was afforded the right to appeal her conviction and sentence.
3. Please provide the details of any investigation into Messrs. Ahmed Mohamed Mohamoud and Bashir Mohamed Isse alleged conduct and of the trial proceedings against them, including: that which they were charged with and found guilty of; whether they were represented by legal counsel; the amount of time they were afforded to prepare a defence, the resources available to ensure the adequacy of the defence; whether they were afforded the opportunity to present evidence and witnesses; and whether they were afforded the right to appeal their conviction and sentence.
4. Please provide information about the remedies open to Ms. Aden and to Messrs. Ahmed Mohamed Mohamoud and Bashir Mohamed Isse to challenge the sentence imposed against them.

## **Sri Lanka**

### **Civilian casualties during military offensive by the Sri Lankan armed forces in Mullaitivu district**

**Violation alleged:** Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law

**Subject(s) of appeal:** Group of persons (about 6432 civilians including about 454 children)

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Sri Lanka has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent appeal dated 30 April 2009**

857. I write to your Excellency's Government with regard to the **number of civilian casualties of the ongoing military offensive by the Sri Lankan armed forces in the so-called No Fire Zone in Mullaitivu district.**

According to information I have received:

From 20 January to 21 April 2009, an estimated 6432 civilians were killed, of whom 5580 were killed in the so-called No Fire Zone in Mullaitivu district, including an estimated 454 children. Approximately 85% of those killed died as a result of shelling of the No Fire Zone. On 24 February 2009, your Excellency's Government announced that it would no longer fire heavy weapons into the No Fire Zone. The average number of civilians in the No Fire Zone killed each day by shelling, however, did not decrease after this announcement.

On 7 April 2009, for instance, at 7:30 a.m. four or five artillery shells reportedly hit the area near Pokkanai primary health center, where hundreds of civilians were waiting in line near a food distribution center, killing at least 13 civilians immediately and wounding over 50 others. The shells were 120mm rounds and were apparently fired from positions of the Sri Lankan Army to the south. The make-shift hospital in Putumattalan received 133 wounded civilians and the dead bodies of 20 persons on that day. On the morning of 8 April 2009, two further shelling attacks hit Pokkanai. The Putumattalan hospital received 296 wounded and 46 dead bodies on 8 April 2009, and 300 wounded and 62 dead bodies on 9 April 2009.

On 27 April 2009, the Presidential Secretariat released a statement declaring that "Our security forces have been instructed to end the use of heavy caliber guns, combat aircraft and aerial weapons which could cause civilian casualties." On the same day, however, gun fire and shells endangered civilians Mullivaikkal and Puthukkudiruppu in the No Fire Zone from 3:30 a.m. to 9:00 a.m. Around 12:40 p.m. and again at 1:10 p.m. the Sri Lankan air force carried out two strikes in the Mullivaikkal South area. Artillery shells were fired into the Mullivaikkal North area at around 5:40 p.m. At 6:50 p.m. heavy shelling of the Mullivaikkal area started. On that day, 27 April 2009, 139 injured civilians were admitted to Mullivaikkal hospital, 19 of whom died after admission.

858. While I do not wish to prejudge the accuracy of these reports, I would like to refer Your Excellency's Government to the fundamental legal rules applicable to all armed conflicts under international humanitarian law and human rights law.

859. Specifically, your Government is under an obligation to distinguish between combatants and civilians and to direct attacks only against combatants (Rules 1, 6 and 7 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross ("Customary Rules")). Indiscriminate attacks are prohibited (Rule 11 of the Customary Rules). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14 of the Customary Rules). All feasible precautions must be taken to avoid and minimize incidental loss of civilian life (Rule 15 of the Customary Rules).

860. There are credible reports that the Liberation Tigers of Tamil Eelam (LTTE) have been holding civilians as human shields in the No Fire Zone, and that LTTE cadres have shot at civilians trying to leave the area. This conduct by the LTTE would constitute a most serious violation of its obligations under customary humanitarian law. I would, however, draw your Government's attention to the principle whereby a violation of the obligation to take precautionary measures vis-à-vis the civilian population or their use as human shields

by one side to a conflict does not change the obligations incumbent on the other party to the conflict to evaluate what constitutes an excessive attack in relation to concrete and direct military advantage (see A/HRC/10/22, para. 17).

861. I urge your Excellency's Government to immediately take all necessary steps to ensure full respect for the 27 April 2009 announcement by the Presidential Secretariat that "the use of heavy caliber guns, combat aircraft and aerial weapons which could cause civilian casualties" would be ended. In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the civilians in the so-called No Fire Zone in compliance with your Government's international legal obligations.

862. It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on the killings of civilians resulting from the military operations your Excellency's Government is conducting against the so-called No Fire Zone since February 2009, I would be grateful for your cooperation and observations on the following four matters:

1. Are the facts alleged in the above summary accurate? Please refer to the results of any police or military investigation, or judicial or other inquiries carried out in relation to the killings of civilians resulting from the military operations against the so-called No Fire Zone since 20 January 2009.
2. What assessment was made to ensure that the attacks against the so-called No Fire Zone since 20 January 2009 complied with the rules of international humanitarian law and human rights law? Specifically, what safeguards, if any, were employed to verify that only legitimate military targets were attacked? What methods were adopted to distinguish between military and civilian objects? What precautions were taken to minimize loss of civilian life? What means and methods of warfare were adopted to avoid incidental loss of civilian life, and to ensure that incidental loss of life was not excessive in relation to the anticipated military advantage?
3. Please provide the details of any disciplinary measures imposed on, or criminal prosecutions against, members of the armed forces responsible for the alleged the killings of civilians in the so-called No Fire Zone since 20 January 2009.
4. Please state whether any compensation was, or is intended to be, provided to the families of the victims.

#### **Sri Lanka: Summary executions by the Sri Lankan army**

**Violation alleged:** Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law

**Subject(s) of appeal:** Group of persons, including 2 unknown men

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the willingness of the Government of Sri Lanka to engage in detailed dialogue on the issue of alleged summary executions of a significant number of men by the Sri Lankan Army, as depicted in a video tape aired in August 2009. The Special Rapporteur looks forward to an independent and impartial investigation of the underlying events.

#### **Allegation letter dated 28 August 2009**

863. In this connection, I would like to draw the attention of your Excellency's Government to reports I have received concerning the alleged summary execution of a

significant number of men by the Sri Lankan army. While the exact circumstances of the killings remain unclear it is alleged that they took place during military operations in or around Kilinochchi in January 2009. Video footage allegedly documenting the incident shows two naked men, bound and blindfolded being shot at point-blank range by men wearing Sri Lankan army uniforms, as well as the bodies of eight other men all but one naked.

864. Following the release of this video footage in the media, your Excellency's Government publicly responded by strongly and unequivocally denying the allegations contained in the video footage. In a statement reproduced by several media outlets, the Sri Lankan High Commission in the United Kingdom declared that it categorically denied, "that the Sri Lankan armed forces engaged in atrocities against Sri Lankan Tamil community. They were only engaged in a military offensive against the LTTE."

865. While I do not wish to prejudge the accuracy of these reports, I would like to refer your Excellency's Government to the relevant principles of international humanitarian law and international human rights law applicable in situations of non-international armed conflicts.

866. In particular, I would like to refer to Common Article 3 to the 1949 Geneva Conventions which prohibits "violence to life and person, in particular murder of all kinds" of persons taking no active part in the hostilities or who have been placed *hors de combat*, including by detention. I would also like to refer to the obligations arising under human rights law. The International Covenant on Civil and Political Rights ("ICCPR"), to which Sri Lanka is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

867. While I take note of Your Excellency's Government's denial of these allegations, I wish to recall that international law provides that states have the obligation to conduct a thorough investigation of all alleged violations of the right to life. (E/CN.4/2006/53, paras. 33-43, 60.) When such violations occur in the context of an armed conflict, States must investigate war crimes allegedly committed by their nationals or armed forces or on their territory and if appropriate prosecute the suspects. I note with interest that Your Excellency's Government denies that its armed forces were engaged in atrocities against the Sri Lankan Tamil community. I am not, however, aware of any more specific statement indicating that the events depicted in the video either did not take place, were fabricated, or did not involve the Sri Lankan army. In any event it is incumbent upon the Government to respect the obligation to conduct an independent and impartial investigation into alleged war crimes committed on its territory or by its nationals. Under the circumstances, and in order to ensure that any investigation that might clear Your Excellency's Government of any responsibility is considered to be credible, and thus affirms the position expressed by the Government, it would seem indispensable for an independent investigation to be undertaken.

868. I would also wish to reiterate my previously expressed request to undertake an official visit to Sri Lanka in order to undertake further inquiries into the issues raised in this and previous communications. I would be most grateful if you could indicate dates on which such a visit might be convenient.

869. It is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the allegations in the above summary of the events accurate? If so please provide details on the incident.



2. When violations of international humanitarian law or of human rights law are alleged to have been committed by members of the Sri Lankan armed forces, what are the established investigation procedures that are followed? Please explain how these have been followed with regards to the above incident.
3. Please provide details on the rules of engagement provided to the members of the Sri Lankan armed forces before the operations in the Kilinochchi area, in particular instructions concerning the treatment of civilians not taking part in the hostilities and of LTTE cadres who had been detained or otherwise placed *hors de combat*.
4. Please provide details of any investigation or inquiry that has been launched into the above incident.

#### **Response of the Government of Sri Lanka dated 31 August 2009**

870. Thank you for your letter of 28 August faxed to our Mission in Geneva at 14:45. This is well after our offices close in Sri Lanka, so I was able to read the letter only the next morning, a Saturday, on which I went to the office specifically for the purpose.

871. I remember you complaining once, in explaining why you could not answer letters promptly, that your position was unpaid. Please note that we are not paid extra for working outside hours. While answering your letters can be undertaken as a labour of love, it would be kind if you tried, if you needed to write to us, to do so well before late on Friday afternoons.

872. This seems the more desirable in that we have also been sent a press release which you had dispatched to our Mission in Geneva at 15:37 on that same Friday afternoon, a release which seems to make your letter redundant. I recall that, on the last time you and your colleagues launched such a press release, it was claimed that this followed on letters to which we had not responded. Those letters had been sent a week earlier, and a week which included holidays scarcely seemed an undue delay, given also the continuing failure of the UN system to respond promptly to letters from us.

873. It was also claimed that the release had been sent to us in time for a response, and it was because we had not responded that the release was issued as it stood. When I pointed out that the letter accompanying the release did not indicate that discussion would serve any purpose, you asserted when we met that you did take responses into account and that you had indeed once altered a press release on the strength of a response you had received.

874. I should note that you must have been well aware that your release would be made prompt use of by terrorist elements. It was highlighted within a few hours by TamilNet. The article was entitled 'Horrendous video images indicate violation of international law - UN expert', available at <http://www.tamilnet.com/art.html?catid=13&artid=30104>, also makes reference to a previous effusion on your part.

875. In addition to the suspicious timing of your two pronouncements on the 28th, there are several points about the letter specifically addressed to our Mission which are not clear. I would be grateful for immediate clarification to enable us to respond. Please note that I am writing this on a Sunday and, though I normally do such work as a matter of course, I hope that you too will, despite not receiving any remuneration, respond swiftly.

876. Firstly, your letter begins with the words "in this connection" was this strange locution simply a mistake, arising from haste, or were we intended to trace the connection ourselves? I could only surmise that we were supposed to read this in conjunction with previous demands from the Office of the High Commissioner for Human Rights to have what is termed an independent investigation into events in Sri Lanka. You are probably aware that one of your peers declared that 'All is Disaster' when attempts to place Sri

Lanka in the dock at a special session of the United Nations Human Rights Council failed. Do you share this view?

877. Your letter refers to reports you have received ‘concerning the alleged summary execution of a significant number of men by the Sri Lankan army’. Have you received reports of such an alleged incident, or are they simply reports of video footage allegedly documenting this alleged incident? Any independent report should be conveyed to us at once but, if your report is only of the video footage, it would be best if you first sought further details about this, to help establish whether an investigation of the alleged incident would serve any purpose.

878. You note that the exact circumstances of these alleged killings remain unclear, but say that it is alleged that they took place in January 2009. Since the video footage gives no clue about the time or place, presumably this attribution of a particular period was by sources you are unwilling to share with us. That is of no great consequence, but you need to tell us whether these sources have communicated with you only what the television presented said, or whether they have been able to ascertain the reasons for the attribution of this period.

879. You do not mention what reports referring to the footage claimed, that the video had been made by a soldier on a mobile phone. Have you checked on this claim, and also found out why this footage only emerged in the public domain seven months later? Have you also found out from experts whether the footage, which seemed of high resolution, is consistent with this story? Are your sources still in contact with the alleged soldier, or can they confirm that the television channel authorities or those from whom they received the material are in possession of further information or in a position to provide it at a later stage?

880. Reports also claimed that the footage had been provided by an organization calling itself Journalists for Democracy in Sri Lanka. This organization seems to have been set up very recently, and its provenance and purpose remain unclear. Have you checked on the credentials of this organization and its members, or ascertained whether the television channel authorities have done so?

881. Though the first paragraph of your letter, beginning ‘in this connection’ deals with the video footage, the second and subsequent one lay stress on what you claim is a statement issued by our High Commission in the United Kingdom that was reproduced by several media outlets. In your press statement you assert that, on the basis of the awareness ‘that the Sri Lankan Government has categorically denied the veracity of the allegations’, there is no justification for not moving forward with an investigation.

882. I am aware that you are a professor of law, and therefore you must realize that ‘moving ahead with an investigation’ requires positive justification in the form of credible basic evidence. You are not appointed to an exalted position, albeit without remuneration (as you have so often told me, though I trust your expenses are met in accordance with generous UN guidelines), to score debating points and make public pronouncements to harass member states, but rather to look carefully through evidence to draw attention to situations that require the attention of member states.

883. Did you check further on the provenance of the footage before rushing in where the angels we believe the UN system should nurture might have been cautious about treading? Did you note the previous history ‘in this connection’ (ie coverage of Sri Lanka) of the television channel concerned? Is it your business to base a case on the reproduction in media outlets of a statement of our High Commission, while ignoring the response of the Secretary to the Foreign Ministry who pointed out that evidence presented to us would be investigated?

With regard to your specific questions

- (a) Your letter mentions an allegation but no summary of events. It is true that there was an allegation, and that video footage was telecast, but there is no incident about which details can be provided. It is up to you to seek further details about the allegation, and if possible summarize an incident which you may then legitimately ask us to investigate if you are of the view that there was indeed an incident as opposed to an allegation alone.
- (b) Your second request in this para is in fact a leading question, inasmuch as there is no incident with regard to which it is possible to explain how standard procedures were followed. If you require a general answer to the actual question here, I can ask the Ministry of Defense to supply it, but in view of your subsequent press release that suggests you have prejudged the issue, I need your assurance, before I worry others, that you are seeking in good faith, in terms of your mandate to assist member states, and not in pursuit of a different sort of agenda.
- (c) The forces that went into battle were equipped with training and information leaflets about international law. Again, I can send you copies of material if you are indeed serious, and once again I shall be happy to accept a personal assurance, even though I was deceived with regard to your assurances as to how you issue press releases.
- (d) Please provide details of the incident which you want to be investigated or inquired into.

884. I would be grateful for an acknowledgement of this letter and would advise withdrawing your press release until you can establish that there was an incident to investigate and that the Government of Sri Lanka failed to investigate any such incident. I hope the sixty days you have suggested for our response will suffice for your response, and you may deduct from these the days that have passed since I was able to see your letter.

885. I would also be happy to meet with you when I am in Geneva next month, in the hope that we can work together to improve both our situations and yours. I am aware that you were warned not to respond to me, and I can only assume that this was done by the only official in the Office of the High Commissioner for Human Rights who knew us both at the time we spoke, back in December 2007. I would of course welcome your assurance that it was not Rory Mungoven who advised you not to respond to me, since my suspicions of his bona fides date from that time, and it is possible that I have been doing the man an injustice and we should seek to work together more productively.

886. I would also welcome, as I have often written, working with you in terms of your mandate, and indeed I thought after our last meeting, and your assurances, that this would be possible. I was sorry therefore that once again you failed to respond to my previous letter, and you have returned to the subject of Sri Lanka only in order to issue yet another tendentious press release.

Yours sincerely  
 Prof. Rajiva Wijesinha  
 Secretary  
 Ministry of Disaster Management and Human Rights.

#### **Response of the Special Rapporteur dated 4 September 2009**

887. Dear Professor Wijesinha,

888. I am replying to your letter dated 31 August 2009 in response to my statement about the need to investigate the authenticity of what has become known as the Channel 4 videotape.

889. Permit me first of all to apologize for the inadvertent omission by the Secretariat when conveying the allegation letter which I had drafted. I understand that its apologies were conveyed to the Permanent Mission as soon as the error was recognized.

890. Your letter raises a significant number of questions in relation to both the authenticity of the video, and the circumstances surrounding its making and release. I fully agree with you that answers are needed to these questions, which is why I have attached major importance to the need for an independent investigation to get to the bottom of the matter.

891. As I read it, the essence of your response is that the video itself and the information alleged to me by the various sources that brought it to my attention in my capacity as Special Rapporteur, do not warrant any attention on the part of the Sri Lankan Government until and unless definitive evidence is able to be provided. As you put it in your newspaper article earlier this week:

892. [I]t is really too much to expect that an investigation be set in motion on the strength of a video clip shown on a television channel that had previously engaged in bizarre inaccuracies. (Source: Prof. Rajiva Wijesinha, 'Arbitrary Execution by Prof Philip Alston', Daily News, Sept 2, 2009, available at <http://www.dailynews.lk/2009/09/02/fea03.asp> )

893. This is the same article in which you claimed that my statement on the issue of the videotape sets me 'at the heart of a terrorist media campaign against the Sri Lankan Government.'

894. In my view, however, the standard that your response implies is clearly too demanding if the Human Rights Council and its special procedures are to be able to respond effectively to alleged human rights violations. The onus placed upon a Special Rapporteur in a situation such as this is to form the view, in light of all of the information available to him as well as his own professional expertise and judgment, that the allegations made are sufficiently credible as to warrant investigation by the Government. Only the Government, or others acting with the support or permission of the Government, would be in a position to undertake the type of investigation required. It is an inappropriate standard to expect that those making allegations in relation to complex human rights situations should bear such a strong burden of proof before the Government itself should take any action. It strikes me as equivalent to a police officer telling an alleged victim that no investigation will take place until the victim can definitively prove to the officer's satisfaction that the alleged crime took place. The standard that you suggest would result in very few allegations ever being considered sufficiently credible as to warrant investigation by the Government in accordance with its responsibilities under international law.

895. The applicable standard is reflected in paragraph 9 of the United Nations, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted on 24 May 1989, which requires that '[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances.'

896. There will always be legitimate room for debate as to what constitutes a 'reliable' report in a given situation. While it is clear that a video tape can be fabricated, so too can almost all other sources of alleged evidence. In this instance, taking account of various characteristics of the video, it does not seem to me that the video on its face is patently fake or staged. In my view it constitutes a sufficiently prima facie reliable source as to warrant

investigation. If it can be convincingly shown to be a fake, so that the scenes of killing depicted in the video were staged or contrived, as your Government apparently believes, I will be immensely relieved and the allegations submitted to me by various sources will be shown to have been unreliable. I do not accept, however, that a video of this nature can be dismissed as self-evidently unreliable in the absence of any detailed investigation or analysis undertaken either by the Government or by independent experts.

897. Given the extremely serious nature of the killings depicted in the video, and your Government's stated commitment to respecting human rights and promoting reconciliation within the country, it is my hope that serious consideration will be given to establishing an independent investigation into the alleged incident.

898. Since it is my responsibility, under the mandates provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I look forward to receiving a response which addresses the facts alleged in the letter sent to your Government. As you know, my responsibility is to report on all such cases to the Human Rights Council and I undertake to ensure that our correspondence on these matters will be duly reflected in my report to the Council.

#### **Response of the Government of Sri Lanka dated 7 September 2009**

899. Dear Prof Alston

900. Thank you for your letter dated September 4th. I am honoured to have received a reply from you at last, and pleased that it came so promptly. I hope that this will be the beginning of a proper dialogue on record, that will help us in our joint aim of promoting human rights.

901. I am happy too to accept your apology with regard to the omission, by the Secretariat in the letter that you signed and sent to us, of part of your original draft. Careful attention to the work of the Secretariat may be useful in future. In this context I note that you have not responded to the query at the end of my last letter.

902. May I take it then that the warning you receive about responding to me in writing indeed came from Mr Mungoven? You will recall that the beginning of the problems in your relationship with Sri Lanka came from the leak of your original, to my mind generally very helpful, report on Sri Lanka. As noted previously I fully accept your assurance that you were not responsible for the leak, but I still believe it would be helpful if you tried to find out how exactly it took place from the Secretariat.

903. With regard to the actual substance of your letter, I am sorry that you have confined yourself to a single issue, and not responded to the detailed questions I asked. I am also sorry that, in the interim, you have spoken loosely to the press, though I presume I should deal with these infelicities separately, since your letter indicates that you will find the time to look at any releases I might issue, for which I am again grateful.

904. The most important question you have avoided is that of whether you received any reports of an incident taking place in Sri Lanka on the lines of that shown in the video or whether it was simply a report of the video itself that prompted your letter. The whole of your letter suggests that you are indeed relying simply on a report or reports of the video, save for one line, in which you refer to 'allegations submitted to me by various sources'.

905. If you are referring to allegations with regard to any other incident, it is incumbent on you to tell us what those allegations are. You may recall that we have been inundated with assertions by UN experts and others demanding international investigations on the strength of generalizations. The government has committed itself to investigating specific allegations, but all we have thus far is 'a series of allegations' (as you are alleged to have mentioned in a Radio Australia report) which range from the London Times claim of

20,000 civilians killed to the Guardian assertion of 11 crop haired women with slit throats. I have dissected the former claim, and will send you the relevant article if you have not already seen it. With regard to the latter, I checked with all agencies involved in Protection issues in terms of the mandate of this Ministry, and received universal denials that there were any grounds for suspecting that anything of the sort had taken place.

906. Please therefore let me know if there are any specific allegations that you feel require investigation. If however the phrase in your letter that I cite refers simply to the incident shown in the video, I can only repeat that you must give us more details of what specifically we should investigate, by indicating date or place or both, in line with the details you usually supply in queries you send to us.

907. Your analogy in this instance, that the request I am making is 'equivalent to a police officer telling an alleged victim that no investigation will take place until the victim can definitely prove to the officer's satisfaction that the alleged crime took place' is nonsensical, and a Professor at least should be able to see this straight away, with or without a moment's reflection. A victim who reports a crime can be asked as to when and where it took place, or at least when and where it was discovered that a crime seemed to have happened. In this instance we are told by you that you have reports of a video in which an alleged incident took place, with no indication of when and where it happened.

908. Surely you must realize that, if for instance a lawyer were to bring an incident to the attention of the authorities, that lawyer would be expected to provide details of the incident. A victim or even a witness who went to a lawyer and said that an incident had taken place but they could give no details of the time or place could not expect the lawyer to take the case further, though of course one would expect a good lawyer to ask questions in an effort to find at least some details that could be investigated

909. The situation is compounded in this instance by the previous allegations by Channel 4, which has a history of trying to denigrate the Sri Lankan government. We are also worried by the claim in the presentation of the allegation by Channel 4 that the video was supplied by a group called Journalists for Democracy in Sri Lanka. This is a new grouping, and may include individuals who you may have known previously as involved in the hounding out from the Centre for Policy of Alternatives of Kethesh Loganathan. As you may recall, he was later murdered when he was proving a doughty opponent of the LTTE whilst functioning as Deputy Secretary General of the Peace Secretariat in Colombo.

910. I would be happy to discuss this with you further when I am in Geneva for the 12th session of the Human Rights Council, if you could spare the time to see me. Meanwhile if you are able to provide us with any further information, or even a copy of the original video supplied to Channel 4, we can try to pursue the matter further. It would however be counter productive for us to seek such information from Channel 4 since, apart from the bias that we have seen previously, it would lay us open to even more outrageous charges if there were further allegations and we did not continue to seek such information from those who obviously have no qualms about making things up.

911. Meanwhile my Minister has headed a press conference at which our reasons for doubting the authenticity of the video were explained. I hope this is reported in a manner that will enable you take the issues up with your informants.

I look forward to hearing from you, and also to meeting you as soon as possible.

Yours sincerely

Prof. Rajiva Wijesinha

Secretary

Ministry of Disaster Management and Human Rights.

### Response from the Government of Sri Lanka dated 8 September 2009<sup>4</sup>

912. The permanent mission of Sri Lanka to the UN office and other International Organisations in Geneva presents its compliments to Prof. Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions and with reference to the latter's communication and press release dated 28 September 2009, has the honour to forward herewith a copy of the press media release dated 3 September 2009 issued by the Ministry of Foreign Affairs of Sri Lanka on the issue of an unauthenticated video footage telecast on channel 4 television in the UK on 25 August 2009 to the attention of the Special Rapporteur.

#### Media Release

913. The Government of Sri Lanka is concerned over an increasing number of comments from some sections of the international community, on an unauthenticated video footage telecast on Channel 4 Television in the UK on 25th August 2009, which contains alleged atrocities being committed against Tamils by the Sri Lankan Forces.

914. The Government of Sri Lanka reiterates its strong and unequivocal rejection of the contents of the video footage telecast on Channel 4 on the grounds that there is absolutely no truth in its concocted story. It is also a deliberate and sinister attempt to cause embarrassment and bring disrepute to the Government of Sri Lanka. It is indeed deeply regretted that despite the Government of Sri Lanka refuting these allegations, some sections of the international community are repeating these allegations which appear to be an orchestrated campaign against Sri Lanka.

915. This diabolical video footage is reported to have been filmed in January in an unidentified location. In Sri Lanka during that time, there was a substantial presence of the international community, especially in the areas of conflict. At that time, the LTTE was also an active, fighting force. If such atrocities had taken place as claimed, then it is highly unlikely that the international community would have remained silent and continued to remain so, for over eight months. Considering the fact that the LTTE was finally eliminated only during the latter part of May, it is surprising that no attempt was made by the LTTE or its front organisations to bring these alleged atrocities or this video to light at the time they remained active.

916. The authenticity of the Channel 4 news report being in question is evident, as the presenter himself has stated that the footage "claimed to show Sri Lankan Forces executing Tamils" and that it "appears to show number of men being shot in the head by forces speaking Sinhala". The presenter further stated that the "video footage has emerged apparently showing Government troops summarily executing Tamils". The news reporter categorically pointed out that it was not possible to "verify the authenticity of the pictures". This commentary in the Channel 4 telecast in itself clearly demonstrates the fact that the footage is of a dubious nature.

917. In this context, attention is drawn to a subsequent BBC World News report telecast on 26th August 2009 at 1730 hrs. BST where Thirumalai Manivannan from the BBC Tamil Service responding to a question on the assessment of the genuineness of the pictures stated that "the video footage does not give the dates when it was shot though the people who have distributed it to the media say the footage was taken in January this year. The pictures

<sup>4</sup> Press releases relevant to the Special Rapporteur's mandate that are issued either by States or by the Special Rapporteur are not ordinarily included in the Communications Addendum. An exception is being made here given the public nature of the communications arising out of the Special Rapporteur's original allegation letter to Sri Lanka.

themselves don't tell you anything nor do the pictures tell you anything about the location where it was shot".

918. Doctoring of videos in this day and age of modern technology is a common occurrence. The credentials of the group, 'Journalists for Democracy in Sri Lanka' which supplied the video footage are also in question, by the fact that Manivannan in the same BBC World News Report stated that he "spoke to one of their organizers in Germany, and he would not go on record though he gave some background in full which cannot be used". Manivannan had also made the point that until recently, there was no awareness of the existence of this group that had supplied the footage except that it had been established in July.

919. Despite the telecast of this video by Channel 4 and various other media thereafter, those who produced this video have also so far failed to answer many of the queries which have emerged on the genuineness of this video from various quarters.

920. The Government of Sri Lanka in carrying out its military offensive against the terrorists adhered to a policy of zero casualties among civilians. The fact that thousands of civilians sought refuge in the safety of the Sri Lankan Security Forces is a testimony of the confidence the civilians had on the Security Forces.

921. In manifestations of its genuine intentions, the Sri Lanka Army, on its own accord, has sought the assistance of an expert in order to verify the authenticity of this video. In spite of Channel 4 on its own accord being unable to confirm the authenticity of the footage, it is a matter of grave concern that it continues to repeat these allegations and that some sections of the international community seem to be giving undue credence to this doctored video thereby attempting to bring discredit to Sri Lanka.

922. The international community should not be misled by these fabricated stories which could culminate in erroneous judgments thereby sully relations. Instead, they must recognize the efforts taken by the Government of Sri Lanka to ensure durable peace for its people in all parts of the country.

923. What Sri Lanka requires at this juncture in its post conflict phase, is the understanding and support of the international community.

Ministry of Foreign Affairs

Colombo

3rd September 2009

#### **Response from the Government of Sri Lanka dated 11 September 2009**

924. The permanent mission of Sri Lanka to the UN office and other International Organisations in Geneva presents its compliments to Prof. Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions and with reference to the latter's communication and press release dated 28 September 2009, (sic) has the honour to forward herewith a copy of the consolidated response of the Government of Sri Lanka to the telecast by the Channel 4 news of the UK on 25 August 2009 of video of supposed extra-judicial executions in Sri Lanka, to the attention of the Special Rapporteur.

925. In light of the comprehensive investigation conducted and expert findings on the alleged video footage, the government of Sri Lanka requests the Special Rapporteur to issue a media release welcoming the investigation and its expert finding.

[...]

926. Consolidated Response of the Government of Sri Lanka to the Telecast by Channel 4 News of the United Kingdom on 25 August 2009 of a Video of Supposed Extra-Judicial



Executions in Sri Lanka – *As communicated to the local and international media on 07 September and to the Diplomatic Community and Multilateral Agency Heads on 08 September 2009*

#### *Background and Introduction*

927. The Channel 4 video purports to show the execution of two persons by supposed armed forces personnel. This incident was said to have taken place in the north of Sri Lanka in January 2009. Channel 4's website on 25 August also carried an article by Jonathan Miller entitled "Execution video: is this evidence of 'war crimes' in Sri Lanka?"; (see [http://www.channel4.com/news/articles/world/asia\\_pacific/execution%20video%20is%20this%20evidence%20of%20war%20crimes%20in%20sri%20lanka/3321087](http://www.channel4.com/news/articles/world/asia_pacific/execution%20video%20is%20this%20evidence%20of%20war%20crimes%20in%20sri%20lanka/3321087)). This states "Channel 4 News shows footage claimed to show Sri Lankan forces executing Tamils earlier this year." Although the broadcast story states that the video was not verified for authenticity, the web article, significantly, does not note this except for one statement in passing towards the end of the piece viz., "If the killing field footage is authenticated, it will do little to reassure Tamil civilians."

928. Reporting on the video on 26 August, the UK Timesonline website stated: "Channel 4, which broadcast the video, says that it was recorded by a Sri Lankan soldier on his mobile phone in January, when government forces overwhelmed the stronghold of the Liberation Tigers of Tamil Eelam (LTTE) at Kilinochchi." (see <http://www.timesonline.co.uk/tol/news/world/asia/article6809968.ece>). Many other international media outlets carried the story and rebroadcast the video in the ensuing days.

929. Thereafter, several international personalities expressed their concern regarding the contents of the video. These included Norway's international development and environment Minister Erik Solheim on 27 August 2009 (see <http://www.aftenposten.no/nyheter/uriks/article3237855.ece>), the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Professor Philip Alston on 2 September (see <http://edition.cnn.com/2009/WORLD/asiapcf/09/02/sri.lanka.united.nations/>), US Ambassador to the United Nations, Susan Rice on 02 September 2009, (see <http://www.reuters.com/article/worldNews/idUSTRE5816IP20090902>) and the Secretary General of the United Nations, Ban Ki-moon when he met Minister of Disaster Management and Human Rights, Mahinda Samarasinghe, in Geneva on Thursday 03 September 2009 (see [http://news.yahoo.com/s/nm/20090903/wl\\_nm/us\\_srilanka\\_un](http://news.yahoo.com/s/nm/20090903/wl_nm/us_srilanka_un)).

930. Minister Samarasinghe assured UN Secretary-General Ban that the Government would ensure that a thorough investigation into the video was conducted and that the findings of that investigation would be shared with the Secretary-General and others. This communication would include an explanation of what steps the Government had taken to clarify the position in relation to the video. The Minister also intimated to the Secretary-General that it was remarkable that such a video, if it was indeed recorded in January, should only now come to light several months later.

#### *The Source*

931. Channel 4 states that the source of the video is "Journalists for Democracy in Sri Lanka (JSD), which obtained the material and said it was filmed in January [2009]." A web based search for this organization reveals that JSD does not seem to have issued any statements prior to 22 July 2009 and it may be reasonably inferred that it did not exist prior to that date. Journalists for Democracy in Sri Lanka established its web presence by launching a blog: [jdsrilanka.blogspot.com](http://jdsrilanka.blogspot.com) on or around 01 August 2009. They have no material older than 01 August except for the 22 July 2009 statement which was posted on 01 August. There are other stories carried on the blog which mostly relate to media and freedom of expression-related issues and all are dated post-01 August 2009.

932. Surprisingly the video carried on the JDS blog – that of the organization that is supposed to have distributed the original – is sourced from CNN. To give JDS credibility as a source, the Timesonline states that the video is from: “a group called Journalists for Democracy in Sri Lanka, which has previously issued statements through the Asian Human Rights Commission.” However a search of that organization’s website [www.ahrchk.net](http://www.ahrchk.net) reveals only one such statement on 10 August. It is also extremely difficult to verify if the address given by the organization in Berlin is genuine. When the video of the so-called “execution” was released on or about 26 August 2009 it was given wide coverage by many, obviously without any inquiry as to the standing of the source.

933. Given that the organization JDS probably did not exist prior to 22 July, the GoSL finds it worrying that Channel 4 and the international media gave the video so much credence and carried it as truth without further verification. The GoSL is of the view that there are legitimate questions as to the provenance of the video coming as it did through a mushroom organization when there are other institutions with credible track records that could have been used to distribute it.

#### *Investigation and Analysis*

934. As Minister Samarasinghe explained to the media and the representatives of the international community on 07 and 08 September respectively, the GoSL condemns and dismisses in its entirety the video and its contents as being false and fabricated. This conclusion is based on the consolidated findings of four separate investigations initiated by the Government.

935. Minister Samarasinghe recalled that such attempts at publishing fabricated video evidence of so-called “atrocities” were common during the final phases of the humanitarian operation which was successfully concluded in May 2009. A video was played at the briefing which showed Al Jazeera television carrying a story about the aftermath of Sri Lankan armed forces supposedly bombing a makeshift hospital in the conflict area. As supporting evidence, a recorded telephone call from a Doctor working in the area was played. However, the Sri Lankan army had conducted an analysis of the footage and pointed out numerous discrepancies which Al Jazeera was professional enough to carry in a subsequent news bulletin. After active operations were concluded, the doctor who was rescued admitted publicly that he was coached and threatened by the Liberation Tigers of Tamil Eelam (LTTE) to utter the false statements that he made to the media. Three other doctors used by various international media outlets to support allegations of atrocities and supposed shortages of medical supplies during the final stages of the humanitarian operation, also publicly stated that they had been similarly coached or threatened by the LTTE.

936. The Minister explained that as a matter of course the Sri Lanka Army had conducted an initial internal inquiry into the alleged incident and had found that the video had no factual basis.

937. Four separate investigations had been initiated by GoSL into the Channel 4 video and four presentations were made to the media and to the international representatives. They were a report by expert on video technology Mr Siri Hewawitharana of Australia (Mr Hewawitharana’s extensive experience, qualifications and credentials are carried on <http://www.linkedin.com/pub/siri-hewa/5/494/5a8>). Mr Hewawitharana’s report was read out by the Minister. Dr Chathura De Silva, Senior Lecturer in Computer Science and Engineering and Director, Centre for Instructional Technology, University of Moratuwa, Brigadier Prasad Samarasinghe, Chief of the Sri Lanka Army’s Signals Corps and Major A.P. Bandara of the Media Centre for National Security were the others who reported.

938. The Minister pointed out that, while all four reports were fully consistent with one another, three main points of convergence was apparent on matters of great significance. These are to the effect that:

- the images were not captured by a mobile telephone but by a digital camcorder or similar equipment because the video is of high quality unattainable on a mobile phone (Channel 4 and several other outlets who carried the story such as Timesonline and www.Tamilnet.com, were categorical that the video was shot by a soldier using a mobile phone);
- there has been editing of the video and that the audio track has been dubbed and there is evidence that the format of the original video has been converted to make it appear that it was captured on a mobile telephone;
- if the video is an accurate depiction of an actual event, the gap in time evident on the video between the shot being fired and the sound thereof being recorded means that there would have to be a distance of over 100 metres between the discharged weapon and the recording device for the first shot and 38 metres for the second (at which distance a mobile telephone with a camera could not have recorded the images shown in the video).

#### *Conclusions Drawn*

939. The GoSL finds it remarkable that the obvious distortions in the video were not noticed by Channel 4 and that they did not seek further authentication of the video given the consequences of its telecast. Coupled with the fact that Channel 4 was unable or unwilling to substantiate the *bona fides* of JDS, and given that the story was one that was potentially damaging to Sri Lanka and inimical to its reputation, the organization's conduct was unprofessional and unseemly.

940. The Minister concluded that crude attempts such as that represented by the telecast of the video was a malicious attempt to play out a political agenda aimed at besmirching the name of Sri Lanka and denigrating the armed forces. It was also an attempt to impair the concluding of a thirty-year armed conflict under President Mahinda Rajapakse's leadership, which has created conditions for an era of political stability and economic development. He urged any Sri Lankan elements involved in this effort to put country before self and to refrain from seeking to gain political mileage by such activity.

#### *Technical/Expert Analysis*

941. Maj. A.P. Bandara of the Media Centre for National Security then made a short presentation wherein he noted that when the video was slowed by 50%, several remarkable discrepancies and distortions became evident. For instance the leg of a dead person lying prone on the ground rises in the air when the first "victim" is shot. Thereafter the leg slowly drops to its former position. The second "victim", though shot in the head, continues to have stiff leg muscles and reclines on his arms bound behind his back. Then he gradually leans back until he lies flat on the ground. One of the other victims who lies dead in muddy ground wears a remarkably clean white shirt. The "soldier" who supposedly kills the first "victim" is wearing a white T-shirt (vest) when the standard issue for Sri Lankan Army is of a different colour altogether. The second "soldier" has a very unmilitary growth of hair. Even though the bodies are lying in waterlogged or muddy ground, not all the "bloodstains" from the fatal injuries have spread in a manner consistent with one another. These were just some of the distortions and discrepancies that were noted to indicate that the video was staged.

942. Dr. De Silva, who presented next, made the following observations:

- The granularity of motion vectors and other inter-frame features indicate that the footage had been originally captured using a high-end camera (at least a digital camcorder) and not by an average mobile phone.
- An analysis of the colour levels and saturation shows that the bloodstains in the film are unusually strong in colour and have texture mismatches - this is usually the result of post-recording modifications and the use of digital effects.
- There is no recoil or movement of the weapon discharged.
- Texture analysis of image and possible over-lays shows evidence of tampering/digital effects in relation to enhanced bloodstains and one blindfold
- Evidence of audio dubbing
  - Lack of audio synchronization - audio is delayed for more than 1.5 seconds - this is not due to video compression or processing.
  - Audio indicates presence of strong wind-noise. However, this is not evident in the video footage.
- Transcript of the Sinhala dialogue has no relation to the images in the footage. There is no audio of victims screaming or any other related noise.
- There was no indication that a zoomed view was used.

943. Minister Samarasinghe then read out Mr Siri Hewawitharana's analysis which could be summarised as follows:

- The total length of the video clip is 1:02.781 (min)
- The edited video stopped at 01:02.312 (min).
- The audio editing stopped at 01:02.125.
- This indicates that the original video is edited since original layer stopped at 1:02.781 and video editing stopped at 01:02.312 and audio dub stopped at 1:02.152.
- If it is the original audio, it should have played all the way to 1:02.781 and should not have 2 video layers indicating an original and an edited version. The audio is added later in a clumsy fashion.
- It is said that the video came from a mobile phone video source. There are only two formats in mobile video formats. One is the old 3GPP format and the new one is the Mpeg4, H-264 part 10 which is a MP4 format that is highly processor intensive encoding. Because of this, mobile phones in today's market do not have high quality video capability since the processors in high end mobile phones like iPhones or smartphones are not powerful enough to capture good quality video. The Channel 4 video is much higher in quality than an existing smartphone can create today.
- Within H-264 coding there is also an extra component called Motion Vectors (VMC) which are used to predict motion on the temporal and spatial domain. Channel 4's video has quite high quality VMC and it appears that this VMC came from a video camera and not from a mobile phone source. Moreover, video from a mobile source also tends to be blocky in nature when it comes to motion.
- Since the original video was originally in AVI and QuickTime format, the whole video indicates that the original video is of high quality that originated from a video camera source since mobile formats does not use AVI or QuickTime which are high quality video formats. If a change of mobile format to AVI or QT format is attempted, then the resulting video is likely to be of very bad quality. However, in this case the video is of very high quality.

- The foregoing indicates that someone transferred the camcorder video to a computer for editing and sound was dubbed later. One can see that the gun shot was not in synchronization with the video. Normally audio is always ahead of the video since video processing takes more time and in this case audio is very late indicating very amateurish video and audio editing.

944. Brigadier Prasad Samarasinghe of the Army's Signals Corps who conducted both a technical study and field tests agreed with the preceding presentations and made the following observations:

- The video has been edited to include additional details that have been added or some details deleted.
- A wide angle camera was used to capture the "incident".
- 30 frames at the end of the video stream only contained a letter "A" against a blank background. This is not consistent with an original video from a mobile telephone source.
- The video and audio streams were analyzed concurrently for consistency and several discrepancies were noticed which leads to the conclusion that the distance of the mobile telephone's microphone from the weapon was 102 metres in respect of the first shot and 38 metres from the second.
- A field simulation test using several mobile telephone brands revealed that, in order to maintain the size of image in the Channel 4 video, the mobile telephone camera should have been at a distance of approximately 3 to 5 metres from the discharged weapon.

#### Concluding Remarks

945. Minister Samarasinghe in conclusion said that, on the basis of this investigation, the GoSL demands a retraction of the story and the video by Channel 4. He stated that he would also inform the UN Secretary- General, Norwegian Minister Solheim and others who had made statements in this regard of the true nature of this video. He said that Channel 4 and others will be challenged to prove that the technical and scientific analysis initiated by the Government was flawed and the scientifically arrived at conclusions are inaccurate. He concluded by stating that the Attorney-General of Sri Lanka would study all aspects of this matter with a view to taking appropriate measures, if deemed necessary, in the future.

[ends]

*Ministry of Disaster Management and Human Rights*

*9 September 2009*

#### **Response of the Special Rapporteur dated 17 September 2009**

946. Thank you for your reply dated 7 September 2009 to my earlier response. In your letter you take issue with the analogy that I offered and suggest that it is nonsensical. Permit me to go a little further with the analogy and suggest that if an individual was beaten up or raped and reported the matter to the police, but because of the trauma suffered, was unable to identify either when or where the alleged assault took place, it would not be justified for the police to throw up their hands and say "well, if you can't give us the details, there is nothing we can do in terms of investigating the incident". There is still an obligation of due diligence upon the authorities to do whatever they can to locate the alleged incident and to pursue those responsible. My contention is, simply, that this is the nature of the obligation incumbent upon the Government of Sri Lanka in relation to this case.

947. In your response you have asked if there are any specific allegations that require investigation. This request has subsequently been elaborated upon in the various public statements that have been made on behalf of the Government and in the comments relayed to me at your request by the officials of the OHCHR subsequent to their meeting with the Government delegation. In particular, I have been requested to issue a public statement in response to the various briefings and statements made by the Minister for Disaster Management and Human Rights. These are contained in the “Consolidated Response” issued by the Government to the local and international media on 7 September 2009 and to the diplomatic community the following day. The Government’s response was summarized in the Minister’s statement on 15 September 2009 to the Human Rights Council in which he stated that “four separate investigations have now scientifically established beyond any doubt that this video is a fake.”

948. I welcome the fact that the Government is now devoting considerable attention to this issue. The legal obligation incumbent upon a Government in a situation such as this, as I recalled in greater detail in my previous letter to you, is to undertake a “thorough, prompt and impartial investigation.” My role as Special Rapporteur on extrajudicial executions is to evaluate whether the investigations undertaken have met the relevant criteria established under international law, and to advise the Human Rights Council accordingly.

949. I can attest to the fact that the investigation has been “prompt” since it was completed within two weeks of the information becoming available.

950. I am not, however, in a position to conclude that it was “thorough.” I have not seen the original version of three of the four expert investigations. The fourth of the investigations seems to have originated as an Opinion piece in *The Island* newspaper, and was subsequently elaborated upon. It is not clear whether or not this was at the Government’s request. The statement provided by the Minister summarizes “observations” made by the remaining three experts in presentations made at a meeting convened by the Government for this purpose. I would welcome the publication of the full text of the analyses undertaken and reports presented by each of the four experts.

951. The third and most important question is whether the “four separate investigations” meet the criteria of impartiality. I would note that two of the experts are members of the Sri Lankan Army, the body whose actions have been called into question. A third report is by Dr. Chathura De Silva, BSc Eng Hons (Moratuwa), MEng (NTU), PhD (NUS), Senior Lecturer, Dept of Computer Science and Engineering, University of Moratuwa, who has apparently advised the Government in relation to a number of other similar issues in the past. And the fourth is by Siri Hewawitharana, a broadcast media specialist who is said to be the former head of Cisco’s global broadcast and digital video practice. No other information has been provided by the government on Mr Hewawitharana, but it would appear that he is based in Australia, and is a member of a network of Sri Lankan Professionals. I would welcome more information on how he was identified and selected by the government as an independent expert.

952. Based on the limited information available to me, it is impossible to conclude that these four individuals, given their relationship to the Government, meet the criteria for impartiality in this context. When the actions of a Government are called into question in a matter of this gravity, what is required is to undertake an investigation by demonstrated experts who can be shown to be fully independent of the Government concerned. Two of these individuals are full-time Government employees, one has previously acted on behalf of the Government, and the basis on which the fourth was identified and selected as an expert remains unclear. I must conclude therefore, on the basis of the information made available by the Government, that the investigations undertaken cannot be characterized as “impartial”.

953. The final question that remains is whether the information provided by the Government raises significant doubts as to the authenticity of the video. On this question, my conclusion is that the views expressed do indeed raise several issues which warrant further investigation before it could reasonably be concluded that the video is authentic. The only way to do this is for an independent and impartial investigation to take place. This is all that I have called for. Such an investigation might well conclude that the position adopted by the Government is fully warranted. I would welcome that outcome very warmly, and I hope that the Government would do likewise.

#### **Press release by the Special Rapporteur dated 17 September 2009**

Sri Lanka should permit an impartial investigation into the 'Channel 4 videotape', says UN expert

954. GENEVA -- Professor Philip Alston, the Special Rapporteur on extrajudicial executions, appointed by the United Nations Human Rights Council today issued the following statement:

955. I have been requested by the Government of Sri Lanka to issue a public statement in response to the latest information provided by the Government in relation to the Channel 4 video which purports to show extrajudicial executions being carried out by the Sri Lankan Army. I have carefully reviewed the various briefings and statements made by the Minister for Disaster Management and Human Rights, which are essentially based upon a detailed "Consolidated Response" issued by the Government to the local and international media on 7 September 2009 and to the diplomatic community the following day. The Government's response was summarized in the Minister's statement on 15 September 2009 to the Human Rights Council in which he stated that "four separate investigations have now scientifically established beyond any doubt that this video is a fake."

956. I welcome the fact that the Government is now devoting considerable attention to this issue. The legal obligation incumbent upon a Government in a situation such as this is to undertake a "thorough, prompt and impartial investigation."\* My role as Special Rapporteur on extrajudicial executions is to evaluate whether the investigations undertaken have met the relevant criteria established under international law, and to advise the Human Rights Council accordingly.

957. I can attest to the fact that the investigation has been "prompt" since it was completed within two weeks of the information becoming available.

958. I am not, however, in a position to conclude that it was "thorough." I have not seen the original version of three of the four expert investigations. The fourth of the investigations seems to have originated as an Opinion piece in The Island newspaper, and was subsequently elaborated upon. It is not clear whether or not this was at the Government's request. The statement provided by the Minister summarizes "observations" made by the remaining three experts in presentations made at a meeting convened by the Government for this purpose. I would welcome the publication of the full text of the analyses undertaken and reports presented by each of the four experts.

959. The third and most important question is whether the "four separate investigations" meet the criteria of impartiality. I would note that two of the experts are members of the Sri Lankan Army, the body whose actions have been called into question. A third report is by Dr. Chathura De Silva, BSc Eng Hons (Moratuwa), MEng (NTU), PhD (NUS), Senior Lecturer, Dept of Computer Science and Engineering, University of Moratuwa, who has advised the Government in relation to a number of other similar issues in the past. And the fourth is by Siri Hewawitharana, a broadcast media specialist based in Australia, who is said to be the former head of Cisco's global broadcast and digital video practice. No other

information has been provided by the government on Mr Hewawitharana, but it would appear that he is a member of a network of Sri Lankan Professionals. I would welcome more information on how he was identified and selected by the government as an independent expert.

960. Based on the limited information available to me, it is impossible to conclude that these four individuals, given their relationship to the Government, meet the criteria for impartiality in this context. When the actions of a Government are called into question in a matter of this gravity, what is required is to undertake an investigation by demonstrated experts who can be shown to be fully independent of the Government concerned. Two of these individuals are full-time Government employees, one has previously acted on behalf of the Government, and the basis on which the fourth was identified and selected as an expert remains unclear. I must conclude therefore, on the basis of the information made available by the Government, that the investigations undertaken cannot be characterized as “impartial”.

961. The final question that remains is whether the information provided by the Government raises significant doubts as to the authenticity of the video. On this question, my conclusion is that the views expressed do indeed raise several issues which warrant further investigation before it could reasonably be concluded that the video is authentic. The only way to do this is for an independent and impartial investigation to take place. This is all that I have called for. Such an investigation might well conclude that the position adopted by the Government is fully warranted. I would welcome that outcome very warmly, and I hope that the Government would do likewise.

962. (\*) United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted on 24 May 1989, para. 9.

963. Communication from the Government of Sri Lanka dated 17 September 2009

#### **Press Release by the Government of Sri Lanka dated 17 September 2009**

##### **Government of Sri Lanka Responds to Prof Philip Alston on Channel 4 Video**

964. The Government of Sri Lanka welcomes the media statement issued today (17) by Prof. Philip Alston, Special Rapporteur on extra-judicial, summary or arbitrary executions, in which he now acknowledges that the report which was shared with him by the Government leads him to the conclusion that “the views expressed do indeed raise several issues which warrant further investigation before it could reasonably be concluded that the video is authentic”.

965. The Government of Sri Lanka also welcomes Prof. Alston acknowledgement that the government’s investigation has been prompt. The government regrets however, that Prof. Alston has characterized the professional investigation as not independent merely because the experts concerned were Sri Lankan.

966. Prof. Alston does not appear to have carefully perused the Government’s Consolidated Response of 09 September in which a URL to Mr Siri Hewawitharana’s experience and qualifications was included on page 4.

967. Contrary to Prof Alton’s assertion, the Minister of Disaster Management and Human Rights, Mahinda Samarasinghe, contacted Mr Hewawitharana on 05 September, several days after the short op-ed opinion piece in *The Island* newspaper appeared and requested him to provide the Minister with a more detailed analysis of the video in the form of a short report. The said report was received on 06 September.

968. With regard to Dr De Silva, the sole reason for Prof. Alston’s characterization of his analysis as partial is that he appears to have been consulted by the Government of Sri



Lanka on previous occasions. The Government is of the view that it is quite legitimate to consult acknowledged experts from autonomous academic institutions and this in no way makes the expert part of the Government nor does it render the view tainted by bias.

969. Moreover, the fact that Prof. Alston now acknowledges that the video needs further investigation to prove its authenticity is sufficient to establish that the work of the experts consulted by the government of Sri Lanka is credible. This also confirms the governments concern that Prof. Alston was unduly hasty in issuing his original press statement concerning the contents of the video in the absence of any credible material.

970. It would be pertinent to note that the High Commissioner for Human Rights welcomed the Sri Lankan delegation's communication that a prompt investigation had been carried out into this matter. She also mentioned that, being a lawyer herself, she had thought it fit not to make a pronouncement on this issue until the authenticity of the contents of the video in question was established.

971. The Government is of the view that any further comment on this issue by Prof. Alston should only be consequent to the receipt of fresh and cogent evidence that will enable him to conclude that the video in question is genuine.

[Ends]

972. Ministry of Disaster Management and Human Rights 17 September 2009

#### **Response of the Government of Sri Lanka dated 18 September 2009**

973. Thank you for your letter dated 17th September sent in reply to mine of 7th September. I note that it contains much the same material as was used in your press release of 17th September, issued as you suggest after a request by the Sri Lankan Government, which had sent you on September 11th, its response to the Channel 4 telecast. I am glad that the meeting of the Hon Minister with your staff on the 16th precipitated these belated responses.

974. I find very strange your argument as to why you did not see fit yourself to look further into the Channel 4 video. You now go further with your analogy and claim that "if an individual was beaten up or raped and reported the matter to the police, but because of the trauma suffered was unable to identify when or where the alleged assault took place, it would not be justified for the police to throw their hands and say "well, if you can't give us the details, then there is nothing we can do in terms of investigating the incident."

975. I am duly entertained by your moving on now from your initial claim that our requests for details of the incident were 'equivalent to a police officer telling an alleged victim that no investigation will take place until the victim can definitely prove to the officer's satisfaction that the alleged crime took place'. It is surely sleight of hand now to introduce trauma, but can you seriously claim that Channel 4 or those who supplied it with the video are in a state of trauma and cannot supply you with further details? Channel 4 informed me that you had made no attempt when you spoke to them to seek information about the video, which suggests a lack of seriousness on your part about the incident you wish investigated.

976. Thus your second paragraph skilfully dodges my question about 'the allegations submitted to me by various sources' and dwells again on the video, suggesting that all your allegations are in fact the video and nothing but the video. If you do have any other allegations, please mention them.

977. With regard to the video itself, the authenticity of which now seems your sole concern, you now challenge the Government investigation. Earlier you had written that you had formed the view 'that the allegations made are sufficiently credible as to warrant

investigation by the Government. Only the Government, or others acting with the support or permission of the Government, would be in a position to undertake the type of investigation required. . . If it can convincingly be shown to be a fake, so that scenes of killing depicted in the video were staged or contrived, as your Government apparently believes, I will be immensely relieved and the allegations submitted to me by various sources will be shown to have been unreliable‘

978. We still believe that, since you seem to be relying on the video alone, you should at least have tried to check on its authenticity yourself. However while you continued to do nothing, the Government did investigate. Happily the Commissioner for Human Rights, who had also been sent the government response, welcomed it and also mentioned that, as a lawyer she had not thought it fit to pronounce simply on the strength of the video, the Special Representative on Children and Armed Conflict agreed that, if a similar video had been brought to her notice, she would have checked on it first before making any public pronouncements. We are immensely sorry that you seem to have a different code of conduct.

979. It is however a development to be welcomed that, unlike your initial pronouncements, you have publicly acknowledged that the video needs investigation, not any alleged incident about which you have failed to seek details from those who first raised the allegation.

980. Meanwhile you challenge the Government investigation on the grounds that it was conducted by Sri Lankas. You are categorical in your distaste for army experts, though obviously, given your prejudices, you will not be able to understand that experts in computer technology who have produced clear arguments should be challenged in terms of those arguments rather than through personal denigration. Sri Lanka is however used now to shooting of messengers without any concern for the content of the message.

981. You go further, in denigrating a Sri Lankan University don, simply because ‘he has advised the Government in relation to a number of other similar issues in the past‘. You may not understand, given the circles in which you move, that established experts are not so many in Sri Lanka – though your general approach makes clear that even someone who had not advised previously would have been suspected if he were Sri Lankan.

982. Finally you also engage in denigration of a Sri Lankan now resident in Australia who had not previously advised the Sri Lankan government. With your customary circumspection where Sri Lankans are concerned, a circumspection you do not extend to Channel 4, you say that while he ‘is said to be the former head of Cisco’s global broadcast and digital video practice‘. Obviously you have not bothered to check this yourself, even though a link to his credentials was given in the report, and you could, if you had doubts since he is a Sri Lankan, have checked with Cisco direct.

983. But that too would probably not have made a difference to your approach since Mr. Hewavithatana’s main crime is that ‘it would appear that he is a member of a network of Sri Lankan Professionals’. You seem to live in an Orwellian world in which Sri Lankans seem generally bad and untrustworthy, but anyone who attacks the Sri Lankan Government, Channel 4, Journalists for Democracy in Sri Lanka, is good and trustworthy.

984. This is sad since, as I have told you in the past, your initial report on Sri Lanka was helpful. You then explained to me why you had decided to adopt an aggressive approach to Sri Lanka, but I pointed out that our lady ambassador’s initial response to you was because your report had been leaked. I accepted your assurance that you had not leaked the material yourself, but I still believe that you should at least have checked on how the leak occurred, and reported to us as to how this type of incident could be prevented in future. I am the more concerned about this now because other representatives in Geneva have informed us of what seems further bad faith with what should be strictly professional dealings.

985. Leaving asides the larger question of your general approach to Sri Lankans, I must question what seems to be a strange inconsistency in this particular instance. Why ask the government to conduct an investigation and then say that it must be by foreigners? If you are determined to denigrate anything we do, you surely should, as we told you initially, conduct your own investigation, and you could have made a start by at least asking a few questions of Channel 4, instead of dancing to their tune.

986. Your performance however is slightly redeemed in that, at the end of your release, you say that, following our report ‘my conclusion is that the views expressed do indeed raise several issues which warrant further investigation before it could reasonably be concluded that the video is authentic’. We can only hope then that now, instead of introducing hypothetical traumatized victims to justify your initial less restricted critique, and contradicting yourself continuously, you actually check on the points made in the analysis, carefully analyzing the video yourself, and then point out what precisely you find inaccurate in our presentation,. Any explanation you can offer for the moving leg of a purportedly dead person would be particularly welcome, and would I am sure provide immense relief.

Yours sincerely  
Rajiva Wijesinha  
Secretary

#### **Response of the Special Rapporteur dated 30 September 2009**

987. Dear Professor Wijesinha,

988. I am responding to your letter dated 18 September 2009, which was received by the OHCHR on 22 September 2009, and by me on 23 September 2009. I shall keep my reply brief since I would prefer to focus on the facts which are under dispute rather than to engage in a heated rhetorical exchange.

989. You suggest that my position is that it is only “the video that needs investigation, not any alleged incident.” This is not correct. I still believe that the Government of Sri Lanka has an international legal obligation to do all it can to ensure that, to the best of its knowledge and based on credible investigations, the killings depicted on the video did not take place.

990. In terms of the expert opinions adduced by the Government, I note that you do not respond to my request that the text of those opinions be made available, rather than a summary presented by the Government itself.

991. You go on to accuse me of impugning the Government investigation “on the grounds that it was conducted by Sri Lankans”, and of having denigrated the individual experts. You conclude by suggesting that I “live in an Orwellian world in which Sri Lankans are generally bad and untrustworthy”. Such statements are unbecoming and unjustified by the facts. A careful reading of my statement indicates clearly that my concern was not that of nationality, but of independence and impartiality. The importance of ensuring that experts or judges are not only independent, but are objectively seen to be so, has long been recognized in all legal systems, and is appropriately reflected in international law standards. Two of the Government's experts were members of the military which stands accused. Another wrote a strong opinion piece in a Sri Lankan newspaper calling the authenticity of the video into question, and seems to have subsequently been called upon by the Government to act as an independent expert on the basis of these views already expressed. The fourth expert had been consulted on several previous occasions by the government, which at least raises a question about his independence.

992. I would conclude by repeating that I would welcome an independent and impartial review of the videotape and very much hope that one shall be undertaken.

Yours sincerely,  
Philip Alston

**Press release by the Special Rapporteur dated 31 September 2009**

993. **An Independent Investigation into Sri Lankan Executions is Urgent, says UN Expert** GENEVA - The UN Special Rapporteur on extrajudicial, summary or arbitrary executions called for the urgent establishment of an independent investigation into the authenticity of a video alleged to show the extrajudicial execution of two naked and helpless men by the Sri Lankan army and the presumed prior execution of a number of others.

994. “These images are horrendous and, if authentic, would indicate a serious violation of international law”, said Professor Philip Alston. “I am aware that the Sri Lankan Government has categorically denied the veracity of the allegations. This makes it all the more important for an independent investigation to be set up.

995. For the independent expert, “if the Government’s position is validated as a result of an inquiry, the international community can rest easy and the Government will have been vindicated. There is no justification for not moving ahead with such an investigation in view of the Government’s confidence that such atrocities were never perpetrated by its armed forces”.

996. Professor Alston stated that no Government today can simply dismiss such allegations without undertaking a thorough investigation that meets international standards. He also recalled that he has, on a number of occasions over recent years, requested to undertake a visit to Sri Lanka in order to review the situation. He regretted that, to date, he has not yet received an invitation to do so from the Government of Sri Lanka, but indicated that he was hopeful that such an invitation might be forthcoming in light of the most recent allegations.

**Response of the Government of Sri Lanka dated 2 October 2009**

997. Dear Prof Alston

998. Thank you for your letter of 30 September, sent in response to mine of the 18th. It is always a pleasure to hear from you, and I am only sorry your reply is so brief, and does not address some of the points I made. Apart from enjoying your prose style, I find that the more you write the more there is that makes clear your mindset. I am pleased however that you have now decided to ignore the warning from the Office of the High Commissioner that you should not respond to my letters in case I were to use those replies. I can assure you that you need not worry, and I also have no intention of engaging in heated rhetorical exchanges, or in any way risking your bulldog mode.

It is sad however that in your previous letter you did engage in a rhetorical flourish, in denigrating Mr Siri Hewa by claiming that ‘It would appear that he is a member of a network of Sri Lankan Professionals’. If as you now declare your concern was ‘not that of nationality, but of independence and impartiality’, the previous claim seems a cheap debating point.

999. I should add that none of your colleagues has expressed doubts about the provenance of the investigation conducted by the Government, so the lack of objectivity seems to me to be more yours than that of the experts who were consulted. Indeed, though very properly none expressed criticism of your haste, the general view amongst your colleagues seemed

to be that rushing into action on the basis of such a video was not something they would have engaged in.

1000. Finally, you continue to ignore the facts raised in the report. I am surprised that you did not yourself seek out the fuller report through accessing the website of the Ministry of Defence ([www.defence.lk](http://www.defence.lk)) but if here too your distaste for the messenger precludes attention to the message, you may ask for this from our representatives at the Mission which sent you the summary. I believe that you have not as yet replied to their letter, except through your second press release, which was then cut and pasted into your previous response to me. It would be proper I believe to respond to them, and with a little more cutting and pasting you could ask for any more material that you needed to continue to justify your original letter and immediate press release.

Yours sincerely,  
Prof Rajiva Wijesinha  
Secretary  
Ministry of Disaster Management and Human Rights

#### **Response of the Special Rapporteur dated 9 November 2009**

1001. Dear Professor Wijesinha,

1002. I am following up on our previous correspondence in relation to the so-called Channel 4 videotape to request access to the original reports by the four experts commissioned by the Sri Lankan Government to provide advice as to the apparent authenticity or otherwise of the videotape. I have, of course, read carefully the excerpts from the various reports posted on the relevant official websites, but I would very much appreciate being able to read the complete report submitted by each of the experts.

#### **Response from the Government of Sri Lanka dated 13 November 2009**

1003. Dear Prof Alston

1004. Thank you for your letter of 9th November. I was awaiting a response to my previous letter of October 2nd, which may not have reached you since your present letter reiterates a request to which I responded then, in suggesting that you 'ask for this from the representatives at the Mission which sent you the summary'. In fact I noted that it seemed 'you have not as yet replied to their letter' except through a press release, which did not strike me as entirely proper.

1005. I will however forward your letter to the Ministry of Foreign Affairs in Colombo, though I should add that the current request would have been made more appropriately to those who initially wrote to you in this regard, in place of the peremptory press release which has done little to convince us of your objectivity.

1006. I will however be happy to engage with you further on the issues of principle I have raised, since I continue perhaps unusually to believe, on the strength of your original report which was so unfortunately leaked, that you are not irredeemably prejudiced. I still think you should inquire into the circumstances of that leak, which has contributed so much to your current bulldog approach, to use your own term, to interactions with Sri Lanka, even our ambassador who was so hurt by what seemed double-dealing retired many years ago.

Yours sincerely  
Prof. Rajiva Wijesinha  
Secretary  
Ministry of Disaster Management and Human Rights.

### **Response of the Special Rapporteur dated 5 January 2010**

1007. By way of follow-up to the several communications that I have exchanged with your Excellency's Government in relation to the so-called "Channel 4 Videotape" (including my communications of 28 August and 17 September 2009 and your Excellency's Government's communications of 7 and 17 September 2009), and by way of responding to the various requests made that further examination of the video be undertaken, I attach a Technical Note which describes the outcome of the further inquiries that I have made in this regard. An Appendix to the Technical Note contains the full text of the original opinions provided by each of three independent experts I have retained to carry out analysis of the video tape.

1008. In view of the very public nature of the comments already exchanged on this matter, I plan to make this Technical Note available by means of a public statement in New York on 7 January 2010.

### **Technical Note prepared by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, in relation to the authenticity of the "Channel 4 videotape"**

#### *Overview*

1. On 25 August 2009, a United Kingdom television station released video footage which appears to show the summary execution of Tamils by Sri Lankan soldiers. A group named Journalists for Democracy in Sri Lanka claimed that the killings had been filmed in January 2009 by a Sri Lankan soldier with a mobile phone. This was at a time when the international media did not have access to the conflict zone.

2. Since the video's release, the Government of Sri Lanka has claimed that the video is a fake. Over the past four months, I have been engaged in a series of communications with the Government about this video, in which I requested it to conduct an independent investigation. While the Government initially refused to do so, on 7 September 2009, it issued a response stating that it had commissioned four separate investigations, and that they "have now scientifically established beyond any doubt that this video is a fake". At the time, I expressed concern about the objectivity of the investigations, in part because two of the "independent experts" worked for the Sri Lankan armed forces. Some of the reports seemed more impressionistic than scientific, and I have never been provided the full version of the reports.

3. I decided that it was incumbent upon me to commission independent and impartial evaluations of the videotape. I retained three experts: in forensic pathology (Dr Spitz), forensic video analysis (Mr Spivack), and firearm evidence (Mr Diaczuk). Together, the reports by these experts strongly suggest that the video is authentic.

4. Mr Diaczuk concluded that the recoil, movement of the weapon and the shooter, and the gases expelled from the muzzle in both apparent shootings were consistent with firing live ammunition, and not with shooting blank cartridges.

5. Dr Spitz found that the footage appeared authentic, especially with respect to the two individuals who are shown being shot in the head at close range. He found that the body reaction, movement, and blood evidence was entirely consistent with what would be expected in such shootings.

6. Mr Spivack's forensic video analysis found no evidence of breaks in continuity in the video, no additional video layers, and no evidence of image manipulation.

7. There are a small number of characteristics of the video which the experts were not able to explain. This included the movement of certain victims in the video, 17

frames at the end of the video, and the date of 17 July 2009 encoded in the video. Each of these characteristics can, however, be explained in a manner which is entirely consistent with the conclusion that the videotape appears to be authentic.

8. Moreover, the independent experts' analyses also systematically rebutted most of the arguments relied upon by Sri Lanka's experts in support of their contention that the video was faked. For example:

(a) A Sri Lankan expert stated that there was no recoil or movement of the weapon discharged. However, Mr Spivack and Mr Diaczuk described the recoil visible on the video, and the way in which the movement was consistent with firing live ammunition.

(b) A Sri Lankan expert stated that the lack of audio synchronization with the video indicated manipulation. However, Mr Spivack stated that the video/audio synchronization in the video was well within acceptable limits, and that audio can be ahead or behind video, subject to various variables.

(c) A Sri Lankan expert stated that the movement of the second victim after being shot was not consistent with the normal expected reaction. However, Mr Spitz stated that the movement was entirely consistent with the manner in which the individual was apparently shot.

(d) A Sri Lankan expert stated that while wind could be heard on the audio, it was not evident in the video. Mr Spivack however described multiple places in the video where there is clear evidence of wind.

(e) Sri Lanka's experts argued that the footage was likely recorded on a digital camcorder, and not a mobile phone. Mr Spivack concluded that the metadata he retrieved from the video was entirely consistent with multimedia files produced by mobile phones with video recording capability, and that it would have been very difficult to alter the metadata.

9. In sum, while there are some unexplained elements in the video, there are strong indications of its authenticity. In addition, most of the arguments relied upon by the Government of Sri Lanka to impugn the video have been shown to be flawed.

10. In light of these conclusions, and of the persistent flow of other allegations concerning alleged extrajudicial executions committed by both sides during the closing phases of the war against the LTTE, I call for an independent inquiry to be established to carry out an impartial investigation into war crimes and other grave violations of international humanitarian and human rights law allegedly committed in Sri Lanka.

11. The detailed report below provides a summary of the background to this issue, as well as a detailed summary of: (i) evaluations undertaken in September 2009 at the request of the Sri Lankan Government; (ii) evaluations undertaken by two other sources unrelated to either the Government or the Special Rapporteur; and (iii) evaluations prepared by the three independent experts commissioned by the Special Rapporteur. In addition, the full text of the latter three reports are reproduced as a separate Appendix to this Technical Note.

### *1. Introduction*

12. On 25 August 2009, a United Kingdom television station, Channel 4, released video footage which appears to show the summary execution of Tamils by Sri Lankan soldiers. There is no indication in the video itself of the ethnicity of the dead men, but the group which obtained the pictures, Journalists for Democracy in Sri Lanka, claimed the victims are Tamils. The group claimed that the killings had been filmed in January by a

Sri Lankan soldier with a mobile phone. This was at a time when the international media did not have access to the conflict zone.

13. The footage first shows a young man who is naked, bound and blindfolded. A man approaches him wearing what appears to be a Sri Lankan army uniform and appears to shoot him at point-blank range.<sup>5</sup> The video, taken in daylight, then pans out to show what appears to be eight bound corpses, all who appear to have been shot and killed. All but one are naked. Towards the end of the footage, a ninth bound victim is shown apparently being shot.

14. The day after the broadcast the Government of Sri Lanka issued a statement saying that it “strongly and unequivocally denies the allegations contained in the video footage telecast on Channel 4. This footage is diabolical and there is absolutely no truth in its concocted story . . .”<sup>6</sup> On 28 August 2009, in a letter sent to the Government of Sri Lanka and in a press statement, I called for the urgent establishment of an independent investigation into the authenticity of the video, adding that, if authentic, the images would indicate a serious violation of international law. I observed that no Government today can simply dismiss such allegations without undertaking a thorough investigation that meets international standards, and expressed hope that an invitation to conduct an official visit, which I had previously requested on a number of occasions, might be forthcoming in the light of these most recent allegations. In addition, I noted that my call did not prejudice any question as to the authenticity or otherwise of the video.<sup>7</sup>

15. The matter of the videotape was also raised by the United Nations Secretary-General, Ban Ki-moon, in talks in Geneva on 2 September 2009, with Mahinda Samarasinghe, Sri Lanka's Minister for Disaster Management and Human Rights.

16. The Government of Sri Lanka responded to the Special Rapporteur by means of a letter signed by Professor Rajiva Wijesinha, Secretary of the Ministry of Disaster Management and Human Rights. The letter rejected the video as inauthentic and indicated that the allegations made did not warrant Government attention until and unless definitive evidence was able to be provided. In subsequent commentary, it was suggested that the fact that the video had first been aired on Channel 4, which had previously had disagreements with the Sri Lankan Government, made an investigation even less appropriate. “[I]t is really too much to expect that an investigation be set in motion on the strength of a video clip shown on a television channel that had previously engaged in bizarre inaccuracies”. Professor Wijesinha also indicated that my earlier statement about the videotape had set me “at the heart of a terrorist media campaign against the Sri Lankan Government”.<sup>8</sup>

17. In my response to the Government I indicated that, in my view, international law established a clear standard which should be followed in such cases:

- “[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints

<sup>5</sup> <http://www.independent.co.uk/news/world/asia/video-that-reveals-truth-of-sri-lankan-war-crimes-1777746.html>

<sup>6</sup> [http://www.slmfa.gov.lk/index.php?option=com\\_content&task=view&id=2100&Itemid=75](http://www.slmfa.gov.lk/index.php?option=com_content&task=view&id=2100&Itemid=75)

<sup>7</sup> See United Nations Press Release “An Independent Investigation into Sri Lankan Executions is Urgent, says UN Expert”, 31 August 2009, at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/56BD66A1DDB017AEC1257623002A48A7?opendocument>

<sup>8</sup> Prof. Rajiva Wijesinha, ‘Arbitrary Execution by Prof Philip Alston’, Daily News, Sept 2, 2009, available at <http://www.dailynews.lk/2009/09/02/fea03.asp>



by relatives or other reliable reports suggest unnatural death in the above circumstances.”<sup>9</sup>

1009. I acknowledged that there would always be legitimate room for debate as to what constitutes a ‘reliable’ report in any such situation, and that a videotape, like most other sources of alleged evidence, can be fabricated. I concluded, however, that in this instance it did “not seem to me that the video [was] patently fake or staged” and that it constituted “a sufficiently reliable source as to warrant investigation”. I added that:

- “If it can be convincingly shown to be a fake, as your Government apparently believes, I will be immensely relieved and the allegations submitted to me by various sources will be shown to have been unreliable. I do not accept, however, that a video of this nature can be dismissed as self-evidently unreliable in the absence of any detailed investigation or analysis undertaken either by the Government or by independent experts.
- Given the extremely serious nature of the killings depicted in the video, and your Government’s stated commitment to respecting human rights and promoting reconciliation within the country, it is my hope that serious consideration will be given to establishing an independent investigation into the alleged incident.”

## 2. *Evaluations commissioned by the Government*

18. The Government of Sri Lanka subsequently decided to commission several expert opinions in relation to the videotape. On 7 September 2009 it publicly issued a “Consolidated Response of the Government of Sri Lanka to the Telecast by Channel 4 News of the United Kingdom on 25 August 2009 of a Video of Supposed Extra-Judicial Executions in Sri Lanka”. This document strenuously denied the video’s authenticity and set out the findings of four separate investigations that had been commissioned.

19. Sri Lanka also disputed the reliability of the source of the video – Journalists for Democracy in Sri Lanka – noting that they did not have any web presence until early August 2009, implying that they had been set up as a Tamil front group. Minister Samarasinghe also stated that attempts at publishing fabricated video evidence of atrocities had been common during the final phases of the war, citing in particular a video and telephone call which purported to document the bombing of a makeshift hospital by Sri Lankan armed forces (aired on Al Jazeera) which, according to the Sri Lankan army analysis which followed, was fabricated.

20. The Consolidated Response summarizes “observations” made by three experts in presentations made at a meeting convened by the Government for this purpose. The analysis of a fourth expert was read by Minister Samarasinghe and is also summarised in the Response. The full text of the analyses undertaken and reports presented by each of the four experts has not been made public. On 9 November 2009 I wrote to the Government noting that while I had “read carefully the excerpts from the various reports posted on the relevant official websites, ... I would very much appreciate being able to read the complete report submitted by each of the experts.” No substantive response to this request has yet been received.

21. Expert statement one: The report first documents the presentation of Dr. De Silva, Senior Lecturer in Computer Science and Engineering and director of the Centre for

<sup>9</sup> Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by Economic and Social Council resolution 1989/65, of 24 May 1989, Annex, para. 9.

Instructional Technology at the University of Moratuwa (Sri Lanka). According to the report, he made the following observations:

- (a) “The granularity of motion vectors and other inter-frame features indicate that the footage had been originally captured using a high-end camera (at least a digital camcorder) and not by an average mobile phone.
- (b) An analysis of the colour levels and saturation shows that the bloodstains in the film are unusually strong in colour and have texture mismatches – this is usually the result of post-recording modifications and the use of digital effects.
- (c) There is no recoil or movement of the weapon discharged.
- (d) Texture analysis of image and possible over-lays shows evidence of tampering / digital effects in relation to enhanced bloodstains and one blindfold.
- (e) Evidence of audio dubbing
- (f) Lack of audio synchronization – audio is delayed for more than 1.5 seconds – this is not due to video compression or processing.
- (g) Audio indicates presence of strong wind-noise. However, this is not evident in the video footage.
- (h) Transcript of the Sinhala dialogue has no relation to the images in the footage. There is no audio of victims screaming or any other related noise.
- (i) There was no indication that a zoomed view was used.”<sup>10</sup>

22. Expert statement two: Minister Samarasinghe read the views of Mr. Siri Hewawitharana who, according to the Sri Lankan Government, was an expert on video technology. This assessment also focused on a technical analysis of the authenticity of the video. His findings were summarized as follows:

- “There are indications that the original video is edited since original layer stopped at 1:02.781, video editing stopped at 01:02.312 and audio dub stopped at 1:02.152. If it is the original audio, it should have played all the way to 1:02.781 and should not have 2 video layers indicating an original and an edited version.
- It is said that the video came from a mobile phone video source, but there are only two formats in mobile video formats (the old 3GPP format and the new MP4 format). However, the Channel 4 video is much higher in quality than either format can create today.
- Within H-264 coding (used for MP4 format) there is also an extra component called Motion Vectors (VMC) which are used to predict motion on the temporal and spatial domain. Channel 4’s video has quite high quality VMC and it appears that this VMC came from a video camera and not from a mobile phone source.
- Since the original video was originally in AVI and QuickTime format, this indicates that the original video is of high quality that originated from a video camera source, as mobile formats does not use AVI or QuickTime. If a change of mobile format to AVI or QT format is attempted, then the resulting video is likely to be of very bad quality. However, in this case the video is of very high quality.

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<sup>10</sup> [http://www.slembassyusa.org/archives/main\\_index\\_pages/2009/min\\_dmhr\\_pr\\_09sep09.pdf](http://www.slembassyusa.org/archives/main_index_pages/2009/min_dmhr_pr_09sep09.pdf)

- The gun shot was not in synchronization with the video. Normally audio is always ahead of the video since video processing takes more time. In this case, the audio is very late indicating video and audio editing.”<sup>11</sup>

23. Expert statement three: Major A.P Bandara of the Media Centre for National Security, which comes within the purview of the Ministry of Defence and is based in Colombo, presented his findings to the Government, summarised in the Report. He noted a number of discrepancies in the video:

- “The leg of a dead person lying prone on the ground rises in the air when the first victim is shot. Thereafter the leg slowly drops to its former position.
- The second victim, though shot in the head, continues to have stiff leg muscles and reclines on his arms bound behind his back. Then he gradually leans back until he lies flat on the ground.
- One of the other victims who appears to lie dead in muddy ground wears a clean white shirt.
- The soldier who is shown killing the first victim is wearing a white T-shirt but the standard issue for Sri Lankan Army is of a different colour altogether. The second soldier has a very unmilitary growth of hair.
- Even though the bodies are lying in waterlogged or muddy ground, not all the bloodstains from the fatal injuries have spread in a manner consistent with one another.”<sup>12</sup>

24. Expert statement four: Brigadier Prasad Samarasinghe of the Army’s Signals Corps gave the final presentation. It was reported that he had conducted both a technical study and field tests which confirmed the conclusions of the preceding presentations. His further observations were summarized in the report as follows:

- “30 frames at the end of the video stream only contained a letter “A” against a blank background. This is not consistent with an original video from a mobile telephone source.
- The video and audio streams were analyzed concurrently for consistency and several discrepancies were noticed which leads to the conclusion that the distance of the mobile telephone’s microphone from the weapon was 102 metres in respect of the first shot and 38 metres from the second.
- A field simulation test using several mobile telephone brands revealed that, in order to maintain the size of image in the Channel 4 video, the mobile telephone camera should have been at a distance of approximately 3 to 5 metres from the discharged weapon.”<sup>13</sup>

25. On the basis of the presentations, the report detailed the conclusions of Minister Samarasinghe, who stated that the telecast of the video represented a “malicious attempt to play out a political agenda aimed at besmirching the name of Sri Lanka and

<sup>11</sup> [http://www.slembassyusa.org/archives/main\\_index\\_pages/2009/min\\_dmhr\\_pr\\_09sep09.pdf](http://www.slembassyusa.org/archives/main_index_pages/2009/min_dmhr_pr_09sep09.pdf)

<sup>12</sup> [http://www.slembassyusa.org/archives/main\\_index\\_pages/2009/min\\_dmhr\\_pr\\_09sep09.pdf](http://www.slembassyusa.org/archives/main_index_pages/2009/min_dmhr_pr_09sep09.pdf)

<sup>13</sup> [http://www.slembassyusa.org/archives/main\\_index\\_pages/2009/min\\_dmhr\\_pr\\_09sep09.pdf](http://www.slembassyusa.org/archives/main_index_pages/2009/min_dmhr_pr_09sep09.pdf)

denigrating the armed forces”<sup>14</sup>. He demanded a retraction of the video and story by Channel 4.<sup>15</sup>

26. On 15 September 2009, the Sri Lankan Government made a statement to the UN Human Rights Council that “four separate investigations have now scientifically established beyond any doubt that this video is a fake”. On 16 September 2009, Secretary Wijesinha told BBC Radio that one reason for restricting the access of journalists to camps for internally displaced persons was that parts of the media had acted irresponsibly. In particular, he cited the “video shown on Channel 4 which showed what was meant to be an execution, it turned out that they had not even bothered to check it. It showed purportedly a dead person with a leg that gradually went down. I'm afraid when people tell lies, all of you get tarred with the same brush”.<sup>16</sup> On 18 September 2009, Sri Lanka's Daily News newspaper reported that the Sri Lankan High Commission in London had lodged a complaint against Channel 4 with the Press Complaints Commission. Attorney General Mohan Peiris was also reported to have consulted with a London-based legal firm with a view to filing a lawsuit against Channel 4.<sup>17</sup>

### 3. *The Special Rapporteur's response to the reports*

27. In acknowledging the Sri Lankan investigations and report, I concluded that “the views expressed do indeed raise several issues which warrant further investigation before it could reasonably be concluded that the video is authentic” and I noted that “the only way to do this is for an independent and impartial investigations to take place”. While recognizing the promptness of the investigation, I observed that two of the four Government experts were full-time Government employees, that the third had previously acted on behalf of the Government, and that “the basis on which the fourth was identified and selected as an expert remains unclear”. Accordingly, the studies could not objectively be characterized as meeting the requirement laid out in international law that such studies must be impartial. Nor was it possible for me to conclude that the investigations had been “thorough”, since I had not seen the original version of three of the four expert investigations, and the fourth of the investigations appeared to have originated as an Opinion piece in The Island newspaper,<sup>18</sup> which had then been elaborated upon at the Government's request.<sup>19</sup>

28. On 17 September 2009, the Sri Lankan Government responded by refuting my characterisation of the investigation as lacking in impartiality. This led to press reports such as that of 19 September 2009 in the *Daily News* which suggested that “Prof. Alston has now eaten most of his harsh, ill-thought out and damaging comments about Sri Lanka”.<sup>20</sup> The following day, the Ministry of Defence published a statement by one of the Government's experts, Mr Siri Hewawitharana, who “challenged the UN to disprove his analysis into the fake video clip of Channel 4”. He was quoted as saying: “I can tell the good Professor that if he is to put his experts against my conclusion I am happy to see any of them do any rebuttal of my analysis. ... [If Channel 4 had asked experts to look at the video, they] would have seen the forgery of the editing parts within a few seconds. ‘So

<sup>14</sup> <http://www.dailynews.lk/2009/09/12/sec02.asp>

<sup>15</sup> <http://www.lankanewspapers.com/news/2009/9/47762.html>

<sup>16</sup> [http://www.dmhr.gov.lk/english/more\\_news.php?dmhrind=304](http://www.dmhr.gov.lk/english/more_news.php?dmhrind=304)

<sup>17</sup> <http://www.nation.lk/2009/09/20/politics.htm>

<sup>18</sup> Siri Hewawitharana, “Channel 4 Video: The Technical Truth”, The Island, 31 August 2009, <http://www.island.lk/2009/08/31/opinion1.html>

<sup>19</sup> <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-7VYKR8?OpenDocument>

<sup>20</sup> Lucien Rajakarunanayake, “Alston sings on lying channel”, Daily News, 19 Sept 2009 <http://www.dailynews.lk/2009/09/19/fea03.asp>

why are we wasting time here', Hewawitharana said adding that Prof. Alston insults not only the Sri Lankan nation with lies and innuendoes, but is also questioning science and engineering".<sup>21</sup>

29. The Government stated that the High Commissioner for Human Rights, Navi Pillay, had welcomed their report,<sup>22</sup> although I am not aware of any public statement on the matter by the High Commissioner. She did, however, subsequently call for a full investigation into violations of human rights and international law that occurred during the civil war in Sri Lanka. In elaborating upon her comments, the Spokesperson for the UN Office of the High Commissioner for Human Rights, Rupert Colville, told reporters that "something like the Gaza fact-finding mission is certainly warranted given the widespread concerns about the conduct of the war in Sri Lanka".<sup>23</sup> The Sri Lankan Ministry for Disaster Management and Human Rights responded on 27 October 2009 to that suggestion, describing the High Commissioner's approach as "unwarranted and uncalled for" and noted that although the statement followed the issuance of a US State Department report into abuses in Sri Lanka, it did not appear to take account of the fact that the US report did not purport to reach legal conclusions.<sup>24</sup> The Ministry reiterated that "the President has appointed a Committee of persons of proven integrity and independence to look into the incidents mentioned in the report" and that the President will "make known its position once this Committee has fulfilled its mandate and reported its conclusions."<sup>25</sup>

#### 4. *Further forensic study commissioned by a Tamil group*

30. Subsequently, in response to the Sri Lankan Government's investigations into the video, a US-based pressure group – Tamils Against Genocide – commissioned a technical study of the video. Preliminary findings were released on 18 October 2009. The report was said to have been made by a US-based forensic company that took nearly three weeks to analyse the recording. They said: "[t]he video and audio of the events depicted in the Video, were continuous without any evidence of start/stops, insertions, deletions, over recordings, editing or tampering of any kind."<sup>26</sup> Although the group stated that it would release the final report on the video in early November, this has not yet happened. The key preliminary findings cited were as follows:

- "No evidence of tampering or editing was discovered with either the video or audio portions of Video.
- The blood pooled around the previous victim with the white shirt and with the victim of the second shooting appears to be consistent with blood from the brain, which would contain high amounts of oxygen giving the blood its bright color. The fact that it is still bright in color appears to be consistent with it being very recent.
- The audio delay with respect to both gun shots' audio compared with each corresponding rifle recoil is consistent for some, if not most, camera cell phones that are capable of video recording.

<sup>21</sup> Sri Lanka Ministry of Defence, Public Security, Law and Order, 20 September 2009, at [http://www.defence.lk/new.asp?fname=20090920\\_03](http://www.defence.lk/new.asp?fname=20090920_03)

<sup>22</sup> <http://www.lankamission.org/content/view/2587/1/>

<sup>23</sup> <http://www.unmultimedia.org/radio/english/detail/84414.html>

<sup>24</sup> [http://www.dmhr.gov.lk/english/more\\_news.php?dmhrmind=336](http://www.dmhr.gov.lk/english/more_news.php?dmhrmind=336)

<sup>25</sup> Ibid.

<sup>26</sup> <http://www.tamilnet.com/art.html?catid=13&artid=30466>

- Preliminary field test with a typical camera cell phone of similar audio qualities ... was able to record a MAK-90 (AK variant w/16" barrel) gun shot w/7.62x39mm ammo, with the camera cell phone being positioned in a similar camera field of view of the second gun shot, or 12 feet away from the muzzle, without any distortion of the audio.
- The leg of an apparent previous shooting victim lying prone on the ground, down range and at the feet of the first victim, rises in the air when the first victim is shot, and then slowly drops to its former position. This reaction appears to be from the bullet that passed through the first victim and then striking the down range victim and would be consistent with a victim that was very recently shot that has not died yet.”<sup>27</sup>

5. *Investigation commissioned by The Times (London)*

31. On 15 December 2009, *The Times* of London published the results of an evaluation of the videotape undertaken by Grant Fredericks, an independent forensic video specialist who was said to be an instructor at the FBI [Federal Bureau of Investigation] National Academy, and to have previously been head of the Vancouver Police forensic video unit. While I endeavoured to obtain a copy of the full report prepared by Mr. Fredericks, my efforts were unsuccessful. I have thus seen only the press coverage of the analysis, the principal reported elements of which are as follows:

- “He found no evidence of digital manipulation, editing or any other special effects. However, subtle details consistent with a real shooting, such as a discharge of gas from the barrel of the weapon used, were visible.
- ‘This level of subtle detail cannot be virtually reproduced. This is clearly an original recording’ . . . .
- There was also strong evidence to rule out the use of actors. ‘Even if the weapons fired blanks, the barrel is so close to the head of the “actors” that the gas discharge alone leaves the weapon with such force it would likely cause serious injury or death’ . . . .
- The reactions of those executed was consistent with reality . . . . ‘The victims do not lunge forward . . . [they] fall backward in a very realistic reaction, unlike what is normally depicted in the movies.’
- . . . ‘[T]he injury to the head of the second victim and the oozing liquid from that injury cannot be reproduced realistically without editing cuts, camera angle changes and special effects. No [errors] exist anywhere in any of the images that support a technical fabrication of the events depicted’ . . . .
- . . . ‘[C]ode embedded in the footage appeared to match with software used in Nokia mobile phones.’ . . . ‘The recording is completely consistent with a cell phone video recording and there are no signs of editing or alterations.’<sup>28</sup>

6. *Analyses by experts commissioned by the Special Rapporteur*

32. Once it became apparent that neither the Government of Sri Lanka, nor the Office of the High Commissioner for Human Rights would be commissioning independent

<sup>27</sup> Ibid.

<sup>28</sup> Rhys Blakely, “Sri Lankan war crimes video is authentic, Times investigation finds”, December 15, 2009, at <http://www.timesonline.co.uk/tol/news/world/asia/article6956569.ece>

and impartial evaluations of the videotape, I decided that it was incumbent upon me to do so in my capacity as Special Rapporteur. Indeed, the Government of Sri Lanka had suggested such a course of action on several occasions.

33. On the basis of advice received from independent experts working in the relevant fields, I approached three experts to provide me with their expert opinions on the authenticity or otherwise of the videotape. Each of these experts agreed to undertake the work on a pro bono basis, and each declared his full independence and impartiality in relation to this matter. The full text of the report provided by each expert is appended to this Note.

Expert 1: Jeff S. Spivack

34. Mr Spivack was formerly a Forensic Multimedia Analyst with the Las Vegas Metropolitan Police Department, and a calibration laboratory specialist for the US Air Force. He is a member of the American College of Forensic Examiners Institute, is a Certified Forensic Consultant, and has been qualified as an expert witness on forensic video analysis in courts throughout the US. He is now in private practice.

35. Mr Spivack's main findings were as follows:

- “The video and audio formats, codecs, bit rates, and video width, height, aspect ratio, and format profile (motion vector) properties are entirely consistent with multimedia files produced by a wide variety of mobile phones with video recording capability.” Mr Spivack noted that while it is “theoretically possible to alter or delete metadata in a multimedia file, he was “unable to locate any commercially available software capable of deleting or altering meaningful file attributes.” He stated that “altering the class of metadata recovered in this analysis ... requires a high degree of technical proficiency.”
- “Content analysis revealed no breaks in continuity, no additional video layers, and no evidence of image manipulation.”

36. Mr Spivack reviewed each of the Sri Lanka expert arguments and found most of them to be inaccurate or faulty. For example:

- Sri Lanka expert Dr De Silva stated that the colours of the bloodstains in the video suggested that the video was faked. Mr Spivack stated, “color reproduction accuracy is inherently unreliable for any photographic or video recording, regardless of domain or medium. Color levels, saturation, and related properties do not provide conclusive evidence of image manipulation.”
- Sri Lanka experts Dr De Silva and Mr Hewawitharana stated that the lack of audio synchronization with the video indicated manipulation. However, Mr Spivack stated, “video/audio synchronization for both events ranges from an audio delay of 0.068 to 0.122 seconds, well within acceptable limits. Again, as previously noted, audio and video quantization processes occur independently and the two tracks are synchronized and multiplexed in a separate process. Audio may be “ahead” of the video or it may be delayed, subject to a number of variables.”
- Sri Lanka expert Dr De Silva stated that there was no evidence of wind in the video footage, but it was present on the audio. Mr Spivack stated that there “is compelling visible evidence of wind activity corresponding to wind noise in the audio track, particularly at frame 333 as the individual operating the camera changed the position of the camera radically as a gust of wind was audible. Further, a cloud of what appears to be aerosolized biological material is visible drifting back toward the second shooter as wind gusts are also audible.”

- Sri Lanka expert Major Bandara stated that the bloodstains did not spread in a consistent manner. Mr Spivack stated, “Both the surface topography and level of water saturation appear to be highly variable in the area where bodies are present. It is quite true that the bloodstains would have individual characteristics. This is to be expected; in fact, it would be far more suspect if all the bloodstains appeared to be identical. Such a condition would be suggestive of effects inserted in a “copy and paste” manner.”

37. Mr Spivack noted two elements that he could not explain on the basis of the video he reviewed:

- He noted that the metadata retrieved from the video indicated that the encoded date was set at 17 July 2009. This date is not determinative, however, as the Philips mobile phone devices sold in Sri Lanka permit the user to set the date and time on the phone.
- At the end of the recording, there are 17 frames consisting of a red background with a white uppercase “A”. Mr Spivack stated that, “Without access to the specific device that generated this recording, it is not possible to determine if this text or title feature is consistent with the normal operation of the device using default settings, user defined settings, as a consequence of device malfunction, or as a characteristic of proprietary transfer and/or conversion software.”

Expert 2: Daniel Spitz

38. Dr Spitz, MD, is a specialist in forensic pathology and toxicology. He is the Chief Medical Examiner for Macomb County and St Claire County in Michigan, and Clinical Assistant Professor of Pathology, Wayne State University School of Medicine. He is also an Adjunct Instructor at Macomb Community College, a Clinical Educator at Michigan State University School of Medicine, and a Staff Physician at Port Huron Hospital. He is Board-certified in Anatomic, Clinical and Forensic Pathology by the American Board of Pathology, is on the Board of Editors of the American Journal of Forensic Medicine and Pathology, and has authored several book chapters, numerous original articles and abstracts. He is the co-author of *Medicolegal Investigation of Death* (4<sup>th</sup> edition, 2006), and *Differential Diagnosis in Surgical Pathology* (2<sup>nd</sup> edition, 2009).

39. Dr Spitz summarizes his findings as follows:

- “[T]he footage shown in this video appears authentic, especially with respect to the two individuals who are shown being shot in the head at close range by assailants using high powered assault rifles. The body reaction, movement and blood evidence of both victims are entirely consistent with what you would expect with execution type shootings. Furthermore, it appears that the other 8 apparently deceased individuals are also victims of homicidal violence . . . “.

40. While the testimony of Sri Lanka’s expert, Major A.P. Bandara stated that the physical response of the second gunshot victim was an indication that the video was fake, Dr Spitz stated that:

- “As the victim is shot, he immediately collapses backwards, but appears to tense his body with contraction of his torso and lower extremity musculature. A large gush of blood pours from the back of his head and onto the ground behind his body. Over the next several seconds, his muscles relax and his back and head then come in complete contact with the ground. Blood continues to saturate the area under and around his head. This reaction is quite typical is an individual who sustains a gunshot wound to the head. The initial response to such trauma is often intense



contraction of the skeletal muscles followed by relaxation over the next several seconds.”

41. In addition, Dr Spitz notes two questions which his inquiries were not able to resolve. These relate to body movements by two of the other apparently deceased victims, which he could not explain on the basis of the information shown on the video.

Expert 3: Peter Diaczuk

42. Mr Diaczuk is an expert in the scientific examination of firearm evidence and crime scene reconstruction. He is the Director of Forensic Science Training at the Center for Modern Forensic Practice at John Jay College of Criminal Justice, City University of New York. He is qualified as an expert witness on firearms, trace evidence, and crime scene reconstruction for courts in New York, New Jersey and Connecticut. He is a Certified Firearms Instructor, and is the current President of the New York Microscopical Society, on the Board of Directors of the Northeastern Association of Forensic Scientists, and a member of the American Society of Testing and Materials and the American Academy of Forensic Sciences.

43. Mr Diaczuk concluded that, “from the videos that I took of an AK-47 class rifle being fired from both hip and shoulder, I am convinced that the minimal recoil seen in the video submitted was accurate for an adult male holding and firing a Kalashnikov class firearm.”

44. Mr Diaczuk’s findings with respect to the first apparent shooting in the video were:

- “At the moment of discharge of the firearm, at frame #41, it moves rearward, as do the shooter’s arms, as seen clearly by both of the elbows suddenly jerking rearward and then forward again in the next frame, #42. When the firearm moves rearward as a result of the recoil from discharge, it appears to move in-line with how it was held, and then forward again in the same linear fashion. This is consistent with how a shooter anticipates recoil and recovers after firing the shot. Accompanying the discharge is the plume of high-pressure gases that is expelled from the muzzle, visible to the left and lower left of frame # 41.”
- The recoil and the high-pressure gases (muzzle blast) “are indicative of firing live ammunition.”
- In frame # 41, the apparent victim’s head “lurches forward (away from the muzzle)” at the moment of discharge. “This lurching forward is so sudden that the excess cloth used to tie the blindfold is seen to move from what was merely gravity-positioned, to an airborne position.”
- “Coinciding with the firearm discharge and forward head movement of the person seated in the foreground is the sudden body movement by the person lying directly in front of him.” This movement could be due to the bullet passing through the body of the first person and hitting the second, as “the energy and ability of the bullet from the Kalashnikov class of firearms to pass through considerable obstacles is well known... I can state from experience that bullets fired from an AK-47 firearm, using 7.62 x 39 mm full metal jacket ammunition, have gone through 6 inches of wood consistently.”

45. With respect to the second apparent shooting, Mr Diaczuk found that:

- “At the moment of discharge of the firearm, both excess cloth “tails” of the blindfold on the victim move suddenly to the side... The sudden movement of the blindfold is consistent with the turbulence generated from high-pressure gases that are expelled

from the muzzle at discharge. The firearm (and the sling attached to its fore end) clearly moves rearward and slightly upward in the same frame that shows the blindfold movement (i.e. when the shot was fired). In this shooting, the shooter is apparently holding the firearm to his shoulder, which provides the pivot point causing the muzzle to rise slightly in addition to its rearward movement. This is fully consistent with the discharge of a live cartridge and not a blank cartridge.”

- “There is a visible defect that develops in the victim’s head on the left side above his ear. This occurs in the same frame as the firearm is discharged, and appears to worsen in the following frame.”

1010. [The three expert reports included as an Appendix the Technical Note are available at: <http://www2.ohchr.org/english/issues/executions/docs/TechnicalNoteAppendix.pdf>]

#### **Response of the Government of Sri Lanka dated 6 January 2010**

1011. I write with reference to your letter dated 05th January 2010 addressed to H.E. Mrs Kshenuka Senewiratne, the Ambassador and Permanent Representative of Sri Lanka to the UN at Geneva, conveying your intent to make the “Technical Note” on the examination of the so-called “Channel 4 Video tape” by “three independent experts” available by means of a public statement in New York on 07th January 2010. Let me add that your letter though dated 05th January appears to have been transmitted only after the end of working hours on that day to our Mission, so that the document reached Colombo in turn only late this evening.

1012. The justification cited by you for your proposed statement, is the public nature of the comments exchanged on this matter. I wish to observe in this regard that the very nature of the material required the Government of Sri Lanka should also make known its stance through the public domain. Had the so called “Channel 4 Video tape” been transmitted to the Sri Lankan Government through privileged and non public channels, my authorities would have surely have opted to share their findings on the authenticity of the material in the same manner. However, as it so happened, Channel 4 telecast the material, leaving the Government no choice other than that of also going before the public with its refutation.

1013. It is therefore submitted that the “public nature of the comments already exchanged” cannot be a justification for a public statement. Rather, fair practice and the unbiased assessment of allegations would require that whatever determinations have been reached by the “three independent experts”, should first be shared with the Government of Sri Lanka. Thereafter, the Government needs to be afforded adequate time to review any fresh material that may have come up, with a view to then responding in respect of the same. The space between the receipt of the “Technical Note” at 1800 hrs. in Colombo on 06th January and the scheduling of the public statement in New York on 07th January, hardly constitutes any yardstick, a reasonable amount of time for a response with a considered position from our side.

1014. In view of the above, I request that you kindly defer whatever public statement you propose to make, so that the Government is enabled to communicate its views on the “Technical Note”. It would be proper we believe for you to take these views into account, prior to deciding on any further course of action.

1015. While I do look forward to your positive response to this letter, I must also mention my concern in the event of what is a palpably fair and reasonable request being turned down, such a course of action would be perceived as yet another example of biased pre-judgement.

1016. Please accept Mr Special Rapporteur, the assurance of my high consideration.

C.R. Jayasinghe

Secretary/Foreign Affairs

**Press Release by the Special Rapporteur dated 7 January 2010**

UN expert concludes that Sri Lankan video is authentic, calls for an independent war crimes investigation

1017. GENEVA -- Reports by three independent experts strongly point to the authenticity of a videotape released by Channel 4 in Britain which appears to show the summary execution of bound, blindfolded, and naked Tamils by Sri Lankan soldiers. This was announced today by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, on the basis of detailed analyses conducted by recognized experts in forensic pathology, forensic video analysis, and firearm evidence.

1018. Alston commissioned the three reports following the publication of four opinions by Sri Lankan experts, all of which concluded that the video was a fake. The Government of Sri Lanka informed the UN Human Rights Council that it would therefore not be undertaking any investigation of the allegations made. "Senior Government officials called upon me to apologize and to withdraw the allegations," said Alston. "They also criticized me for not having undertaken my own technical analysis. In response to that criticism and to what seemed to me the patent inadequacies of the reports commissioned by the Government (two of which were prepared by officials of the Sri Lankan army), I requested highly qualified and totally independent experts to undertake evaluations."

1019. Alston released the full text of the expert opinions in a "Technical Note" made public in New York today. "Together, the reports by these experts strongly suggest that the video is authentic," Alston stated.

- "Given these conclusions, and in light of the persistent flow of other allegations of extrajudicial executions by both sides during the closing phases of the war against the LTTE, I call for the establishment of an independent inquiry to carry out an impartial investigation into war crimes and other grave violations of international humanitarian and human rights law allegedly committed in Sri Lanka."

1020. Alston summarized the key findings of the experts:

1021. Mr Peter Diaczuk, an expert in firearms evidence, concluded that the recoil, movement of the weapon and the shooter, and the gases expelled from the muzzle in both apparent shootings were consistent with firing live ammunition, and not with shooting blank cartridges.

1022. Dr Daniel Spitz, a prominent forensic pathologist, found that the footage appeared authentic, especially with respect to the two individuals who are shown being shot in the head at close range. He found that the body reaction, movement, and blood evidence was entirely consistent with what would be expected in such shootings.

1023. Mr Jeff Spivack, an expert in forensic video analysis, found no evidence of breaks in continuity in the video, no additional video layers, and no evidence of image manipulation.

1024. Alston added that the independent experts' analyses also systematically rebutted most of the arguments relied upon by Sri Lanka's experts in support of their contention that the video was faked. He gave the following examples:

- (a) A Sri Lankan expert stated that there was no recoil or movement of the weapon discharged. However, Mr Spivack and Mr Diaczuk described the recoil visible on the video, and the way in which the movement was consistent with firing live ammunition.

- (b) A Sri Lankan expert stated that the lack of audio synchronization with the video indicated manipulation. However, Mr Spivack stated that the video/audio synchronization in the video was well within acceptable limits, and that audio can be ahead or behind video, subject to various variables.
- (c) A Sri Lankan expert stated that the movement of the second victim after being shot was not consistent with the normal expected reaction. However, Mr Spitz stated that the movement was entirely consistent with the manner in which the individual was apparently shot.
- (d) A Sri Lankan expert stated that while wind could be heard on the audio, it was not evident in the video. Mr Spivack however described multiple places in the video where there is clear evidence of wind.
- (e) Sri Lanka's experts argued that the footage was likely to have been recorded on a digital camcorder, and not a mobile phone. Mr Spivack concluded that the metadata he retrieved from the video was entirely consistent with multimedia files produced by mobile phones with video recording capability, and that it would have been very difficult to alter the metadata.

1025. There are a small number of characteristics of the video which the experts were unable to explain. These included the movement of certain victims in the video, 17 frames at the end of the video, and the date of 17 July 2009 encoded in the video. Each of these characteristics can, however, be explained in a manner entirely consistent with the conclusion that the videotape appears to be authentic.

1026. In sum, while there are some unexplained elements in the video, there are strong indications of its authenticity. In addition, most of the arguments relied upon by the Government of Sri Lanka to impugn the video have been shown to be flawed.

#### **Sri Lanka: Death threats against journalists Frederica Jansz and Munza Mushataq**

**Violation alleged:** Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, or groups cooperating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above and when the Government is failing to take appropriate protection measures

**Subject(s) of appeal:** 2 females

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Sri Lanka has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 6 November 2009,** sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.

1027. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the situation of Ms. Frederica Jansz, and Ms. Munza Mushataq and staff members of the Sunday Leader weekly newspaper, an investigative newspaper which often reports on cases of alleged corruption and abuse of authority in Sri Lanka. Ms. Jansz and Ms. Mushataq are respectively Editor-in-chief and News Editor of the Sunday Leader.

1028. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders sent on 9

January 2009, a letter of allegation on the killing of Mr. Lasantha Wickrematunga, founder and former Editor-in-Chief of the *Sunday Leader*. We acknowledge receipt of the responses of your Excellency's Government dated 11 February 2009 and 9 July 2009.

According to the information received:

On 22 October 2009, Ms. Jansz and Ms. Mushataq reportedly received death threat letters. The letters, handwritten in red ink, stated the following: "if you write anymore, we will kill you, slice you into pieces". Mr. Lasantha Wickrematunga was killed in January 2009 after having received a similar red ink handwritten death threat letter.

These new threats occurred following the publication on 18 October 2009, of an article by the *Sunday Leader* in relation to a video allegedly showing Sri Lankan soldiers executing Tamil prisoners and denounced as a fake by your Excellency's Government.

Ms. Jansz and Ms. Mushataq reported the threats to the Inspector General of Police and to the police in Colombo.

It is further reported that staff members of the *Sunday Leader* have been threatened on many occasions and the premises of the newspaper burnt down and bombed several times.

Grave concern is expressed that these new threats may be directly related to the legitimate work of Ms. Jansz and Ms. Mushataq and the staff members of the *Sunday Leader* in defense of human rights. Given the content of the letters and the killing of Mr. Wickrematunga, further concern is expressed for the physical and psychological integrity of Ms. Jansz and Ms. Mushataq and all staff of the *Sunday Leader*.

Moreover, we would like to reiterate our concern regarding the number of abductions, physical attacks, death threats, killings and acts of intimidation against journalists, and the ensuing lack of prosecutions of alleged perpetrators, which has previously been conveyed to your Excellency's Government, including the most recent urgent appeal sent on 15 October 2009 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.

1029. While we do not wish to prejudice the accuracy of these allegations, we would like to refer your Excellency's Government to the relevant principles of international law. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life.

1030. With respect to the death threats received by Ms. Jansz and Ms. Mushataq, we would like to recall that your Excellency's Government has an obligation under Art 2(1) of the ICCPR to "ensure to all individuals within its territory" the right to life. As explained by the Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), this positive obligation to ensure the right to life:

- "will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons ... There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take

appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”

1031. These due diligence obligations to take all appropriate measures to deter and prevent extrajudicial executions may be breached where, for example, state authorities do not react promptly to reliable reports, the relevant legal remedies are ineffective or non-existent, authorities do not act to clarify a situation in the face of reliable evidence, or it takes no action to establish individual responsibility (See *Velásquez Rodríguez v. Honduras*, Annual Report of the Inter-American Court of Human Rights, OAS/Ser. L/V./III.19, doc. 13 (1988), 28 ILM (1989) 291; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7, paras 71-73).

1032. In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

1033. Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6, point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

1034. We should also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression of the above mentioned persons, in accordance with fundamental principles as set forth in article 19 of the

Universal Declaration of Human Rights and reiterated in article 19 of the International Covenant on Civil and Political Rights which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

1035. We also deem it appropriate to make reference to paragraph 3 of Human Rights Resolution 12/16, which states that the Council is deeply concerned that:

- (a) violations of the right to freedom of opinion and expression continue to occur, often with impunity, including extrajudicial killings, intimidation, persecution and harassment, threats and acts of violence against persons who exercise, seek to promote or defend these rights, including journalists, writers, and human rights defenders;
- (c) threats and acts of violence, including killings and attacks, particularly directed against journalists, have increased and are not adequately punished, in particular in those circumstances where public authorities are involved in committing those acts.

1036. In the event that your investigations support or suggest the above allegations to be correct, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

1037. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

1038. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which have been or will be undertaken. Have penal, disciplinary or administrative sanctions been or will be imposed on the alleged perpetrators?

**Sri Lanka: Death in custody of Wannu Athapaththu Mudiyansele Nilantha Saman Kumara**

**Violation alleged:** Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention

**Subject(s) of appeal:** 1 male

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Sri Lanka has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 31 December 2009**, sent with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

1039. In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning Mr. **Wanni Athapaththu Mudiyanseelage Nilantha Saman Kumara**, aged 31.

According to the information received:

On 26 October 2009, Mr. Kumara joined several villagers outside a shop by the Nahettigkulama jam tree in Galgamuwa to search the jungle for some goods which had been stolen. A few hours later, he was stopped by the police and asked to accompany them to the Galgamuwa Police Station. Upon arrival at the station, he was detained without a warrant or formal charges against him.

Two hours later, he was taken to a room in what appeared to be the private wing of the police residential barracks behind the Crimes Division. Mr. Kumara was interrogated by Inspector Ataputtu, Police Constable Wijeratne and other officers, all dressed in civilian clothes. The police indicated that he had been detained on suspicion of theft at the shop and of a water pump, charges which Mr. Kumara denied.

Subsequently, Mr. Kumara was subjected to the "Palestinian hanging", whereby his shirt was removed, his lower arms were wrapped in cloth, his hands were forced behind his back and tied with a rope which was attached to a nylon rope that hung from a beam in the ceiling. The other end of the nylon rope was secured to a steel bed. Mr. Kumara was then told to stand on a box; the rope was pulled tight and the box was then kicked from under his feet, leaving him hanging. Inspector Ataputtu gave orders to the other officers to leave Mr. Kumara hanging until he confessed to the crimes. He was taken down approximately two hours later, but the procedure was repeated that evening. The second time, he was released after approximately 30 minutes, but was then beaten and kicked for three hours. Although by this time the police had allegedly received information indicating that Mr. Kumara had not been involved in the theft at the shop, he was still accused of stealing a water pump.

The following day, Mr. Kumara was once again hung for approximately two hours. Although he needed medical attention, none was provided. That evening, Inspector Ataputtu told Mr. Kumara that he could be released the following day if he confessed; otherwise, he would be presented before the court. When Mr. Kumara denied his involvement, he was grabbed by the hair and dragged to the same room where he was beaten and stripped, and his hands were tied. He was then subjected to the "Dharma Chakra" or wheel of enlightenment, by which he was forced to squat and wrap his hands over his knees, while a metal pipe was inserted through the space between his knees and elbows, and was balanced on two tables. While in this position, a bottle of petrol was poured in his anus. Water was also poured on him to relax the muscles.

On 28 October, Mr. Kumara's cellmate was ordered to bathe and dress him, since he could not move his arms. They were both taken to the Criminal Division, but a statement was only taken from Mr. Kumara's cellmate. They were then taken to the Out-Patient Department of Galgamuwa Hospital, where a physician, Dr. Roja, completed a Medico-Legal Examination Form without examining Mr. Kumara.

Afterwards, Mr. Kumara and his cellmate were taken to the Magistrate's Court in Galgamuwa. They were not allowed to inform their families or contact a



lawyer. Mr. Kumara was not questioned or addressed by the magistrate, but was remanded. He was then transferred to Wariyapola Prison, where he informed the guards about his torture and signed a statement indicating his experience.

The following day, Mr. Kumara was taken to Wariyapola Hospital. The accompanying officer informed the doctor of the torture, but the doctor reportedly accused Mr. Kumara of lying and refused to examine him.

On 6 November, Mr. Kumara was presented before the Galgamuwa Magistrate's Court. He was released on bail. Three days after, Mr. Kumara went to the Galgamuwa Hospital, but Dr. Roja once again refused to examine him and indicated that he should go to the Anuradhapura Teaching Hospital. Mr. Kumara went there the following day, where he received adequate treatment and was examined by a Judicial Medical Officer.

On 17 November, one of the alleged perpetrators visited Mr. Kumara at his home to inquire into the possible action he was intending to take. On 19 November, Mr. Kumara submitted a complaint to the Inspector General of Police, the National Police Commission, the Attorney General and the National Human Rights Commission.

1040. Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances of the arrest, detention at the police station and remand to detention in prison of Mr. Kumara. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1041. In this context, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

1042. We would further like to draw your Excellency's Government's attention to Article 13 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which requires that "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given." In this context, we would also like to draw your Excellency's Government's attention to paragraph 6 b and e of Human Rights Council Resolution 8/8 adopted in June 2008 which urges States "to take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold persons, who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed [...] and "to ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation [...]."

1043. With regard to the alleged denial of adequate medical treatment and proper diagnosis of the injuries suffered by Mr. Kumara, we would like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. ...". Furthermore, Rule 25(1) provides that, "The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed." (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

1044. With regard to the alleged denial of assistance by legal counsel during the hearing before the Magistrate's Court in Galgamuwa, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular:

- principle 5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
- principle 7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

1045. We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person are respected and that accountability of those guilty of the alleged torture and denial of medical treatment is ensured. We also request that your Government adopt effective measures to protect Mr. Kumara against intimidation by those involved in his torture.

1046. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please provide the details of the measures adopted by your Excellency's Government to protect Mr. Kumara against intimidation by those involved in his torture.
5. Please indicate whether compensation has been provided to Mr. Kumara.

**Sri Lanka: Death of three senior representatives of the Liberation Tigers of Tamil Eelam**

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

**Subject(s) of appeal:** 3 males

**Character of reply:** Receipt acknowledged

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the Government of Sri Lanka's acknowledgement of his communication and looks forward to a full response to the questions raised in that communication.

**Allegation letter dated 18 December 2009**

1047. I write to your Excellency's Government with regard to the circumstances of the death of three senior representatives of the Liberation Tigers of Tamil Eelam (LTTE), Mr. **Balasingham Nadeshan**, Mr. **Seevaratnam Pulidevan** and Mr. **Ramesh**, as well as of members of their families, in the night of 17 to 18 May 2009.

According to information I have received:

On 17 May 2009, the day before your Excellency's Government announced that its forces had completely defeated the LTTE, Messrs. Nadeshan, Pulidevan and Ramesh were trapped with other senior cadres of the LTTE in a small area north of Vellamullivaikkal. Through intermediaries they sought to establish contact with your Excellency's Government to inquire how they could surrender to the Sri Lanka Army (SLA). The reply, coming from the Secretary of Defense in your Excellency's Government and from a Member of Parliament who is at the same time a senior adviser to the President, and conveyed through the intermediaries, was that they should walk towards the positions of the SLA in a way that made their intentions clear and holding a white cloth. The Commander of the SLA 58<sup>th</sup> Brigade, the unit on the front line with the last LTTE position, however, received a telephone call from the Secretary of Defense instructing him to order his forces to shoot those surrendering. When Messrs. Nadeshan, Pulidevan and Ramesh walked towards the SLA positions carrying white cloths in the first hours of 18 May 2009, soldiers opened fire on them and killed them. An unspecified number of family members of the three men were killed as well.

These allegations were made by the Commander of the Sri Lanka Army at the time of the events and subsequent Chief of Defence Staff, (now retired) General Gardihewa Sarath Chandralal Fonseka, in an interview to the newspaper *The Sunday Leader*. The accounts of journalists embedded with the SLA 58<sup>th</sup> Brigade confirm some of the alleged circumstances of the death of Messrs. Nadeshan, Pulidevan and Ramesh and their families.

1048. While I do not wish to prejudge the accuracy of these reports, I would like to refer your Excellency's Government to fundamental legal rules applicable to all armed conflicts under international humanitarian law and human rights law.

1049. Common Article 3 (applicable to armed conflict not of an international character) of the Geneva Conventions of 1949, to which your Excellency's Government is a party, dictates that "[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely [...]. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds".

1050. Similarly, an authoritative study of customary international humanitarian law finds that attacking and killing persons who are recognized as *hors de combat* is prohibited. Persons *hors de combat* include anyone who clearly expresses an intention to surrender, provided he or she abstains from any hostile act and does not attempt to escape (Rule 47 of

the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross).

1051. It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on the death of Messrs. Nadeshah, Pulidevan and Ramesh, as well as of the members of their families, I would be grateful for the cooperation and observations of your Excellency's Government, in particular in relation to the following questions:

1. Are the allegations summarized above accurate? If not so, please share the information and documents proving their inaccuracy.
2. What information does your Excellency's Government have on the family members of Messrs. Nadeshah, Pulidevan and Ramesh allegedly killed on 18 May 2009?
3. Please refer to the results of any military, police, judicial or other inquiry or investigation carried out in relation to the allegations summarized above.

## **Sudan**

### **Concerns about death penalty safeguards in the trials of 10 men**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 10 males

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Sudan has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 2 April 2009,** sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

1052. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the trial of Messrs. **Ishag Al Sanosi Juma, Abdulhai Omer Mohamed Al Kalifa, Al Taieb Abdelaziz Ishag, Mustafa Adam Mohamed Suleiman, Mohamed Abdelnabi Adam, Saber Zakaria Hasan, Hasan Adam Fadel, Adam Ibrahim Al Haj, Jamal Al Deen Issa Al Haj, and Abdulmajeed Ali Abdulmajeed**, ten men of origin from the Darfur region charged with the murder of Mr. Mohamed Taha, the founder and editor-in-chief of the daily Al Wifaq. The ten men were arrested in and around Khartoum between 9 September and December 2006 by National Intelligence and Security Services (NISS) and police forces. On 10 November 2007, a court in Khartoum found the ten defendants guilty and sentenced them to death. On 10 March 2008, the Court of Appeal upheld the verdict of the first instance court. On 26 August 2008, the Supreme Court upheld the death sentences for nine of the ten defendants and amended the charges against Mr. Al Taieb Abdelaziz Ishag, who was a minor at the time of the crime, from murder to harbouring offenders. His sentence was amended to a four-year prison term from the date of his arrest, 21 October 2006.

1053. The case was brought before the Working Group on Arbitrary Detention in August 2008. On 24 November 2008, the Working Group adopted Opinion No. 38/2008. It found (paras. 41-45 of Opinion No. 38/2008) that the defendants

- “[...] have not had a fair and public hearing as established in article 14 of the International Covenant on Civil and Political Rights.
- All ten defendants [...] accused of murdering Mr. Mohamed Taha, revoked their confessions in court, stating that they had been threatened, intimidated and subjected to torture and ill-treatment as a means to compel them to make the incriminating statements that the investigators instructed them to make. These statements were made during up to four months of incommunicado detention – without permission of access to defence counsel and family visits – in the police-run Forensic Evidence Department and Criminal Investigations Department, as well as in NISS [National Investigation and Security Service] detention facilities in Khartoum.
- A request was made to the prosecutor heading the investigation for the defendants to be medically examined on the grounds that they were feared to have been subjected to severe torture. However, the prosecutor and the judge turned down the request despite the fact that when the trial proceedings began, many of the defendants still bore clearly visible physical traces of injuries and scars on their arms, hands, thighs, and shoulders as a result of the alleged torture.
- The sentence that condemns the defendants to death is exclusively based on their confessions during their incommunicado detention as explained above. The court did not consider: i) that the defendants had revoked their confessions and ii) that the prosecutor and the judge turned down the request on the medical examination.”

1054. In light of these findings of the Working Group on Arbitrary Detention, we would like to draw the attention of your Excellency’s Government to several principles applicable to this case under international law.

1055. We would in the first place respectfully remind your Excellency’s Government that in capital punishment cases the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights, to which Sudan is a party and which (pursuant to article 27(3) of Sudan’s Interim National Constitution) is “an integral part” of the constitutional Bill of Rights, admits of no exception. Relevant to the case at hand, these guarantees include the right to a public trial, to “have adequate time and facilities for the preparation of [one’s] defence and to communicate with counsel of [one’s] own choosing” and the right not to be compelled to confess guilt.

1056. We recall that “prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment” (General Assembly Resolution A/RES/61/153 of 14 February 2007, paragraph 12). Prolonged incommunicado detention furthermore negates the abovementioned guarantees of the right to a fair trial, such as being assisted by a lawyer and having adequate facilities to prepare one’s defence.

1057. We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made. In addition to being a crucial fair trial guarantee, this principle is an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights. The Working Group on Arbitrary Detention found that “the prosecutor and the judge turned down [requests for the medical examination of the defendants] despite the fact that when the trial proceedings began, many of the defendants still bore clearly visible physical traces of injuries and scars on their arms, hands, thighs, and shoulders as a result of the alleged torture”. The courts’ reliance on the self-incriminating statements made by the defendants

during incommunicado detention in NISS facilities and, allegedly, under torture suggests a particularly serious violation of these principles of international law.

1058. With regard to the right to “have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing” (Article 14(3)(b) of the Covenant), we would refer your Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Principle 7 reads: “Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.” The Human Rights Committee has observed that “[i]n cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings.” (General Comment no. 32, CCPR/C/GC/32, para. 38). The circumstance that the defendants were kept up to four months of incommunicado detention, without access to defence counsel, and made the statements relied on by the courts during this period, negates the possibility of a fair trial.

1059. With regard to the right to a public trial, the Working Group on Arbitrary Detention noted reports of heavy censorship of public reporting on the trial, which have not been disputed by your Excellency’s Government. According to Opinion No. 38/2008 (para. 21):

- “In addition, there was also a lack of public scrutiny and discussion about the investigation and trial. From the beginning of the investigation, the authorities imposed a ban on newspapers and media to report on the investigation, in a stated effort to prevent influencing the course of justice. Direct censorship of privately-owned print media by the NISS, a practice used to restrict independent reporting on politically sensitive issues, was reinstated systematically from 6 September 2006, the day the body of Mr. Mohamed Taha was found. On 1 February 2007, three weeks before the start of the trial, the Minister of Justice imposed a new ban on publishing stories related to the trial, which applied to all media outlets except the state-run SUNA (Sudan News Agency). Papers that published articles on the murder trial were temporarily suspended. On 21 February 2007, the presiding judge met privately with journalists in order to inform them of a decision by the court to forbid photography or any news reporting inside the courtroom by any other outlet than SUNA. This measure was in accordance with Article 133 of the Criminal Procedure Act of 1991, which allows the court to exclude “the public generally or any person of those attending” at its discretion. On 12 March 2007 journalists from four Arabic-language newspapers – Al Sudani, Akhbar Alyoum, Al Dar, and Al Adwa – were barred entry to the courthouse by the police and were informed that they would be forbidden to attend the court session unless they provided a written apology for having published commentary on the trial. On 27 March 2007, after protests from numerous dailies, the presiding judge granted newspapers the right to factually report on the trial without any independent commentary or analysis. However, because the gagging order was never definitively retracted and because NISS censorship of newspaper contents has continued, journalists have remained uncertain about the extent to which they could comment on the trial and have generally erred on the side of caution, rather than risk problems with the authorities.”

1060. These reports raise grave concerns with regard to the enjoyment of the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. They provide that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of

art, or through any other media of his choice.” Additionally, as already mentioned above, such censorship on the reporting about the trial interferes with the defendants’ right to a public trial protected by Article 14(1) of the Covenant.

1061. To summarize, only the full respect for stringent due process guarantees distinguishes capital punishment, as permitted by Article 6 of the Covenant “in countries which have not abolished the death penalty”, from a summary execution which violates the most fundamental human right. We therefore urge your Excellency’s Government to take all necessary steps to ensure that the rights under international law of Messrs. Ishag Al Sanosi Juma, Abdulhai Omer Mohamed Al Kalifa, Al Taieb Abdelaziz Ishag, Mustafa Adam Mohamed Suleiman, Mohamed Abdelnabi Adam, Saber Zakaria Hasan, Hasan Adam Fadel, Adam Ibrahim Al Haj, Jamal Al Deen Issa Al Haj, and Abdulmajeed Ali Abdulmajeed are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety, or the above named men are given a new trial or released.

1062. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters.

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please explain the steps taken by your Excellency’s Government, in light of Opinion No. 38/2008, to grant a retrial to Messrs. Ishag Al Sanosi Juma, Abdulhai Omer Mohamed Al Kalifa, Al Taieb Abdelaziz Ishag, Mustafa Adam Mohamed Suleiman, Mohamed Abdelnabi Adam, Saber Zakaria Hasan, Hasan Adam Fadel, Adam Ibrahim Al Haj, Jamal Al Deen Issa Al Haj, and Abdulmajeed Ali Abdulmajeed, or to lift or commute the death sentences imposed against them.
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegation that the ten defendants were subjected to torture while in pre-trial detention. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide details regarding the defendants’ access to legal counsel before the trial and please indicate whether the defendants had the possibility to communicate in private with their counsels.
5. Please provide information as to how the principle that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made, is implemented in the Sudan. What steps should judges take under Sudanese law when confronted with allegations by defendants that they have been compelled to make confessions?

**Sudan: Concern about death sentences against 6 men .**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 6 males

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Sudan has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent Appeal dated 30 December 2009**, sent with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

1063. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the cases of Mr. **Paul John Kaw**, Mr. **Idris Adam Alyas**, Mr. **Naser El Din Mohamed Ali Kadaka** (referred to as Nasr-al-Din Ahmad Ali in our previous communication), Mr. **Suleiman Juma'a Awad Kambal** (referred to as Sulayman Jum'a Timbal in our previous communication), Mr. **Badawi Hassan Ibrahim** and Mr. **Abdelrahim Ali Al Rahama Mohamed** (referred to as Abd-al-Rahim Ali in our previous communication), six men sentenced to death on murder charges related to the killing of 14 policemen in the Soba Aradi internally displaced persons camp in May 2005.

1064. Following their conviction and sentencing to death on 23 November 2006, on 23 January 2007 the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture wrote to your Excellency's Government drawing attention to reports that the men had been detained without access to legal counsel for five months following their arrest (from May until October 2005), and that they confessed to murder charges under torture. Regrettably, we have not received a reply to this communication. In the meantime, we have received information on further developments in the case, which suggest that the six men's execution might be imminent. The recently received information also strengthens our concerns that the execution of the men would constitute a violation of norms of international law binding for your Excellency's Government.

According to reports recently received:

On 11 December 2006, the judge announced the verdict in the presence of the families of the victims. The families declared that they refused to spare the lives of the condemned in return for payment of diya and asked for retribution in kind, i.e. execution of the death sentences.

The trial court's judgment was confirmed on appeal by the Court of Appeal, with the exception of the case of one defendant, Fathi Adam Mohammed Ahmad Dahab, who was found guilty of involuntary homicide instead of murder. His sentence was reduced from death to five years imprisonment.

On 18 July 2007, the Supreme Court confirmed the death sentences, as did a review panel of the Supreme Court on 27 February 2008. From the judgment of the Constitutional Court in this case (see below), it would appear that the defendants' lawyers raised the violation of the defendants' constitutional rights before the Supreme Court, including that confessions were obtained under torture, but the Supreme Court declined to deal with these complaints.

On 13 October 2009, the Constitutional Court rejected an appeal in the case. The judgment notes, without further elaboration, that "allegations of torture were not convincing to the lower courts".

The Supreme Court then granted a one month stay, until 2 December 2009, a committee made up of family and traditional leaders to pursue contacts with the traditional leaders of the victims' tribes to seek pardons or acceptance of blood money. These efforts were not successful. The stay of execution currently in force expires on 6 January 2010.



1065. While we do not wish to prejudge the accuracy of the reports received, we would like to draw the attention of your Excellency's Government to several principles applicable to this case under international law.

1066. We would in the first place respectfully remind your Excellency's Government that in capital punishment cases the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights, to which Sudan is a party and which (pursuant to article 27(3) of Sudan's Interim National Constitution) is "an integral part" of the constitutional Bill of Rights, admits of no exception. Relevant to the case at hand, these guarantees include the right to "have adequate time and facilities for the preparation of [one's] defence and to communicate with counsel of [one's] own choosing" and the right not to be compelled to confess guilt. As the Human Rights Committee has observed, "[i]n cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings." (General Comment no. 32, CCPR/C/GC/32, para. 38). This would not appear to have been the case here, as consistent reports indicate that the condemned prisoners were deprived of access to legal counsel for five months following their arrest (from May until October 2005), during which, crucially, their confessions were obtained.

1067. In this respect, we would further like to draw your Excellency's Government's attention to paragraph 20 of General Assembly Resolution A/RES/63/166 of 19 February 2009, which "reminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person". Prolonged incommunicado detention furthermore negates the abovementioned guarantees of the right to a fair trial, such as being assisted by a lawyer and having adequate facilities to prepare one's defence.

1068. We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made. In addition to being a key fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights.

1069. Finally, we note that the accused were found guilty of murder and sentenced to death under Article 130 of the Criminal Act of 1991. Under this provision, the death sentence appears to be the only possible punishment for murder, unless the family of the victim forgoes retribution in kind and opts for the payment of compensation. This provision would appear to deprive the judge of the necessary discretion to tailor the sentence to the specific circumstances of the case and of the accused. Inevitably, some accused will be sentenced to death even though that sentence is disproportionate to the facts of their crimes, in violation of the requirement that only "the most serious crimes" be punishable by death (article 6(2) of the Covenant). Moreover, this provision could be interpreted to give only the victims' families the right to forgo the death penalty, to the exclusion of the right to seek pardon from governmental authorities. Such an interpretation would violate article 6(4) of the Covenant, which provides that "[a]nyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

1070. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of defendants in compliance with the obligations under international law of your Excellency's Government, as outlined above. This can only mean suspension of the capital punishment until the

allegations of torture have been thoroughly investigated and all doubts in this respect dispelled. Moreover, international law requires that the accountability of any person guilty of subjecting someone to torture is ensured.

1071. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on this case to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts reproduced in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegations that the defendants were subjected to torture while in incommunicado detention from May to October 2005. What steps did the courts take to investigate the allegations of torture in this case?
3. With regard to Article 130 of the Criminal Act of 1991, please explain whether in case of a guilty finding on charges under Article 130, the judge can impose a prison sentence instead of the death penalty if the family of the victim refuses to accept the payment of blood money.
4. Please explain the avenues open to Paul John Kaw, Idris Adam Alyas, Nasr-al-Din Ahmad Ali, Sulayman Jum'a Timbal, Badawi Hasan Ibrahim and Abd-al-Rahim Ali to seek pardon or commutation of the sentence from governmental authorities.

**Sudan: Imposition of the death penalty for juvenile offenders**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 10 males (minors)

**Character of reply:** Translation awaited

**Observations of Special Rapporteur:** The Government of the Sudan replied to the communication below on 18 March 2010. The Special Rapporteur appreciates the response but unfortunately had not received a translation of it from the relevant services at the time this report was finalized. He is unable, therefore, to make observations, and expects they will be included in the next report. However, a copy of the original response letter is available online at the following address: [http://www2.ohchr.org/english/issues/executions/docs/Soudan\\_18.03.10\\_2.2010.pdf](http://www2.ohchr.org/english/issues/executions/docs/Soudan_18.03.10_2.2010.pdf).

**Urgent Appeal dated 10 February 2010**, sent with the Special Rapporteur on the independence of judges and lawyers.

1072. On 11 August and 24 September 2008, we wrote to your Excellency's Government in relation to information we received regarding the death sentences imposed by special Anti-Terrorism Courts in greater Khartoum against persons convicted on charges connected to the attack on Omdurman on 10 May 2008 led by the Justice and Equality Movement (JEM). We would now like to follow up to those previous communications, which regrettably have remained without a response from your Excellency's Government, with specific regard to the cases of defendants who allegedly were children at the time of the attack on Omdurman. In this context, we would also like to raise more general concerns regarding the continued imposition of the death penalty against children in Sudan.

1073. In our letter of 11 August 2008, we drew the attention of your Excellency's Government to the case of **Mahmood Adam Zariba**. At the trial, his defence counsel

reportedly informed the court that he was aged 16 years at the time of the JEM attack. The counter terrorism court, however, reportedly did not grant a medical examination to determine his age. Mahmood Adam Zariba was sentenced to death on 31 July 2008 by Anti-Terrorism Court 4 in Omdurman, having been found guilty on a range of offences under the 1991 Criminal Act, the 1986 Arms, Ammunitions and Explosives Act and the 2001 Counter-Terrorism Act.

1074. On 31 July 2008, Anti-Terrorism Court 3 in Bahri (Khartoum North) sentenced to death two additional defendants charged in relation with the attacks on Omdurman who, according to statements they reportedly made to their defence counsel, were aged 17 at the time of the offence. Both **Mohamed Hashim Ali Abdu** and **Ishag Yaseen Ali Adam** (whose mother gave his age as 16) were found to be over the age of 18 according to the views of a police medical committee. Members of the committee testified that the determination of Mohamed Hashim Ali Abdu's age was based on the colour and number of his teeth; the committee testified that this methodology was also used in the case of Ishag Yaseen Ali Adam, as was an assessment of the deepness of his voice and an examination of his armpits for underarm hair. The court reportedly did not take into account doubt cast on the methodology of the medical committee during cross examination, and defence counsel were reportedly denied access to the prosecution's evidence submissions of the committee's findings.

1075. On 20 May 2009, Anti-Terrorism Court 3 in Bahri (Khartoum North) sentenced to death four additional defendants charged in relation with the attacks on Omdurman who, according to statements they reportedly made to their defence counsel, were aged 17 at the time of the offence. They are **Abdelsalam Yahya Abdallah Adam**, **Mohamed Al Duma Yahya Abaker**, **Mohamed Al Taib Mustafa Al Sanousi**, and **Mansour Ibrahim Abaker Hashim**. All four were found to be over the age of 18 according to the views of a police medical committee. Members of the committee testified in court that the defendants were not minors, but allegedly gave no details of the medical examinations conducted to allow them to reach this conclusion. Defence counsel challenged the adequacy of the medical examinations, but the court did not conduct any further inquiry. While the authorities have denied that any minors were sentenced to death in these trials, they have never produced court records nor medical certificates to show that adequate medical examinations had been conducted to assess the age of the above four defendants. The information received indicates that under Sudanese law neither the defence lawyers nor the interested public can demand disclosure of the court records in this respect.

1076. The case of **Al Sadig Mohamed Jaber Al Dar Adam**, raised in the communication of 24 September 2008, is different from those described above in that the Khartoum Anti-Terrorism Court which sentenced him to death on 17 August 2008, reportedly accepted his birth certificate, showing him to have been aged 17 at the time of the offence, as valid documentation of his age. The court, however, found him guilty of hiraba, or brigandage (Article 167 of the Sudanese Criminal Act), a hudud offence, and concluded that he could be sentenced to death in spite of his age. Article 27(2) of the Sudanese Criminal Act allows the death penalty to be applied for hudud crimes regardless of age.

1077. As mentioned in our communications of 11 August and 24 September 2008, reports (which have remained unchallenged by your Excellency's Government) indicate that the defendants in the trials concerning the attacks against Omdurman were held without access to the outside world after their apprehension and were not given access to lawyers until after the trial proceedings opened.

1078. Turning to the general question of the imposition and execution of the death penalty for offences committed by children, our attention has been drawn to the case of **Abdulrahman Zakaria Mohammed**. According to the information received with regard to this case:

On 3 May 2007, Abdulrahman Zakaria Mohammed, aged 17 at the time of the trial, was found guilty of murder and robbery and sentenced to death by the Nyala General Court in South Darfur. The Court reasoned that the Interim National Constitution and the 1991 Criminal Act excluded hudud offences from the general ban against the death penalty for offenders aged less than 18 years at the time of the crime. The court concluded that, as the provisions of the Sudanese Constitution prevail over the provisions of any other domestic law, the victim's family's right to retribution (qisas) prevails over the 2004 Child Act which prohibits the death penalty for offences committed by minors.

On appeal, the Nyala Appellate Court quashed the judgment and returned the case for reconsideration to the Nyala General Court. The Appeals Court argued that, although the child had been found guilty of murder, the imposition of the death sentence was not permissible according to the Child Act 2004. It instructed the Nyala General Court to apply the appropriate alternative measures stipulated in the Child Act, and to decide on the compensation (blood money) for the family of the deceased.

The victim's family, however, refused to accept compensation (blood money) as an alternative punishment for the offence, and appealed the Nyala Appellate Court's decision instead.

The case thus reached the Supreme Court in Khartoum, which in December 2008 confirmed the decision of the Nyala General Court and the death sentence against Abdulrahman Zakaria Mohammed. The Supreme Court based its decision on two arguments. First, it found that under both the Constitution and the 1991 Criminal Act the prohibition of the death penalty for children and those above age seventy did not extend to hudud offences. Second, the Supreme Court found that the definition of a child should be drawn from the definition of "adult" provided in the Criminal Act. According to the Criminal Act, "adult means any person whose puberty has been established by definite natural features and who has completed fifteen years of age, and whoever attains eighteen years of age shall be deemed an adult even if the features of puberty do not appear". Therefore, as long as the defendant had reached 15 years of age and the natural puberty features had been established, the Criminal Act provisions applicable to adults should be applied, rather than the Child Act. The Supreme Court upheld the decision of the Nyala General Court and confirmed the death sentence against Abdulrahman Zakaria Mohammed.

Abdulrahman Zakaria Mohammed was executed in El Fasher, North Darfur, on 14 May 2009.

1079. While we do not wish to prejudge the accuracy of the information received, we would like to draw the attention of your Excellency's Government to the fact that article 37(a) of the Convention on the Rights of the Child, to which Sudan is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, article 6(5) of the International Covenant on Civil and Political Rights, to which Sudan is a Party as well, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age. In application of these norms, in August 2007 the Human Rights Committee called on your Excellency's Government to "guarantee that the death penalty will not be applied to persons aged under 18 years" (Concluding observations of the Human Rights Committee, CCPR/C/SDN/CO/3/CRP.1, para 20). These provisions are unequivocal and admit no exception. We must stress that, for the purposes of your Excellency's Government's obligation under international law, the distinction between hudud, ta'azir and qisas offences is immaterial. Article 37(a) of the Convention on the Rights of the Child and article 6(5) of

the International Covenant on Civil and Political Rights apply – and bind your Excellency’s Government – irrespective of this distinction in the law of the Sudan.

1080. With regard to the Supreme Court’s reliance on the Criminal Act’s provision that, in the case of those who have attained 15 years of age, adulthood is defined by natural features, we would like to again draw the attention of your Excellency’s Government to its obligations under the Convention on the Rights of the Child. While the Convention leaves room in article 1 for the setting of an age below 18 years for the attainment of majority for specific purposes, this is not in fact the case in relation to the death penalty. To the contrary, the Convention is absolutely clear in article 37 (a) in establishing 18 years as the minimum age attained at the time of the relevant crime in order for an individual to be potentially subject to the death penalty in those jurisdictions that have retained it. Unlike other provisions of the Convention, this prohibition is not flexible when account is taken of the individual development and maturity of the offender. The International Covenant on Civil and Political Rights similarly admits no flexibility in terms of execution of the death penalty for persons under eighteen years of age.

1081. As to the cases of Abdelsalam Yahya Abdallah Adam, Mohamed Al Duma Yahya Abaker, Mohamed Al Taib Mustafa Al Sanousi, and Mansour Ibrahim Abaker Hashim, who were sentenced to death by Anti-Terrorism Court 3 in Bahri (Khartoum) on 20 May 2009, we note that where a genuine dispute about the age of a criminal defendant exists, the Government is obligated to give the benefit of any doubt to the individual concerned. Moreover, to the extent that the age of these four accused at the time of the attack on Omdurman is decisive for the sanction imposed against them by the courts, they are entitled to a determination of their age in full compliance with fair trial principles. These include the right to an impartial tribunal and to have witnesses (including medical expert witnesses) on their behalf called and examined under the same conditions as witnesses against them, as provided in article 14 of the Covenant, paragraphs 1 and 3. If it were accurate that the courts relied exclusively on a report by a police medical committee for the determination of the defendants’ age, which defence counsel did not have access to, and did not request independent medical examination, fair trial principles would have been gravely violated.

1082. Similarly, it would be incompatible with the right to a fair trial if it were accurate that, as reported, the lawyers of Mohamed Hashim Ali Abdu, Ishag Yaseen Ali Adam, Abdelsalam Yahya Abdallah Adam, Mohamed Al Duma Yahya Abaker, Mohamed Al Taib Mustafa Al Sanousi, and Mansour Ibrahim Abaker Hashim were not allowed to see either the results of the alleged medical examination or their clients before the first trial hearing. According to the Basic Principles on the Role of Lawyers, Governments shall ensure that “all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention” (Principle 7). The Principles also stipulate that “[i]t is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.” (Principle 21). Both provisions highlight key aspects of the right to have adequate time and facilities for the preparation of one’s defence and to communicate with counsel of his own choosing enshrined in article 14(3)(b) of the Covenant.

1083. In view of the urgency of this matter and of the irreversibility of the punishment of the death penalty, it is imperative that your Excellency’s Government take all steps necessary to prevent the execution of Messrs. Mohamed Hashim Ali Abdu, Ishag Yaseen Ali Adam, Al Sadig Mohamed Jaber Al Dar Adam, Mahmood Adam Zariba, Abdelsalam Yahya Abdallah Adam, Mohamed Al Duma Yahya Abaker, Mohamed Al Taib Mustafa Al Sanousi, and Mansour Ibrahim Abaker Hashim. We therefore again urge your Excellency’s Government to expeditiously lift or commute the death sentences imposed against them by

the Anti-Terrorism Courts, as well as all other death sentences imposed for acts committed by perpetrators aged less than 18 at the time of the offence.

1084. It is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters.

1. Are the facts alleged in the above summaries of the cases accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please explain the steps taken by your Excellency's Government to lift or commute the death sentences imposed against Mohamed Hashim Ali Abdu, Ishag Yaseen Ali Adam, Al Sadig Mohamed Jaber Al Dar Adam, Mahmood Adam Zariba, Abdelsalam Yahya Abdallah Adam, Mohamed Al Duma Yahya Abaker, Mohamed Al Taib Mustafa Al Sanousi, and Mansour Ibrahim Abaker Hashim.
3. Please explain the steps taken by your Excellency's Government to ensure that no further death sentences are imposed against persons aged less than 18 at the time of the offence.
4. We would further like to recall to your attention the questions asked in our communication to your Excellency's Government of 10 October 2008 regarding juvenile offenders on death row in Southern Sudan, which have remained without a response as of to date.

## **Thailand**

### **Killings of teachers by insurgents in Southern Thailand**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** Group concern, 4 persons

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Thailand has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

### **Allegation letter sent on 28 August 2009**

1085. In this connection, we would like to bring to your Government's attention information we have received regarding the targeting and burning of schools, school closures, murder and mutilation of, and threats against, teachers and students in certain districts in Southern Thailand (Pattani, Yala, Narathiwat, and five districts of Songkhla).

According to the information received:

For the past five years a separatist insurgency has raged in these four predominately Muslim provinces in Southern Thailand (Pattani, Yala, Narathiwat, and five districts of Songkhla). Security forces have allegedly struggled unsuccessfully to protect schools, teachers, and students against attacks by the insurgents with the result that schools have often been shut down in many districts or even entire provinces.

During the night of 4 January 2004, groups of separatist militants burned down 20 government schools in Narathiwat in a series of near-simultaneous attacks.

By 27 January 2004, nearly 700 schools (out of the total 925) across the southern border provinces had to be shut down temporarily as a result of growing fears of insurgent attacks.

It is further reported that on 13 June 2007, militants burned down 11 schools in Yala province's Raman district, apparently in retaliation for the murder of Abdulraman Sama, age 60, a respected Muslim religious teacher. More than 500 Muslim women and children blocked a highway in front of a mosque in Raman district in protest of his killing, accusing government security forces of responsibility. Fears of further reprisal attacks on schools led to the closure of 60 other schools.

Over the past five years, there have also been many reported attacks on mosques and Muslim schools (ponoh). There have been no successful criminal investigations of these cases.

Separatist insurgents are increasingly attacking teachers. Since the beginning of the new school term in May 2009, five teachers have been killed by insurgents in the south. After each attack, schools in affected areas were closed down for security reasons. Hundreds of teachers have requested transfers from the region. On 19 May 2009, a teacher at Nikhom Pattana Park Tai school, was reportedly shot dead as he was riding a motorcycle from his home to his school in Bannang Sta district of Yala province. On 2 June 2009, insurgents allegedly attacked a pickup truck transporting six teachers from their schools in Ja Nae district of Narathiwat province. Two Buddhist Thai teachers were singled out and killed: **Atcharaporn Thepsorn**, a teacher at Ban Dusung Ngor school who was eight months pregnant, and **Warunee Navaka**, a teacher at Ban Ri Nge School.

On 6 June 2009, insurgents killed **Matohe Yama**, a teacher at Ban Palukasamo in Bajoh district of Narathiwat province, and on 16 June 2009, insurgents shot dead **Lekha Issara**, a teacher at Ban Poh Maeng school, while she was riding on a motorcycle from home to work in Raman district of Yala province.

1086. While we do not wish to prejudge the accuracy of these allegations, we would like to refer Your Excellency's Government to article 26 of the Universal Declaration of Human Rights, as well as article 13 of the International Covenant on Economic, Social and Cultural Rights, ratified by your country, which consecrate everyone's right to education. In this context we would like to bring your Excellency's attention to the 2008 report to the Human Rights Council (A/HRC/8/10) dedicated to education in emergencies by the Special Rapporteur on the right to education, which showed the urgent need to redouble efforts to safeguard educational opportunities for persons affected by emergency situations - especially children, adolescents and young people.

1087. With specific regard to the recent killing of teachers by insurgents, we would also like to refer your Excellency's Government to Article 6 of the International Covenant on Civil and Political Rights. It provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. As reiterated in Human Rights Council resolution 8/3 (OP 4), all States have "the obligation ... to conduct exhaustive and impartial investigation into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions". Where a State fails to take all appropriate measures to deter, prevent and punish the perpetrators of a pattern of attacks against a group in society, such as teachers, crimes, including murder, can also give rise to State responsibility (Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7, para. 71.)

1088. We urge your Government to take all necessary measures to guarantee that the right to education of those affected by the conflict in Pattani, Yala, Narathiwat, and five districts of Songkhla is respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of attacks against teachers in those areas.

1089. Moreover, it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. What measures have been taken to protect teachers and students from violence by the insurgents, including killing?
3. What practical measures have been taken to protect educational buildings from violent attacks? What steps have and are being taken to monitor attacks on learners and educational personnel?
4. What precautions and measures have local and central authorities taken to ensure that the right to education of persons within the provinces of Pattani, Yala, Narathiwat, and five districts of Songkhla is ensured and respected in spite of the conflict?
5. What steps have, and are being taken to investigate and sanction those responsible for the violent attacks against schools, students and teachers, particularly the killing of teachers? Please provide full details and results of any investigation, prosecution, judicial or other inquiries carried out in relation to the killing of Atcharaporn Thepsorn, Warunee Navaka, Matohe Yama, and Lekha Issara?

**Thailand: Deaths in immigration detention of Rohingya minority from Myanmar**

**Violation alleged:** Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention

**Subject(s) of appeal:** Group concern about 69 unknown persons (migrants) and 9 minors

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the response of the Government of Thailand, and the information that the deaths of Mr. Abdul Salam and Mr. Hammah Tulah during their immigration detention was due to cardiac arrest. The Special Rapporteur looks forward to receiving additional information about investigations and judicial or other inquiries into their deaths, as well as the information the Government has said it would provide about further developments including, specifically, measures to ensure the health of other members of the Rohingya minority in immigration detention.

**Urgent appeal dated 26 August 2009,** sent with the Working Group on arbitrary detention, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the human rights of migrants, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

1090. In this connection, we would like to draw the attention of your Government to information we have received regarding the situation of a group of **individuals from the Rohingya minority of Myanmar currently in immigration detention** in Thailand. The conditions of detention, and particularly alleged shortcomings in the access to medical care,



are alleged to have already resulted in the death of two of the detainees, namely **Abdul Salam** and **Hammah Tulah**. They were reportedly part of a group of 78 individuals that arrived in Thailand on 26 January 2009 and who were subsequently transferred to the Immigration Detention Center (IDC) in Ranong, Thailand. The names of the other members of the group are **Chaina Aaben, Chuansu Aalam, Khafad Aalm, Mahmud Aarm, Nulu Aarm, Sabeham Ahmad, Mahmud Ahmin, Mahmud Ahnuay, Mahammad Babo, Matab Bhad**, 17 years of age, **Aanam Butrok, Mohammad Duhar**, 14, **Mahmad Fati, Yafat Fuzon, Mawm Gulamad**, 16, **Numala Hadgin, Mahmud Halak, Nasi Hamad, Abdul Hamad, Numubu Hamad**, 17, **Mondu Haram, Abdul Haren, Yamee Hasen, Khorimu Hha, Budseram Hmad, Muhmad Hudsein**, 17, **Mahmud Hudsen, Solee Hunrah, Gama Hunsein, Anat Husen, Ahmed Hussein**, 15, **Mahmad Iria, Mohammad Islam, Mahmud Jorkid, Mahmud Kasim, Choey Khammud**, 17, **Moseed Khuraman, Nulu Kobi, Abdul Koeylim, Ahminun Kok**, 15, **Munji Lalam, Abdul Loh, Kaman Luzeen, Deeli Mahmud, Dorhi Munla, Mahmud Noon, Abdul Noon, Sobi Oohla, Choylee Oonla, Mohammad Puludin, Harun Rosid, Mohammad Saded**, 15, **Nuhud Sala, Hamed Samud, Mahammad Sarim, Sila Sisalam, Andhu Sugud, Anlee Suhad, Hamid Suthan, Mahmud Tiagoob, Mahmud Tuhad, Hamid Tusan, Puti Yang, Ali Yuhad**, 16, **Mohammad Yuwen, Ahmud Zeen**, and **Harew Zem**, as well as **Jaral, Sotamin, Saleem, Islam, Hunsein, Isu**, 17, **Baseh**, and **Jinud**, whose respective surnames could not be established.

According to information received:

On 1 July 2009, Abdul Salam deceased at the age of 18 at the Ranong IDC after suffering from heart failure. On 13 August 2009, Hammah Tulah, 15 years of age, also died while in detention at the Ranong IDC. In both cases, the rapid deterioration of their health might be due to the inadequacy and inefficiency of healthcare being provided to them during the entire period of their detention and particularly during the hours preceding their deaths. A third person is reportedly in a critical medical condition.

Following these deaths, all remaining individuals from the aforementioned Rohingya minority group have been transferred to the Suan Plu IDC in Bangkok.

It has also been reported that irregular immigrants in Thailand face potentially indefinite administrative immigration detention.

1091. Despite the reported transfer of the above mentioned detained individuals to the Suan Plu IDC, serious concerns remain regarding their physical and mental integrity. For this reason, it is considered crucial that the entire group undergo immediate and proper medical examinations; that all individuals within the group are provided with all appropriate assistance; and that effective mechanisms are made available through which any specific protection needs are identified and timely addressed.

1092. We should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the persons named above. We would like to stress that each Government has the obligation to protect the human rights of the persons that are under their jurisdiction, regardless of their immigration status as has repeatedly been highlighted by the Human Rights Council and the United Nations General Assembly, inter alia, in resolutions 9/7, 62/156 and 63/184 respectively.

1093. We would also like to stress that the State obligation to protect and ensure the right to physical and mental integrity of all persons under the State's jurisdiction is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights to which Thailand is a party as of January 1997.

1094. Furthermore, without expressing at this stage an opinion whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

1095. Moreover, with respect to the minors in detention, we would like to refer your Excellency's Government to article 37 of the Convention on the Rights of the Child, to which Thailand is a party, which, inter alia, provides that: "(b) ... The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. ... (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action." In this connection, we would also like to bring your Excellency's Government's attention to General Comment No.6 of the Committee on the Rights of the Child, which highlights that "all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation."

1096. We would also like to take this opportunity to stress that indefinite immigration detention in addition to its human rights implications fosters many negative repercussions including extreme desperation and hopelessness among those detained, and therefore we urge your Excellency's Government to find as a matter of urgency other suitable alternatives in view of applicable international human rights standards.

1097. We would also like to draw your Excellency's Government attention to article 12 of the International Covenant on Economic, Social and Cultural Rights, to which Thailand is a party from December 1999, which recognizes the right to the highest attainable standard of mental and physical health. This includes an obligation on the part of all States parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

1098. We would like to draw the attention of your Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, "the medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed." (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

1099. With regard to the death of Abdul Salam and Hammah Tulah, allegedly due to a lack of adequate health care, we would like to recall that Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights protect the right to life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies while in State custody, there is a presumption of State responsibility (*see*

for instance the Human Rights Committee's views in *Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraphe 9.2). In order to overcome the presumption of State responsibility for a death in custody, there must be a thorough, prompt and impartial investigation (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3 (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

1100. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to the deaths of Abdul Salam and Hammah Tulah.
3. Please provide information concerning the health conditions of the remaining individuals from the aforementioned Rohingya group and the steps being taken to ensure that their well being and physical integrity is protected and that their right to health is fully enjoyed.
4. Please indicate the legal basis for the arrest and detention of the above named individuals and how these measures are compatible with applicable international human rights norms and standards as stipulated, inter alia, in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

#### **Response of the Government of Thailand dated 17 November 2009**

1101. I wish to refer to your joint letter dated 26 August 2009 seeking clarification from the Royal Thai Government on the allegations regarding the situation of a group of individuals from the Rohingya minority in Myanmar currently in immigration detention in Thailand, particularly the death of two detainees, namely, Mr. Abdul Salam and Mr. Hammah Tulah.

1102. In this connection, I would like to forward herewith some preliminary response and information regarding the above-mentioned cases for your reference and consideration, as follows:

1. First of all, the Royal Thai Government attaches the highest priority to the promotion and protection of human rights in accordance with the Universal Declaration of Human Rights and other international human rights instruments to which Thailand is a Party.
2. With regard to the Rohingyas who arrived on Thai shores, it needs to be noted that they have entered Thailand illegally and, hence, are illegal immigrants under Thai law. Nevertheless, Thailand has been caring for them based on its long-standing and firm adherence to humanitarian principles.
3. Thailand believes that the issue of Rohingyas is a complex one which involves problems of statelessness, people smuggling and human trafficking. This issue must therefore be addressed in a comprehensive manner and through regional cooperation.

4. To deal with this complex issue, Thailand is now pursuing a four-pronged approach as follows:

- Bilateral cooperation with Myanmar and Bangladesh.
- Cooperation with a contact group of affected countries (Bangladesh, India, Indonesia, Malaysia, Myanmar and Thailand).
- Cooperation with the Association of Southeast Asian Nations (ASEAN); and
- Cooperation with the Bali Process on People Smuggling, Trafficking in Persons and related Transnational Crime.

5. With regard to the group of 78 Rohingyas who arrived on Thai shores in January 2009, Thailand has taken care of them based on humanitarian considerations. The Royal Thai Government allowed relevant embassy representatives and staff from the Office of the United Nations High Commissioner for Refugees (UNHCR) to visit and talk to this group of persons earlier this year.

6. With regard to the death of Mr. Abdul Salam and Mr. Hammah Tulah in the Immigration Detention Centre in Ranong Province, the post mortems have suggested that the causes of death were cardiac arrest. On a humanitarian basis, the Immigration Bureau moved all the Rohingyas to the Immigration Detention Centre in Bangkok. This was aimed at giving the Rohingyas more space for exercise and recreation, as well as better access to medical care. Furthermore, this move would also make it easier for UNHCR and other relevant NGOs to access this group of people.

7. Thailand has no intention of detaining this group of persons indefinitely, and steps are being taken in order to verify their nationality and country of origin and provide a lasting solution for them.

1103. In this regard, I wish to reaffirm the importance that the Royal Thai Government attaches to human rights and the rule of law. The permanent mission of Thailand will forward any further development on the situation of the 78 Rohingyas currently in immigration detention in Thailand, and the death of two detainees, namely, Mr. Abdul Salam and Mr. Hammah Tulah as soon as we receive information from the relevant authorities in Thailand.

#### **Thailand: Imposition of the death penalty for drug related offences**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 2 males

**Character of reply:** Largely satisfactory response

1104. Observations of the Special Rapporteur: The Special Rapporteur appreciates the response of the Government of Thailand. The Special Rapporteur acknowledges that, as the Government states, drug trafficking has seriously detrimental effects on society, but notes that the imposition of the death penalty for drug-related offenses is inconsistent with the interpretation of “most serious crimes” adopted by international human rights bodies because such crimes do not result directly in the loss of life. The Special Rapporteur reiterates his appeal to the Government to suspend imposition of the death penalty for drug-trafficking offenses.

#### **Allegation letter dated 3 September 2009**

1105. I am writing to your Excellency’s Government in relation to the reported execution of Bundit Jaroenwanit and Jirawat Poompreuk, two men found guilty of drug trafficking.

According to the information received, **Bundit Jaroenwanit**, aged 45, and **Jirawat Poompreuk**, aged 52, were convicted on drug trafficking charges on 29 March 2001 and subsequently sentenced to death. They were executed by lethal injection at Bang Khwang prison, central Thailand, on 24 August 2009. These were reportedly the first executions in Thailand since 2003.

1106. While I do not wish to prejudge the accuracy of the allegations reported to me, I would like to respectfully remind your Excellency's Government that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. Article 6(2) of the International Covenant on Civil and Political Rights, to which Thailand is a party, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes".

1107. Illicit trafficking in narcotic drugs and psychotropic substances can certainly be considered a serious offence. Indeed, international treaties oblige Governments to criminalize international trafficking in illicit drugs and to cooperate in combating the trade. In interpreting Article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As observed in a recent report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). In its concluding observations on the initial report under the Covenant presented by your Excellency's Government (CCPR/CO/84/THA of 8 July 2005, para. 14), the Committee called on Thailand to "review the imposition of the death penalty for offences related to drug trafficking".

1108. I therefore urge your Excellency's Government to take all necessary measures to suspend the execution of all persons sentenced to death on drug trafficking charges and to eventually commute their sentences. In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government in this respect.

1109. Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters.

1. Are the facts alleged above accurate?
2. Please indicate any steps your Government intends to take or has taken to comply with article 6(2) of the International Covenant on Civil and Political Rights, to which Thailand is a party, that the "sentence of death may be imposed only for the most serious crimes in accordance with the law at the time of the commission of the crime and not contrary to the provisions of the present Covenant".

#### **Response of the Government of Thailand dated 8 January 2010**

1110. I wish to refer to your letter dated 3 September 2009, expressing concern regarding the execution on 24 August 2009 of Mr. Bundit Jaroenwanit and Mr. Jirawat Poompreuk, two men who were found guilty on drug trafficking charges.

1111. The Royal Thai Government has recently considered and examined the facts and circumstances surrounding the above-mentioned cases. Please find enclosed herewith the clarification concerning the aforementioned cases for your perusal and kind consideration.

1112. I take due notice of your concern on the imposition of the death sentence for drug trafficking offences. However, I wish to point out that like many other countries, the scourge of drugs has posed a major challenge for Thailand. It has affected many segments of our society, especially our youths. It is an issue that has far-reaching repercussions for national stability, affecting the very fabric of our society and the future of our younger generation. Drug traffickers may not have the direct intent to take someone's life, but as evident to all, the consequences of their actions are devastating for the society and the nation as a whole.

1113. Having said this, I would like to assure you that Thailand takes the question of the death penalty very seriously. Thai law permits capital punishment only for the most serious crimes and heinous offences. Safeguards have been put in place to ensure due and thorough judicial process, as well as consideration of each individual case based on humanitarian grounds and any other exceptional circumstances.

1114. At the same time, there have been a number of positive developments in the area of your concern. I should like to point out that, since 2003, Thailand has amended its Penal Code to prohibit the imposition of capital punishment for crimes committed by persons under the age of 18 years. There had been a *de facto* 6-year moratorium on the death penalty in Thailand until the recent two cases, which reflects the overall positive developments on this matter which should continue.

1115. Clarification on the execution of Mr. Bundit Jaroenwanit and Mr. Jirawat Poompreuk

- Thai law permits capital punishment for the most serious crimes and heinous offences. During the past 6 years, capital punishment has been administered only twice. This 6 years interval during which no execution took place was due to judicial procedures and the availability of the various judicial safety nets.
- The cases of Mr. Bundit Jaroenwanit and Mr. Jirawat Poompreuk concerned the possession of more than 114,000 methamphetamine pills alongside repeated offences, amounting to actions which could cause tremendous harm particularly to the youth. While in prison, the two prisoners still continued to unscrupulously act as agents for trafficking in methamphetamine pills among inmates. In view of such heinous offences, capital punishment was carried out according to Thai law.
- As to the question why the two prisoners were notified of their execution at short notice, the Thai Criminal Code stipulates that once the prisoners have exhausted all means of appeal, the Department of Corrections must carry out the death sentence without delay. In this case, the two prisoners had exhausted all means of appeal including seeking royal pardon, thus their sentence must be carried out without delay according to the Criminal Procedure Code. The prisoners were fully informed of their rights while relevant procedures were implemented in accordance with the laws and Ministerial Regulations governing the execution of capital punishment.
- Under Thai law, there are adequate safety nets to ensure due and thorough judicial process as well as the involvement of careful and humanitarian consideration before the imposition of capital punishment. For instance, a person sentenced to death can lodge appeals all the way up to the Supreme Court. In addition, they can file petition for royal pardon or commutation of the death sentence. Persons under the age of 18 years old, mentally-ill persons and pregnant women are also not subject to the death penalty.

- Thailand has always taken account of the different perspectives on capital punishment. In this light, it is still the wish of the Thai general public to retain capital punishment as a deterrent. A recent survey conducted by a Thai news programme on 29 August 2009 revealed that 14.28 voted against capital punishment while 85.72 percent voted in favour. The Prime Minister has emphasized that the issue of capital punishment rests upon the opinion of the Thai general public, which is still divided on the issue.

## Uganda

### Deaths of over 20 people in violent clashes with state forces

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

**Subject(s) of appeal:** Group concern

Character of reply: No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Uganda has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 22 September 2009,** sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

1116. In this connection, we would like to bring the attention of your Excellency's Government to information we have received concerning the death of over twenty persons, the arrest of over 663 persons, the closure of four radio stations, the suspension of radio and television programmes, and the abduction and alleged ill-treatment of Mr. Robert Kalundi Serumaga, talk-show host on Radio One, in connection with reported two-day protests in Buganda.

According to information received:

On 10 and 11 September 2009, violence erupted in Kampala and several Buganda districts (Mityana, Masaka, Rakai, Mukomo, Mpigi, Wakisi, and Kayunga), during which at least twenty-one persons died and approximately a hundred persons were injured. The violence reportedly followed tensions caused by the planned celebrations of National Youth Day in Kayunga district on 12 September, where the king of Buganda, Ronald Musenda Mutebi II, was to make a formal presentation. On 10 September, a delegation of Baganda leadership attempted to visit the area in anticipation of the king's visit, but was reportedly stopped by the police from entering the district, where the people of Banyala ethnicity reject the king's authority. Reports claim that the king's supporters, mainly youth from the Baganda ethnic group, felt they were being prevented from seeing the king, which allegedly sparked the protests. In response, police and military responded with tear gas and live ammunition, while some rioters blocked roads, lit fires and threw rocks. Whilst this remains to be confirmed, reports indicate that some of the deaths and injuries were allegedly caused by stray live bullets.

Protesters and onlookers were also allegedly severely beaten, including an incident in which at least 30 people were assembled on a sidewalk, and the police forced men to remove their shirts. A group of men in civilian clothes, standing alongside the uniformed police, allegedly beat them with large sticks.

On 10 and 11 September, the Uganda Broadcasting Council, a government body responsible for monitoring broadcasting services in the country, reportedly switched off the broadcasting signals of four radio stations (Central Broadcasting Service, Radio Two, Radio Sapienta, and Ssuubi FM), based on allegations of inciting the public and escalating the protests. Other radio and television programmes such as the “Face of the Press” on Radio Simba and “Kibazo on Friday” on Wavah Broadcasting Station (WBS) have also been ordered off the air or suspended indefinitely.

The “Kibazo on Friday” programme was suspended indefinitely following the appearance on the show of Mr. Robert Kalundi Segumaga, talk-show host of “Spectrum” on Radio One. During the show on 11 September, he reportedly criticised President Museveni. At around 11:00 p.m. after his appearance on the show, Mr. Segumaga was abducted by men in civilian clothes outside the WBS studio. He was forced into an unmarked car and was allegedly beaten, choked and had his eyes gouged during transport. He was taken to a place of detention in Kirela, a neighbourhood of Kampala, where at least 23 others who had also been arrested during the protests were allegedly being held. On 12 September, he was transferred to the Central Police Station in Kampala, where he was allegedly interrogated about the content of the talk show. He reportedly spent two nights at a hospital to receive treatment for his injuries. On 15 September, he was charged with six counts of sedition and released on bail of US\$250. According to police reports, at least 663 persons were arrested during the two days, and most remain in custody to face trial.

1117. While we do not wish to prejudice the accuracy of these allegations, we would like to express our concern that the deaths and injuries may have resulted from excessive and indiscriminate use of force. Further concern is expressed that the abduction, alleged ill-treatment and charges against Mr. Segumaga may represent an attempt to stifle the right to freedom of opinion and expression in Uganda. In addition, concern is expressed regarding the psychological and physical integrity of over 663 persons who remain in detention.

1118. With regard to the reported use of lethal force by police and military, we would like to refer your Government to the principles of international law governing the use of force when policing rallies and protests. The International Covenant on Civil and Political Rights (“ICCPR”), to which Uganda is a party, prohibits cruel, inhuman or degrading treatment or punishment (Article 7), which, as the Special Rapporteur on Torture has highlighted in one of his reports (E/CN.4/2006/6), includes the prohibition of excessive use of violence: “Disproportionate or excessive exercise of police powers amounts to cruel, inhuman or degrading treatment or punishment and is always prohibited.” (para. 38) Furthermore, Article 6 of ICCPR provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

1119. In particular, Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials (“Basic Principles”), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force and shall only use force in exceptional cases including self-defence or defence of others against the imminent threat of death or serious injury. Such force must be proportional to these objectives, the seriousness of the crime and must minimize damage and injury. Force may only be used when less extreme means are insufficient (Principle 9).

1120. Of particular relevance in the present context are principles 12 to 14 which govern the policing of unlawful assemblies. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not



practicable, shall restrict such force to the minimum extent necessary. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in Principle 9. Principle 22 establishes that Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents where death or serious injury are caused by the use of firearms by law enforcement officials. This includes ensuring that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in such circumstances. Governments and law enforcement agencies shall promptly send a detailed report to the competent authorities responsible for administrative review and judicial control.

1121. We would further like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights which provides that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

1122. With regard to alleged closure of radio stations and suspension of programmes, we would like to draw the attention of your Excellency's Government to the principle that the restrictions to the right to freedom of expression applied for the respect of the rights or reputations of others, for the protection of national security or public order, or of public health or morals, may not put in jeopardy the right itself. The restrictions must be provided by law and be justified as being necessary for those purposes. Moreover, the law must, on the one hand, be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful, and on the other hand, provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal.

1123. We also wish to reiterate the principle enunciated by Commission on Human Rights Resolution 2005/38, which calls on States, while noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (ii) the free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship; and (iii) access to or use of information and communication technologies, including radio, television and the Internet.

1124. Moreover, regarding the case of Mr. Serumaga, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1125. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation or other inquiries which may have been carried out in relation to the death of over twenty persons and injuries of approximately one hundred persons. If no inquiries have taken place, or if they have been inconclusive, please explain why.

3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the case of Mr. Segumaga. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide detailed information on the laws governing the closure of radio stations in Uganda, and how they are compatible with international standards regarding restrictions to the right to freedom of opinion and expression, namely that such laws must be accessible, unambiguous, draw narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful, and on the other hand, provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal.

**Uganda: Death in custody of Brian Mpadde**

**Violation alleged:** Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention

**Subject(s) of appeal:** 1 males (death in custody) and 8 others

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Uganda has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent appeal dated 12 November 2009,** sent with the Working Group on arbitrary detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

1126. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the detention of nine men under Penal Act Code Article 145(a) and the alleged ill treatment of two of the detainees, one of which died immediately upon release from prison.

According to the information received,

Consensual homosexual conduct is a criminal offense in Uganda, punishable, in some cases, with life imprisonment. At present people suspected of homosexual conduct are being prosecuted on the charge of 'carnal knowledge of any person against the order of nature' under Penal Act Code Article 145 (a). Reportedly, nine men are currently being detained on this charge and have been held in detention for over 90 days without trial. They were allegedly arrested without warrant or other permission by local police officers in some cases cooperating with the Local Council Officials, on the basis of unfounded allegations of homosexuality made by fellow villagers. They have then been detained for extended periods of time, longer than the maximum of 48 hours, during which time some men were beaten by other detainees and police, forced to undergo invasive medical examinations, and were denied access to necessary health care.

Details regarding each of the individuals are outlined below:

1. Mr. **Simon Semondo** was first detained in Nakifuma, Kawuuga Prison, Mukono, and is now detained in Luzira Prison, Kibuye. Initially charged with "carnal knowledge against the order of nature", he was later charged with "defilement" and "aggravated defilement". Mr. Semondo remains in Luzira Prison

pending a hearing on his application for bail, which has recently been postponed for two months

2. Mr. **Shasha Kalule Kirumira** has been detained since March 2009 in Kigo Prison, Entebbe. He was initially charged with “carnal knowledge against the order of nature” and later with “aggravated defilement”.

3. Mr. **Christopher Timmy**: The details of his detention are unknown.

4. Mr. **Julius Kizito** is detained in Butuntumula Prison, Luwero Village. Initially charged with “carnal knowledge against the order of nature”, he was later charged with “defilement” and “aggravated defilement”.

5. Mr. **Joseph Ssempijja** was detained from June 2009 to 13 July 2009 in Luzira Prison, Kibuye, charged with “aggravated defilement”.

6. Mr. **David Erias Musoke Kazeeyi Kazooba** was arrested in May 2009 in Nakawuka Village, Kasanje Sub-County, Wakiso District and charged with “aggravated defilement”.

7. Mr. **Justus Kiiza Turyamureba** was arrested in October 2008 in Karoza, Mitooma, Bushenyi and charged with “carnal knowledge against the order of nature”.

8. Mr. **Fred Wasukiara** (also known as **Nabooza Margate**) was arrested on 8 April 2009 in Namakwekwe Village, Mbale District of Eastern Uganda and charged with “carnal knowledge against the order of nature”. He was detained in Kampala Road Police Station, Mbale Police Station, and Maluke Prison (all in the Mbale District of Eastern Uganda) until 20 May 2009.

9. Mr. **Brian Mpadde** was arrested on 8 April 2009 in Namakwekwe Village, Mbale District of Eastern Uganda, charged with “carnal knowledge against the order of nature”. He was detained, in Kampala Road Police Station, Mbale Police Station and Maluke Prison (all in the Mbale District of Eastern Uganda) until June 16, 2009.

In particular, information received regarding Mr. Brian Mpadde and Mr. Fred Wasukira suggests that there were no investigations into allegations by the police who lacked warrants of arrest. The arrests followed denunciations of Namakwekwe villagers and local LCD officers who ‘suspected’ Wasukira and Mpadde of homosexual activity. At the Kampala Road Police Station, both men were kept in a cell with 17 other men who allegedly severely beat them on two occasions, allegedly after having been incited by the police to do so and disclosure of the allegations against them.

On 9 April 2009, both men were transferred to Mbale Police Station, where they were allegedly examined by a police doctor in a humiliating and invasive manner. The report of these examinations (dated 16 June 2009) stated that both men had the STI gonorrhoea and were HIV negative and mentioned that both men had pierced ear lobes, a presumed sign of homosexuality. The police also allowed the media to take photographs of Mr. Wasukira and Mr. Mpadde, which were then used in full coverage stories on television and in newspapers. Reports about these alleged violations of the right to privacy were submitted to the Uganda Human Rights Commission on 17 June 2009.

Both men remained in custody at Mbale until 17 April 2009 when they were formally charged in court with ‘having carnal knowledge against the order of nature’. They were then transferred on remand to Maluke Prison in Mbale. Following appearances on 21 April 2009 and 4 May 2009, bail was set for both of

them. However, neither man could immediately meet the financial terms and conditions set by the court, so their detention was again extended until 20 May 2009, when Mr. Wasukira was released. He is attending court hearings while on bail.

Meanwhile, Mr. Mpadde remained in custody until 16 June 2009. Due to the violent treatment received while in custody, Mr. Mpadde was admitted to Mbale District Hospital, with severe injuries to his head and internal organs, immediately upon getting bail. However, he went into a coma before any medical examinations were carried out. Subsequently, his condition deteriorated and he died on 13 September 2009. Medical records contain conflicting information on the cause of this death. While one report indicates that the coma was due to complications from syphilis, others indicate that his death was related to meningitis or anemia. Despite the resulting uncertainty, no autopsy was carried out on Mr. Mpadde and the cause of this death remains unknown. However, a number of sources have indicated their fear that physical and psychological ill-treatment or torture during Mr. Mpadde's detention may have caused or contributed to his death.

1127. Without expressing at this stage an opinion on the facts of the above cases and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

1128. We would also like to draw your Excellency's Government's attention to its commitment to protect the right to health as reflected in the international legal instruments. The Universal Declaration of Human Rights provides that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food (Article 25 (1))." Article 12 of the International Covenant on Economic, Social and Cultural Rights, which your Excellency's Government ratified on 21 April 1987, specifically provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on part of all States parties to ensure that health facilities, goods, and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

1129. We would further like to draw your Excellency's Government's attention to the evidence that shows that criminalization of homosexuality has a negative effect on responses to HIV. It has been shown that decriminalization of homosexuality, combined with efforts to address stigma and discrimination against lesbian, gay, bisexual and transgender (LGBT) presents an effective approach to HIV prevention. Criminalization of homosexuality impedes access to HIV- and health-related information and services for LGBT individuals and thereby can undermine the national HIV response, by not only discouraging LGBT individuals from seeking and accessing services, but also by preventing service providers from providing information and services to members of this community.

1130. In this context, we would like to draw your Excellency's Government's attention to General Comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights (art. 2 para. 2) of the Committee on Economic, Social and Cultural rights, and in particular to its paragraph 7, which states: "Non-discrimination is an immediate and cross-cutting obligation in the Covenant. Article 2(2) requires States parties to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights. It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other

differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights”.

1131. Furthermore, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this context, we would like to draw your Excellency’s Government’s attention to paragraph 1 of Human Rights Council Resolution 8/8 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

1132. With regard to Mr. Mpadde, we wish to recall that, when the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3, stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions” (OP 4).

1133. In the event that your investigations support or suggest the above allegations to be correct, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

1134. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

1135. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged pertaining to the arrests and detention of the nine men listed above correct?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these nine cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please indicate which measures were taken to address the medical needs of Mr. Brian Mpadde and Mr. Fred Wasukira following the injuries they sustained as a

result of the alleged beatings, and to ensure the right to the highest attainable standard of health. If no measures were taken, please explain why.

4. What measures have been taken to ensure non-discrimination on the basis of sexual orientation in the realization of the right to health?

5. Please indicate the legal basis for the arrest and detention of these persons and how these measures are compatible with applicable international human rights principles and standards as contained, inter alia, in the Universal Declaration of Human Rights.

**Uganda: Concerns about proposed Anti-Homosexuality Bill**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** Group concern

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Uganda has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 23 December 2009,** sent with the Working Group on arbitrary detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

1136. We would like to bring the attention of your Excellency's Government information received concerning a legislative bill pending before the Ugandan legislature, Bill N° 18 of 2009.

1137. According to the information received, the Parliament of Uganda is currently considering Bill N° 18 of 2009 (also known as the "Anti-Homosexuality Bill") tabled before it on 15 October 2009. The proposed Bill increases penalties for homosexual conduct and criminalizes many related activities. The envisaged penalties range from imprisonment not exceeding three years for the failure to denounce the commission of an offence as defined by the Bill to life imprisonment and the death sentence. Consensual homosexual conduct is already a criminal offence under article 145 sub a) of the Ugandan criminal code, which penalizes "carnal knowledge of any person against the order of nature". However, Bill N° 18 would expand the reach of this existing provision by including "any person who touches another person with the intention of committing an act of homosexuality". The Bill also punishes 'aggravated homosexuality', including activity by 'serial offenders' or those who are living with HIV, with the death penalty.

1138. In addition, the Bill punishes any form of 'promotion of homosexuality' with imprisonment of five to seven years. This raises concerns that the work of civil society actors and human rights defenders addressing issues of sexual orientation or gender identity might be criminalized. The Bill specifies that this includes anyone who publishes or disseminates 'homosexual materials', 'funds or sponsors homosexuality and related activities', 'uses electronic devices which include internet, films and mobile phone' or 'who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices'. The Bill also criminalizes failure to report any offences within its scope, compelling citizens to report to the authorities anyone whom they suspect of engaging in homosexual activity.

1139. Furthermore, HIV prevention activities in Uganda, which rely on an ability to speak frankly about sexuality and health and to provide condoms and other safer sex materials,

may be compromised by this Bill. However, women, sex workers, people living with HIV, and other marginalized groups may also find their activities tracked and criminalized through this Bill should it be enacted into law.

1140. We would like to draw the attention of your Excellency's Government to its commitment to protect the right to health as reflected in the international legal instruments. The Universal Declaration of Human Rights provides that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food (Article 25 (1))." Article 12 of the International Covenant on Economic, Social and Cultural Rights, which your Excellency's Government ratified on 21 April 1987, specifically provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on part of all States parties to ensure that health facilities, goods, and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

1141. Furthermore, a number of studies indicate that criminalization of homosexuality will have a detrimental impact on efforts to combat the spread of HIV in Uganda. It has been shown that decriminalization of homosexuality, combined with efforts to address stigma and discrimination against lesbian, gay, bisexual and transgender (LGBT) persons constitutes a far more effective approach to HIV prevention. If the Bill came into force, it would impede access to HIV- and health-related information and services for LGBT individuals and could thereby undermine the national HIV response, not only by discouraging LGBT individuals from seeking and accessing services, but also by preventing service providers from providing information and services to members of this community.

1142. In this context, we would like to remind your Excellency's Government of General Comment N° 20 on Non-Discrimination in Economic, Social and Cultural Rights, adopted by the Committee on Economic, Social and Cultural Rights in 2009. In paragraph 32, the Committee stated that "parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the work place".

1143. The Committee also underlined in paragraph 33 that "health status refers to a person's physical or mental health. States parties should ensure that a person's actual or perceived health status is not a barrier to realizing the rights under the Covenant. The protection of public health is often cited by States as a basis for restricting human rights in the context of a person's health status. However, many such restrictions are discriminatory, for example, when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum. States parties should also adopt measures to address widespread stigmatization of persons on the basis of their health status".

1144. In relation to the penalty of imprisonment as enshrined in the Bill, we would like to draw your Excellency's Government's attention to article 9, paragraph 1, clause 2, of the International Covenant on Civil and Political Rights (ICCPR), which the Government of Uganda ratified on 21 June 1995. This provision stipulates that [n]o one shall be subjected to arbitrary arrest or detention. The Working Group on Arbitrary Detention has qualified deprivation of liberty as arbitrary, *inter alia*, "[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II). In this connection, we would like to draw your Excellency's

Government to Opinion N° 22/2006 (A/HRC/4/40/Add.1, page 91), in which the Working Group on Arbitrary Detention, at para. 19, held that “[e]ver since the Human Rights Committee adopted its View in *Toonen v. Australia* and it itself adopted its Opinion 7/2002 ... the Working Group has followed the line taken in those cases. That means that the existence of laws criminalizing homosexual behaviour between consenting adults in private and the application of criminal penalties against persons accused of such behaviour violate the rights to privacy and freedom from discrimination set forth in the International Covenant on Civil and Political Rights. Consequently, the Working Group considers that the fact that the criminalization of homosexuality ... is incompatible with articles 17 and 26 of the International Covenant on Civil and Political Rights.”

1145. In addition, with regard to the provisions in article 13 of the Bill which criminalize any form of ‘promotion of homosexuality’, including using electronic devices such as the Internet, films, mobile phones for “purposes of homosexuality” or “promoting sexuality”, we would like to remind your Excellency’s Government of its obligation to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the ICCPR, which provides that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

1146. Finally, we would like to draw your attention to principles of international law relevant in relation to article 3 of the Bill, which makes “aggravated homosexuality” (such as where the person against whom the “offence of homosexuality” is committed is a minor or a person with a disability, or the “perpetrator” is a person living with HIV or a “serial offender”) punishable by the death penalty. We would like to recall that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”. As the Special Rapporteur on extrajudicial, arbitrary or summary executions observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Article 3 of Bill N° 18 of 2009 is incompatible with this well-established principle of international law.

1147. We urge your Excellency’s Government to take all necessary measures to ensure that the enjoyment of the right to the highest attainable standard of physical and mental health, of the rights not to be arbitrarily deprived of one’s life or personal freedom, as well as of the right to freedom of opinion and expression is protected. It is our opinion as independent human rights experts of the Human Rights Council that only the withdrawal or rejection of Bill N° 18 of 2009 can ensure that fundamental principles of international human rights law binding for Uganda are not seriously violated.

1148. We would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged pertaining to the proposed “Anti-Homosexuality Bill” correct?
2. Please provide details of any actions taken to remove the provisions in the Bill which violate the human rights of the people of Uganda – specifically those



relating to the application of the death penalty, imprisonment, discrimination on the basis of sexual orientation, discrimination on the basis of HIV status, freedom of opinion and expression, and the right to health, but generally with a view to the Bill in its entirety.

3. What measures have been taken to ensure non-discrimination on the basis of sexual orientation?

## Ukraine

### Death in custody of H.H. Ashakhanov

**Violation alleged:** Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention.

**Subject(s) of appeal:** 1 male

**Character of reply:** No response (recent communication)

**Observations of the Special Rapporteur:** The Special Rapporteur looks forward to receiving a response concerning these allegations.

**Allegation letter dated 11 February 2010,** sent with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

1149. In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning Mr. **H.H. Ashakhanov**, born in 1973.

Mr. Ashakhanov was serving his sentence in Orekhovskaya penal colony No. 88, when he fell sick in September 2009. He approached the medical unit where he allegedly received two injections of unknown drugs. Subsequent to this treatment, Mr. Ashakhanov became permanently ill, lost his appetite and often vomited after meals. Mr. Ashakhanov reportedly complained repeatedly to the medical unit, requesting them to conduct an examination and administer proper treatment. However, no examination was performed and no treatment was administered.

Since November 2009, Mr. Ashahanov's health condition severely deteriorated. He was unable to leave his bed as he was severely weak and suffered from nausea and vomiting. His temperature rose above 40 degrees. In two months, Mr. Ashahanov lost about 20 kg of weight. On those days when he was able to walk, he went to the medical unit to complain. He was given medication (analginum or diphenhydramine), which decreased his temperature for a short time. On several occasions, he was placed in the medical unit, however, never for a period exceeding 5 days. There was no medical examination and no permanent treatment administered. When Mr. Ashakhanov could not get out of the bed and go to the medical attendant for help, he did not obtain medical assistance at all because the warders did not respond to his complaints.

In mid-January 2010, Mr. Ashakhanov was again placed in the medical unit for several days. In the morning of 19 January 2010, he was suddenly transported away from the colony in an unknown direction. On 20 January 2010, Mr. Ashahanov's cellmates were told that he had died.

Information received indicates that Mr. Ashahanov has submitted a complaint to the European Court of Human Rights (application no. 35930/06). Reports further

suggest that prison officials intimidated Mr. Ashahanov more than once, in connection with this complaint. His correspondence was allegedly intercepted.

Reports further indicate a high mortality rate among prisoners at Orekhovskaya penal colony No. 88 due to the absence of medical assistance. Prisoners are reportedly taken out of the colony only in the event of exceptionally severe health deterioration. Information further suggests that neither family members nor other relevant persons are informed to which hospital detainees are transported.

1150. While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency's Government to seek clarification of the circumstances of the death of Mr. Ashahanov. We would like to stress that each Government has the obligation to protect the rights to life and physical and mental integrity of all persons. These rights are set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies as a consequence of injuries sustained or illness contracted while in State custody, there is a presumption of State responsibility (see, for instance, the conclusions of the Human Rights Committee in the case *Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraphe 9.2). In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions).

1151. We would highly appreciate information from your Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of the persons mentioned above. This right is reflected, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights, which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all States parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination

1152. We would like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, "The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed." (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.).

1153. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have

been carried out in relation to the death of Mr. Ashahanov. If no inquiries have taken place, or if they have been inconclusive, please explain why.

3. Have penal, disciplinary or administrative sanctions been imposed on those officials found to be responsible for his health while in detention?

4. Please indicate whether compensation has been provided to Mr. Ashahanov's family.

## **United States of America**

### **Imminent execution of Donald Lee Gilson**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

**Subject(s) of appeal:** 1 male

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the detailed response of the United States of America.

### **Urgent appeal dated 30 April 2009**

1154. I am writing concerning **Donald Lee Gilson** who has been sentenced to death and is reportedly scheduled to be executed on 14 May 2009. Mr Gilson was charged with murder for his alleged role in the death of eight-year-old Shane Coffman in 1995. While it was reportedly impossible to establish the cause of Shane Coffman's death, due in part to the six months that passed between his death and the discovery of his body, there was evidence of fractures to various bones. Mr. Gilson and Bertha-Jean Coffman, Shane Coffman's mother, who was living with Mr. Gilson at the time of her son's death, were charged jointly with first degree murder by child abuse. In August 1997, Ms. Coffman entered a guilty plea. Her sentencing was deferred until after she had testified at Mr. Gilson's trial. She was later sentenced to life imprisonment without the possibility of parole. Donald Gilson was tried and sentenced to death in 1998.

1155. It is my understanding that, under Oklahoma law, a defendant can be found guilty of first degree murder when a child dies from "willful or malicious injuring, torturing, maiming or using of unreasonable force" by the defendant or he or she "willfully cause[s], procure[s] or permit[s]" any of these acts to be inflicted upon a child. The jury instructions in Mr. Gilson's trial defined "permitting" to mean "to allow for the care of a child where one knows or reasonably should know" the child is being placed at risk of abuse. My understanding is that the jury in Mr. Gilson's case was unanimous in finding first degree murder, but split on "the underlying theory", i.e. some jurors found that he had willfully committed the child abuse leading to Shane Coffman's death, while others found that he only permitted it. One of the jurors has reportedly since said in an affidavit that most of the jurors considered that Mr. Gilson had been a "permitter" rather than the "committer", and that they had considered that "permitting" merely meant a failure to intervene rather than any active participation.

1156. Although the death penalty is not prohibited under international law, I would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights, to which the United States of America is a party, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". As observed in a recent report to the Human Rights Council, based on a thorough and

systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

1157. Intrinsic to the most serious crime requirement, therefore, is the concept of personal culpability: a state may only impose the death penalty when it can show, at a minimum, that the particular defendant committed an intentional act of violence that resulted in the death of another person. The personal culpability requirement is reflected in the jurisprudence of the Supreme Court of the United States. In 2002, the Supreme Court held in *Atkins v. Virginia* (536 U.S. 304 (2002)) that the death penalty could not be imposed on those with mental retardation because this class of people were significantly less culpable than people without functional impairment. A few years later, the Supreme Court extended its reasoning to juveniles under 18, holding in *Roper v. Simmons* (543 U.S. 551 (2005)) that juveniles were insufficiently culpable and less deserving of retribution because of their age and immaturity and, thus, the imposition of the death penalty would be a disproportionate punishment, even for crimes that resulted in death. Recently, in *Kennedy v. Louisiana*, the Supreme Court decided that the death penalty could not be imposed for the crime of rape of a child where the crime did not result, and was not intended to result, in the death of the victim. (128 S. Ct. 2641 (2008)). The Court's reasoning is instructive: it found that the Eighth Amendment to the U.S. Constitution requires that punishment be "graduated and proportioned" to the crime and that the death penalty must "be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'" 128 S. Ct. 2649-51. Oklahoma's law does not appear to comply with the Supreme Court's jurisprudence on individual culpability for the most serious crimes.

1158. As applied in the jury instructions on which Mr. Gilson's conviction of first degree murder and thus the death sentence in his case are based, Oklahoma law appears to permit capital punishment in cases where the defendant is not found guilty of having intentionally killed the victim. Dissenting judges both on the Oklahoma Court of Criminal Appeals and on the United States 10th Circuit argued that the death sentence should not have been imposed on Mr. Gilson because he had not been found to have actively contributed to causing the victim's death. Judge Charles Chapel of the Oklahoma Court of Criminal Appeals wrote to dissent against the court's decision upholding the death sentence in Mr. Gilson's case: "The crime of permitting requires only that the defendant allows another to commit child abuse murder. No action is required – all that is necessary is that the defendant knows that child abuse is occurring but does not stop someone else from committing the crime". Judge Chapel argued in dissent that the trial judge had erred in failing to instruct the jury that it could find Donald Gilson guilty of an offence less than first-degree murder. Chief Judge Robert Henry of the United States 10th Circuit noted that, on the basis of the evidence presented at trial, a rational jury could have found Mr Gilson guilty of culpable negligence, which is not an offense eligible for the death penalty. He argued that the jury should have been told that it could return a verdict of second-degree manslaughter.

1159. The conclusion I draw from the above is that the jury and the courts did not in fact unambiguously find that Mr. Gilson committed a "most serious crime" for the purposes of Article 6(2) of the International Covenant on Civil and Political Rights. Mr. Gilson's execution would therefore not be in accordance with human rights norms recognized by the international community and accepted as binding by your Excellency's Government. It would also seem to me that his execution also would not comply with the jurisprudence of the United States Supreme Court. I would respectfully urge your Excellency's Government to put Mr Gilson's execution on hold with a view to commuting his death sentence. In this respect, I am greatly encouraged by reports that on 14 April 2009, the Oklahoma Pardon

and Parole Board voted three to two that the Governor should commute Donald Gilson's death sentence.

1160. Since I am expected to report on this case to the UN Human Rights Council, I would be grateful for your cooperation and your observations. In addition to an expeditious first reply, I would greatly appreciate being informed about further developments in this case. I undertake to ensure that your Government's response is accurately reflected in the report I will submit to the UN Human Rights Council for its consideration.

**Response from the Government of the United States of America dated 18 May 2009**

1161. We thank you for your letter of April 30, 2009 regarding the pending execution of Donald Lee Gibson, who was convicted of the murder of eight-year-old Shane Coffman.

1162. We passed your letter to Mr. Drew Edmondson, Attorney General of the State of Oklahoma, who provided the attached response. Capital punishment in the United States may only be carried out subject to the extensive due process and equal protection requirements, and after exhaustive appeals, all of which were made available to Mr. Gilson, as detailed in the attached letter from the Oklahoma Attorney General.

1163. [The entire response, including the letter from the Attorney General of the State of Oklahoma, is available at [http://www2.ohchr.org/english/issues/executions/docs/USA\\_18.05.09\\_4.2009.pdf](http://www2.ohchr.org/english/issues/executions/docs/USA_18.05.09_4.2009.pdf).]

**United States of America: Killings of six Afghan National Police officers by Afghan Special Guards**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** 6 males

**Character of reply:** Receipt acknowledged

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the acknowledgment of the Government of the United States that it has received his communication. The Special Rapporteur regrets, however, that in only referring all questions on the issues raised to the Government of Afghanistan the United States fails to address the crux of his communication, which seeks information about the connection, if any, between the Afghan Special Guards involved in the shooting of the six Afghan National Police officers and any US force, agency or organization.

**Allegation letter dated 17 July 2009,** sent with the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination.

1164. In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning reports of a shooting incident that occurred on 29 June 2009, between armed Afghan Special Guards (also referred to by the local population as "Afghan Special Forces") and Afghan National Police (ANP) inside the Attorney General's office in Kandahar, Afghanistan.

1165. While the precise identity and chain of command of the Afghan Special Guards is unclear, according to information received, it is an Afghan private entity operating as a security company. Information received indicates that it may be working with, or led by, American Special Forces in Afghanistan, or armed international intelligence services.

According to the information received:

On 29 June 2009, at 11.45 a.m. a shoot out erupted between Afghan Special Guards and Afghan National Police (ANP) inside the Attorney General's office, Kandahar.

It is alleged that Afghan Special Guards went to the Attorney's General office to forcefully and unconditionally demand the release of a suspect, who had been arrested by the ANP in connection with a criminal offence for theft of a motor vehicle.

The Attorney General, Mr. Hafizullah Khaliqya, reportedly refused to release the suspect on the grounds that it would be illegal and unconstitutional. He also advised the Afghan Special Guards that the arrested suspect will have to be charged for the offence as required in law. The Attorney General then reportedly called the Chief of Police (B.G. Matiullah Khan Qateh) and the Chief of Crime (Col. Abdul Khalik) for assistance. Both the Chief of Police and the Chief of Crime arrived at the scene accompanied by their body guards. Then, it is alleged that an argument erupted inside the Attorney General's office and that the Afghan Special Guards opened fire and killed the Chief of Police, the Chief of Crime and four other ANP officers. There are unconfirmed reports of civilian casualties.

According to police reports, 41 suspects have been arrested in connection with the incident and await to be charged before the court in Kabul. In addition, it was also reported that six ANP sustained gun wound injuries and were admitted at Mirwais provincial hospital for treatment.

1166. Without expressing at this stage any opinion on the facts of the case, and bearing in mind that the primary responsibility to investigate the incident and prosecute those responsible rests with the Government of Afghanistan, we would like to bring to your Excellency's Government's attention our concern regarding the allegation referred to above and would welcome detailed information on the following questions:

1. Are the facts alleged in the above summary of the case accurate, including regarding the individuals and institutions involved?
2. If the Afghan Special Guards involved in the shooting have worked for or with any US force, agency, or organization, please provide details on this relationship and on the Afghan Special Guards. Please provide information on the force's command and control structure, and which, if any, US force, agency or organization it works with or reports to. Please indicate whether the Afghan Special Guards is a private military and security company registered in accordance with the Afghan procedure for regulating the activities of private security companies in Afghanistan. Please also specify whether it operates under contract with the US Government. If it does, please detail the contractual modalities between the private security company and the US government, and in particular the oversight and vetting mechanisms stipulated in the contract, as well as a copy of the contract.
3. Please provide the details, and where available the results, of any investigation which may have been carried out in relation to this event.
4. Any additional information which your Excellency's Government wishes to share with us in this regard would be much welcome.

#### **Response of the Government of the United States of America dated 23 April 2010**

1167. Thank you for your letter dated 17 July 2009 [reference ALG/SO 214 (2005-4 G/SO 214 (33 -27) USA 7/2009)] regarding the shooting incident in Kandahar on 29 June 2009 between the Afghan Special Guards and the Afghan National Police inside the Attorney General's office in Kandahar, Afghanistan.

1168. We ask that you refer all questions regarding this incident to the Government of Afghanistan.

**United States of America: Deaths of three prisoners at the US detention facility at Guantánamo Bay**

**Violation alleged:** Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention

**Subject(s) of appeal:** 3 males

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the response of the Government of the United States of America concerning the deaths of Salah Ahmed Al-Salami, Mani Shaman al-Utaybi and Yasser Talal Al-Zahrani at the Guantánamo Bay detention facility. The Special Rapporteur also appreciates the detail about the Government's investigations into those deaths.

**The Special Rapporteur is concerned,** however, about the inability of independent pathologists retained by the detainees' families to conduct meaningful autopsies because these pathologists lacked access to each detainee's larynx, hyoid bone and thyroid cartilage. As the Government's response acknowledges, these body parts would be key evidence for a "hanging-death" autopsy. According to the Government, the independent pathologists were unable to examine these body parts because they did not submit an official request – but it would be hard for the pathologists to know to submit such a request when, as the Government notes, the body parts were taken and retained for evidentiary purposes without notification to the decedents' families. The Special Rapporteur would appreciate being kept apprised of responses by the Government to any requests from the families or their representatives for access to the body parts for the purpose of an independent autopsy.

**Allegation letter dated 22 February 2010**

1169. In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the deaths on 9 June 2006 of three prisoners at the US detention facility at Guantánamo Bay - Salah Ahmed Al-Salami, Mani Shaman al-Utaybi and Yasser Talal Al-Zahrani. According to this information, new evidence suggests that the three men may not have committed suicide, as claimed by the US government, but may have died as a result of interrogation by the members of the CIA or Joint Special Operations Command.

**Incident: 9 June 2006 – Deaths of Salah Ahmed Al-Salami, Mani Shaman al-Utaybi and Yasser Talal Al-Zahrani**

1170. During my mission to the US in June 2008, I investigated deaths in custody in the US, including deaths in Guantánamo Bay. At the time, I called upon the US government to provide fully unredacted medical records, autopsy files and other investigation records to the families of all the deceased, and I reminded the Government of its obligation to investigate and publicly report its findings and the evidence supporting them.

1171. When the deaths were initially reported, they were declared suicides by the commander at Guantánamo, Rear Admiral Harry Harris, an assessment which was confirmed two years later in a report by the US Naval Criminal Investigative Service. According to the findings of the investigation, the three men were found unresponsive in their cells at approximately 12:30 a.m., apparently having taken their own lives by hanging themselves with rope made from bed sheets and tee-shirts. The investigation reported that blankets and sheets had been used to obstruct the guards' views and to create the appearance that the detainees were asleep in their cells. Two of the detainees — Salah

Ahmed Al-Salami, Mani Shaman al-Utaybi — were determined to be dead at the scene. Resuscitation attempts were made on Yasser Talal al Zahrani, who was then transported to Naval Hospital Guantánamo where he was pronounced dead a short time later. According to the report, the detainees had last been seen alive at approximately 10:00 pm on June 9, 2006.

1172. The information I have received alleges that the conclusions of this report are problematic, and that the three men may have been victims of interrogation practices used at the Guantánamo detention centre. According to this information, at least two of the men had cloth masks affixed to their faces, one was severely bruised, and all three had rags pushed down their throats. The information suggests that the men were taken from their cells in Alpha Block between 6 and 7.30 pm on 9 June 2006 and transported in a white van to a compound or 'black-site' located just outside Camp Delta. It is alleged that the van returned around 11.30 pm and backed up to the entrance of the medical clinic where it delivered the bodies of the three men.

1173. In addition to the allegations surrounding the deaths of the three men, it has also been alleged that the deaths have not been the subject of a thorough, impartial and independent investigation. According to the information I have received, pathologists commissioned by the families to conduct autopsies on the three men were unable to obtain all information pertaining to the previous autopsies from the Armed Forces Institute of Pathology which had arranged immediate autopsies after the death of the three men. Family members were also unable to obtain those body parts which would have been the focus of the autopsy, namely the larynx, thyroid bone and the thyroid cartilage, which had been removed. The information received also alleges that injuries to Salah Ahmed Al-Salami's mouth suggested blunt trauma inconsistent with damage associated with resuscitation attempts. According to the information I have received, on 10 June 2006 a meeting was held for the guards on duty the night the three prisoners died. It is alleged that at this meeting the guards were told to make no comments which might undermine the report of the men's suicides.

1174. The information I have received also suggests that if the NCIS report is accurate, and the men had been dead for at least two hours before discovery, standard operating procedures which would have required the Navy guards on duty to visually search each cell and detainee every ten minutes must have been violated. In addition, the prisoners must have been allowed sheets, blankets and pillows in addition to their controlled allotment in order to be able to simultaneously hang sheets and blankets to conceal their activities, shape pillows and sheets to look like bodies in their beds, and fashion a noose for themselves.

1175. While I do not wish to prejudge the accuracy of these allegations, I would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). In its General Comment on Article 6, the United Nations Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity.

1176. In this connection I would also like to recall Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which provides that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances". This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that



all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

1177. I urge your Excellency’s Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths of Salah Ahmed Al-Salami, Mani Shaman al-Utaybi and Yasser Talal Al-Zahrani in Guantanamo, with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings.

1178. It is my responsibility under the mandate provided to me by the UN Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Please respond to the allegations outlined above which suggest that the deaths of Salah Ahmed Al-Salami, Mani Shaman al-Utaybi and Yasser Talal Al-Zahrani were extrajudicial executions rather than suicides, and that a thorough, credible and independent investigation into their deaths failed to take place.
2. Please provide the details, and, where available, the results of any investigations and judicial or other inquiries carried out in relation to the deaths of the three men.
3. Please respond to allegations that the guards on duty that night failed to follow standard operating procedures, and, if true, provide details of any investigation or disciplinary measures taken.
4. Please respond to allegations that the prisoners obtained sheets, pillows and blankets beyond their allotment which they were then allowed to hang in order to obscure their activities, and, if true, provide information of any investigation or disciplinary measures taken.
5. Please provide the full details of why the larynx, hyoid bone and the thyroid cartilage were removed by military pathologists, why they were not provided to the independent pathologists commissioned by the families of the three dead men, and why all information about the first autopsies was not made available to them.

**Response from the Government of the United States of America dated 12 March 2010**

1179. Thank you for your letter of February 22, 2010 [ALG/SO 214 (33-27) USA 4/2010], in which you inquired as to the accuracy of the allegations that the deaths on June 9, 2006 of three individuals at Guantanamo Bay Detention Facility were extrajudicial executions rather than suicides. The United States took the deaths of Salah Ahmed Al-Salami, Mani Shaman al-Utaybi and Yasser Talal Al-Zahrani very seriously and conducted a thorough, lengthy investigation into the circumstances surrounding their deaths. In addition the subsequent allegations suggesting misconduct were investigated and were determined to be unfounded.

1180. In all three cases, an autopsy performed by a senior medical examiner from the Department of Defence Armed Forces Institute of Pathology (AFIP) determined that the cause of death for all three was hanging and the manner of death was suicide. A civilian, state level medical examiner served as an independent observer for these autopsies and concurred with these determinations. During the autopsies, the bodies were also thoroughly examined for signs of torture or abuse. None were found. The AFIP determinations were

further supported by a 1300- page investigation by the U.S Naval Criminal Investigative Service (NCIS) that took more than two years to complete<sup>29</sup>

1181. In addition a number of experienced attorneys and agents from the U.S. Department of Justice extensively and thoroughly reviewed the subsequent allegations and found no evidence of wrong doing.

Specific findings of these investigations are detailed below:

- NCIS special agents who investigated this case found no evidence to suggest that the three detainees died by means other than suicide. On the contrary, it was clear from interviews and forensic evidence that these detainees wanted to end their lives and methodologically took steps to accomplish that goal. The knots that bound their hands and feet were not elaborate, and were of a type that each of the detainees who died would have been able to tie. In addition, short written statements declaring their intent to be martyrs was found in the pockets of each of the detainees. Lengthier written death declarations were also found. The rulings of the AFIP, which determined the cause and manner of death, were wholly consistent with the NCIS investigative findings.
- One of the detainees had a rag lodged down his throat. Investigators concluded that the detainee had positioned the rag in his mouth in order not to make any noise that could have alerted the guards. The detainees inhaled the rag as a natural reaction to death by asphyxiation.
- Blankets and sheets had been used to obstruct the guards' views and to create the appearance that the detainees were asleep in their cells. During its investigation, NCIS discovered that the detainees were allowed to hang sheets for privacy; they were allowed to have extra linens and/or blankets; and some of the lights in the detention facility were dimmed at night to permit better sleep. This explains how the detainees were able to obscure their actions and why the guards did not discover the deceased detainees right away. All available video footage was reviewed by NCIS, and nothing of evidentiary value was discovered.
- A team of lawyers and investigators from the U.S. Department of Justice and Federal Bureau of Investigation were specifically tasked to review allegations made by Staff Sergeant Hickman, one of the tower guards on duty the evening of these individuals' deaths. According to the allegations, Staff Sergeant Hickman and other members of his unit were stationed on the exterior perimeter of the camp, including Tower 1, the night of the detainees' deaths. From this location, investigators confirmed that a person would have no visibility into the cell block or the cells where the deaths occurred. NCIS conducted more than 100 interviews during the investigation, including interviews with all of the guards who worked in the cell block at the relevant time and all of the detainees who were housed there. None of those interviewed reported that any detainees were taken away or alleged that homicide occurred.
- The Armed Forces Institute of Pathology (AFIP), which conducted the autopsies of the three detainees, kept each detainee's larynx, hyoid bone and the thyroid cartilage for evidentiary purposes as is standard practice for hanging-death autopsies. When organs or tissue are taken for evidentiary purposes, families are not notified and the

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<sup>29</sup> A redacted version of this file is publicly available at [http://www.dod.mil/pubs/foi/detainees/death\\_investigation/index.html#NCIS](http://www.dod.mil/pubs/foi/detainees/death_investigation/index.html#NCIS)

material is kept as part of the permanent record of investigation. Additionally, AFIP did not receive an official request by the independent pathologists to examine the retained parts.

1182. The deaths of these three individuals while in U.S. custody is indeed a matter of the utmost gravity, and the United States responded by immediately conducting an extensive investigation that included the participation of numerous government agencies. Due to the lessons learnt from this unfortunate event, the Joint Task Force- Guantanamo updated its Standard Operating Procedures to help prevent additional suicides. The United States provides safe and humane care for all detainees in its custody. We take all credible allegations of abuse very seriously and thoroughly investigate them. We will continue to ensure our detention operations meet or exceed applicable international standards.

## Uzbekistan

### Deaths in custody of Sobit Zufarov and Negmat Zufarov

**Violation alleged:** Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention

**Subject(s) of appeal:** 2 males

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the response of the Government of Uzbekistan.

**Urgent appeal dated 9 September 2009,** sent with the Special Rapporteur on the freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

1183. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **Sobit Zufarov**, aged 30, and his deceased brother, **Negmat Zufarov**, aged 45 at the time of his death, both of Tashkent.

According to the information received,

Negmat Zufarov was arrested in 1999 on charges related to the practice of his religion. These charges included "upsetting the constitutional order" (article 159 of the Uzbek criminal code) and "setting up, leading or participating in a religious extremist, separatist, fundamentalist or other banned organization" (article 244.2 of the Uzbek criminal code).

In August 1999, Negmat Zufaraoov was sentenced to a 20-year prison term by the Tashkent District Court. On appeal to the Supreme Court, the sentence was converted to an 18-year-sentence in a strict regime prison. Negmat Zufaraoov served the first five years of his prison sentence at Jaslyk prison, where he sustained multiple beatings and ill-treatment as punishment for his praying. Negmat Zufaraoov's family wrote letters of concern about his ill-treatment to the Uzbek Ministry of Internal Affairs Directorate of Prison, the General Prosecutor's Office, and the Ombudsman's office – the responses were dismissive and no action was taken in response to the allegations.

In 2004, Negmat Zufaraoov was transferred to a prison in Chirchik, and then subsequently to Zarafshan prison colony. In spring 2007, he was sentenced to an additional 20 months in prison to be served in Zarafshan, allegedly for violating prison rules. His family had not been informed in advance of the charges, nor were they sent a copy of the verdict.

Whilst he was at Zarafshan prison, Negmat Zufaraov was allegedly subjected to torture and ill-treatment over several years. In particular, he was beaten by four fellow inmates with plastic bottles filled with water, and regularly placed in an isolation cell as punishment for praying. Even when he was in isolation, the fellow inmates who had beaten Negmat Zufaraov, were allowed access to him, and continued to beat him. In mid-May 2009, Negmat Zufaraov commenced a hunger strike, demanding that he be allowed to pray. After six days, he was force-fed by prison authorities, who also performed a forced enema on him, using pepper solution. The beatings allegedly continued after his hunger strike.

When his family visited him between 2 and 5 June 2009, Negmat Zufaraov informed them that he was being subjected to intensified ill-treatment in prison, to the point where he feared for his life.

On 16 June 2009, prison authorities telephoned Negmat Zufaraov's family and informed them that he had committed suicide. His body was delivered to his family who were also given a death certificate stating that he had died of "mechanical asphyxiation". However, Negmat Zufaraov's body displayed signs of ill-treatment, including wounds to the head, visible blood clots, a hematoma on his neck, and bruises on his back. Negmat Zufaraov's family was instructed by the prison authorities to bury him the next morning, without any opportunity for a medical examination of his body. The burial was observed by police, who also monitored the family's house in the days following the return of Negmat Zufaraov's body.

In 2000, the brother of Negmat Zufarov, Sobit Zufarov, was also arrested for religion-related charges. In spite of a serious medical condition, he was sentenced to 8 years' imprisonment in a strict regime prison in 2000, and is currently serving time in Prison Colony 46 in Navoi region. In January 2008, just prior to his release date, Sobit Zufaraov was charged with violating prison rules, and was sentenced to a further 3 years and 6 months imprisonment.

There have been reports that Sobit Zufaraov is being ill-treated in prison, including being placed in an isolation cell for up to six months as punishment for praying.

In light of above allegations of isolation, concern is expressed in relation to Sobit Zufarov's physical and psychological integrity.

1184. While we do not wish to prejudge the accuracy of the allegations relating to the death in custody of Negmat Zufaraov, we would like to draw the attention of your Excellency's Government to the fundamental principles applicable under international law to this case. Article 7 of the International Covenant on Civil and Political Rights provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life.

1185. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. In this respect, we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 of 21 October 1982, paragraph 9.2): "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant."

1186. In order to overcome the presumption of State responsibility for a death in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in Resolution 8/3. (OP 4), stating that all States have “the obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions,

1187. The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, [...], to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to [...] prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1188. We would also like to appeal to your Excellency’s Government to ensure the right to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights. Furthermore, we would like to refer to General Assembly resolution 63/181, which recognizes with concern the situation of persons in vulnerable situations, including persons deprived of their liberty. In the same resolution, the Assembly also urges States “to step up their efforts to protect and promote freedom of thought, conscience, religion or belief, and to this end: [...] (b) To ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights”.

1189. We urge your Excellency’s Government to conduct an inquiry into the circumstances surrounding the death of Negmat Zufaraov expeditiously, impartially and transparently, including the conduct of an independent autopsy, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate Negmat Zufaraov’s family.

1190. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Negmat and Sobit Zufaraov in compliance with the above international instruments.

1191. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Have any formal complaints been lodged by the family of Negmat Zufarov and/or Sobit Zufarov in relation to the allegations of ill-treatment sustained by each individual whilst in prison?
3. Please provide the full details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in

relation to the alleged treatment and death of Negmat Zufarov. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide the full details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the alleged ill-treatment of Sobit Zufarov. If no inquiries have taken place, or if they have been inconclusive, please explain why.

5. Please indicate whether compensation has been provided to the family of Negmat Zufarov.

**Response of the Government of Uzbekistan dated 13 October 2009 (translated from Russian)**

1192. Information concerning N. Zufarov and S. Zufarov

1. Nigmat Sobirovich Zufarov, born in 1964, was a citizen of the Republic of Uzbekistan with a criminal record. He worked as the director of a private company until his arrest.

By a judgement of 3 April 2000 the Tashkent provincial court sentenced him to 20 years' deprivation of liberty under article 159, paragraph 3 (a) and (b) (infringement of the constitutional order of the Republic of Uzbekistan), article 244-1, paragraph 3 (a) (manufacture or distribution of materials entailing a threat to public security and public order), article 244-2, paragraph 1 (establishment, leadership or participation in religious, extremist, separatist, fundamentalist or other prohibited organizations), article 190, paragraph 2 (b) (engaging in unlicensed activity), and article 273, paragraph 3 (b) (illegal manufacture, acquisition or possession of and other activities with narcotic substances or psychotropic materials with a view to their sale or the equivalent), of the Criminal Code of the Republic of Uzbekistan. By a decision of the criminal chamber of the Supreme Court of 17 July 2000, the length of the penalty was reduced to 18 years' deprivation of liberty.

While serving his sentence in places of detention, the convict N. Zufarov continued his criminal activity, for which criminal action was again brought against him. By a judgement of 14 May 2004 of the Navoi provincial criminal court N. Zufarov was found guilty under article 159, paragraph 3 (a) and (b) (infringement of the constitutional order of the Republic of Uzbekistan), of the Criminal Code and sentenced to 15 years' deprivation of liberty to be served in a strict regime colony.

As from 14 April 2009 the convict N. Zufarov served his sentence in institution UYA-64/48 (in Zarafshan, Navoi province). While serving his sentence N. Zufarov incurred a disciplinary penalty 13 times for admitted breaches of the rules governing the serving of his sentence.

On 3 June 2009 the convict N. Zufarov was granted a long meeting with his parents. The administration did not receive any complaints or representations thereafter from his parents.

On 15 June 2009 the convict N. Zufarov committed suicide by hanging himself. Forensic report No. ZA 31 of 15 June 2009 came to the conclusion that N. Zufarov's death was caused by mechanical asphyxiation.

A further investigation did not show that N. Zufarov had been subjected to any violence by the staff of the colony or other persons. Hence the decision of 25 June 2009 of the investigator of the Navoi Procurator's Office responsible for the supervision of compliance with the law in places of detention to initiate criminal proceedings was dismissed pursuant to article 83, paragraph 2, of the Code of Criminal Procedure.

The senior managers of the colony K. Nuraliev, S. Boimuratov and Inspector T. Safarov were disciplined for failure to exercise due supervision of the conduct and actions of N. Zufarov, who committed suicide.

It must be noted in response to the unfounded accusations in the complaint from the special procedures of the United Nations that, in all penal institutions, all the conditions allowing convicts to observe religious rites have been created in accordance with penal enforcement legislation.

Convicts are allowed to perform religious rites and to use religious articles and religious literature. The performance of religious rites is voluntary and must not “breach the regulations of the penal institution or prejudice the rights and lawful interests of other persons”.

In UYA-64/48, as in all other penal institutions, convicts are not punished for the performance of religious rites, they are not tortured in any way and they are not put in the disciplinary section.

2. Sobit Sabirovich Zufarov, born in 1968, is a citizen of the Republic of Uzbekistan with a criminal record. He worked as a conductor before his arrest.

By a judgement of 22 June 2000 of the Yakkasarai district court in Tashkent he was sentenced to eight years’ deprivation of liberty under article 159, paragraph 3 (b) (infringement of the constitutional order of the Republic of Uzbekistan), article 244-1, paragraph 3 (a) (manufacture or distribution of materials entailing a threat to public security and public order), and article 216 (breach of the legislation concerning religious organizations) of the Criminal Code of the Republic of Uzbekistan.

The convict S. Zufarov, who is serving his sentence in institution UYA-64/3, situated in the Bostanlyk district of the Tashkent region, has incurred a disciplinary penalty eight times, including on one occasion one month in the punishment cell, for failure to comply with the lawful demands of the prison administration and breach of the prison regulations. In connection therewith he has been prosecuted and by a judgement of 11 January 2008 of the Bostanlyk district criminal court he was found guilty under article 221, paragraph 2 (b) (failure to comply with the lawful demands of the administration of a penal institution), of the Criminal Code of the Republic of Uzbekistan and sentenced to three years and six months’ deprivation of liberty to be served in a strict regime colony.

The convict S. Zufarov has been serving his sentence in institution UYA-64/46 (in Navoi) since 3 February 2008. During this period he has had three disciplinary penalties. According to the prison administration’s records, S. Zufarov shuns participation in educational measures and work, he does not attend educational talks, he does not understand the essence of the crime which he committed and he does not regret its commission.

On entering the penal institution he underwent a full medical examination and his medical record shows him as having been diagnosed with “osteocondrosis of the lumbar vertebrae, chronic pyelonephritis and prostatitis”. At intervals prescribed by the prison hospital he receives outpatient and inpatient treatment. At present the convict’s state of health is deemed to be satisfactory.

The use of torture and other unlawful methods of physical or psychological pressure on N. Zufarov and S. Zufarov and the alleged hunger strike of N. Zufarov were not borne out by the investigation conducted in response to the communication from the special procedures of the United Nations Human Rights Council.

## Venezuela (Bolivarian republic of)

### Muerte de Mijail Martínez

**Violación alegada:** Muerte como consecuencia de ataques o asesinatos por parte de las fuerzas de seguridad del Estado, o de grupos paramilitares, escuadrones de la muerte, o otras fuerzas privadas que cooperan con o son toleradas por el Estado

**Persona objeto del llamamiento:** 1 hombre

**Carácter de la respuesta:** No se recibió ninguna respuesta

**Observaciones del Relator Especial:** El Relator Especial lamenta que el Gobierno de Venezuela no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

**Carta de alegación con fecha de 18 de enero de 2010,** enviada con el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión y la Relatora Especial sobre la situación de los defensores de los derechos humanos.

1193. En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con en relación con el Sr. Mijail Martínez, integrante del Comité de Víctimas contra la Impunidad (CVCI), una organización de derechos humanos ubicada en el Estado de Lara. El Sr. Martínez era productor de audiovisuales y habría estado produciendo un documental acerca de las historias de las víctimas de violaciones de los derechos humanos supuestamente cometidas por agentes de la policía del Estado de Lara. Asimismo, era hijo del Sr. Víctor Martínez, ex Diputado de la Asamblea Legislativa del Estado de Lara e integrante del CVCI.

Según las informaciones recibidas:

El 26 de noviembre de 2009, por la mañana, dos hombres no identificados habrían disparado contra el Sr. Martínez quien se habría encontrado en la puerta de su casa en Barquisimeto. El Sr. Martínez habría muerto inmediatamente.

Se teme que el asesinato del Sr. Mijail Martínez esté relacionado con las actividades que realizaba en la defensa de los derechos humanos, en particular sus actividades de denuncia de las violaciones de los derechos humanos supuestamente cometidas por agentes de la policía. Asimismo, este asesinato podría tener un efecto extremadamente negativo sobre el trabajo legítimo de los defensores de los derechos humanos en Venezuela y podría sofocar la libertad de expresión en el país.

1194. Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos y en particular los artículos 1 y 2. Éstos establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales en los planos nacional e internacional y que es la responsabilidad primordial y el deber de todos los Estados de proteger, promover y hacer efectivos todos los derechos humanos, adoptando las medidas necesarias para crear las condiciones sociales, económicas, políticas y de otra índole, así como las garantías jurídicas requeridas para que toda persona sometida a su jurisdicción, individual o colectivamente, pueda disfrutar en la práctica todos esos derechos y libertades.

1195. Además, quisiéramos referirnos a los artículos siguientes:



- el artículo 6, apartados b) y c), estipula que toda persona tiene derecho, individualmente y con otras, conforme a lo dispuesto en los instrumentos de derechos humanos y otros instrumentos internacionales aplicables, a publicar, impartir o difundir libremente a terceros opiniones, informaciones y conocimientos relativos a todos los derechos humanos y las libertades fundamentales y a estudiar y debatir si esos derechos y libertades fundamentales se observan, tanto en la ley como en la práctica, y a formarse y mantener una opinión al respecto, así como a señalar a la atención del público esas cuestiones por conducto de esos medios y de otros medios adecuados.
- el artículo 12, párrafos 2 y 3, estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración. A este respecto, toda persona tiene derecho, individual o colectivamente, a una protección eficaz de las leyes nacionales al reaccionar u oponerse, por medios pacíficos, a actividades y actos, con inclusión de las omisiones, imputables a los Estados que causen violaciones de los derechos humanos y las libertades fundamentales, así como a actos de violencia perpetrados por grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.

1196. Además, nos permitimos hacer un llamamiento urgente al gobierno de su Excelencia para que tome las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: “Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección”.

1197. En caso de que sus investigaciones apoyen o sugieran la exactitud de las alegaciones arriba mencionadas, quisiéramos instar a su Gobierno a que adopte todas las medidas necesarias para proteger la independencia del poder judicial, en especial la de los jueces provisorios. Quisiéramos asimismo instarle a que adopte las medidas eficaces para evitar que se repitan tales hechos.

1198. Es nuestra responsabilidad, de acuerdo con los mandatos que me han sido otorgados por la Asamblea General, intentar clarificar los hechos traídos a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos si pudiéramos obtener su cooperación y sus observaciones sobre los siguientes asuntos:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con este caso. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables del asesinato del Sr. Martínez? Si no se han realizado diligencias judiciales y administrativas respecto al caso, le rogamos que explique por qué.

## Viet Nam

### Death sentence against Tuyet Lan Pham Thi

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment.

**Subject(s) of appeal:** 1 female

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur:** The Special Rapporteur appreciates the response of the Government of Viet Nam with respect to the death sentence against Ms. Tuyet Lan Pham Thi.

1199. The Special Rapporteur commends the Government of Viet Nam for recognizing that the death penalty may be imposed only for the most serious crimes by eliminating the death penalty for a number of criminal offenses in which death does not result. He notes that Viet Nam has, in June 2009, eliminated the death penalty for rape, the illegal use of drugs, smuggling and bribery, the unlawful seizure of aircrafts or vessels, and a variety of financial crimes.

1200. However, the Special Rapporteur is deeply concerned that the Government continues to impose the death penalty for other offences similar to the ones for which the death penalty has been eliminated. Specifically, the offence of embezzlement for which Mrs. Tuyet Lan Pham Thi received the death sentence violates international human rights law. Especially given the Government's recognition of the "most serious crime" requirement with respect to elimination of the death penalty for other financial crimes, the Special Rapporteur looks forward to an explanation of why the Government's domestic law continues to permit the death sentence for embezzlement under Article 278 of the Criminal Code. He also looks forward to receiving information about the outcome of Ms. Tuyet Lan Pham Thi's appeal.

**Urgent appeal dated 19 June 2009**, sent with the Working Group on arbitrary detention and the Special Rapporteur on the independence of judges and lawyers.

1201. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the death sentence imposed on Mrs. Tuyet Lan Pham Thi, a woman aged 51, resident of Phu Nhuan District, Ho Chi Minh City.

According to the information received:

Mrs. Tuyet Lan Pham Thi (identity card n. 022438116) was arrested in her house by eight policemen, who also searched her house, on the evening of 7 February 2005. This arrest followed a warrant issued by the People's Procuratorate of Ho Chi Minh City, based on allegations of infringement of the Utilization of Land rule. It also occurred after five to seven summons to the Police Station, to collaborate with the police investigation. After her arrest, Mrs. Pham Thi was taken directly to a prison, in the Binh Thanh district of Ho Chi Minh.

Once in prison, she was also accused of embezzlement and of heading a criminal organization responsible for fraudulent transactions over a number of years. These last accusations are allegedly related to a transaction that Mrs. Pham Thi carried out in 2002, as chief executive officer of the SA An Hoi company, during which she sold (with profit) land to a state company.

After her arrest in February 2005, Mrs. Pham Thi was denied all visiting rights for a period of 6 months. It was reported that during this time, she was not provided with food and had to eat what was left by other prisoners, who also beat

her. Following this period of 6 months, she was transferred to the Chi Hoa Prison, in the 10th arrondissement of the City, where she also had restricted rights compared to other inmates, such as limited visits and food.

On February 2007, the first instance Court of Ho Chi Minh City sentenced her to death. On July 2007, the Appeal Court rejected the death sentence and asked for a new investigation. Allegedly however, her lawyers have not been kept apprised of the findings of the investigation and she has reportedly been charged with the wrong offence. After one and a half years of investigation, the police maintained its initial conclusions. It is reported that the new trial is set for 23 June 2009.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned person is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee her right not to be deprived arbitrarily of her liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

1202. While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to this case under international law.

1203. We would like to remind your Excellency's Government that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). In the present case, Mrs. Tuyet Lan Pham Thi did not kill anyone and no allegation of such was made.

1204. We would also like to refer your Excellency's Government to article 14 3) of the International Covenant on Civil and Political Rights, which was ratified by your Government, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing."

1205. The right to be assisted by a lawyer is also set forth in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular:

- principle 1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings;
- principle 5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

1206. In the event that your investigations support or suggest the above allegations to be correct, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person are respected and accountability

of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

1207. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

1208. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate? If not, please share all information and documents proving their inaccuracy.
2. Please provide the legal basis for her death sentence and how these measures are compatible with international human rights norms and standards as contained, inter alia, in the Universal Declaration for Human Rights, the Covenant on Civil and Political Rights, and the Basic Principles on the Role of Lawyers.
3. Please provide details regarding the trials of Tuyet Lan Pham Thi, including responses to the following: was she adequately represented by a lawyer during all steps of the investigation and the trials? Which provisions of criminal law was she found guilty of having violated and what are the maximum sanctions imposed for these violations?
4. Please provide details regarding Tuyet Lan Pham Thi alleged involvement in a criminal organization implicated in fraudulent transactions.

#### **Response of the Government of Viet Nam dated 20 August 2009**

1209. With reference to your letter under reference code [ . . . ] dated 19 January 2009 regarding the case of Mrs. Pham Thi Tuyet Lan [sic], I have the honor to convey to you the following information:

1 Mrs Pham Thi Tuyet Lan was arrested for falsifying documents on land-use-rights and selling lands for huge illegal profits. Mrs Pham Thi Tuyet Lan is accused of embezzlement in accordance with Paragraph A of section 4 of Article 278 of the 1999 Criminal Code Act, of which the maximum sanction imposed for such offense is the capital punishment. Mrs Pham Thi Tuyet Lan has been judged by the Court of first instance and the Court of Appeal.

2. During the period of provisional detention for investigation and the trial, Mrs Pham Thi Tuyet Lan is entitled to enjoy the rights of the suspected offender without discrimination or ill-treatment, including the right to be assisted by a lawyer of her own choosing. However, she has refused and wants to be defended by herself. All information which states that Mrs Pham Thi Tuyet Lan was denied visiting rights, not provided with food and beaten are totally untrue.

3. The arrest, detention for investigation and trial of Mrs Pham Thi Tuyet Lan are carried out in strict compliance with the sequence and procedures stipulated in existing Vietnamese laws, particularly the Criminal Procedures Code and also in line with international standards on human rights, particularly the Universal Declaration of Human Rights, and the International Convention on Civil and Political Rights. Based on recently found evidences, a court of final appeal will be soon convened to review Mrs Pham Thi Tuyet Lan's case to ensure that justice is done.

4. According to the 1985 Criminal Code of Viet Nam, 44 serious criminal offenses were subject to capital punishment. In the process of judicial reform in compliance with international standards, the National Assembly of Viet Nam has adopted in 1999 the new Criminal Code in which there are only 29 serious criminal offenses that are punishable by death, and the death penalty is not applicable to juvenile offenders, pregnant women or women having children under 36 months of age.

Moreover, in the orientation of the restrictive imposition of the death penalty, only for the most serious crimes, in accordance with section 2 of article 6 of the International Convention on Civil and Political Rights, in June 2009, the National Assembly of Viet Nam has revised the 1999 Criminal Code, reducing from 29 to 21 the number of criminal offenses which are subject to the death penalty. The criminal offenses which are removed from the death penalty list are as follows: rape (Article 111); fraudulent appropriation (Article 139); smuggling (Article 153); production, stockpiling, transport and circulation of counterfeit money, counterfeit bank notes or counterfeit government bonds (Article 180); illegal use of drug (Article 197); unlawful seizure of aircrafts or vessels (Article 221); give bribes (Article 289) damage of arms and military equipments (Article 234).

## Yemen

### **Civilians killed by state armed forces in attacks on internally displaced persons' camps in Adi in the Amran governorate**

**Violation alleged:** Deaths due to attacks or killings by security forces of the state, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the state

**Subject(s) of appeal:** Group concern

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Yemen has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent appeal dated 22 September 2009,** sent with Representative of the Secretary-General on the human rights of internally displaced persons

1210. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding reports of attacks on civilian targets, in particular camps for internally displaced persons in Adi in the Amran governorate, by the Yemeni armed forces on 14 and 17 September 2009 resulting in the killing of numerous civilians.

According to information we have received:

In mid-August 2009 renewed armed conflict between Yemeni governmental armed forces and insurgents referred to as "Al Huthis" broke out in 'Amran and Saada Governorates in northern Yemen. The United Nations estimate that the recent combat has brought the total number of internally displaced people to 150,000, the majority of whom are women and children.

On 16 September 2009, a Yemen air force attack caused the death of internally displaced persons (IDPs) in an improvised camp in Adi east of Harf Sufian in 'Amran governorate. According to witnesses, the attack took place in two waves, the first targeting IDPs gathering in makeshift tents and under trees, the second targeting people fleeing towards a canal. The number of persons killed is indicated as 87 in some reports, 85 in others, as "dozens of displaced persons,

mostly women and children” in others yet. In speaking to journalists, a Government official claimed that the fighter jets targeted rebels who were hiding among the IDPs.

The attack on 16 September was preceded by the air force attack on a crowded market place in Saada Governorate on 14 September 2009. This attack left dozens of victims killed and wounded, including women and children, and caused huge material losses to trade shops, cars and houses near to the market.

1211. While we do not wish to prejudge the accuracy of these reports, we would like to refer Your Excellency’s Government to the fundamental legal rules applicable to all armed conflicts under international humanitarian law and human rights law.

1212. Specifically, your Government is under an obligation to distinguish between combatants and civilians and to direct attacks only against combatants (Rules 1, 6 and 7 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross (“Customary Rules”)).

1213. Regarding claims that rebels were hiding among the IDPs and attacking the governmental forces, we would recall that indiscriminate attacks are prohibited as well (Rule 11 of the Customary Rules). They include attacks which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law (Rule 12). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14 of the Customary Rules). All feasible precautions must be taken to avoid and minimize incidental loss of civilian life (Rule 15 of the Customary Rules). This explicitly requires that parties to a conflict must give effective advance warning of attacks which may affect the civilian population (Rule 20 of the Customary Rules).

1214. We urge your Excellency’s Government to ensure that immediate and independent investigations are carried out into these killings and to protect those displaced by the conflict according to the UN Guiding Principles on Internal Displacement including Principle 10 on the right to life which codifies and reflects the above mentioned basic guarantees of international humanitarian law..

1215. It is moreover our responsibility under the mandate provided to us by the Human Rights Council to seek to clarify all cases brought to my attention. Since we are expected to report on these alleged incidents, we would be grateful for your cooperation and observations on the following four matters:

1. Are the facts alleged in the above summary accurate? Please refer to the results of any police or military investigation, or judicial or other inquiries carried out in relation to the alleged incident.
2. What, if any, assessment was made to ensure that the attack complied with the rules of international humanitarian law and human rights law? Specifically, what safeguards, if any, were employed to verify that only legitimate military targets were attacked? What methods were adopted to distinguish between military and civilian objects? What precautions were taken to minimize loss of civilian life? What means and methods of warfare were adopted to avoid incidental loss of civilian life, and to ensure that incidental loss of life was not excessive in relation to the anticipated military advantage?
3. Please provide the details of any disciplinary measures imposed on or criminal prosecutions against members of the armed forces responsible for the alleged incident.

4. Please state whether any compensation was, or is intended to be, provided to the families of the victims.
5. Please describe the measures adopted to protect those displaced by the conflict according to the UN Guiding Principles on Internal Displacement.

**Yemen: Death sentence against Fatima Hussein Badi**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment.

**Subject(s) of appeal:** 1 female

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Yemen has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent appeal dated 29 April 2009,** sent with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on violence against women, its causes and consequences.

1216. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the death sentence imposed against Ms. Fatima Hussein Badi, who may reportedly be at imminent risk of execution. Fatima Hussein al-Badi and her brother Abdullah Hussein al-Badi were arrested in July 2000 for the murder of her husband, Hamoud Ali al-Jalal, tried and sentenced to death on 17 February 2001. The appeals court upheld the death sentence. In September 2003, the Supreme Court confirmed the death sentence imposed on Abdullah Hussein al-Badi. After confirmation of the sentence by the President of Yemen, he was executed on 2 May 2005.

We wrote to your Excellency's Government regarding this case on 20 December 2005, drawing your Government's attention to reports that the two defendants had been tortured by police in detention, that Abdullah Hussein al-Badi confessed to the police after he was assured that his confession would lead to his sister's release, that the two defendants had no legal representation during the trial, and were not allowed to speak in court. Your Excellency's Government replied to our communication on 1 June 2006, stating that: "[Fatima Hussein al-Badi] was not subjected to any form of mental or physical torture. A lawyer was appointed to present her defence from the very first stage of proceedings until the Supreme Court delivered its ruling. The Yemeni judiciary takes every care to comply with, and abide by, the norms of international law. Yemeni law guarantees defendants the full right to a defence during every stage of judicial proceedings." (A/HRC/4/20/Add.1, pp. 378-380).

With regard to the case of Fatima Hussein Badi, we have recently received information which was not available to us at the time of our letter of December 2005. These reports indicate that in September 2003 Section B of the Supreme Court found that Fatima Hussein Badi was not guilty of murder, but only of participating in hiding the victim's body. It therefore quashed the death sentence and imposed a four years' prison term instead. Because of the death sentence imposed in the same Supreme Court judgment against Abdullah Hussein al-Badi, the case went to the President of Yemen for confirmation. The President ordered the Supreme Court to reconsider its findings and sentence regarding Fatima Hussein Badi. In August 2004, the Supreme Court sitting as General Assembly, i.e. with the participation of all judges, reportedly overturned the judgment of Section B of the Supreme Court and

reinstated the death penalty against Fatima Hussein Badi. She has been on death row since then. Her death sentence has reportedly not been carried out as a special appeal to the President by her defence lawyer remains pending.

According to the information received, the President's order to the Supreme Court to reconsider its decision not to sentence Fatima Hussein Badi to death followed a letter of January 2004 by the then Head of the Council of Representatives (Yemen's Parliament) to the President urging him not to ratify the judgment. The letter allegedly referred to a report by the Justice and Endowment Committee of the Council of Representatives which had studied the case upon a request by relatives of the victim. The Justice and Endowment Committee noted that, if the death sentence against Fatima Hussein Badi was lifted, she would be reinstated as her late husband's heir and could as such pardon her brother.

1217. While we do not wish to prejudge the accuracy of the information received, we would like to recall that in capital punishment cases, the obligations of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights, to which Yemen is a Party, admits no exception.

1218. The reports received raise considerable concerns with regard to the right to be judged by an "independent tribunal". As the Human Rights Committee explains in its General Comment No. 32 on the right to a fair trial, this requires a court "independent of the executive and legislative branches of government" (CCPR/C/GC/32, at para. 18). The Human Rights Committee adds that "[t]he requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception." (CCPR/C/GC/32, at para. 19). The Basic Principles on the Independence of the Judiciary, endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, state in this respect that "[t]here shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision." (Principle 4)

1219. It is our understanding that the laws of Yemen require that any judgment imposing the death sentence must be confirmed by the President. This requirement that any death sentence be confirmed by the Head of State, which Yemen shares with the legal systems of other States, does arguably involve an interference with the independence of the judiciary. It is, however, an interference which is expressly allowed by international human rights law to protect the right to life in capital punishment cases. Article 6(4) of the Covenant provides that "[a]nyone sentenced to death shall have the right to seek pardon or commutation of the sentence", which implies that in death penalty cases domestic law may empower the executive branch (or the legislature) to change the determination of the sentence by the judiciary.

1220. This exception to the principle of the independence of the judiciary is, however, limited to decisions to reduce the sentence imposed, not to make it harsher. Indeed, having stated that judicial decisions by the courts may not be subject to revision, the United Nations Basic Principles on the Independence of the Judiciary immediately add that "[t]his principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law." In conclusion, the independence of the judiciary requires that competent authorities belonging to other branches of government may interfere with sentences imposed by the judiciary only to mitigate or commute the sentence imposed, not to aggravate it. The President's order to the Supreme Court to review the prison term imposed on Fatima Hussein Badi with a view to considering whether the death sentence would not be appropriate would, assuming the reports received are accurate, constitute a serious violation of this principle.



1221. With regard to the reports that the confessions of Fatima Hussein al-Badi and Abdullah Hussein al-Badi were extorted by the police after their arrest in July 2000, which we brought to the attention of your Excellency's Government in our previous communication, a new and particularly disturbing allegation was brought to our attention. It is alleged that Fatima Hussein Badi was threatened with rape in the presence of her brother, who confessed in order to save her.

1222. In this respect, and with regard to her right to counsel, we appreciate the assurances by your Excellency's Government that Fatima Hussein Badi "was not subjected to any form of mental or physical torture. A lawyer was appointed to present her defence from the very first stage of proceedings until the Supreme Court delivered its ruling." We remain concerned, however, that – as the Special Rapporteur on extrajudicial, summary or arbitrary executions observed – your "Government's response consists of conclusory denials that do not appear to reflect a thorough investigation of whether confessions were extracted with torture or of whether legal representation was provided in fact as well as law." (A/HRC/4/20/Add.1, p. 377) We renew our call on your Excellency's Government to subject these questions to independent and detailed investigation.

1223. We recall in this regard Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which stipulates that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth in several international human rights instruments, such as the above mentioned Convention against Torture and the International Covenant on Civil and Political Rights, to both of which Yemen is a party.

1224. Only full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law protecting the right to life from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights under international law of Fatima Hussein Badi are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

1225. It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters.

1. Are the reports above regarding the proceedings before the Supreme Court in the case of Fatima Hussein Badi accurate? Please explain the legal basis for the order by the President to the Supreme Court to review the sentence imposed against Fatima Hussein Badi.
2. Are the allegations above regarding the threats against and torture of Fatima Hussein Badi, aimed at extorting confessions from her and Abdullah Hussein al-Badi, accurate? If not so, please share the results of any investigation and all information and documents proving their inaccuracy.

**Yemen: Death sentences against Shaikh Khalid Nahshal, Mabkhout 'Ali Nahshal and Abduh Muhammad Nahshal**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment.

**Subject(s) of appeal:** 3 males

**Character of reply:** No response

**Observations of the Special Rapporteur:** The Special Rapporteur regrets that the Government of Yemen has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent appeal dated 22 September 2009**, sent with the Special Rapporteur on the situation of internally displaced persons.

1226. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged imminent execution of Messrs. Shaikh Khalid Nahshal, Mabkhout 'Ali Nahshal and Abduh Muhammad Nahshal.

According to information received:

The three men were arrested in connection with the killing of a government official in the district of Khayran in northern Yemen. The incident occurred following an exchange of fire between a group of armed men and government officials during disputes over the local and presidential elections in September 2006,

The three men at risk of execution are reported to be leading members of an opposition party, Islah. Their lawyers have indicated that they were not given full and effective opportunity to challenge the evidence against their clients, and that court judges who were hearing the case were threatened by relatives of the official who was killed. They also submitted that their clients may have been targeted because they had supported a candidate who had challenged the incumbent President, during the 2006 presidential elections.

1227. While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully remind your Excellency's Government that the International Covenant on Civil and Political Rights ("ICCPR"), to which the Republic of Yemen is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

1228. We would respectfully remind your Excellency's Government that in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the ICCPR admits of no exception. It is essential that capital punishment, whenever it is applied, should fully respect all fair trial standards contained in international human rights law in the relevant proceedings with the sentence being pronounced only after following a regular judicial process. Relevant to the case at hand, these guarantees under article 14 (b) include the right that in the determination of any criminal charge an accused person shall be entitled to have adequate time and facilities for the preparation of his defense.

1229. With regard to the allegation that Judges were threatened during the course of the trial, we would like to refer Your Excellency's Government to the Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular principle 2 which stipulates that the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. Further the Human Rights Committee in its general comment No. 32 has stated that it is necessary to protect judges against intimidation.

1230. We urge your Excellency's Government to take all necessary measures to guarantee that the rights of Messer's Shaikh Khalid Nahshal, Mabkhout 'Ali Nahshal and Abduh Muhammad Nahshal under international law of are respected. Considering the irreversible nature of capital punishment, this can only mean suspension of the death sentence against the three men until the question of whether fair trial guarantees were respected has been clarified.

1231. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the three men mentioned herein in compliance with your Government's international legal obligations.

1232. Moreover, it is our responsibility under the mandates provided to us by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate what legal measures are in place to ensure that Messer's Shaikh Khalid Nahshal, Mabkhout 'Ali Nahshal and Abduh Muhammad Nahshal, have fair trial guarantees as stipulated in Article 14 of the ICCPR including adequate time for preparation of their defense.
3. Please indicate what measures are in place to ensure that judges discharge their functions without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect.

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