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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 independence of judges and lawyers, Gabriela Carina Knaul de Albuquerque e Silva*

Addendum

Communications to and from Governments

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

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I. Introduction

The present report supplements the main report submitted by the Special Rapporteur on the independence of judges and lawyers to the Human Rights Council (A/HRC/14/26). It reflects specific situations alleged to be affecting the independence of judges or lawyers or violating the right to a fair trial in 47 countries, with 3 communications concerning the Occupied Palestinian Territories. Further, it includes replies received from the Government of the country concerned in response to specific allegations together with the Special Rapporteur's comments and observations.

The report presents summaries of the urgent appeals and allegation letters transmitted by the Special Rapporteur to governmental authorities between 16 March 2009 and 15 March 2010, and of press releases issued during the same reporting period. During this period the Special Rapporteur sent a total of 106 communications. In this connection, the Special Rapporteur wishes to emphasize that the communications presented in the report exclusively reflect allegations she received and subsequently acted upon. Where information was insufficient and could not be supplemented, or where the information received was outside the mandate, the Special Rapporteur was not in a position to act. Hence such allegations were not included in the report.

The report also includes summaries of the replies received from several States concerned between 1 May 2009 and 10 May 2010. In certain instances, the Government reply was obtained late and referred to allegations that were presented in the previous report (A/HRC/11/4/1Add.1). In those cases, the Special Rapporteur has included the respective allegation in the section of communications sent, in order to facilitate the reader's comprehension. On the other hand, it may be noted that certain responses to urgent appeals or allegation letters sent during the reporting period, and for which the Special Rapporteur wishes to thank the Governments, could not be included in the report owing to the fact that they were either not translated in time or received after 10 May 2010. To the Special Rapporteur's regret, they will therefore be reflected only in next year's report. Finally, due to restrictions on the length of the report, the Special Rapporteur has been obliged to summarize the details of the correspondence sent and received. As a result, requests from Governments to publish their replies in their totality could regrettably not always be accommodated.

II. Statistical data

The following tables of statistical data are aimed at helping the Human Rights Council to have an overview of developments in 2009 and the first trimester of 2010.

The tables show that action had to be taken in all parts of the world and that it covered a very wide range of issues. Since it is far from uncommon that situations affecting the judiciary occur in contexts in which other democratic institutions are also at risk, or where a variety of human rights are being violated – for example the right to life, the right not to be subjected to torture and ill-treatment, the right to freedom of expression, women's rights, indigenous people's and minorities' rights - the Special Rapporteur´s action often had to be taken jointly with other special procedures. Thus, 87% of communications were sent to Governments jointly with other special procedures (See chart 1). This also reflects the Special Rapporteur's will to work in close collaboration with other mandate holders so as to strengthen the impact of the special procedures system.

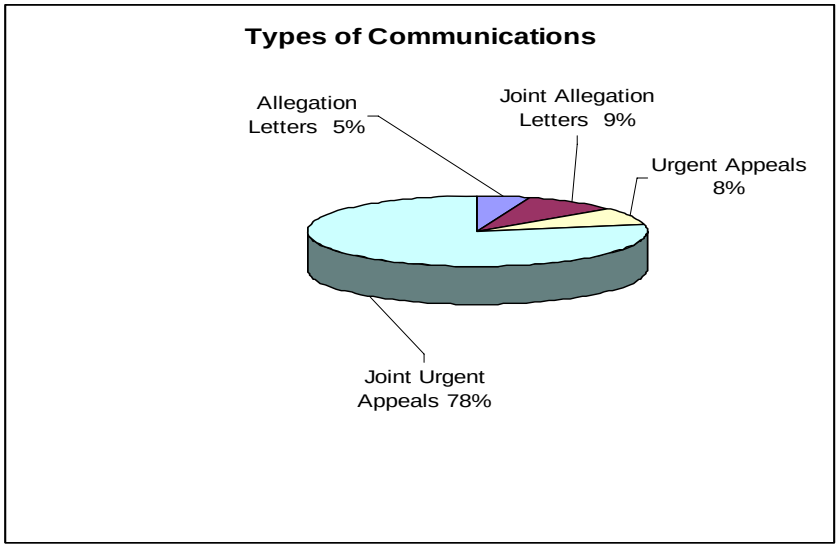

Chart 1: Type of Communications

The Special Rapporteur appreciates the responses received from Goverments. However, she notes with some concern the decrease in rate of replies received from Governments: of the 106 communications she sent which are referred to in this report, she received 45 replies representing 42% response rate. This represents a reduction in replies received from Government during last year reporting period of 16 March 2008 to 15 March 2009, in which her predecessor had sent 148 communications and received 79 replies, representing 53 % response rate (See Chart 2). The Special Rapporteur underlines that it is crucial that governments share their views on the allegations received with her.

The Special Rapporteur highlights her preoccupation in relation to the proportion of specific allegations of serious human rights violations that remain unanswered, more especially where the cases at hand concerned serious and revealed systemic violations affecting not only the judiciary, but the institutional structures of the Member State at large. In addition, the Special Rapporteur notes that replies are often received with a considerable delay and encourages Member States to reply to her communications within reasonable deadlines.

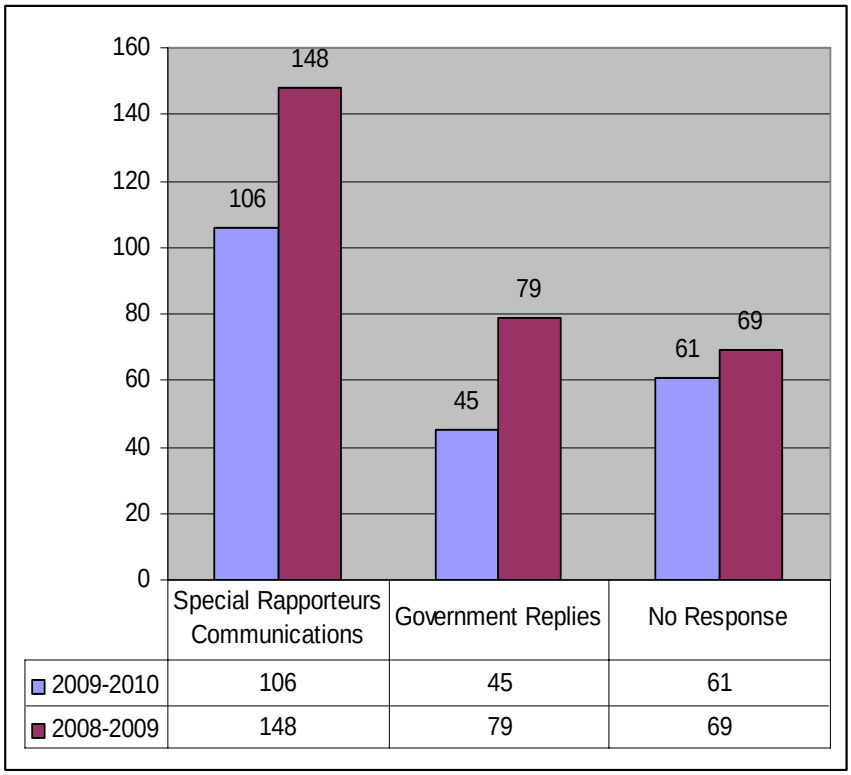

Chart 2: Comparison of Communications sent and replies received in 2008-2009 and 2009-2010

The Special Rapporteur also notes that, when compared to the reporting period of 2008 to 2009, there has been a decrease in cooperation from States: Only 28 States (58%) of the 47 States referred to in this report have replied to her communications. In the 2008 to 2009 reporting period, 38 States of the 50 States to whom communications were sent had replied representing 76% response rate. She however appreciates that most answers offered detailed, substantive information regarding the allegations received. The Special Rapporteur underlines that it is crucial that governments share their views on the allegations received with him.

The Special Rapporteur welcomes and encourages further cooperation from governments. Early, precise and detailed answers allow for a dialogue which, in many cases, leads to a clarification of the matters and often even to a settlement of the case.

The Special Rapporteur notes that communications have been sent to Member States of all regions of the world **(See chart 4)**. The Asia and Pacific region (34%) and the Middle East and North Africa region (22%), the Latin America and the Caribbean region (24%), The Europe, North America and Central Asia region 8% of the communications. Finally, the Africa region has received 12 % of the communications.

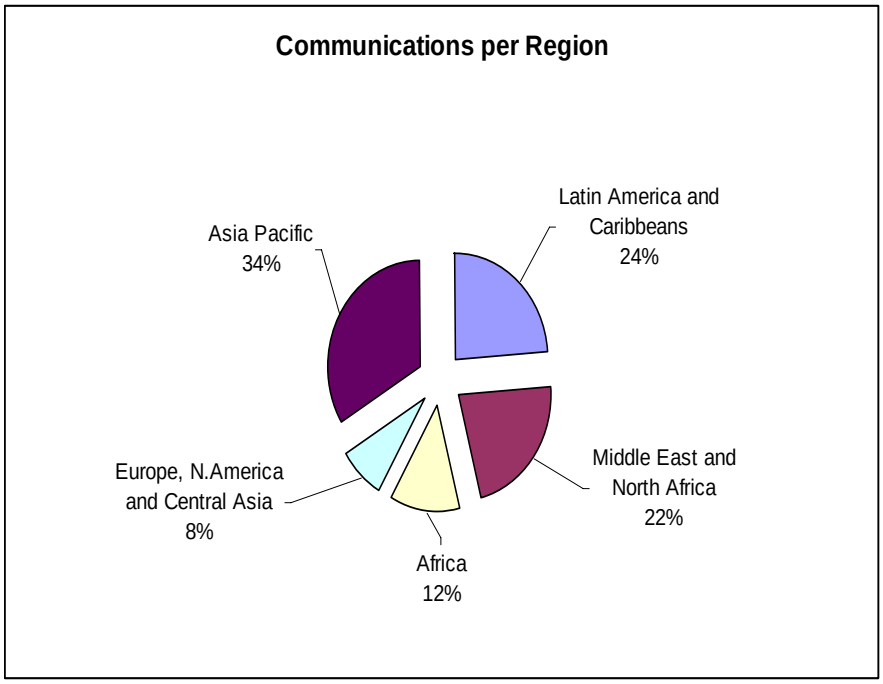

Chart 3 Communications per Region

The Special Rapporteur's communications addressed to the Governments on alleged human rights violations covered a wide range of subjects (**See chart 4**). The main areas of concern was fairness of judicial proceedings (24%) which relates to concerns of *inter alia* violations of the right to be informed of charges and the concern of evidence used in the proceedings and obtained by unlawful methods and undue delays in judicial proceedings. Harassment or threats to lawyers represent 16 % of the communications addressed to the governments. Lack of access to lawyer in places of detention constituted 15% of the communication and access to court was 9%. Lawsuits against lawyers relating to civil, criminal and disciplinary charges constitute 12 % of the communications. Concerns on independence of the judiciary constitute 8% and these related to inter alia legislation impinging the independences of the judiciary and any interference in judicial functions. 6% if the communications relate to concerns on military courts trying civilians. Other issues addressed by the Special Rapporteur relating to choice of lawyer, right to be tried in ones presence, right of appeal military justice systems, trials by shari'a courts, freedom of expression of lawyers and impunity constitute 13% of the communications.

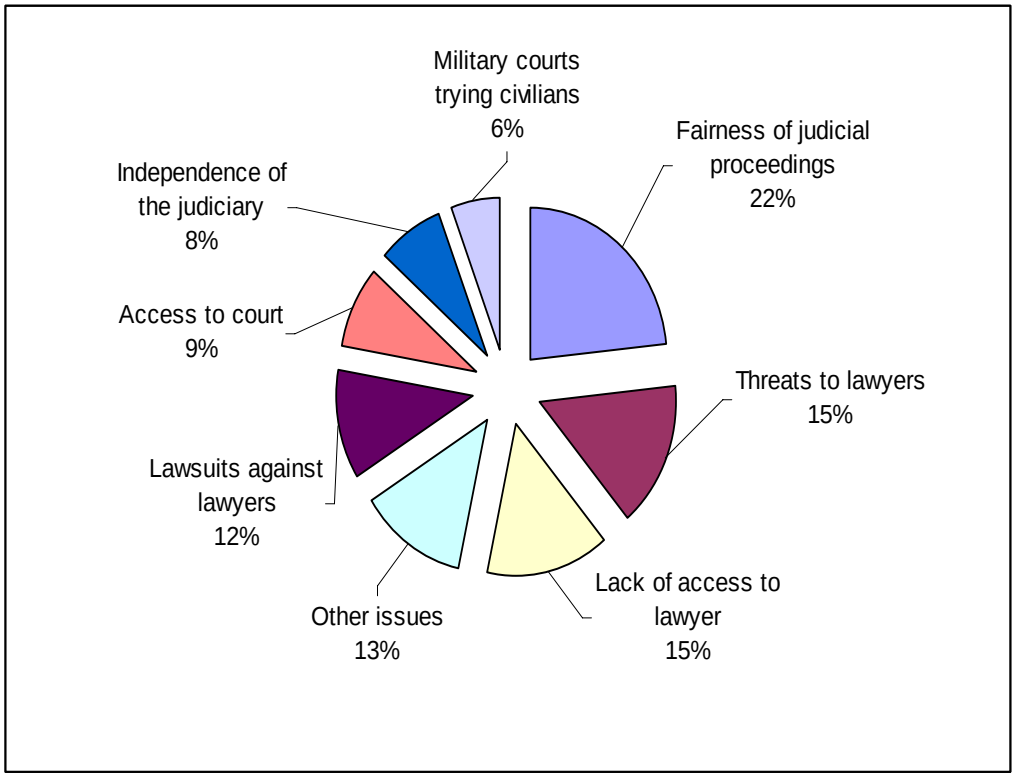

Chart 4: Types of violations and thematic issued addressed in the communications

The Special Rapporteur has included in the present report a table of communications and replies received from governments to provide an overview the Human Rights Council of developments in 2009 and the first trimester of 2010.

The table indicates the type of communication, the subject/author of the communication as well as the nature of the allegations concerned. The Special Rapporteur has classified the communications thematically depending on the nature of the alleged violation raised. The table also indicates the status of the replies.

	Country	*Communication sent*	*Subject of Communication*	*Nature of violation alleged*	*Status of reply*
1	Argentina	AL (2), UA (1)	Legislation (2) Judge (1)	Independence of the Judiciary (2) Threats against Judges (1)	Reply received (2) No Response (1)
2	Bangladesh	JAL (1)	Individuals (5)	Choice of Lawyer and trial in absentia (1)	Reply received (1)
3	Belarus	JUA (1)	Individual(1-HRD)	Fairness of judicial proceedings (1)	Reply received (1)
4	Cambodia	JAL (1) JUA (2)	Individuals (1-HRD); 1 Lawyers (1); Group concern (1)	Fairness of judicial proceedings(2); Freedom to carry out legal work (1); Criminal Charges against lawyer (1)	Reply received (1)No Response (2)

	Country	*Communication sent*	*Subject of Communication*	*Nature of violation alleged*	*Status of reply*
5	Chad	JUA (1)	Individuals (1)	Access to lawyer (1)	No Response (1)
6	China	JUA (7) JAL (1)	Individuals (17); Lawyers (19)	Lawsuit against lawyers (1); Fairness of judicial proceedings (4); Threats to lawyers (1) Freedom to carry out legal work (1); Threats to lawyers (1)	Reply received (7); No Response (1)
7	Colombia	JUA (2) JAL (1)	Lawyers (7); Judges (6) Individuals(3-HRD, 1 other)	Lawsuit against lawyers (1); Threats against lawyer (2)	Reply received (1); No Response (2)
8	Czech Republic	JUA (1)	Individuals (1)	Access to lawyer (1)	Reply received (1)
9	Democratic Republic of Congo	JUA (1)	Individuals (4-HRD)1 Lawyer (1)	Military courts trying civilians (1)	No Response (1)
10	Ecuador	AL (1)	Legislation (1)	Access to court and fair trial (1)	Reply received (1)
11	Egypt	JUA (2)	Individuals (28)	Fairness of judicial proceedings (1); Access to court and lawyer (1)	No Response (2)
12	Ethiopia	JUA (1)	Individuals (5)	Right to be tried in his/her presence (1)	Reply received (1)
13	Fiji	UA (1)	Legislation (1)	Independence of the judiciary (1)	No response (1)
14	Guatemala	JAL (1); JUA (2)	Lawyers(2), Individuals (2-HRD); Legislation (1)	Threats to lawyers (1); Independence of the judiciary (1); Access to effective remedy (Impunity) (1)	No response (2)Reply (1)
15	Guinea-Bissau	JUA (1)	Lawyers (2)	Threats to lawyers (1)	No response (1)
16	Honduras	JAL (1) JUA (1)	Individual (1); General Concern (1)	Fairness of judicial proceedings (1); Independence of the judiciary (1)	No response (2)
17	India	JUA (1)	Lawyer (1)	Lawsuit against lawyer	No response (1)
18	Indonesia	JUA (1)	Individual (1)	Right to effective remedy- Impunity (1)	No response (1)
19	Iran (Islamic	JUA (10)	Individuals (10,	Access to lawyer (6);	No response (10)

	Country	*Communication sent*	*Subject of Communication*	*Nature of violation alleged*	*Status of reply*
	Republic of)		2–HRD, 27-religious minorities) Lawyers (2); Group Concern (1)	Threats to lawyers (1); Access to court (1) ; Fairness of judicial proceedings(1); Threats to Lawyers (1)	
20	Iraq	JUA(1)	Group concern (1)	Fairness of judicial proceedings (1)	Reply received (1)
21	Israel	UA (1); JUA (2)	Legislation (1); Individuals (2-HRD)	Military justice system (1); Military courts trying civilians (1) Access to lawyer (1)	Reply received (3)
22	Japan	JUA (1)	Individuals (5)	Fairness of judicial proceedings (1)	Reply received (1)
23	Kazakhstan	JUA (2)	Individuals (1, 2-HRD)	Choice of lawyer (1); Fairness of judicial proceedings (1)	Reply received (2)
24	Kyrgyzstan	JAL (1)	Group concern (1)	Fairness of judicial proceedings (1)	Reply received (1)
26	Lebanon	JUA (3)	Individuals (3)	Access to Court (1); Military courts trying civilians (1)	Reply received (3)
27	Madagascar	UA (1), JUA (1)	Legislation (1); Individuals (5)	Independence of the judiciary (1); Access to Lawyer (1)	No response (2)
28	Malaysia	AL (1)	Lawyers (5)	Criminal charges against lawyers (1)	Reply received (1)
29	Mexico	UA (1) JUA (3); JAL (1)	Legislation (1); Lawyers (2); Individuals (8, 8-HRD)	Access to court(2), Threats and intimidation (2), Military Justice System (1)	Reply received (1) No response (4)
30	Morocco	JUA (1)	Individuals (3)	Right of Appeal (1)	No response (1)
31	Myanmar	JUA (2)	Lawyer (1), Individuals (4)	Criminal Charges against lawyers (1), Fairness of judicial proceedings (1)	No response (2)
32	Occupied Palestinian Territory	JUA (2)	Individuals (2)	Military Courts trying civilians (2)	No response (2)
33	Occupied Palestinian	JUA (1)	Individuals (1)	Military Courts trying civilians (1)	No response (1)

	Country	*Communication sent*	*Subject of Communication*	*Nature of violation alleged*	*Status of reply*
	Territory- (The Authorities in Gaza)				
34	Panama	UA (1)	Legislation (1)	Independence of the Judiciary (1)	No response (1)
35	Peru	JUA (2)	Lawyers (3), Individuals (3-HRD)	Threats and Intimidation (1), Criminal Charge against lawyer (1)	No response (2)
36	Republic of Moldova	JUA (1)	Group concern (1)	Fairness of judicial proceedings (1)	Reply received (1)
37	Russian Federation	JUA (1) JAL (1)	Judges (2), Individuals (4-HRD)	Threats and Intimidations(Violation of right to life) (2)	Reply received (2)
38	Kingdom of Saudi Arabia	JUA (5)	1 Individual (10), Group concern (1)	Access to Court (2), Fairness of judicial proceedings (3),	Reply received (1) No response (4)
39	Somalia	JUA (1)	Individuals (3)	Trial by Islamic Shari'a Court and Fairness of judicial proceedings (1)	No response (1)
38	Sri Lanka	JUA (2), JAL (1)	Individuals (5)	Access to lawyer (3)	Reply received (1) No response (2)
40	Sudan	JUA (5)	Lawyers (3), Individuals (16, 4-minors, 1 HRD)	Fairness of judicial proceedings (3), Access to lawyer and access to court (1), Criminal charge against lawyer (1)	Reply received (1), No response (4)
41	Syrian Arab Republic	JUA (2)	Lawyers (1), Individuals(1-HRD)	Criminal and disciplinary proceedings against lawyer (1), Access to lawyer and Access to court (1)	Reply received (1), No response (1)
42	Tunisia	JUA (2)	1 lawyer and 4 Individuals (42-HRD)	Threats and Intimidation (1) Fairness of judicial proceedings (1)	Reply received (1) , No response (1)
43	Turkey	JUA (1)	Lawyers (4)	Criminal charge against lawyer (1)	Reply received (1)
44	United Arab	JUA (1)	Individuals (1)	Fairness of judicial	No response (1)

	Country	*Communication sent*	*Subject of Communication*	*Nature of violation alleged*	*Status of reply*
	Emirates			proceedings (1)	
45	Venezuela	UA (2) AL (2) JUA (1)	Judges (4), Legislations (1) Judicial Decision (2)	Freedom of expression of lawyers (2) Independence of the judiciary (2), Criminal Charge against Judge (1)	Reply received (4), No response (1)
46	Viet Nam	JUA (4)	Lawyers (2) Individuals (2, 1 HRD),	Right to defense – adequate facilities (1), Criminal Charge against lawyer (1), Access to Lawyer (1), Fairness of judicial proceedings (1)	Reply received (4)
47	Yemen	JUA (3)	1 Individual (2)	Fairness of judicial proceedings (1), Access to court (1)	No response (3)
48	Zimbabwe	JUA (1)	Lawyers (1)	Criminal charges against lawyer	No response (1)

III. Summary of cases transmitted and replies received

Argentina

Comunicación enviada

1. El 28 de Julio de 2009, el Relator Especial envió una carta de alegación para señalar a la atención urgente del Gobierno de Argentina la información que había recibido con relación a a la situación del Consejo de la Magistratura, a raíz de una serie de denuncias que atentarían contra la independencia de ese organismo. La carta de alegación expresó preocupación para una reforma de la ley que reglamenta el Consejo de la Magistratura que se produjo en 2006, con la modificación en particular de la composición de éste organismo.

2. El Relator Especial observó que la Constitución de la Nación Argentina, reformada en el año 1994, estableció que fuera un Consejo de la Magistratura el organismo encargado de la selección de los magistrados, con el propósito de disminuir la influencia del poder político en la designación y remoción de jueces y así garantizar la independencia del Poder Judicial. Es por ello que la Constitución estableció en su artículo 114 que el Consejo sea "integrado periódicamente de modo que se procure el equilibrio entre la representación de los órganos políticos resultantes de la elección popular, de los jueces de todas las instancias y de los abogados de la matrícula federal. Será integrado, asimismo, por otras personas del ámbito académico y científico, en el número y la forma que indique la ley." La clave del mandato constitucional sobre la integración del Consejo de la Magistratura es la de procurar el equilibrio y pluralidad de la representación.

3. El Relator Especial observó que La ley 24.937 (y su ley correctiva 24.939), que inicialmente reglamentó la disposición constitucional, estableció una composición del organismo con veinte miembros, de los cuales ocho eran legisladores (cuatro de la mayoría

y cuatro entre la primera y segunda minoría) y uno era representante del Ejecutivo. Así, la mayoría gobernante (de ser el mismo partido mayoría en el Congreso y el partido de la Presidencia) tenía un cuarto de la representación, es decir, cinco miembros sobre veinte. Sin embargo, la reforma a través de la ley 26.080, realizada en febrero de 2006, modificó la composición del organismo y redujo los miembros de veinte a trece. De ese modo, disminuyó la representación de todos los sectores, salvo la de la mayoría gobernante, que sigue contando con cinco miembros, pero en lugar de ser sobre un total de veinte, ahora es sobre un total de trece, lo que representa casi el cuarenta por ciento de la representación. En términos relativos y de peso en las decisiones, el Gobierno ha incrementado su poder y participación dentro del Consejo de la Magistratura.

4. El Relator también subrayó que, a traves de la reforma, si bién el gobierno no tiene una mayoría propia para decidir por sí mismo, sí tiene en la práctica un poder de veto para impedir la decisión del Consejo en los asuntos más importantes a su tratamiento; este poder de veto, rompería claramente con el equilibrio de la representación plural fijado por la Constitución argentina. Además, el Relator Especial expresó su preocupación por el hecho que diversas entidades que representan a los sectores involucrados en la administración de justicia, entre ellas la Asociación de Magistrados, han denunciado presiones del Gobierno sobre las decisiones del Consejo de la Magistratura y, al mismo tiempo, interferencias sobre el accionar de los jueces, como lo ha afirmado el Presidente de la Corte Suprema.

Comunicaciones recibidas

5. Mediante comunicación del 22 de octubre de 2009, el Gobierno de Argentina proporcionó información con respecto a la carta de alegación enviada el 30 de julio de 2009. El Gobierno indicó que la Reforma preservó el equilibrio entre los distintos estamentos del Consejo de la Magistradura y que la representación parlamentaria, al igual que la del poder ejecutivo nacional, se encuentra reducida a su minima expresión. El Gobierno observó que actualmente el el Consejo se integra con tres (3) representantes de la Cámara de Senadores de la Nación y con tres (3) de la Cámara de Diputados de la Nación (dos por la mayoría y uno por la minoría); y con un solo representante del poder Ejecutivo. Es decir, en la actual composición del Consejo, son cuatro (4) legisladores, que representan al bloque de la mayoría y eventualmente su opinión podría ser avalada por el representante del poder Ejecutivo nacional, por lo que serían cinco (5) sobre un total de trece (13) miembros. El Gobierno también subrayo que las resoluciones para la elección y remoción de los jueces deben ser adoptadas por una mayoría calificada de dos tercios de los miembros del Consejo. El Gobierno concluyó que la Ley n° 24.937 y sus modificatorias, las Leyes Nros. 24.939 y 26.080, cumplen absolutamente con las previsiones del artículo 114 de la Constitución Nacional y destacó que, de todas maneras, equilibrio no significa igualdad, sino que uno no prevalezca arbitrariamente sobre el otro. Con respecto al comentario realizado por el Relator Especial sobre las manifestaciones del Señor Presidente de la Corte Suprema de la Nación, el Gobierno indicó que el maximo Tribunal nunca se pronunció sobre la constitucionalidad de la citada reforma. El Gobierno también observó que la Carta del Relator omitió señalar cuales eran los hechos o denuncias en que se fundaban las supuestas “presiones del Gobierno sobre las decisiones del Consejo de la Magistratura” y, por lo tanto, no efectuó mayores consideraciones al respecto.

Comentarios y observaciones de la Relatora Especial

6. La Relatora Especial agradece la respuesta del Gobierno a su comunicación del 28 de julio de 2009. Sin embargo, la Relatora reitera la importancia de garantizar que la composición del Consejo de la Magistradura asegure la independencia del poder judicial y el equilibrio de la representación plural fijado por la Constitución Argentina. Al respecto, la Relatora Especial continúa preocupada por el origen basicamente político del Consejo de la Magistratura: de sus 13 Consejeros siete provienen del Poder Ejecutivo y del Poder

Legislativo. Es decir, la mayoría de sus integrantes. Los otros seis Consejeros provienen de los organismos representativos de jueces, abogados y de la academia. Ello no parece estar en concordancia con el equilibrio preconizado por el artículo 114 de la Constitución Política.

Comunicación enviada

7. El 30 de Julio de 2009, el Relator Especial envió una carta de alegación respecto a la crítica situación que atraviesa el Poder Judicial de la Provincia de Tucumán, a raíz de una serie de irregularidades que atentarían contra la independencia de ese poder.

Según la información recibida:

8. Durante el año 2006 se produjo una reforma de la Constitución provincial, a partir del dictado de la ley 7496, que declaró la necesidad de su reforma parcial. Por decisión de los constituyentes se incorporó al Consejo Asesor de la Magistratura (CAM) –como mecanismo de selección de magistrados y funcionarios- dentro de la competencia del Poder Ejecutivo, ya que éste tenía la facultad de organizarlo y al Jurado de Enjuiciamiento (JE) – como mecanismo de destitución- dentro de la órbita del Poder Legislativo, contrariando a la mencionada ley que determinaba que ambos institutos debían pertenecer al ámbito del Poder Judicial.

9. Los mecanismos constitucionales de selección y remoción de magistrados se encuentran impugnados ante la justicia por el Colegio de Abogados de Tucumán. La misma suerte corrió el decreto reglamentario del CAM dictado por el Poder Ejecutivo local, por mandato constitucional. Teóricamente la intención era incluir en el texto constitucional al órgano encargado de recomendar de manera vinculante los postulantes para su nombramiento como jueces de primera instancia, jueces de Cámara, defensores y fiscales.

10. No obstante establecer algunos criterios rectores para la elección de candidatos (como el concurso de oposición y la posibilidad de la ciudadanía de participar en el proceso), los convencionales habrían diferido aspectos esenciales que hacen a su conformación y funcionamiento, a un decreto del Poder Ejecutivo. Así, el Gobernador a través del decreto Nº 1820/14 habría diseñado la conformación del CAM con una mayoría calificada de consejeros políticos. Considerando que las decisiones del CAM se tomarían por el voto de los 2/3 de los consejeros, bastaría con que los representantes políticos alienten o desalienten una candidatura para promocionar o frustrar un nombramiento.

11. El Jurado de Enjuiciamiento (JE), por su parte, encargado de destituir a los funcionarios que nombra el CAM, al integrarse también por abrumadora mayoría política, se observa como una amenaza permanente a los jueces que no respondan al poder de turno, que persigan penalmente a alguno de sus funcionarios o que fallen en contra de sus intereses.

12. Las alegaciones señalan que ya antes de concluir el trabajo de la Convención Constituyente muchos actores sociales comenzaron a expresar su disenso respecto de varios ejes de la reforma y del escaso espacio para la participación y el diálogo, generándose un creciente clima de conflicto que derivó en la presentación de numerosos planteos judiciales de inconstitucionalidad total o parcial del nuevo texto constitucional. La mayoría de dichos planteos apuntaron al diseño del CAM y el JE, porque significaría la afectación del sistema republicano de gobierno por un deliberado debilitamiento del Poder Judicial y la vulneración de su independencia respecto de los otros poderes, especialmente del P.E.

13. En junio de 2006 la Sala II de la Cámara en lo Contencioso-Administrativo habría concedido al Colegio de Abogados una medida cautelar por la que se suspendía la implementación de los mecanismos constitucionales de selección de jueces, lo que incluiría también el decreto del P.E. que reglamentaba el CAM. La Exma. Corte Suprema de Justicia

de la Provincia habría ratificado dicha sentencia, declarando inconstitucionales parcialmente las cláusulas referidas al Consejo de la Magistratura, dejando subsistente lo relativo al instituto del Jurado de Enjuiciamiento, lo que actualmente se encontraría recurrido por el Colegio de Abogados ante la Corte Suprema de Justicia de la Nación.

14. Según la información recibida, una cuestión adicional se habría producido en este contexto: la presentación de la acción judicial por parte del Colegio de Abogados local habría motivado que el Poder Ejecutivo, conjuntamente con legisladores oficialistas, promovieran retirar el control de la matrícula a cargo tradicionalmente de esta institución. Este hecho fue llevado a conocimiento de este Relator Especial, quien visitó la provincia para observar in situ las circunstancias denunciadas. Esa visita como así también la intervención de la Federación de Profesionales Universitarios de Tucumán, la Federación Económica de Tucumán, la Federación de Colegios de Abogados de la Región Noroeste de la República Argentina, la Federación Argentina de Colegios de Abogados, la Federación Argentina de Magistrados, la Junta Federal de Cortes, la Confederación de Profesionales de la República Argentina, provocaron que dicho proyecto no tuviera tratamiento legislativo hasta la fecha, aunque aún no se habría archivado de manera definitiva.

15. Según la información recibida en el mes de diciembre de 2008 se dictó la ley Nº 8136 que declara la emergencia del Poder Judicial y ordena el procedimiento a seguir para la designación interina de magistrados, defensores y fiscales, lo que significaría eludir la obligación de dictar la ley que ponga en funcionamiento al Consejo Asesor de la Magistratura (CAM) como único órgano constitucional de selección de magistrados, conforme la interpretación dada por el Superior Tribunal de la Provincia, en la sentencia mencionada. De esa manera, la norma dictada crearía un rango inexistente de jueces interinos o temporarios, designados directamente por el Poder Ejecutivo sin proceso de selección y sin participación del Consejo de la Magistratura.

16. El dictado de esa norma y su decreto reglamentario (Decr. 4201/1) habría provocado la presentación judicial del Colegio de Abogados de Tucumán y otras instituciones reclamando su inconstitucionalidad, lo que trajo como consecuencia que se ordenara la suspensión total del proceso de designación de magistrados interinos, hasta tanto recaiga sentencia firme en el proceso de amparo.

17. Se observa con preocupación que lo expuesto demuestra la enorme trascendencia social, política e institucional que tendría la situación suscitada en la Provincia de Tucumán por la reforma de su Constitución y la crisis en la administración de justicia. No es ajeno a ello, adicionalmente, la decisión de los poderes políticos de adherirse a la ley nacional Nº 24018 que establece el sistema previsional de jueces nacionales, otorgando dicho beneficio a los magistrados tucumanos, con la posibilidad cierta de jubilarse con una movilidad del 82%. La intimación a los jueces locales que se encontraren en condiciones, de acogerse de inmediato a este beneficio con el riesgo de perderlo, habría producido la jubilación de numerosos jueces provinciales, lo que sumado a la carencia de la norma que reglamente la única posibilidad de selección de magistrados, traería como consecuencia el cumplimiento deficiente de la obligación esencial del Estado de garantizar el servicio de Justicia para todos sus habitantes.

18. De la información disponible resulta evidente la carencia de un procedimiento adecuado para la selección y designación de jueces en la provincia de Tucumán, habida cuenta de no haberse dictado la ley que ponga en funcionamiento el Consejo Asesor de la Magistratura. Además por los últimos informes, el Poder Ejecutivo provincial impulsaría una ley que no reflejaría la doctrina del fallo del Superior Tribunal de la provincia ni tampoco las disposiciones del artículo 114 de la constitución nacional y de los estándares internacionales en cuanto al proceso de selección de jueces. Esto es la participación directa en dichos procesos de las representaciones de los abogados de la matrícula y de académicos o representantes del estamento docente, además de la representación de jueces de manera

absolutamente equilibrada. Solo estaría integrada por jueces y legisladores oficialistas sin respeto por la participación de la representación de la minoría.

19. En cuanto al Jurado de Enjuiciamiento, como órgano destinado a la remoción de jueces, si bien no fue declarado inconstitucional por la Exma, Corte Provincial, la ley reglamentaria establecería una conformación mayoritaria de representantes políticos del oficialismo actual, sin representación de las minorías legislativas, ni representación de los Colegios de Abogados de la provincia y que constituiría de hecho un órgano de presión sobre los magistrados.

Comunicaciones recibidas

20. No se recibió hasta la fecha respuesta alguna a esta comunicación.

Comunicación enviada

21. El 15 de Enero de 2010, la Relatora Especial envió una carta de alegación para señalar a la atención urgente del Gobierno de Argentina la información que había recibido con relación a la situación de la Jueza en lo contencioso-administrativo de Buenos Aires, Dra. María José Sarmiento, que habría estado sufriendo una serie de actos de intimidación y hostigamiento. La jueza Sarmiento habría resuelto un recurso de amparo suspendiendo el decreto de necesidad y urgencia del Ejecutivo No. 18/2010, y dispuesto la inmediata remoción en su cargo del Presidente del Banco Central de la República Argentina, Sr. Martín Redrado.

22. El Sr. Redrado había sido destituido por decisión del Ejecutivo, por negarse a transferir 6,569 millones de dólares americanos de las reservas del Banco Central, para garantizar el pago de la deuda externa durante el 2010. Algunas autoridades habrían criticado a la jueza Sarmiento por resolver el amparo "en sólo dos horas" y calificado públicamente su decisión como parte de una conspitación antigubernamental. La Relatora Especial también observó que la Jueza Sarmiento, con más de treinta años de servicio en la magistratura, estaría siendo permanentemente seguida por un automóvil patrullero de la policía después de haber emitido su fallo. Otro patrullero habría sido estacionado de manera permanente en la puerta de su domicilio, pese a que la jueza nunca ha solicitado protección y que no ejerce en el fuero penal. Durante la noche, la jueza Sarmiento estaría recibiendo una serie de llamadas telefónicas anónimas. La Relatora Especial también recordó que el Estado Argentino se estructura en función de la separación de Poderes del Estado, y que la norma suprema de la Nación, la Constitución de la Nación Argentina, proclamada el 22 de agosto de 1994, establece en su Preámbulo que ésta se promulga con el objeto, inter alia, de constituir la unión nacional y de apoyar a la justicia. La Relatora Especial quiso recibir seguridades que el principio de la separación de Poderes sigue siendo respetado y que la Jueza Sarmiento puede ejercer sus elevadas funciones judiciales con total independencia y sin interferencia ni presiones de ninguna clase.

Comunicaciones recibidas

23. Mediante comunicación del 17 de marzo de 2010, el Gobierno de Argentina proporcionó información con respecto a la carta de alegación enviada el 15 de enero de 2010. El Gobierno observó que la acción de amparo en el que intervino la Dra. Sarmiento fue promovida por los legisladores de partidos políticos de la oposición, que objetaban la oportunidad y conveniencia del Decreto 18/2010, y solicitaban como medida cautelar la suspensión de los efectos del decreto, y que se trataba sin duda de una cuestión de índole política. El Gobierno también indicó que no existían denuncias de la Señora Jueza respecto a posible intimaciones y que la misma magistrada relativizó los hechos en diversas entrevistas, aclarándose que la presencia policial en la puerta de su domicilio tuvo como propósito la presentación de escritos judiciales para lo cual se le requería su presencia en el

Juzgado en el que se encontraba de turno. El Gobierno tambíen observó que la presentación de recursos, defensas u otro tipo de planteo jurídico en el marco de una causa no pueden confundirse con supuestas intromisiones del poder político y que se afrima la plena vigencia de los principios constitucionales y se respeta y celebra la división de poderes que surge del principio republicano de gobierno.

Comentarios y observaciones de la Relatora Especial

24. La Relatora Especial agradece al Gobierno de Argentina la respuesta a la carta de alegaciones enviada el 15 de Enero de 2010. La Relatora Especial reitera que la independencia y seguridad de los jueces debe ser garantizada por el Estado y que los jueces tienen que ser puestos en condición de de resolver los asuntos que conozcan sin restricción alguna y sin influencias, alicientes, presiones, amenazas o intromisiones indebidas, sean directas o indirectas, de cualquier sector o por cualquier motivo.

25. En lo que concierne la comunicación enviada el 30 de julio de 2009, la Relatora espera recibir una respuesta del Gobierno lo más pronto posible.

Bangladesh

Communications sent

26. On 26 January 2010, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on Summary Executions 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 was the understanding of the Special Rapporteurs 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:

27. 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.

28. 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.

29. 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).

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

Communications received

36. On 5 and 23 February 2010 the Government replied to the allegation letter dated 26 January 2010:

Government Reply dated 5 February 2009:

37. On 15 August 1975, the father of the nation Bangabandhu Sheikh Mujibur Rahman was britually 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.

38. 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.

39. 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.

40. 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.

41. 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. 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.

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

43. It took thirtyfour 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.

Government reply of 23 February:

44. The Special Rapporteur has made three specific queries regarding the murder case of Bangabandhu Sheikh Mujibur Rahman

a. Are the alleged facts in the summary of the case accurate?

b. Under what circumstances Mr Huda and others accused were tried in absentia? What are the measures taken to ensure in subsequent proceedings that the accused tried in absentia were able to exercise fully their right to fair trial

c. Why the mercy petitions of the three convicts were rejected before the review applications in the Appelate 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 1:

45. 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.

46. After the killing of Bangabandhu Sheikh Mujibur Rahman and his family members including is wife, three sons, two daughter in law, one brother and Col. Jamil, S.I Siddiqur 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.

47. 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.

48. 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 commuting 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. After examining the witnesses and hearing the defense as well as the arguments learned serious convicted 15 accused under section 302/34 and 302/120B of the Penal Code and sentenced then to death by his judgment and order dated 08.11.1998. The hearing in the Court of Session Judge took place for 151 days.

49. 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 conviction 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 3rd Judge and Honorable 3rd Judge after hearing the parties for 25 days confirmed the death sentence of 12 convicts and acquitted 3 convicts.

50. 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 petitions 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. Thereafter five separate appeals were taken up for hearing in the Appellate Division in a bench of five 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.

51. 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 at midnight. 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 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 Khari and Mihiuddin (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 decision as well as in the Appellate Division.

Reply to Question 2

52. 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

53. "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.

54. (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."

55. 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 (quoted).

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

57. 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.

58. 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.

59. After conviction by the trial court when the death reference and appeals were heard in the High Court Division, state defence lawyers were also appopinted 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.

60. 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 fail (sic) thereafter he filled 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.

61. 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 3.

62. 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

63. 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.

64. 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.*

65. 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 again 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.

66. 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.

67. Here convict Bazlul Huda and A.K.M Muhiuddin filed review petition on 10.01.2010. Convict Shahriar Rashid Khan filed review petititon 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.

68. 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 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 no 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

69. 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 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.

70. 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.

Special Rapporteur's comments and observations

71. The Special Rapporteur thanks the Government of Bangladesh for the detailed reply to the allegation letter of 26 January 2010. The Special Rapportuer notes that despite the communication sent and the Special Rapporteurs' remark about the difficulties of providing a fair hearing to the defendants - taking also into account that 35 years have expired since the commission of the crime - the five men object of the communication were reportedly executed in Dhaka Central Jail on 28 January 2010, few hours after the final judicial review of their sentences by the Supreme Court on 27 January 2010.

Belarus

Communications sent

72. On 15 July 2009, the Special Rapportuer sent a joint urgent appeal together with the Special Rapporteur on human right defenders regarding Mr Leanid Svetsik, a human rights defender from Vitebsk. Since 2006, Mr Svetsik has submitted several complaints to the Human Rights Committee of the United Nations. A previous communication on his situation was addressed by the Special Rapporteur on the situation of human rights defenders on 10 June 2008, to which the Belarus Government replied on 18 August 2008.

According to new information received:

73. A court hearing against Mr Leanid Svetsik commenced on 10 June 2009, in the Vitebsk regional court presided by Judge Mrs. Galina Urbanovich. Mr Svetsik was first named as a witness in a case involving threats against certain individuals from the extreme-right organization Russian National Unity. Mr. Svetsik was later declared a suspect in the same case and is now charged under article 130, section 1, of the Criminal Code (Incitement of racial, ethnic or religious enmity or discord). A second charge of libel against the President of Belarus under article 367 of the Criminal Code was dropped as unsubstantiated.

74. In the period between 2006 and 2007, Mr. Svetsik was rendering legal aid to Vitebsk citizens, who received letters with threats on behalf of the extreme-right organization Russian National Unity, and was helping to prepare complaints to prosecutors.

75. During the current trial, several requests were made by Mr Svetsik to obtain relevant evidentiary material with a view to introducing it into the proceedings. These requests all related to the role of Mr Svetsik concerning the letters in question. However, reports

indicate that these were all refused by Judge Urbanovich. Among them was a request for a dactyloscopic/fingerprint expert examination to ascertain whether Mr Svetsik was implicated in the writing of the letters. According to article 322, para. 2, of the Criminal Procedure Code, the court is required to examine any petition in which the factual circumstances to be ascertained are relevant to the criminal case.

76. Concern is expressed that the charges laid against Mr. Svetsik may be related to his activities carried out in the defence of human rights. Concern is also expressed that Mr Svetsik might be not afforded a fair trial.

Communications received

77. On 18 August 2009 the Government of Belarus replied providing the following information from the Office of the Procurator-General of the Republic of Belarus and the Supreme Court of the Republic of Belarus:

78. The criminal proceedings against Mr. L. Svetik were heard by the Vitebsk Provincial Court in connection with the charge that he had committed an offence under article 130, paragraph 1, of the Criminal Code (Incitement to racial, ethnic or religious enmity or discord).

79. In accordance with a decision by the deputy prosecutor of Vitebsk province of 11 May 2009, one of the charges against Mr. Svetik — committing an offence under article 367, paragraph 2, of the Criminal Code (Defamation of the President of the Republic of Belarus) — was dropped.

80. On 16 July 2009, the criminal division of the Vitebsk Provincial Court sentenced Mr. Svetik under article 130, paragraph 1, of the Criminal Code to pay a fine of 31,500,000 Belarusian roubles (approximately US$ 11,130).

81. The court found Mr. Svetik guilty of engaging, from July 2006 to January 2008, in premeditated acts aimed at provoking ethnic enmity and discord among the Belarusian, Jewish and Russian ethnic groups, advocating the exclusivity and supremacy of the Russian ethnic group, and demeaning the national honour and dignity of the Belarusian and other ethnic groups. Coming to Vitebsk for this purpose, he posted pamphlets on behalf of an unregistered organization, Russian National Unity (Vitebsk branch), to the Vitebsk Provincial Executive Committee, newspapers, Belarusian theatres, and members of political parties and voluntary associations. The pamphlets contained pictures, statements and slogans aimed at provoking ethnic and religious enmity and discord among the Belarusian, Jewish and Russian ethnic groups, advocating the exclusivity and supremacy of the Russian ethnic group and the Orthodox religion, and demeaning the national honour and dignity of the Belarusian, Jewish and other ethnic groups.

82. The guilt of the accused, Mr. Svetik, was established by the testimony of the injured parties, Mr. T. Gusachenko, Mr. V. Bazan, Mr. Y. Derzhavtsev and others, who stated that they had received and seen the pamphlets, the content of which demeaned the Belarusian, Jewish and other peoples.

83. In addition, the conclusions of expert handwriting analysis indicated that the addresses on the envelopes containing the pamphlets had been written by Mr. Svetik.

84. Forensic analysis established that the pictures and printed text of the pamphlets were produced on a printer using the supplementary toner cartridge and paper that were seized from Mr. Svetik's place of residence.

85. Authorship analysis indicated that the texts of the letters containing the pamphlets sent to the injured parties and witnesses had all been written by the same person.

86. According to the expert academic analysis conducted by the linguistic commission, the Russian National Unity pamphlets under investigation may contain explicit incitement to interethnic enmity and discord aimed at demeaning the national honour and dignity of the Belarusian, Jewish and other ethnic groups.

87. The Vitebsk Province Procurator's Office concurred with the court's judgement. However, the sentence has not been carried out, since Mr. Svetik and his defence counsel, Mr. P. Sapelko, have appealed by way of cassation to the criminal division of the Supreme Court of the Republic of Belarus.

88. The case is scheduled to be heard by the court of cassation on 15 September 2009. Neither Mr. Svetik nor any other persons acting on his behalf have lodged a complaint with the Office of the Procurator-General of the Republic of Belarus. Further information relating to the trial and the reliability of the facts set out in the petition will be provided after the hearing of the case by the court of cassation.

Special Rapporteur's comments and observations

89. The Special Rapporteur wishes to thank the Government of Belarus for its reply. The Special Rapporteur would like to receive updated information on the case as further information has not been received following the response above. In particular, the Special Rapporteur would appreciate receiving information in relation to the hearing of the case by the Court of Cassation, on 15.09.2009.

Cambodia

Communications sent

90. On 3 April 2009, The Special Rapporteur sent an allegation letter jointly with the 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 concerning the upheld conviction of Mr. Thach Saveth, also known as Mr. Chan Sopheak, for the murder of Mr. Ros Sovannareth, a Steering Committee member of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) and the union's representative at the Trinuggal Komara factory in Phnom Penh. Mr. Ros Sovannareth was shot dead by two men on a motorbike in Phnom Penh on 7 May 2004. His murder came less than four months after the virtually identical murder of Mr. Chea Vichea, the FTUWKC's national president.

According to the information received:

91. On 18 February 2009, the Court of Appeal upheld the Phnom Penh Municipal Court conviction of Mr. Sopheak in February 2005 in which he was found guilty of the murder of Mr. Sovannareth and sentenced to 15 year's imprisonment. On 11 February 2009, an appeal hearing on Mr. Sopheak's case took place which lasted less than an hour. One of the witnesses of the assassination of Mr. Sovannareth was present in court in order to testify, at the request of the defence lawyer. However, presiding Judge Um Sarith refused to give him the floor, and preferred to rely upon written statements of witnesses, that were gathered by the police. According to reports received, there were a number of irregularities with the hearing, including the fact that again the prosecution witness statements were read out and there was no cross-examination.

92. At the original trial in 2005, the conviction of Mr Chan Sopheak by the Municipal Court was based on prosecution witnesses who did not appear in court, and therefore could not be cross-examined by defence lawyers. Defence witnesses who provided alibi testimonies, acknowledging the fact that Mr. Chan Sopheak was travelling between Anlong Veng and Siem Reap on the day of Mr. Ros Sovannareth's murder, were ignored. Mr. Chan

Sopheak was convicted on the basis of written statements, prepared by the police, by four eyewitnesses to Mr Ros Sovannareth's murder who allegedly identified him. None of these witnesses were interviewed by the court prosecutor or investigating judge who examined the case. The witnesses' written statements contained a glaring inconsistency: some of the witnesses reportedly said that Sopheak resembled the gunman, while others said he looked like the shooter's accomplice, his motorcycle driver.

93. It is worth noting the similarities of the case of Mr. Sopheak and the case of Messrs. Born Samnang and Sok Sam Oeun, who were unjustly convicted of killing Mr. Chea Vichea, FTUWKC National President. The latter were finally released on bail on 31 December 2008 upon a ruling of the Cambodian Supreme Court. The Supreme Court acknowledged the lack of evidence against them and the need for further investigation. Mr Chan Sopheak was arrested by the same Toul Kork district police as Messrs. Born Samnang and Sok Sam Oeun, led by deputy chief Hun Song, who arrested Born Samnang and Sok Sam Oeun. Mr Hun Song was reportedly involved in the framing of the two men for Chea Vichea's murder, including by allegedly forcing an initial confession to the killing by Born Samnang. More recently, in 2006, Mr Hun Song was fired from his position after being accused of ordering the execution of a robbery suspect.

94. Concern is expressed for Mr. Chan Sopheak´s right to a fair trial. In this regard, the mandate-holders recall the findings of the ILO's Committee on Freedom of Association, which stated in its 351st report that Chan Sopheak "was sentenced to 15 years in prison for the murder of Mr. Ros Sovannareth, in a trial lasting one hour that was characterized by breaches of procedural rules and the absence of full guarantees of due process of law" (para. 251). The Committee deplored "the fact that Mr. Thach Saveth has been sentenced to prison for the murder of Mr. Ros Sovannareth, in a trial closely mirroring that of Born Samnang and Sok Sam Oeun in that it had been characterized by the absence of full guarantees of due process. In these circumstances, the Committee must once again stress the importance of ensuring full respect for the right to freedom and security of person and freedom from arbitrary arrest and detention, as well as the right to a fair trial by an independent and impartial tribunal" (para. 252).

Communications received

95. No replies have been received so far with respect to this communication.

Communications sent

96. On 26 May 2009, the Special Rapporteur sent an urgent appeal jointly with the 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 regarding Mr. Kong Sam Onn, lawyer of Ms. Mu Sochua.

According to the information received:

97. On 24 April 2009, Ms. Mu Sochua, an opposition member representing Kampot Province for the Sam Rainsy Party in the National Assembly, alleging criminal defamation filed a law suit against Prime Minister Hun Sen before the Phnom Penh Municipal Court. She claimed that a speech the Prime Minister had given on 4 April, in which he had referred to a woman from Kampot behaving in a "provocative way", who "lunged towards a man to kiss him, so much so that the buttons [of her blouse] popped out", had been directed at her. Allegedly, the speech used the term "strong legs" to describe the woman, an offensive derogatory term in Khmer. Earlier, on 23 April, Ms. Mu Sochua and her lawyer, Mr. Kong Sam Onn, held a press conference to explain the legal case against the Prime Minister, during which Ms. Mu Sochua stated her intention to file a suit, and where her lawyer provided information on the legal grounds for bringing the action in court.

98. On 24 April 2009, the Prime Minister, represented by his lawyer, Mr. Ky Tech, filed a counter-complaint before the same court in Phnom Penh. He alleged that both the politician and her lawyer, had defamed him during the press conference. The Prime Minister is seeking ten million riels (2,500 USD) in compensation from each of the concerned persons. Mr. Kong Sam Onn was summoned to appear before an investigating judge for questioning with regard to the Prime Minister's counter-complaint on 7 May 2009.

99. The Prime Minister's lawyer, Mr. Ky Tech, who is a former President of the Bar Association, also lodged a complaint against Mr. Kong Sam Onn before the Bar Council, for an alleged breach of the lawyers' code of conduct in accordance with the Law on the Bar. The current President of the Bar has formed an ad-hoc committee to investigate the allegations. This committee has summoned the concerned lawyer to answer questions at the Bar on Monday, 25 May 2009. It will then report back to the Bar President who will subsequently refer the matter to the Bar Council to decide on any disciplinary action.

100. There is serious concern that Mr. Kong Sam Onn will be excluded from the Cambodian Bar Association as a result of providing legal advice to Ms. Mu Sochua and representing her in public. Mr. Kong Sam Onn has represented the Sam Rainsy Party over many years, having acted for both Mr. Sam Rainsy and Mr. Dam Sith in previous legal cases. This is, however, the first time he himself has been threatened with disciplinary and legal action for discharging his functions. Both the legal case and the disciplinary investigation are likely to have a chilling effect on the legal profession, particularly in cases involving high-ranking politicians.

101. Concern is expressed that the proceedings taken against Ms. Mu Sochua's lawyer may constitute acts of harassment and intimidation in order to prevent the lawyer from providing legal advise to her and representing her in public.

Communications received

102. No replies have been received so far with respect to this communication.

Communications sent

103. On 28 July 2009, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Representative on the situation of human rights in Cambodia, and the Special Rapporteur on the situation of human rights defenders in relation to recent instances of defamation and disinformation lawsuits filed mostly against journalists, opposition members of parliament, lawyers and other persons expressing their views in a peaceful manner on matters of public interest.

According to information received:

104. On 8 June 2009, Mr. Soung Sophorn, a 22-year old law student and local leader of the SRP youth wing was charged, arrested and sentenced with US $1,250 for defamation after he wrote slogans criticising the government on the walls of his private house. It has been reported that he belongs to one of the hundreds of families embattled with the Shukaku company and Phnom Penh Municipality to defend their rights to their lands and housing in the disputed Boeng Kak lake case where 4,000 families are under threat of eviction.

105. On 22 June 2009, the National Assembly voted to lift the parliamentary immunity of Mr. Ho Vann, a member of the opposition Sam Rainsy Party (SRP). Mr. Ho Vann is facing charges of defamation following a complaint lodged against him on 27 April by 22 Royal Cambodian Air Force (RCAF) military officers, who were allegedly offended by a

comment Mr. Ho Vann made in relation to post-graduate degrees given to RCAF officials by a Viet Namese military institution. Mr. Ho Vann had allegedly questioned the authenticity of those degrees in an interview given on 20 April to reporters. The Municipal Court of Phnom Penh began an initial hearing of his case on 17 July 2009, when in addition to Mr. Ho Vann, Mr. Neou Vannarin, a reporter from the Cambodia Daily who covered comments allegedly made by Ho Vann in an article, also faced charges of defamation.

106. On 26 June 2009, a Phnom Penh court sentenced Mr. Hang Chakra, editor-in-chief of the newspaper Khmer Machas Srok (Khmer Landowner), one of the only two remaining opposition affiliated newspapers, to one year in prison on charges of disinformation after the newspaper published articles concerning alleged corruption in the office of the Deputy Prime Minister Sok An.

107. On 5 July 2009, a lawsuit was filed against Mr. Dam Sith, editor-in-chief of Moneaksekar Khmer newspaper, by Mr. Long Dara, a government lawyer, for publishing articles between February and May 2009 which included stories about civil servants and the removal of former RCAF Commander-in-Chief Mr. Ke Kim Yan. Mr. Dam Sith has reportedly been accused of using false information, and has closed the newspaper on 10 July 2009 allegedly to avoid criminal prosecution. At the same time, Mr. Dam Sith defected to the ruling Cambodian People's Party.

108. On 14 July 2009, Mr. Moeun Sonn, president of the Khmer Civilization Foundation, a nonprofit organisation, was sentenced in absentia to two years in prison on charges of disinformation after he raised concerns that a new lighting system in the Angkor Wat temple complex could damage the site.

109. We would also like to draw the attention of your Excellency's Government regarding the case of Ms. Mu Sochua and her lawyer, Mr. Kong Sam Onn, which was the subject of an urgent appeal sent to your Excellency's Government on behalf of the Special Rapporteur on the independence of judges and lawyers, 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, on 26 May 2009. As yet a response has not been received from your Excellency's Government. According to additional information received, Ms. Mu Sochua's parliamentary immunity has also been lifted on 22 June 2009, together with Mr. Ho Vann mentioned above. Ms. Mu Sochua's hearing took place on 24 July 2009, when she appeared in court without a lawyer, claiming that no lawyer would represent her after what had happened to Mr. Kong Sam Onn.

110. Concern is expressed that the recent increase in the number of defamation and disinformation lawsuits filed mostly against politicians, journalists and other persons expressing their views in a peaceful manner on matters of public interest may represent an attempt to stifle freedom of expression in Cambodia. Without prejudging the outcomes of the trials of Ms. Mu Sochua and Mr. Ho Vann, further concern is expressed that should they be convicted of disinformation rather than defamation, they may permanently lose their seats in the National Assembly, which would undermine the rule of law and democracy in Cambodia.

Communications received

111. On 15 September 2009, the Government of the Kingdom of Cambodia replied to the urgent appeal sent by the Special Rapporteur dated 28 July 2009 informing that Cambodia is a multi-party pluralistic society, where democracy and human rights are fully guaranteed by its 1993 Constitution. The Cambodian Constitution recognizes the individual rights, freedom of expression and other fundamental rights. Since 1993, Cambodia's state of democracy and the overall human rights situation have continuously been observed in a significant progress. At present, Cambodia has thousands of civil society organizations, as

well as free press and trade unions which have been operating in the country. Out of that number, Cambodia has at least eleven foreign human rights organizations, including the National Democratic Institute (NDI) and the International Republican Institute (IRI), which are working mainly on human rights-related issues. Cambodia has also the Office of the United Nations High Commissioner for Human Rights and the regular visits of the United Nations Special Rapporteur on Human Rights in Cambodia. Moreover, with regard to freedom of the press, Cambodia has almost 600 newspapers, journals and magazines, 40 radio stations, and seven television channels.

112. If this is not enough, the people of Cambodia also have unobstructed access to all kinds of foreign media, such as the Voice of America and Radio Free Asia, Cable News Network, just to name a few. Local media supporting or leaning to the opposition party are allowed to have a complete freedom to publish and flourish it in the country. Some of the media have been critical of the Government on a daily basis. The people of Cambodia, therefore, enjoy largely freedom of the press and freedom of expression in the country.

113. With respect to the recent courts verdicts on defamations and disinformation, it is the Court's view that they are delivered in compliance with the law established by the United Nations Transitional Authority in Cambodia (UNTAC), as provided for in art. 61 on "Incitement to Discrimination", art. 62 on "Disinformation", and art. 63 on "Defamation and Libel". The sentences delivered by the Court are aimed at protecting the individual rights, as well as the security and stability of the country. Like any other democratic country in the world, Cambodia cannot let the proliferation of voluntary public defamation and disinformation to create social disorder, which is detrimental to the well-being of the society and the dignity of all citizens. In a democratic society, freedom of expression shall be exercised with responsibilities. Therefore, the rule of law is fundamental, particularly in ensuring that people's dignity and honour are well respected and protected. Freedom of expression is not absolute and it should not allow one person to defame another person. It also does not permit a campaign of disinformation to take place repeatedly. In the face of this growing defamation and disinformation campaign to smear the reputation of the leaders, the Royal Government of Cambodia has the right to resort to justice and due process of law, such as in the cases of Ms. Mu Sochua's defamation against Prime Minister Samdech Hum Sen and Hang Chakra's engagement in the campaign of disinformation. The recent verdicts by the Cambodian Court on both cases are carried out in compliance with the existing laws in relation to those offences. The prevailing laws and regulations concerning defamation and disinformation exist worldwide, particularly in developed countries, in order to protect and guarantee the rights and honour of everyone alike. Therefore, democracy, respect for human rights and freedom of expression must be in compliance with the rule of law. The Government, on its part, is aware of the democratic process in the country, including the practice of freedom of expression that it has strived for with greater tolerance. All of the facts mentioned above clearly demonstrate that Cambodia has and, remains to, full commitments to the promotion and protection of human rights and respects for other fundamental freedoms in the country.

Press statement

114. On 1 July 2009, the Special Rapportuer issued the following press statement:

115. The United Nations Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, today expressed his concern at recent attempts to restrict the freedom of lawyers to represent their clients effectively in Cambodia.

116. "To be able to represent their clients effectively, lawyers should not be subject to threats or intimidation, nor should they be targeted for prosecution or disciplinary action merely for having acted in the interests of their clients", Mr. Despouy said. "Lawyers play

an important role as defenders of human rights and must be free to represent their clients as they see fit in accordance with professional standards and the rule of law."

117. Having paid close attention to the situation in the country throughout his mandate, the Special Rapporteur is concerned that recent moves against lawyers in Cambodia seem to indicate a worrying new trend, which could have a chilling effect on the legal profession. "I encourage and support the Bar Council and its President in their efforts to strengthen the legal profession in Cambodia and to defend lawyers against attempts to undermine their independence", he added.

118. Last week, a lawyer, acting for an opposition member of the National Assembly who alleged that she had been defamed by the Prime Minister, was himself charged with criminal defamation and is now threatened with expulsion from the Cambodian Bar Association. In January 2009, defence lawyers acting for defendants at the Extraordinary Chambers in the Courts of Cambodia were threatened with possible legal action by Cambodian judges for having called for allegations of corruption at the Chambers to be properly investigated by the Phnom Penh Municipal Court. Earlier, in June 2007, lawyers acting for indigenous communities in Ratanakiri Province in a land dispute with a business woman who is closely connected to the Government were threatened both with criminal charges and disciplinary action before the Bar Council for having allegedly "incited" the communities to file a law suit to reclaim their land.

119. The Special Rapporteur reminded the Royal Government of Cambodia of its obligations under international law as set out in the United Nations Basic Principles on the Role of Lawyers which specifically state that "lawyers should not be identified with their clients or their clients' causes as a result of discharging their functions". They go on to provide that "Governments shall ensure that lawyers ... are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference [and] 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". Furthermore, lawyers should enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

120. The Special Rapporteur also called for the Bar Council of the Kingdom of Cambodia to be allowed to exercise without external pressure its responsibilities under the Law on the Bar to protect the independence and autonomy of the legal profession in Cambodia.

Special Rapporteur's comments and observations

121. The Special Rapporteur thanks the Government of the Kingdom of Cambodia for the reply to her urgent appeal sent on 28 July 2009. Nonetheless, the Special Rapporteur wishes to reiterate the need to guarantee the right of lawyers to freely represent their clients and perform their professional activity without fear, intimidation and interference. In this respect, the Special Rapporteur would like to stress once again the importance for Governments to respect and take into account the Basic Principles on the Role of Lawyers adopted in Havana, Cuba, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from 27 August to 7 September 1990, aimed at assisting Member States to protect and ensure the proper role of lawyers.

122. With respect to the communications sent on 3 April and 26 May 2009, the Special Rapporteur regrets the absence of an official reply thereto and calls upon the Royal Government of Cambodia to provide at the earliest possible date a substantive answer to these allegations, including updated information on these cases.

Chad

Communications envoyées

123. Le Rapporteur spécial a envoyé un appel urgent le 27 juillet 2009 avec le Président-Rapporteur du Groupe de Travail sur la détention arbitraire et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants sur la situation de M. Haroun Mahamat Abdoulaye, Sultan à Dar Tama, région de Wadi Fira à L'Est du pays.

Selon les allégations reçues :

124. Le 20 juillet 2009 il aurait été arrêté à son domicile par le directeur de la police judiciaire accompagné de quelques policiers et conduit à la Direction des renseignements généraux. Depuis, il serait privé de tout contact avec ses avocats et sa famille.

125. M. Haroun Mahamat Abdoulaye aurait déjà été détenu entre le 30 novembre 2007 et le 3 mai 2008, accusé d'avoir soutenu le Front Uni pour le Changement Démocratique (FUC), un groupe d'opposition armé. Pendant ce temps, il aurait été détenu dans des conditions très difficiles, notamment sans accès à un avocat et sa famille, à la Direction des renseignements généraux proches de la Présidence de la République, ensuite à Korotoro, un lieu de détention sans statut juridique réel.

126. Au vue de la détention incommunicado de M. Haroun Mahamat Abdoulaye, des craintes sont exprimées pour son intégrité physique et mentale.

Communications reçues

127. Au moment de la finalisation du rapport aucune réponse à ladite communication n'avait été reçue.

Commentaires et observations du Rapporteur spécial

128. La Rapporteuse spéciale regrette de devoir constater qu'elle n'a reçu du Gouvernement du Tchad aucune réponse à son appel urgent envoyé le 11 mars 2010 et demande au Gouvernement de lui transmettre au plus tôt des informations précises en réponse à ces allégations.

China

Communications sent

129. On 31 March 2009 the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal regarding Wei Liangyue, director of the Harbin-based Jiaodian Law Firm and a human rights lawyer, and his wife, Du Yongjing.

According to the information received:

130. On 28 February 2009, Wei Liangyue and his wife Du Yongjing were arrested by public security officers in the city of Harbin, Heilongjiang Province, while attending a Falun Gong meeting. Subsequently, Wei Liangyue and Du Yongjing were reportedly held in Nangang District Detention Center and in the Harbin City Women's No. 2 Detention Center, respectively.

131. While Wei Liangyue was detained on suspicion of "gathering a crowd to disturb social order" and reportedly received one and a half years of re-education through labour, his wife is suspected of "using heretical organization to obstruct the implementation of the law" and might face criminal prosecution under article 300 of the Criminal Law. Both were reportedly warned by the authorities not to discuss the case publicly and not to hire a lawyer to represent them.

132. During over 20 years of his law practice, Wei Liangyue has provided legal aid to local people facing human rights violations, including Falun Gong practitioners who have been detained for their beliefs. Concern was expressed for the physical and psychological integrity of Wei Liangyue and Du Yongjing while in detention.

Communications received

133. At the time this report was finalized, the reply of the Government dated 22 May 2009 had not been translated.

Communications sent

134. On 1 May 2009, the Special Rapporteur sent an urgent appeal with the Special Rapporteur on summary execution 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:

135. 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.

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

137. 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 sentenced, Gangtsu the death sentence with two-year reprieve, and Dawa Gangpo a sentence of life imprisonment.

138. 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.

139. 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.

Communications received

140. On 9 June 2009 the Government replied to the communication sent by the Special Rapporteur on 1 May 2009

141. 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.

142. 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).

143. 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 Gyaltse 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.

144. 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.

145. 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.

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

Comments and observations of the Special Rapporteur

147. The Special Rapporteur thanks the Government of China for its response. She welcomes the information that the accused person were represented by counsel and as requested in the communication she would like to receive information on when, and how often, the lawyers who defended them had the opportunity to meet with their clients ahead of the trials on 8 April 2009. The Special Rapporteur would also welcome further information from the government on the results of the investigations that were undertaken to determine if lawyers were prevented from defending the accused persons and information on the alleged intimidation of lawyers who volunteered to defend Tibetans criminally charged in relation to the incidents. The Special Rapporteur would like to

reiterate that in all cases, and notably 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)

Communications sent

148. On 19 May 2009, the Special Rapporteur, together with the Special Rapporteur on freedom of expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding two lawyers, Mr. Zhang Kai and Mr. Li Chunfu. According to the information received:

149. Zhang Kai and Li Chunfu were hired by the family of Jiang Xiqing, a Falun Gong practitioner who died in the Chongqing Xishanping Reeducation Center on 28 January 2009. Authorities stated that he died of a heart attack, but the family, suspicious of the cause of death, decided to hire a lawyer for legal support. A first lawyer was hired from Chongqing, but he declined to be retained by the family after having formally inquired with the police. Zhang Kai, from a Beijing Yijia Law Firm, and Li Chunfu, from the Beijing Globe Law Firm, were hired afterwards. On 13 May 2009, they met with their clients at their home in the Jiangjin District, Chongqing, to discuss the case. At around 4 p.m., four policemen went to the home claiming that they were delivering materials from the public security bureau's judicial administrative office. They then started to interrogate the two lawyers and their clients. Subsequently, about 20 more individuals from the state security unit of the Jiangjin District Public Security Bureau and the Jijiang Police Substation also came to the house. When the police asked the two lawyers to show their identity cards, Li Chunfu presented his lawyer's license and Zhang Kai his passport, which were, however, not accepted by the police. Subsequently, the police officers began pulling their hair, twisting their arms and beating them while pinning them on the ground. Afterwards, the two lawyers were handcuffed and taken to the police station.

150. At the police station, Zhang Kai was hung up with handcuffs in an iron cage and Li Chunfu was slapped in the face by a police officer. During their interrogation they were both threatened not to defend any Falun Gong cases. They were released at 12:40 a.m., on 14 May 2009. Their hands were covered with bruises and scars; Zhang Kai's hands were also numb and swollen and Li Chunfu had troubled hearing in one ear. They are currently being examined at the Jiangjin District People's Hospital.

Communications received:

151. At the time this report was finalized, the reply of the Government of 9 June 2009 had not been translated.

Communications sent:

152. On 10 June 2009, the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding the rejection of re-registration of several defense lawyers, in particular Jiang Tianyong, Li Heping, Li Xiongbing, Li Chunfu and Wang Yajun of Globe-Law in Beijing; Cheng Hai, Tang Jitian, and Yang Huiwen of Anhui Law Firm in Beijing; Xie Yanyi and Li Dunyong of Gongxin Law Firm in Beijing; Wen Haibo and Liu Wei of Shunhe Law Firm in Beijing; Zhang Lihui of Beijing G&G Law Firm; Li Jinglin of Jiurui Law Firm in Beijing; Wei Liangyue of Jiaodian Law Firm in Heilongjiang; Yang Zaixin of Baijuming Law Firm in Guangxi; and Sun Wenbing of Xinhe Law Firm in Liaoning.

153. Li Heping, Li Chunfu, Cheng Hai, Tang Jitian and Wei Liangyue have been the subject of previous communications sent on 5 October 2007, 13 March 2008, 7 November 2008, 31 March 2009 and 19 May 2009. The Special Rapporteurs wish to thank the

Government of the People's Republic of China for the replies received on 25 February 2008, 24 April 2008, 13 February 2009 and 22 May 2009.

154. On 25 June 2008, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders sent an allegation letter to the Government regarding the Law on Lawyers as amended on 28 October 2007 and the 1996 Ministry of Justice regulations on "Methods for the Management of Lawyers Professional Licenses". In this connection, the Special Rapporteurs drew the Excellency's Government attention to concerns related to the legal regime of re-registration of licenses of lawyers and its application and several new provisions of the amended Law on Lawyers. The Special Rapporteurs regret that no reply has been received so far from the Government to that communication. According to the information received:

155. Jiang Tianyong, Li Heping, Li Xiongbing, Li Chunfu, Wang Yajun, Cheng Hai, Tang Jitian, Yang Huiwen, Xie Yanyi, Li Dunyong, Wen Haibo, Liu Wei, Zhang Lihui, Li Jinglin, Wei Liangyue, Yang Zaixin and Sun Wenbing had applied for the renewal of their lawyers' licenses in the 'Annual Inspection and Registration' procedure, which was concluded on 31 May 2009. The above-mentioned individuals have not been granted re-registration by early June 2009 and thus are in effect disbarred from carrying out their professional functions. As a consequence, they will not be able to proceed in the cases they are currently representing.

156. Most of the aforementioned lawyers have worked on a number of human rights related cases. They represented parents in the melamine milk-powder affair and parents of children killed during the Sichuan earthquake who are pressing for an investigation into the causes of the disproportionately high rate of school collapses. Others have been involved in representing HIV/AIDS patients, victims of police abuses, farmers evicted from their land, and Falun Gong practitioners. In addition, many of those lawyers supported the call for direct elections of representatives of the Lawyers Association.

157. Many law firms have received instructions by their judicial and administrative departments and lawyers associations of their localities to either 'fail' those lawyers in their annual performance evaluation (a pre-requisite for successful re-licensing) who take on sensitive cases or to immediately terminate their contracts.

158. Furthermore, at least three law firms, i.e. Anhui, Gongxin and Shunhe in Beijing, were also denied the approval by local lawyers associations in the 'Annual Inspection and Registration' exercise. This rejection affects at least 30 more lawyers employed by those firms. On 17 February 2009, Beijing's Yitong Law Firm was forced to close for six months. It is alleged that this closure was in retaliation for the advocating of some of the firm's lawyers in the direct election of the representatives of the Lawyers Association. Concern was expressed that the rejection to re-register the above-mentioned lawyers and the law firms is related to their activities in representing victims of alleged human rights violations and their families in their capacity as defense lawyers.

Communications received

159. At the time this report was finalized, the reply of the Government of 21 August 2009 had not been translated.

Communications sent

160. On 23 October 2009, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on summary executions regarding the case Mr. Akmal Shaikh, a man sentenced to death on drug trafficking charges.

According to the information received:

161. 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.

Communications received

162. On 4 January 2010 the Government replied to the communication sent by the Special Rapporteur on 23 October 2009

[Translated from Chinese]

163. Annex to the letter dated 4 January 2010 from the Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland addressed to the Office of the High Commissioner for Human Rights

164. 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:

165. 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.

166. 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.

167. 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.

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

Comments and observations of the Special Rapporteur

169. The Special Rapporteur thanks the Government for the response. On the concern raised that the accused was denied a mental health evaluation, the Special Rapporteur acknowledges that judicial processes must be heard in accordance with the law but would like to note that in such proceedings the judiciary must ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.(Principle 6 of 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). To this end as requested in the communication the Special Rapporteur would like to receive information on the basis for the judicial authorities' denial of a mental health evaluation of Mr. Shaikh.

Communications sent

170. On 3 November 2009, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on summary executions 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:

171. 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.

172. 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.

173. 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.

174. 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.

175. 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.

176. 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.

Communications received

177. On 17 December 2009, the Government replied to the communication sent by the Special Rapporteur on 3 November 2009.

(Translated from Chinese) Letter No. GJ/066/2009

178. 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.

179. 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.

180. 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 Aizezijiang 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.

181. 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.

182. 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.

183. 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.

184. 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.

185. 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.

186. 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.

187. 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.

188. 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.

189. 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.

190. Ainiwa'er Aikepa'er [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.

191. Aizezijiang 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.

192. Xi'erzhati Maimaititusong 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.

193. 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.

194. 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.

195. 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.

196. 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.

197. 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.

198. Abushehelil Maimaitimin was involved in attempted murder. He was sentenced to 10 years' imprisonment for murder.

199. 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.

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

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

202. 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 Metyusupdid 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.

203. 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.

204. 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.

205. 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.

206. 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.

207. 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.

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

209. 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 Tienshan 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.

210. 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.

211. 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.

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

Comments and observations of the Special Rapporteur

213. The Special Rapporteur thanks the Government for the comprehensive response received. She welcomes the assurance by the government that there is strict adherence with due process guarantees in capital punishment cases. The Special Rapporteur would like to request the government for information, as indicated in the communication she sent, on how the judges sitting on the trials before the Urumqi Intermediate People's Court on 11 and 14 October 2009 were selected and whether it is 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. The Special Rapporteur would like to emphasise that, in accordance with 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), it "is the duty of all governmental and other institutions to respect and observe the independence of the judiciary." (Principle 1) and 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."(Principle 2)

Communications sent

214. On 5 January 2010, the Special Rapporteur send an allegation letter together with the 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 concerning the situation of Mr. Liu Xiaobo. Mr. Liu is a well-known Chinese writer, intellectual and human rights activist. Mr. Liu was the subject of two previous urgent appeals sent to the Government of the People's Republic of China. The most recent urgent appeal was sent on 24 December 2008, and concerned his arrest and detention on suspicion of "inciting subversion of State power" on 8 December 2008, one day before the release of Charter 08, a public appeal calling for reforms to promote democracy and human rights in the People's Republic of China.

According to the information received:

215. On 25 December 2009, Mr. Liu Xiaobo was convicted of "inciting subversion of State power" by the Beijing No. 1 Municipal Court and sentenced to 11 years in prison, with two years' deprivation of political rights, for his involvement in drafting and organizing the signing of Charter 08. Allegedly, six other articles written by Mr. Liu Xiaobo between October 2005 and July 2007, which were critical of the Chinese Government, were also used as evidence to convict him.

216. It is alleged that Mr. Liu's defence lawyers were notified about the trial date only three days in advance and that, during the trial held on 23 December 2009, which lasted less than three hours, they were given less than 20 minutes to present their arguments. Similarly, Mr. Liu was interrupted and not allowed to finish his remarks. It is also alleged that the trial was mostly closed to the public as only his brother and his brother in law could be present. His wife was denied access to the Court and supporters, reporters and foreign diplomats were barred from observing the trial.

217. Furthermore, Mr. Liu had been reportedly imprisoned and held under house arrest for his writings and activism on several occasions, including around 18 months of prison in 1989, for participating in a student democracy movement, and a three-year of re-education through labour sentence in 1995 for criticizing the Government.

218. Concern is expressed that the conviction and sentence to 11 years prison of Mr. Liu may be related to his non-violent exercise of his right to freedom of expression.

Communications received

219. At the time this report was finalized, the reply of the Government of 9 April 2010 had not been translated.

Communications sent

220. On 11 February 2010, the Special Rapportuer sent an urgent appeal together with the Special Rapporteur on summary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment 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:

221. 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.

222. 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.

223. 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.

Communications received.

224. At the time this report was finalized, no response to this communication has been received.

Comments and observations of the Special Rapporteur

225. The Special Rapporteur appreciates the responses received from the Government of China, though unfortunately she is unable to make observations on all of them as she has not received all translations from the relevant services at the time this report was finalized. The Special Rapporteur is looking forward to receiving information with respect to the joint urgent appeal sent on 11 February 2010.

226. The Special Rapporteur wishes to note that, as last year, the majority of the cases mentioned above and addressed by her mandate to the Government of China concern the situation of defense lawyers and the situation of other human rights defenders which often face judicial and other proceedings - which fall short of the fair trial principles - as a consequence of their professional activity. In this respect, the Special Rapporteur would like to stress once again the importance for Governments to respect and take into account, *inter alia*, the Basic Principles on the Role of Lawyers adopted in Havana, Cuba, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from 27 August to 7 September 1990, aimed at assisting Member States to protect and ensure the proper role of lawyers.

Colombia

Comunicaciones enviadas

227. El 20 de marzo de 2009, el Relator Especial envió un llamamiento urgente conjuntamente al 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, en relación con el los procesos judiciales en contra del sacerdote Javier Giraldo, el abogado Elkin Ramírez Jaramillo, y el Sr. Miguel Ángel Afanador. El Padre Javier Giraldo es defensor de derechos humanos y miembro del el *Centro de Investigación y Educación Popular* (CINEP), el abogado Elkin Ramírez Jaramillo es el director de la *Corporación Jurídica Libertad* y el Sr. Miguel Ángel Afanador, fue Defensor del Pueblo en la región de Urabá, Antioquia.

228. El CINEP es una organización no gubernamental, creada por la Compañía de Jesús en el año de 1962, comprometida con la transformación social, económica y política de Colombia desde los sectores excluidos, considerando que los mismos son agentes importantes en la construcción de una nueva sociedad y que su participación en las decisiones fundamentales que les conciernen se constituye en una garantía para producir un impacto de cambio en la sociedad colombiana.

229. Desde su fundación en 1993, la Corporación Jurídica Libertad viene desarrollando, entre otras, actividades como representación legal a las víctimas de crímenes de lesa humanidad en busca de verdad, justicia y reparación; presentación de demandas ante los organismos internacionales de protección de los derechos humanos; defensa penal de personas sindicadas de pertenecer a grupos insurgentes, así como de líderes sociales y comunitarios vinculados judicialmente por o con ocasión de sus actividades políticas o en razón de su opinión, y la elaboración de informes e investigaciones para divulgar la situación de los derechos humanos.

Según la información recibida:

230. El 13 de febrero de 2009 la Fiscalía 216 seccional de la ciudad de Bogotá, habría ordenado reabrir la investigación y vincular mediante indagatoria al Padre Javier Giraldo y al abogado Elkin Ramírez por los presuntos delitos de injuria, falsa denuncia y calumnia, en razón de varias denuncias instauradas por el Coronel Néstor Iván Duque López, antiguo Comandante del Batallón "Bejarano Muñoz" de la Brigada XVII, en la región de Urabá.

231. Las denuncias del Coronel Duque López se habrían basado en que el 22 de febrero de 2005, un día después de ocurrida la masacre de San José de Apartadó, hechos en los que según las alegaciones recibidas, se habría demostrado la participación de miembros de la Brigada XVII del Ejército Nacional junto con paramilitares, el Padre Javier Giraldo habría denunciado estos hechos y a sus responsables ante los medios de comunicación. Posteriormente, el 18 y 25 de mayo del mismo año, el Padre Javier Giraldo habría denunciado los mismos hechos ante la Comisión Segunda de la Cámara de Representantes.

232. Asimismo, el 12 de marzo de 2004 el Sacerdote Javier Giraldo, el abogado Elkin Ramírez y el Sr. Miguel Ángel Afanador, habrían denunciado ante las autoridades políticas del país y ante organismos nacionales e internacionales de derechos humanos graves irregularidades cometidas por personal perteneciente al Batallón de Ingenieros "Carlos Bejarano Muñoz", de la Brigada XVII del Ejército, con sede en Carepa, Antioquia, cuyo comandante era el Coronel Néstor Iván Duque López.

233. La información relacionada con tales hechos habría sido también presentada ante la Corte Interamericana de Derechos Humanos (CoIDH), instancia que dispuso medidas especiales de protección en favor de la Comunidad de Paz de San José de Apartadó, lo que originó que en septiembre de 2005, el Coronel Duque López formulara otra denuncia

contra el Padre Javier Giraldo, el abogado Elkin Ramírez Jaramillo y el Sr. Miguel Ángel Afanador por los delitos de injuria, calumnia y falsa denuncia. Dicha denuncia habría conllevado el inicio de una investigación preliminar, resuelta en primera instancia con inhibición y archivo de las diligencias.

234. Dicha decisión inhibitoria habría sido revocada por la segunda instancia (la Fiscalía 216 Seccional de Bogotá), en virtud de un recurso de apelación interpuesto por el representante legal del Coronel Duque López. Asimismo habría ordenado la reapertura formal de la investigación y la vinculación del Padre Javier Giraldo y del abogado Elkin Ramírez Jaramillo mediante indagatoria.

235. Según las informaciones recibidas, esta diligencia, que debería comenzar durante el mes de marzo de 2009, conlleva el riesgo de que el derecho a la libertad individual de los mencionados defensores de derechos humanos pueda verse afectado por el hecho de haber actuado en el marco de su trabajo y por haber presentado una solicitud legítima ante el Sistema Interamericano de protección de los Derechos Humanos.

236. En vista de lo aquí resumido, se expresa preocupación por la integridad física y psicológica del Padre Javier Giraldo, el abogado Elkin Ramírez Jaramillo y el Sr. Miguel Ángel Afanador. Se teme que el hostigamiento contra dichos defensores, en particular en virtud de los procesos judiciales existentes contra ellos, esté relacionado con su trabajo legítimo en defensa de los derechos humanos en Colombia.

Comunicaciones recibidas

237. La Relatora Especial no recibió, hasta la fecha, ninguna respuesta con respecto a esta comunicación.

Comunicaciones enviadas

238. El 9 de abril de 2009, el Relator Especial envió un llamamiento urgente conjuntamente el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, la Relatora Especial sobre la situación de los defensores de los derechos humanos, y la Relatora Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado y sobre el derecho de no discriminación a este respecto en relación con las amenazas contra las señoras Blanca Irene López y Claudia Erazo y el Sr. Rigoberto Jiménez. Blanca Irene López y Claudia Erazo son abogadas de derechos humanos que trabajan para la *Corporación Jurídica Yira Castro* (CJYC), una organización que defiende los derechos de comunidades campesinas y de las víctimas del desplazamiento forzado. Rigoberto Jiménez es el líder de la Coordinación Nacional de Desplazados. Blanca Irene López y la CJYC ya fueron objeto de una comunicación de la entonces Representante Especial del Secretario General sobre la situación de los defensores de derechos humanos enviada el 4 de diciembre de 2007.

Según la información recibida:

239. El 26 de marzo de 2009, la CJYC habría recibido una amenaza de muerte por correo electrónico enviada a Blanca Irene López y Claudia Erazo por el AUC Bloque Capital de las Águilas Negras, una rama del grupo paramilitar autodenominado las Águilas Negras. Este correo electrónico habría sido el octavo de una serie de amenazas idénticas enviadas a la CJYC desde 2007.

240. Asimismo, el 4 de febrero de 2009, habría llegado al correo electrónico de la CJYC y al de la Coordinación Nacional de Desplazados otro mensaje de amenazas de muerte del mismo grupo (Águilas Negras AUC Bloque Capital), dirigido esta vez no sólo contra Blanca Irene López y Claudia Erazo, sino también contra Rigoberto Jiménez.

241. La CJYC habría denunciado estas amenazas y otros incidentes tales como el sabotaje de su página Web y un allanamiento de su sede, en el que se habría sustraído información relacionada con violaciones de los derechos humanos en Colombia. El 6 de marzo de 2009, la CJYC habría enviado una petición pública a la Fiscalía General de la Nación, solicitando información sobre las medidas tomadas en relación con estas amenazas y ataques. Sin embargo, hasta la fecha no se habría recibido ninguna respuesta.

242. Se teme que las amenazas en contra de las abogadas Blanca Irene López y Claudia Erazo, y el Sr. Rigoberto Jiménez estén relacionadas con su trabajo en defensa de las poblaciones desplazadas. En vista de lo aquí resumido, se expresa preocupación por su integridad física y psicológica.

Comunicaciones recibidas

243. La Relatora Especial no recibió, hasta la fecha, ninguna respuesta con respecto a esta comunicación.

Comunicaciones enviadas

244. El 30 de Julio de 2009, el Relator Especial envío una carta de alegación conjuntamente al Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, y a la Relatora Especial sobre la situación de los defensores de los derechos humanos en relación con los actos ilegales de vigilancia, incluidas interceptaciones telefónicas, de correos electrónicos y seguimientos sin orden judicial, en contra de varias organizaciones de derechos humanos y sus dirigentes, incluso los presidentes de la Corporación Colectivo de Abogados José Alvear Restrepo (CCAJAR) y de la Comisión Colombiana de Juristas (CCJ), el Sr. Alirio Uribe Muñoz y Gustavo Gallón, respectivamente; así como otras ONGs, entre ellas, CODHES, Redepaz, Cáritas Diocesanas, Colectivo de Abogados Luis Carlos Pérez, Corporación Siempreviva, Diakonia Colombia, ILSA, MINGA y el Movimiento Cimarrón. Asimismo, quisiéramos referirnos a los actos ilegales de vigilancia llevados a cabo respecto de varios jueces, incluyendo magistrados de las Altas Cortes, entre ellos, Jaime Araujo Rentería, Magistrado del Consejo Nacional Electoral y ex Magistrado de la Corte Constitucional, Julio Arturo Beltrán Sierra, ex magistrado auxiliar de la Corte Suprema de Justicia, Rodrigo Escobar Gil, magistrado de la Corte Suprema de Justicia, Clara Inés Vargas, ex magistrada de la Corte Constitucional y Carlos Vicente de Roux Rengifo, ex juez de la Corte Interamericana de Derechos Humanos; así como periodistas, entre ellos, Holman Morris y Daniel Coronell.

Según la información recibida:

245. En un artículo publicado el 25 de abril de 2009, la revista Semana informó que de acuerdo con la investigación preliminar por parte de la Fiscalía, el Departamento Administrativo de Seguridad (DAS) habría realizado desde 2004 una operación específica en contra las organizaciones de derechos humanos llamada “Transmilenio.” En esta operación el DAS habría monitorizado las finanzas, movimientos, ubicación, composición del núcleo familiar y medios de transporte de los miembros del Colectivo de Abogados José Alvear Restrepo, en particular el presidente de dicha organización, el Sr. Alirio Uribe Muñoz, así como de otras organizaciones de derechos humanos colombianas, entre ellas, CODHES, Redepaz, Cáritas Diocesanas, Comisión Colombiana de Juristas, en particular su presidente, Sr. Gustavo Gallón, Colectivo de Abogados Luis Carlos Pérez, Corporación Siempreviva, Diakonia Colombia, ILSA, MINGA y Movimiento Cimarrón.

246. Asimismo, se nos informa que se habrían realizado acciones similares de inteligencia respecto de varios jueces, incluyendo algunos magistrados y ex magistrados de la Corte Suprema de Justicia y de la Corte Constitucional, entre ellas, interceptaciones telefónicas e investigaciones de sus movimientos bancarios sin orden judicial. Según las

alegaciones recibidas, la Fiscalía habría encontrado investigaciones de inteligencia respecto de varios jueces, entre ellos, Jaime Araujo Rentería, Magistrado del Consejo Nacional Electoral y ex Magistrado de la Corte Constitucional, Julio Arturo Beltrán Sierra, ex magistrado auxiliar de la Corte Suprema de Justicia, Rodrigo Escobar Gil, magistrado de la Corte Suprema de Justicia, Clara Inés Vargas, ex magistrada de la Corte Constitucional y Carlos Vicente de Roux Rengifo, ex juez de la Corte Interamericana de Derechos Humanos.,

247. Según las informaciones recibidas, el 28 de mayo de 2009, el Fiscal General de la Nación llamó a indagatoria a cuatro líderes del DAS por su presunta responsabilidad en actos ilegales de vigilancia, incluidos "los delitos de concierto para delinquir, violación ilícita de comunicaciones, utilización ilícita de equipos transmisores o receptores; abuso de autoridad, falsedad ideológica en documento público, destrucción, supresión u ocultamiento de documento público; y fraude procesal en sus actos de vigilancia" en contra de, entre otros, magistrados de las Altas Cortes, periodistas y organizaciones de derechos humanos. Asimismo, recientemente se habría llamado a rendir indagatoria a la ex directora del DAS, María del Pilar Hurtado por los delitos de concierto para delinquir, abuso de autoridad y falsedad en documento.

248. Según se informó, en 2004 el DAS habría creado el primer Grupo Especial de Inteligencia llamado G-3 para realizar "seguimientos a organizaciones o personas de tendencia opositora frente a las políticas gubernamentales, con el fin de restringir o neutralizar sus acciones." Este grupo habría actuado durante 2004 y 2005. Según el Fiscal General de la Nación, Mario Iguarán Arana, "se encontró que varias personas acordaron y ejecutaron interceptaciones telefónicas, de correos electrónicos y seguimientos sin orden judicial, o utilizándola de manera arbitraria."

249. Se alega que durante la semana del 19 al 23 de enero de 2009, gran parte de los documentos públicos del DAS habrían sido destruidos o ocultados por funcionarios del DAS.

250. En vista de lo aquí resumido se teme que los actos ilegales de vigilancia en contra de varias organizaciones de derechos humanos y sus dirigentes, incluido el Colectivo de Abogados José Alvear Restrepo, y en particular el presidente de dicha organización, el Sr. Alirio Uribe Muñoz, así como la Comisión Colombiana de Juristas, y en particular su presidente, Sr. Gustavo Gallón, al igual que las organizaciones de derechos humanos arriba mencionadas; estén relacionados con su trabajo en defensa de derechos humanos en Colombia. Se teme por la integridad física y psicológica de los Sres. Alirio Uribe Muñoz y Gustavo Gallón, así como de los miembros de las organizaciones de defensores de derechos humanos mencionadas y demás personas que estuvieron bajo vigilancia del DAS. Asimismo, quisiéramos expresar nuestra profunda preocupación por las graves consecuencias que podrían tener estos actos ilegales de vigilancia sobre de la independencia del poder judicial.

Comunicaciones recibidas

251. En tres cartas fechadas 4 de agosto de 2009, 2 de octubre de 2009 y 26 de octubre de 2009, el Gobierno respondió a la carta de alegaciones. En la primera carta se informó que la exactitud de los hechos será determinado por los resultados de las investigaciones penales y disciplinarias que ya fueron iniciadas por las autoridades competentes con fundamento en la denuncia penal presentada por el Dr. Felipe Muñoz, director del Departamento Administrativo de Seguridad (DAS), luego de que informaciones de prensa dieran a conocer a la opinión pública sobre estas actuaciones.

252. La carta subrayó el hecho de que las presuntas actividades ilegales de inteligencias adelantadas por algunas personas vinculadas al DAS de las que presuntamente fueron

víctimas, opositores, organizaciones sociales, magistrados, miembros del Gobierno Nacional - entre otros - no hacen parte de una política del Gobierno. Asimismo, se informó que ya existe una investigación penal en curso con el propósito de esclarecer los hechos denunciados, así como para identificar e individualizar a los responsables. Según la carta, en reiteradas oportunidades, las más altas autoridades del Gobierno Nacional han condenado públicamente de la manera más enérgica este tipo de prácticas, manifestando así mismo su mayor interés en el esclarecimiento de los presuntos hecho ilícitos que involucran la responsabilidad de algunas personas vinculadas al DAS.

253. El Ministro del Interior y de Justicia explicó que no solo estaban interceptados los teléfonos de los magistrados, periodistas y congresistas, sino también miembros del alto Gobierno. Asimismo, se informó que, el 21 de febrero de 2009, el DAS expidió una comunicación pública en el que rechazó ese tipo de acción y se informó que nunca se han dado instrucciones para realizar las intercepciones a las que se refiere la información periodística. Asimismo, se afirmó que hacer intercepciones sin la debida orden judicial constituye un delito sancionado por la legislación penal colombiana.

254. En el marco de la investigación penal, el Fiscal General de la Nación ha ordenado la práctica de diversas pruebas, tales como el registro de las instalaciones del DAS donde funcionan los equipos de interceptación, entrevistas a funcionarios de las áreas de Inteligencia y Contrainteligencia e inspecciones a los protocolos y a los libros de registros.

255. Se informó que se creó un grupo élite para que se encargara de iniciar el proceso de investigación en torno a las supuestas grabaciones que de manera ilegal se habrían realizado a varias personas de la vida pública. Se designó a dos fiscales delegados ante la Corte Suprema de Justicia y a 10 investigadores del CTI para adelantar las averiguaciones respectivas.

256. Adicionalmente, la Procuraduría General de la Nación ha iniciado la correspondiente investigación disciplinaria, con el propósito de establecer las responsabilidades disciplinarias de los servidores públicos involucrados en estos hechos, e imponer las sanciones a que haya lugar.

257. La Fiscalía informó que se ordenaron entrevistas con funcionarios de las áreas de inteligencia y contrainteligencia para establecer posibles responsabilidades, y aseguró que se les ofrecerán todos los beneficios a quienes colaboren para esclarecer el caso.

258. Cabe añadir que el Director General del DAS ha tomado la iniciativa para implementar diversas medidas administrativas, dentro de las cuales se destaca las renuncias aceptadas de los subdirectores de Análisis y de Operaciones, que hacer parte de la Dirección General de Inteligencia; traslados y rotaciones internas de persona, así como cambios en la estructura organizacional del DAS. De igual manera, el Director General ordenó la desvinculación de 54 funcionarios, los cuales después de diferentes verificaciones, resultaron no confiables para permanecer al servicio de la Entidad.

259. El DAS encontró que el inventario de aparatos de interceptación está completo, con lo cual, en su criterio, se descartaría la hipótesis de que las interceptaciones se hicieron con un equipo tobado hace unos meses. Se estableció además que un ex funcionario de la institución, de la seccional de inteligencia, estaría atrás de la supuesta red mafiosa dedicada a interceptar a magistrados, fiscales, funcionarios del alto Gobierno, policías, políticos y periodistas. Asimismo, uno de los principales expertos en el mundo en peritaje forense de audio elaboró un estudio acerca de estas interceptaciones, como resultado del cual concluyó que las más recientes grabaciones denunciadas NO se realizaron desde las salas fijas del DAS ni desde los equipos móviles.

260. El Gobierno Nacional impulsó al interior del Congreso de la República, la aprobación de una nueva Ley de inteligencia (Ley 1288 de 5 de marzo de 2009), la cual

contiene disposiciones que garantizan el correcto uso de las herramientas de inteligencia y contrainteligencia, por parte de las entidades competentes para ello.

261. Se subrayó que el Estado de Colombia protege, reconoce y garantiza la labor periodística, de las Organizaciones defensoras de Derechos Humanos y de las organizaciones sindicales, y en este sentido, condena y rechaza cualquier acción violenta en contra de los líderes sindicales y sindicalistas, defensores de Derechos Humanos, periodistas y en general de cualquier ciudadano en el país.

262. Asimismo, se informó que el Gobierno Nacional apoya, reconoce y respeta la actividad de la Rama Judicial y en este sentido, brinda las garantías necesarias para que los Honorables Magistrados de las Altas Cortes puedan desarrollar su labor en total independencia y seguridad.

263. Por último, se informó que el Estado de Colombia brinda todas las medidas de protección y seguridad necesarias a quienes consideren se encuentran en grave situación de riesgo y/o amenaza, por razón de su actividad sindical, civil, social, periodística etc.

264. En relación con las medidas de protección adoptadas, se informó que han implementado varias medidas a favor de 10 personas: esquema duro con vehículo blindado, escolta, medio de comunicación Avantel, uso personal medio de comunicación Avantel (uso de escoltas), blindaje de residencia. Asimismo, se informó que la Corporación Colectivo de Abogados “José Alvear Restrepo” es beneficiaria de medidas cautelares solicitadas por la Honorables Comisión Interamericana de Derechos Humanos desde el 11 de mayo de 2000.

265. Asimismo, se informó que la Comisión Colombiana de Juristas (que también es beneficiaria de medidas cautelares solicitadas por la Honorable Comisión Interamericana de Derechos humanos desde el 4 de diciembre de 2003) ha afirmado que no acepta medidas de protección materiales, ya que manifiestan no estar de acuerdo con las medidas que brinda el Programa de Protección del Ministerio del Interior y de Justicia, sino que solicitan la implementación de medidas políticas por parte del Estado colombiana.

266. Se informó que se ha implementado medidas protectoras y de carácter colectivo para la Asociación para la Promoción Social Alternativa (MINGA), también beneficiaria de medidas cautelares solicitadas por la Honorable Comisión Interamericana d Derechos Humanos, desde el 10 de julio de 2008. Asimismo se informó que el periodista Hollman Morris, beneficiario del Programa de Protección del Ministerio del Interior y de Justicia también es beneficiario de medidas de protección. Asimismo, el Estado informó que la Policía Nacional implementó medidas preventivas de seguridad en torno a la residencia del periodista y su familia. No obstante lo anterior, el Sr. Hollman Morris ha incumplido en varias oportunidades los compromisos debidos para su seguridad, y si bien el Estado tiene la obligación convencional y constitucional de garantizar la vida y la integridad personal del Sr. Morris, no es menos cierto que para que el Estado puede cumplir con esta obligación, se requiere que el periodista adopte responsablemente dichas conductas mínimas de seguridad que no buscan otra cosa que el beneficiario de las medidas de protección se compromete con facilitar la adecuada y efectiva prestación de este servicio por parte de las autoridades competentes.

267. Asimismo, se informó que el Director General de la Policía Nacional se comprometió a continuar ofreciendo todas las garantías de seguridad y protección a los Magistrados de las Altas Cortes. Se informó que el Gobierno Nacional ha actuado con toda la diligencia para brindarle protección a todos los magistrados de las Altas Cortes. De otra parte, el Ministerio de Defensa informó que luego de haber sostenido una reunión con los Magistrados de las Altas Cortes, se van a reforzar las medidas de seguridad de los magistrados entre otros.Asimismo, el Presidente de la República informó acerca de la

destinación de tres millones de dólares de los Estados Unidos para la protección de los Magistrados de las Altas Cortes y sus familias.

Comentarios y observaciones de la Relatora Especial

268. La Relatora Especial agradece la respuesta detallada del Gobierno de Colombia a la carta de alegación enviada el 30 de julio de 2009. La Relatora aprecia que las más altas autoridades del Gobierno hayan condenado públicamente las actividades ilegales de inteligencia. La Relatora Especial quisiera recibir toda la información posible sobre los resultados de la investigación penal en curso con el propósito de esclarecer los hechos alegados.

Sin embargo, lamenta que no se haya recibido respuesta alguna a las comunicaciones enviadas con fecha de 20 de marzo y 9 de avril de 2009 e invita al Gobierno de Colombia a proporcionar la dicha información lo antes posible.

269. Para observaciones generales sobre la independencia de jueces y abogados en Colombia, la Relatora Especial quisiera hacer referencia a las conclusiones y recomendaciones contenidas en el informe elaborado después de su visita al país, que tuvo lugar del 7 al 16 diciembre de 2009 atendiendo a una invitación del Gobierno (A/HRC/14/26/Add.2).

Czech Republic

Communications sent

270. On 31 July 2009, the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Mr Shakhzod Maksudov, aged 30, citizen of Uzbekistan, currently held at Vazebni Veznice in Prague – Pankrac, P.O. Box – 5; Praha – 4; 14057.

According to the allegations received:

271. Mr Maksudov was arrested on 21 October 2008 without any explanation and taken to the main police criminal investigation department in Prague. There he was severely beaten and called “dirty and black foreigner”. In the process, he was stripped of his clothes. As a result of the beatings, he finally kneeled down and begged the police to tell him why he had been arrested, to inform his consular authorities and to allow him access to a lawyer, but to no avail. Rather, the officers continued to beat him and forced him to sign some papers, which he did, despite the fact that everything was written in the Czech language, of which he has limited knowledge. As a result his head was bleeding and he felt the taste of blood in his mouth.

272. The treatment continued on 22 October, when he received even stronger blows and his hands were handcuffed to a tube. The handcuffs were tightened so that he could not feel one of his hands anymore. It subsequently turned out that he and his brother were accused of having committed a murder. The brother was held in the neighbouring room, and Mr. Shakhzod Maksudov could hear him beg for help. When he reiterated his request for a lawyer and an interpreter, one of the police officers took out a rifle and put it to his head, threatening to kill him.

273. The policemen also allegedly indicated that foreigners were considered “shit and litter”, so nobody would believe them, in case they decided to file any complaints. Once he had made a confession, he was finally led to an office, where a defence lawyer was present.

He said that he had nothing to do with the crime, but nobody listened to him. With a view to the above allegations, fear is expressed that Mr. Maksudov may be sentenced on the basis of evidence obtained under torture/ill-treatment.

Communications received

274. By letter dated 1/10/09, the Government indicated that the first complaint against the police was received by the Ministry of Foreign Affairs from the Embassy of Uzbekistan in Austria, dated 27/03/09, pursuant to the demand of Mr. Shakhzod Maksudov's parents asking for help against the arbitrary detention of their son. The Inner Control Section at the Regional Police Directorate in Prague investigated this complaint.

275. The result was that no violation of the law or service instruction had occurred during the actions performed by the police. The report of the investigation was sent to the attention of the International Relations Section at the Ministry of Internal Affairs on 27 May 2009.

276. A second complaint was received from Mr. Maksudov on 19 May 2009, regarding his dissent with the official action of four unnamed police officers who reportedly beat and kicked him, served him no food or drink and refused his request to call a lawyer on 21 and 22 October 2008. During the investigation of this complaint, two other complaints were received by the Regional Police Directorate of Prague on 30 July 2009. The first was addressed by the Ministry of Foreign Affairs and the second by the Ministry of Internal Affairs. The content was nearly the same as in the complaint from 19 May.

277. The result of the common investigation was that no police officer had treated the accused in a manner that was in violation of law or service instructions and that no reduction of the rights of the accused had occurred. Mr. Maksudov was not subjected to physical cruelty, verbal assaults, threats or other similar acts. In addition, he was regularly served meals and drinks.

278. On 17 December 2008, the Municipal Court in Prague did not find any violation of the law in the actions performed by the police. No other complaint has been submitted during the criminal proceedings. There was a justified suspicion that Mr. Maksudov and others had participated in a murder. The state attorney of the Metropolitan prosecuting Attorney's Office in Prague then approved their detention. On 21 October, Mr. Maksudov was detained in the parking of the Imperial Hotel in Prague, where he had been employed. In the course of his detention, holds and grasps were used, in accordance with Police Act No. 283/1991. He was also handcuffed due to his active resistance. Three other persons were also arrested.

279. The investigation continued, and one of the detainees was released. The other men, including Mr. Maksudov, were handed over to the detention cell in the Regional Police Directorate. On 22 October, the criminal prosecution began. The resolution to commence prosecution was handed over to Mr. Maksudov in the presence of his appointed counsel. His interrogation was then conducted in the presence of his defending counsels and an interpreter. On 24 October, through the resolution of the District Court Judge, Mr. Maksudov was remanded in custody, and he was transferred to Remand Prison Pankrac, where he is currently detained.

Comments and observations of the Special Rapporteur

280. The Special Rapporteur thanks the Government for the replied received to the urgent appeal dated 31 July 2009. Nonetheless, the Special Rapporteur – while noting that all allegations have been denied by the Government – continues to be concerned at their serious nature. The Special Rapporteur would appreciate receiving further information

about the criminal proceedings of Mr. Maksudov, as the last information in her possession is that he was remanded in custody in October 2009 to Remand Prison Pankrac.

Democratic Republic of Congo

Communications envoyées

281. Le 11 mars 2010, la Rapporteur Spécial a envoyée un appel urgente avec le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants et le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires 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 :

282. 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.

283. 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.

284. 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.

285. 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 ».

286. 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.

287. 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.

288. 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.

Communications reçues

289. Au moment de la finalisation du rapport aucune réponse à ladite communication n'avait été reçue.

Commentaires et observations du Rapporteur Spécial

290. Le Rapporteur spécial regrette de devoir constater qu'il n'a reçu du Gouvernement de la République Démocratique du Congo aucune réponse à l'appel urgent envoyé le 11 mars 2010 et demande au Gouvernement de lui transmettre au plus tôt des informations précises en réponse à ces allégations.

Ecuador

Comunicaciones enviadas

291. El 19 de mayo de 2009, el Relator Especial envío una carta de alegación respecto de algunas preocupaciones relativas a temas relacionados con su mandato.

292. Mediante Consulta Popular de 15 de abril de 2007, se aprobó la convocatoria a una Asamblea Constituyente en Ecuador, la cual fue dotada de plenos poderes. La Asamblea Nacional Constituyente está facultada para dictar Mandatos Constituyentes, los cuales tienen efecto inmediato y no son susceptibles de control o impugnación por parte de alguno de los poderes constituidos. El Reglamento también determina que toda autoridad pública está obligada al cumplimiento de los Mandatos, bajo prevenciones de apremio y destitución (artículos 2 y 3 del Reglamento de la Asamblea Nacional Constituyente). En virtud de estos poderes, la Asamblea Constituyente dictó durante el mes de de julio de 2008, los Mandatos Constituyentes 13 y 20. El primero ratificó la validez de una Resolución de la Agencia de Garantía de Depósitos (AGD), mediante la cual se decretaba la incautación de bienes de ex accionistas y ex administradores de ciertas entidades financieras y decretó que la resolución en cuestión no es susceptible de acción de amparo constitucional u otra de carácter especial. Los jueces magistrados que avocaren el conocimiento de cualquier acción constitucional relativa a esta resolución y a aquellas que se tomen para ejecutarla, deben inadmitirlas so pena de destitución. Por su parte, el Mandato 20, dispone que las obligaciones de las entidades financieras arriba mencionadas deben ser pagadas a sus acreedores con recursos propios y en ningún caso el Estado cubrirá las deudas de dichas entidades. Ambos mandatos establecen que sus disposiciones no podrán ser objeto de ningún tipo de acción judicial o administrativa.

293. El origen de estos Mandatos se encuentra en la quiebra del sistema financiero (1997 - 1998), como consecuencia de la cual se creó la AGD, con el objeto de pagar a los depositantes de las entidades financieras que fueron sometidas a procesos de saneamiento y/o liquidación. Según la información recibida, la AGD habría, en extralimitación de sus competencias, extendido sus facultades a nuevas entidades financieras y habría decretado la incautación de varios bienes de manera ilegal. Según dichas informaciones los destinatarios de dichas medidas no tendrían ninguna posibilidad de recurrirlas.

294. El Relator Especial quisiera expresar su preocupación por el hecho que las acciones presuntamente arbitrarias de la AGD no sean susceptibles de control judicial y se permite recordar al Gobierno de Su Excelencia que según el artículo 14 del Pacto Internacional de Derechos Civiles y Políticos, del cual Ecuador es parte, toda persona tendrá derecho a ser oída públicamente y con las debidas garantías por un tribunal competente, independiente e imparcial, establecido por la ley, en la substanciación de cualquier acusación de carácter penal formulada contra ella o para la determinación de sus derechos u obligaciones de carácter civil.

Comunicaciones recibidas

295. El Gobierno respondió a la carta del Relator el día 1 de Julio de 2009:

296. Mediante Consulta Popular de 15 de abril de 2007, el Soberano Pueblo del Ecuador aprobó mayoritariamente la convocatoria a una Asamblea Nacional Constituyente, la misma que en ejercicio de los plenos poderes de los que se hallaba investida, por considerar que la quiebra del sistema financiero en los años noventa causó enormes pérdidas, las mismas que fueron asumidas por el Estado y por todos los ecuatorianos, y que hasta la presente fecha no se ha logrado saldar en su totalidad: dictó el Mandato Constituyente No, 13 por medio del cual dispuso que la Agencia de Garantía de Depósitos, sin excepción alguna, aplique la disposición contenida en el artículo 29 de la Ley antes invocada a todos los accionistas y administradores de los Bancos que cerraron sus operaciones y pasaron a control de la AGD; así como también declaró a las resoluciones de incautación expedidas en aplicación de la referida Ley, no susceptibles de acción de amparo constitucional u otra de carácter especial, y si de hecho se hubieren interpuesto, ordena dicho Mandato, deben ser inmediatamente archivadas, sin que se pueda suspender o impedir su cabal cumplimiento. Este mandato es concordante con las disposiciones contenidas en los artículos 2 y 3 del Reglamento de la Asamblea Nacional Constituyente.

297. Por haberse comprobado que los administradores que provocaron la crisis financiera de FILANBANCO S.A. y del BANCO DE PRÉSTAMOS S.A. - esto es de la década de los noventa - alteraron las cifras de los balances de esas entidades financieras y declararon patrimonios técnicos irreales, induciendo a la creencia de que los referidos Bancos eran de alta confiabilidad, cuando en verdad atravesaban por una seria crisis de liquidez que provocó el cierre de sus operaciones, por retiros de depósitos y préstamos vinculados otorgados ilegalmente a varias empresas de propiedad de los mismos accionistas de esas entidades financieras, y en consecuencia haber adecuado su conducta a la presunción iuris tantum establecida en el articulo 29 reformado, último inciso, de la Ley de Reordenamiento en Materia Económica en el Área Tributaria Financiera, la Agencia de Garantía de Depósitos, en general, expidió sendas resoluciones de incautación de los bienes de público conocimiento de propiedad de los ex accionistas y/o ex administradores de FILANBANCO S. A y del BANCO DE PRÉSTAMOS S. A.

298. No obstante que el Mandato Constituyente No. 13 dispuso que la Agencia de Garantía de Depósitos (AGD), sin excepción alguna, aplique la disposición contenida en el artículo 29 de la Ley ibidem a todos los accionistas y administradores de los Bancos que cerraron sus operaciones y pasaron a control de la AGD, para permitir que terceras personas, que se consideren perjudicadas con las resoluciones administrativas de incautación, presenten sus impugnaciones y ejerzan su derecho constitucional a la legítima defensa, con resolución No. AGD-UIO-D-2008-153-001, de 24 de julio de 2008, el Directorio de la Agencia de Garantía de Depósitos expidió el INSTRUCTIVO DE PROCEDIMIENTOS PARA LA DETERMINACION DEL ORIGEN LICITO Y REAL PROPIEDAD DE LOS BIENES INCAUTADOS POR LA AGD, publicado en el Registro Oficial No. 393, de 31 de julio de 2008, que contiene las condiciones, requisitos y plazos para interponer el reclamo pertinente. Por considerarse afectados con las resoluciones de incautación dictadas por la Agencia de Garantía de Depósitos en aplicación a la disposición del artículo 29 de la Ley antes citada, y en observancia del Mandato Constituyente No. 13, varios ciudadanos y ciudadanas han interpuesto sus reclamos en observancia al Instructivo de procedimientos para la determinación del origen licito y real propiedad de los bienes incautados por fa AGD; no obstante, por no cumplir con los requisitos establecidos en ese instructivo y comprobarse la real propiedad de los bienes incautados a favor de ex accionistas y/o ex administradores de las instituciones financieras referidas, mediante resoluciones debidamente motivadas, varios reclamos han sido acogidos favorablemente y otros han sido negados, por falencias atribuibles únicamente a los reclamantes, quienes, en

consecuencia, han ejercido el derecho de impugnación establecido en el Estatuto del Régimen Jurídico Administrativo de la Función Ejecutiva, y han interpuesto varios recursos administrativos para ante los órganos de alzada competentes.

299. En lo referente al contenido del Mandato Constituyente No. 20 que entre otros aspectos, dispone que las obligaciones registradas en la contabilidad de las entidades financieras sometidas a procedimiento de saneamiento y luego declaradas en liquidación forzosa, sean pagadas con recursos propios de estas entidades, para lo cual se seguirá lo dispuesto en los artículos 159 y 169 de la Ley General de las Instituciones del Sistema Financiero; por no ser competencia de la Agencia de Garantía de Depósitos, sino de la Superintendencia de Bancos y Seguros, esta se abstiene de emitir opinión alguna.

300. Con estos antecedentes, y en razón de que las resoluciones de incautación de los bienes de público conocimiento de propiedad de los ex accionistas y ex administradores de FILANBANCO S. A y del BANCO DE PRÉSTAMOS S, A., cumplen perfectamente las disposiciones contenidas en el Mandato Constituyente No 13, y que de igual manera se enmarcan en la presunción iuris tantum establecida en el artículo 29 reformado, último inciso, de la Ley de Reordenamiento en Materia Económica en el Área Tributario Financiera; esos actos administrativos de incautación no violan ningún derecho de los administrados, por lo que se reputan perfectos y legítimos; y tienen por único objeto asegurar la recuperación del desfase patrimonial de FILANBANCO S. A. y del BANCO DE PRÉSTAMOS S. A., así como rescatar 105 pagos millonarios que por concepto de garantía de depósitos erogó la Agencia de Garantía de Depósitos, y de esa manera proteger los intereses del Estado y de la generalidad de la población, intereses que están por encima de cualquier interés particular.

301. En relación con las preguntas transmitidas en la comunicación en referencia, el gobierno ecuatoriano remite las respuestas formuladas por la Agencia de Garantía de Depósitos.

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

302. La información recibida por el señor Relator Especial sobre la independencia de magistrados y abogados, de que la Agencia de Garantía de Depósitos habría, en extralimitación de sus competencias, extendido sus facultades de control y administración a nuevas entidades financieras y habría decretado la intervención e incautación de varias compañías y propiedades de manera ilegal no es correcta; pues, los actos administrativos emitidos por la Agencia de Garantía de Depósitos, como se manifestó anteriormente, han sido apegados a la disposición contenida en el artículo 29 reformado, último inciso, de la Ley de Reordenamiento en Materia Económica en el Área Tributaria Financiera, y en estricta observancia al precepto establecido en el artículo 3 del Mandato Constituyente No 13, que ordena a la Agencia de Garantía de Depósitos aplicar el articulo 29 de la Ley ídem, sin excepción; a todos los administradores y accionistas de Bancos que cerraron sus operaciones y pasaron a control de la AGD y que se encuentran incursos en la norma referida.

a. Por favor indique qué medidas se han adoptado para respetar el derecho a un debido proceso, en especial el derecho a la defensa, de las personas que han sido objeto de las decisiones tomadas por la AGD.

303. Con el objeto de permitir que terceras personas posiblemente afectadas con las resoluciones de incautación emitidas por la AGD, ejerzan su derecho a un debido proceso, específicamente su legítimo derecho a la defensa, el Directorio de la Agencia de Garantía de Depósitos con resolución No. AGD-UIO-D-2008-153-001, de 24 de julio de 2008, expidió el INSTRUCTIVO DE PROCEDIMIENTOS PARA LA DETERMINACIÓN DEL ORIGEN LICITO y REAL PROPIEDAD DE LOS BIENES INCAUTADOS POR LA AGD, publicado en el Registro Oficial No. 393, de 31 de julio de 2008; que contiene las

condiciones, requisitos y plazos para interponer el reclamo pertinente, constituyéndose este Instructivo, en el mecanismo legal de impugnación a las incautaciones realizadas por la Agencia de Garantía de Depósitos.

a. Por favor, especifique si existe algún tipo de recurso judicial o administrativo a la disposición de los destinatarios de las medidas adoptadas por la AGD, en especial aquellas que afectan derechos individuales, tajes como las incautaciones.

304. En el ordenamiento jurídico ecuatoriano existen recursos administrativos o judiciales a los cuales pueden recurrir las personas que se consideren afectadas por las resoluciones de la Agenda de Garantía de Depósitos, sin limitación alguna salvo su propia estrategia de defensa; obviamente, no es competencia de la AGD el asesorar sobre la táctica y estrategia de defensa de los quejosos. Finalmente, el Gobierno del Ecuador se encuentra dispuesto para responder cualquier inquietud adicional sobre este tema, a través del Gerente General de la Agencia de Garantía de Depósitos, Dr. Carlos Bravo, quien está listo a ser recibido por el Relator Especial sobre la independencia de magistrados y abogados, para presentar la abundante y concordante prueba con que dispone sobre los asertos señalados anteriormente.

Comentarios y observaciones de la Relatora Especial

305. La Relatora Especial agradece la respuesta detallada del Gobierno a la carta con de fecha 19 de mayo de 2009. Sin embargo, manifiesta su preocupación por el hecho que los Mandatos Constituyentes no sean susceptibles de impugnación o control por parte de ninguno de los podered constituídos. El hecho que toda autoridad pública esté obligada al cumplimiento de estos Mandatos, bajo prevenciones de apremio y destitución, en virtud de lo dispuesto por los artículos 2 y 3 del Reglamento de la Asamblea Nacional Constituyente, puede constituir un obstáculo para el ejercicio independiente, libre e imparcial de la función jurisdiccional.

Egypt

Communications sent

306. On 17 June 2009, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in relation to 25 individuals resident in Egypt (names given) and reportedly detained, at the time of the communication in Sahrawi Prison 2 in Wadi El Natroun.

According to the allegations received:

307. On 17 May 2009, the 25 individuals were arrested by approximately 100 officers from the Special Forces of the State Security Investigative Service, from General Investigation and from General Security, without a warrant. They were taken to the Headquarters of the State Security Investigation Bureau, Opera Square, Damanhur, where they were subjected to ill-treatment. In addition, the conditions of detention at Sahrawi Prison 2 in Wadi El Natroun are poor, including overcrowding, and a lack of mattresses and food. On 18 May 2009, the 25 men were charged with membership in the Muslim Brotherhood. Initial hearings were held from 18 - 31 May 2009, during which time the court used proof which may have been extracted under torture and ill-treatment. However, when allegations of torture were raised, the judges did not take them into account or order any investigation.

Communications received

308. At the time this report was finalized, no response to this communication has been received.

Communication sent

309. On 9 December 2009, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning Mr. Ahmed Rajab Abdelradi, aged 23 years, a chemist at the Aswan drinking water and sanitation company, usually residing at Al Akkad neighbourhood, Aswan City, Egypt, Mr. Ghanam Abu Dar and Mr. Alaa Bakir.

According to the information received:

310. On 12 November 2009, Mr. Ahmed Rajab Abdelradi was arrested at his home by officials of the State Security Intelligence (SSI) supported by officers of the Investigative Branch of the Aswan Police Department to whose offices he was then taken. The agents did not inform him about the reasons for his arrest and failed to produce a judicial warrant for his arrest. The Office of the Prosecution of Aswan accused him of belonging to the Muslim Brotherhood.

311. Mr. Abdelradi has not been allowed visits from his lawyer or his family and remains detained in the offices of the Investigative Branch of the Aswan Police Department despite an order for his release from the Aswan Correctional Court of 18 November 2009. The prosecution appealed this decision, and the next day the Criminal Court of Aswan overturned the decision of the Correctional Court and ordered Mr. Abdelradi's detention for 15 days.

312. During the hearing before the Criminal Court of Aswan on 19 November 2009, Mr. Abdelradi stated that he had been stripped naked, and insulted. The officers applied electric shocks to sensitive parts of his body. He was also punched, slapped, and kicked all over his body. These torture sessions took place on 13, 14, 15 and 18 November 2009 at the offices of the Investigative Branch of the Aswan Police Department. They were carried out under the supervision of Major Mohamed al Omari of the SSI in Aswan and two other officers; Captain Taha Abu Sahli of the SSI in Aswan and Captain Ahmed Mahrane, head of the Aswan Investigative Branch. The officers of the SSI in particular questioned him about the activities of the Muslim Brotherhood in Aswan. The Court however responded that it had no jurisdiction to deal with allegations of torture and that only the Prosecutor-General was competent. The Court did not order for him to be examined by a doctor to ascertain the truth of his allegations nor did it order an investigation.

313. Mr. Abdelradi will again appear before the Criminal Court of Aswan on 9 December 2009, where his detention may again be renewed. On 1 September 2009, Mr. Ghanam Abu Dar and Alaa Bakir were arrested at a mosque in Al Arish, North Sinai, by officers from the SSI. They were held in incommunicado detention at the SSI Branch Headquarters in Al Arish for ten days. During their incommunicado detention, they were whipped on the soles of their feet; they were beaten, hung from the ceiling from their hands and feet and subjected to electric shocks. They were both forced to sign confessions under duress. On 10 September, the Ministry of Interior issued an order for their administrative detention and transferred them to the Wadi Natroun 2 Prison. Upon arrival, they were forced to sign a medical report indicating that they were in good health, despite their physical injuries. They have not yet been presented before a judge.

314. Mr. Abdullah Awad was arrested on 25 March 2009 by the SSI in Al Arich. He was held in incommunicado detention at the SSI Headquarters in Nasr City, Cairo, for two

months. During this time, he was hit on the head, whipped on his feet, hung from the ceiling by his feet and hands on numerous occasions, in an effort to force him to confess. On 25 May, the Ministry of Interior issued an arrest warrant and transferred him to Al Marg Prison, where was held in solitary confinement. The authorities refused to have an independent doctor examine him. On 30 June, the Penal Court of Cairo ordered his release, but the Ministry of Interior issued an administrative order for his arrest and transferred him to Burj al Arab prison. He had surgery in mid-July and was released on 18 August due to his poor health.

315. According to article 42 of the Egyptian Constitution of 1971, torture is prohibited and no evidence extracted under torture can be used as evidence in a court. Article 42 provides: "Any person arrested, detained or his freedom restricted shall be treated in such a manner that preserves his human dignity. No physical or moral harm shall be inflicted upon him. He may not be detained or imprisoned in places other than those defined by laws regulating prisons. Any statement proved to have been made by a person under any of the aforementioned forms of duress or coercion or under the threat thereof, shall be considered invalid and futile."

316. In view of the serious allegations of torture fears are expressed about the physical and mental integrity of Mr. Ahmed Rajab Abdelradi, especially in view of his reported continuing incommunicado detention. Further concerns are expressed that the above cases concerning arrests carried out by the SSI, followed by reportedly different forms of torture and ill-treatment, might point to a pattern of violations.

Communications received

317. At the time this report was finalized, no response to this communication has been received.

Special Rapporteur's comments and observations

318. The Special Rapporteur regrets the absence of an official reply to the communications sent and calls upon the Government of Egypt to provide at the earliest possible date a detailed substantive answer to the above allegations.

Ethiopia

Communications sent

319. On 11 March 2010, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the death sentences imposed on Messer's Berhanu Nega, Melaku Teffera Tilahun, Andargachew Tsigie, Muluneh Iyoel Fage, and Mesfin Aman.

According to information received:

320. On 22 December 2009, the Federal High Court in Addis Ababa sentenced to death Messer's 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.

321. It is reported that thirteen of the defendants including Messer's 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.

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

Communications received

323. The Government of Ethiopia replied on 29 April 2010:

General overview of the trial

324. A total of 46 defendants including Dr. Birhanu Nega(38th defendant), Mr. Melaku Tefera (24th defendant), Mr. Andargachew Tsige (39th defendant), Mr. Muluneh Iyoel (40th defendant) and Mr. Mesfine Aman(40th 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).

325. These offences include:

326. 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)).

327. 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)).

328. 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)).

329. 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)).

330. 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).

331. 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.

332. As regards the remaining six defendants, the Court rendered an acquittal order .

333. 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.

334. 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.

335. 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

336. 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:

337. "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."

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

339. "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."

340. 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.

341. 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.

342. 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

343. 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).

344. 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.

345. 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.

346. All the accused who were present during the whole trail 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.

347. 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 trail in person, without a legal counsel.

Appeal process

348. 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

349. 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.

350. 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.

Special Rapporteur's comments and observations

351. The Special Rapportuer thanks the Government for the detailed reply received on 29 April 2010, though she is still concerned that the law appears to permit a person to be sentenced to death for offences that are not internationally recognized as "most serious crimes" and that four of the five defendants who have been sentenced to death have been tried in absentia. The Special Rapportuer also requests the Government to provide updated information on the developments of the case before the Supreme Court.

Fiji

Communication sent

352. On 4 May 2009, the Special Rapporteur sent an urgent appeal regarding the Revocation of Judicial Appointments Decree 2009 and the Administration of Justice Decree 2009 in conjunction with the Public Emergency Regulations 2009 and in follow-up to previous exchanges of correspondence.

According to the information received:

353. On 10 April 2009, the Public Emergency Regulations 2009 were issued by President J. I. Uluivuda. On the same day, President Uluivuda also issued the Revocation of Judicial Appointments Decree 2009 (Decree No. 4). In conjunction with the Fiji Constitution Amendment Act 1997 Revocation Decree 2009, paragraph 2 of the above mentioned Revocation of Judicial Appointments Decree 2009 provides that all courts established by the Constitution Amendment Act 1997 or any previous constitution or written law shall be

dissolved and any judicial appointments under these shall be revoked and declared vacant pending the appointment by the President.

354. Both decrees were issued one day after the decision of the Fiji Court of Appeal in the case of Qarase v Bainimarama [2009], which declared the following acts unlawful under the Fiji Constitution: (a) the assumption of executive authority and the declaration of a State of Emergency by J.V. Bainimarama; (b) the dismissal of L. Qarase as Prime Minister and the appointment of Dr Jona Baravilala Senilagakali as caretaker Prime Minister; (c) the advice that Parliament be dissolved by Dr Senilagakali; (d) the order by J.V. Bainimarama that the Parliament be dissolved; (e) the appointment on 5 January 2007 of J.V. Bainimarama as Interim Prime Minister and of other persons as his Ministers by President Uluivuda; and (f) the purported Ratification and Validation of the Declaration and Decrees of the Fiji Military Government Decree of 16 January 2007, subsequently renamed as a Promulgation of the Interim Government of the Republic of Fiji, by which decree President Uluivuda purported to validate and confirm the dismissal of L. Qarase as Prime Minister of Fiji, the appointment of Dr Senilagakali as caretaker Prime Minister, and the dissolution of Parliament.

355. On 16 April 2009, the Administration of Justice Decree 2009 (Decree no. 9) was issued by President J. I. Uluivuda, which was deemed to come into force on 10 April 2009. Under paragraph 3 of this decree, all initial appointments to judicial offices shall be made by the President at his discretion. Furthermore, several provisions re-define the jurisdiction of the courts (article 9), re-determine the applicable law for proceedings which had started but had not been concluded before 10 April 2009 (article 23, paragraphs 2 to 4) and re-establish a Judicial Service Commission (article 16).

Communications received

356. At the time this report was finalized, no response to this communication has been received.

Press statement

357. On 20 April 2009, the Special Rapporteur issued a press release with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, whereby they strongly condemned the decision of the President of Fiji to dismiss the entire judiciary and the heavy restrictions imposed on the media. “The respect of the independence of the judiciary and freedom of expression are fundamental pillars of the rule of law and democracy”, said the experts.

358. The experts urged the authorities in Fiji to restore the rule of law by immediately reinstating the judiciary and ending the restrictions placed on the right to freedom of expression and assembly.

359. On Friday 10 April, the President abrogated the Constitution and declared a state of emergency, following the decision of the Fiji Court of Appeal, which declared that the appointment of the Interim Government after the 2006 coup was illegal. The President also promulgated the Public Emergency Regulations 2009, which give military and law enforcement officers broad powers on search and arrest, to impose restrictions on freedom of assembly, and to allow censorship of the media. “Judges play a fundamental role in protecting human rights during states of emergency. It is crucial that the judiciary is immediately reestablished”, said Mr. Leandro Despouy, Special Rapporteur on the independence of judges and lawyers.

360. “According to international law, States are permitted to unilaterally derogate from some of their obligations on a temporary basis; however a fundamental requirement for such measures is that they be limited to the extent strictly required by the exigencies of the

situation and that States must provide well-considered justification, not only of their decision to proclaim a state of emergency but also of any specific measures based on such a proclamation" the experts added.

361. There have been deportations of foreign journalists and arbitrary arrests of journalists and at least one lawyer who has since been released. Moreover, journalists have been summoned by the Ministry of information and warned to restrict the content of their reporting. "Special Procedures of the UN Human Rights Council as well as other neutral international observers should be allowed to visit the country in order to ensure the respect of the human rights of the population ", Mr. Despouy said.

362. The experts joined the UN Secretary General and the UN High Commissioner for Human Rights in calling for actions towards the restoration of a legitimate government and constitutional order.

Special Rapporteur's comments and observations

363. The Special Rapporteur is concerned at the absence of an official reply on these very serious issues and calls upon the Government of Fiji to provide at the earliest possible date a detailed substantive answer to the above allegations.

Guatemala

Comunicaciones enviadas

364. El 9 de abril de 2009, el Relator Especial envió un llamamiento urgente junto al 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 en relación con el secuestro de la Sra. Gladis Elizabeth Monterroso Velásquez de Morales, las amenazas de muerte contra su esposo, el Dr. Sergio Morales, Procurador de los Derechos Humanos de Guatemala, y los ataques contra el Licenciado Luis Roberto Romero de la Procuraduría de Derechos Humanos (PDH) de Guatemala.

Según la información recibida:

365. El 25 de marzo de 2009, a las 7h00, la Sra. Gladys Monterroso habría sido secuestrada, cuando se encontraba en las afueras de un restaurante en la Zona 9 de la Ciudad de Guatemala, en donde asistiría a una reunión. La Sra. Monterroso habría sido introducida por la fuerza en un vehículo por tres hombres encapuchados. A las 20h00 del mismo día, la Sra. Monterroso, llamó a sus familiares informando que se encontraba en un parque ubicado en la Colonia Atlántida, Zona 18. La víctima habría sido drogada y vejada durante las 13 horas que duró su cautiverio. Al ser ingresada al hospital, su estado de salud era delicado y presentaba diversas quemaduras de cigarro y golpes en varias partes de su cuerpo.

366. El secuestro habría sucedido a pocas horas de haberse hecho público el informe "Derecho a saber", que denuncia abusos y crímenes cometidos por la Policía Nacional (PN) durante el conflicto armado, incluyendo asesinatos y desapariciones forzadas, redactado en base a una recopilación de 10 años de documentos del archivo histórico de la Policía Nacional.

367. El Procurador, el Dr. Sergio Morales y algunos de sus colaboradores cercanos habrían estado recibiendo diversas amenazas desde hace varios meses. Según la información recibida, el 14 de marzo, el Licenciado Luis Roberto Romero, abogado encargado de la Unidad de Averiguaciones Especiales de la Procuraduría de Derechos

Humanos, quien trabaja sobre los casos de desapariciones forzadas ocurridas durante el conflicto armado en Guatemala, habría sido golpeado por desconocidos, produciéndole una incapacidad de una semana.

368. Se teme que el secuestro de la Sra. Monterroso Velásquez de Morales y las amenazas en contra del Sr. Sergio Morales y el Sr. Luis Roberto Romero estén relacionados con su trabajo legítimo en defensa de los derechos humanos en Guatemala. En visto de lo aquí resumido quisiéramos expresar nuestra preocupación sobre la integridad física y psicológica y la seguridad de todos los miembros de la Procuraduría de Derechos Humanos de Guatemala.

Comunicaciones recibidas

369. No se recibió hasta la fecha respuesta alguna a esta comunicación.

Comunicaciones enviadas

370. El 2 de octubre de 2009, la Relatora Especial envió un llamamiento urgente respecto al proceso de elección de magistrados de la Corte Suprema de Justicia y de la Corte de Apelaciones para el período 2009-2014, que le compete culminar al Pleno del Congreso de la República, antes del 13 de octubre del año en curso, fecha en la cual deberán tomar posesión de los respectivos cargos los candidatos a magistrados que resulten electos:

371. La Constitución Política de la República de Guatemala regula en los artículos 215 y 217 el procedimiento para la elección de magistrados de la Corte Suprema de Justicia y de los magistrados de la Corte de Apelaciones. Los magistrados son elegidos por el Congreso de la República para un período de cinco años, de una nómina de candidatos propuestos por una Comisión de Postulación integrada por un representante de los Rectores de las universidades del país, que la preside, los Decanos de las Facultades de Derecho o Ciencias Jurídicas y Sociales de cada universidad del país, un número equivalente de representantes electos por la Asamblea General del Colegio de Abogados y Notarios de Guatemala y por igual número de representantes (cuando se trata de la Comisión que elige a los candidatos a magistrados de la Corte Suprema de Justicia) o de representantes electos por los magistrados de la Corte Suprema de Justicia (cuando se trata de la Comisión que elige a los candidatos a magistrados de la Corte de Apelaciones) .

372. La Ley de Comisiones de Postulación aprobada por el Congreso de la República el 21 de mayo de 2009, por medio del Decreto 19-2009, desarrolla las normas constitucionales antes indicadas, en cuanto a la integración y funcionamiento de las Comisiones de Postulación, así como a la selección de candidatos a los cargos de magistrados de las altas cortes, que éstas deben proponer al Congreso, con fundamento en los principios de transparencia, excelencia profesional, objetividad y publicidad .

373. A su vez, ratificando el principio de transparencia y publicidad, la Ley de la Carrera Judicial, Decreto 41-99, establece que a fin de garantizar la transparencia del proceso de selección, se realizarán cuantas acciones y diligencias sean necesarias, incluyendo la celebración de entrevistas personales, privadas o públicas.

374. Me permito recordar a su Gobierno que los estándares internacionales en la materia reafirman los principios antes señalados, recogidos en la Ley de Comisiones de Postulación. En efecto, los Principios básicos relativos a la independencia de la judicatura establecen que: “Las personas seleccionadas para ocupar cargos judiciales serán personas íntegras e idóneas y tendrán la formación o las calificaciones jurídicas apropiadas. Todo método utilizado para la selección de personal judicial garantizará que éste no sea nombrado por motivos indebidos. En la selección de los jueces, no se hará discriminación alguna por motivo de raza, color, sexo, religión, opinión política o de otra índole, origen nacional o social, posición económica, nacimiento o condición; el requisito de que los

postulantes a cargos judiciales sean nacionales del país de que se trate no se considerará discriminatorio” .

375. Por su parte, el Comité de Derechos Humanos, órgano de vigilancia del Pacto Internacional de Derechos Civiles y Políticos ratificado por Guatemala , se ha pronunciado en reiteradas ocasiones en relación con situaciones particulares de algunos países, estableciendo que el principal criterio para el nombramiento de jueces debe ser la idoneidad de los candidatos. El Comité ha recomendado que “(…) el nombramiento de los jueces y magistrados se base en su competencia y no en su filiación política” .

376. Asimismo, el Comité ha recomendado que “se establezcan procedimientos claros y transparentes para el proceso de nombramientos y asignación de los jueces, a fin de (…) salvaguardar la independencia e imparcialidad del poder judicial”.

377. En el informe sobre independencia judicial que presentó este año mi antecesor ante el Consejo de Derechos Humanos de las Naciones Unidas destacó que: “Como complemento de un proceso de selección y nominación de los jueces en que se utilicen criterios objetivos, podrían aplicarse otros procedimientos dirigidos a que el público tuviera una mayor certidumbre de la integridad del candidato. Por ejemplo, podrían celebrarse audiencias públicas en que los ciudadanos, las organizaciones no gubernamentales y otros interesados tuvieran la posibilidad de expresar sus inquietudes o su apoyo en relación con un determinado candidato” .

378. En el informe de la misión realizada a Guatemala en enero de 2009, mi antecesor señaló que: “(…) La selección y nombramiento de los magistrados deberá hacerse bajo un procedimiento transparente que garantice su independencia e imparcialidad, basado en criterios objetivos determinados claramente, basados en la idoneidad, probidad y antecedentes académicos y profesionales de los candidatos” . Mi antecesor añadió que un proceso de elección con estas características, ajeno a toda injerencia ilegítima, brindará a los magistrados que resulten electos la autoridad y confianza que requiere el ejercicio de su magisterio.

379. Quisiera llamar la atención que con relación a la fase de elección de magistrados por el Congreso de la República de Guatemala, mi antecesor, tras concluir su misión a Guatemala, realizada del 16 al 21 de julio de 2009 y hacer públicas sus recomendaciones preliminares, manifestó que “(…) espera que el Congreso de la República cumpla con el compromiso asumido frente a la sociedad y a la comunidad internacional, de generar espacios de participación efectiva durante el proceso de elección y que la misma se realice en función de la idoneidad y honorabilidad de los candidatos. El voto nominal por parte de los diputados y las entrevistas públicas con los candidatos a las magistraturas, constituyen mecanismos que deberán ser adoptados para contribuir a consolidar la transparencia de la elección por parte del Congreso de la República” .

380. Según se me ha informado las Comisiones de Postulación concluyeron su función de elaborar las nóminas de candidatos para elegir a los magistrados de las altas cortes del país, luego de seguir las diferentes etapas previstas en el nuevo marco normativo que regula su funcionamiento, incluyendo votación pública y nominal de los comisionados, así como una creciente participación y auditoría de diversos sectores de la sociedad civil y de los medios de comunicación.

381. No obstante lo anterior, también he sido informada que en la etapa de selección final e integración de la nómina de candidatos no hubo un debate suficiente sobre determinados aspectos del perfil establecido en la Constitución y en la Ley de Comisiones de Postulación. Tal es el caso del requisito de “reconocida honorabilidad de los aspirantes”, así como lo relativo a los méritos éticos y de proyección humana.

382. Por otra parte, he recibido información en el sentido de que no se discutieron públicamente, en la etapa de selección final, varias de las denuncias presentadas por diversos sectores sociales en contra de algunos aspirantes.

383. Asimismo, la información que he obtenido muestra la ausencia de una debida justificación (criterios expresos) para determinar la exclusión, en la nómina final, de algunos candidatos que habían obtenido altas calificaciones según la tabla de gradación aprobada por las Comisiones de Postulación.

384. Lo anterior generó que en la integración de la nómina final de candidatos se incluyera algunos aspirantes que habían obtenido muy bajas calificaciones, o en su caso, contra quienes diversos sectores sociales habían presentado denuncias relacionadas con actos de corrupción, obstaculización de la justicia, entre otros aspectos, que no fueron discutidas y resueltas por las Comisiones de Postulación.

385. Desde que las Comisiones de Postulación entregaron al Congreso de la República las nóminas finales de candidatos, el 21 de septiembre de 2009, algunas bancadas del Congreso realizaron procesos de entrevistas públicas con varios candidatos, mientras que otras bancadas convocaron a determinados aspirantes a reuniones privadas. Así también, algunos diputados expresado que la votación para la elección debía ser secreta, a través de la conformación previa de una planilla única de candidatos (bloque de listas).

386. Posteriormente, frente a las acciones de amparo interpuestas, por un lado, por la Presidenta de la Comisión Extraordinaria de Reformas del Sector Justicia del Congreso de la República, y por otro lado, por organizaciones de la sociedad civil, la Corte de Constitucionalidad resolvió el 29 de septiembre, que la votación para la elección de magistrados por parte de los diputados y diputadas del Congreso de la República no podía hacerse en forma secreta ni a través de la utilización del sistema de planillas.

387. Me permito expresar mi profunda preocupación ante el hecho de que el Congreso de la República, contando con el tiempo suficiente, haya decido elegir a los magistrados de la Corte Suprema de Justicia en la sesión plenaria del miércoles 30 de septiembre, sin haber establecido previamente una metodología y cronograma, que le permitiera realizar un proceso de manera ordenada con base en los principios de transparencia, objetividad e idoneidad, y valorar y evaluar a cada uno de los candidatos de conformidad con los criterios previamente definidos en la ley, en concordancia con los estándares internacionales de la materia.

388. Asimismo, deseo manifestar que lamento que los diputados y diputadas del Congreso de la República, a pesar de haber cumplido formalmente con votar públicamente, no hayan desarrollado un proceso de elección conforme al espíritu de los estándares internacionales en la materia, recogidos en gran parte en el marco normativo nacional, ni hayan atendido las recomendaciones que en su momento formuló mi antecesor en su última visita a Guatemala, en particular los aspectos mínimos siguientes:

389. Realización de entrevistas públicas a cada uno de los candidatos por el Pleno del Congreso o por una comisión ad hoc que éste designe.

390. ? Discusión sobre cada uno de los candidatos, basada en criterios objetivos, tomando en cuenta las calificaciones previamente realizadas por las Comisiones de Postulación y, por consiguiente, que se hagan expresas las justificaciones por las cuales se elige o no a un candidato.

391. Valoración y evaluación de situaciones en las cuales candidatos con bajas calificaciones se incluyeron en la nómina final elaborada por las Comisiones de Postulación.

392. Votación por cada uno de los candidatos, no por planilla única o bloques de listas.

393. Tomo esta oportunidad para llamar la atención de su Gobierno, en el sentido de que estas recomendaciones se elaboraron con el objeto de contribuir a la superación de las graves deficiencias del sistema de justicia en Guatemala.

394. Con base en lo anteriormente expuesto, es mi responsabilidad de acuerdo con el mandato que me ha sido otorgado por el Consejo de Derechos Humanos, hacer un llamado urgente para que el Pleno del Congreso garantice que en la elección de magistrados de la Corte de Apelaciones se cumplan los aspectos siguientes: entrevistas públicas a cada uno de los candidatos por el Pleno del Congreso o por una comisión ad hoc que éste designe; votación pública por cada uno de los candidatos (no por planillas o bloques de listas); participación efectiva de la sociedad civil; discusión sobre la idoneidad de cada uno de los candidatos, basada en criterios objetivos y haciendo expresas las justificaciones por las cuales se elige o no a un aspirante.

395. De manera respetuosa me permito solicitar la asistencia del Gobierno de su Excelencia para transmitir las consideraciones antes expuestas al Pleno del Congreso de la República de Guatemala. Asimismo, me permito solicitar al Presidente del Congreso que mis consideraciones sean puestas en conocimiento del Pleno del Congreso, esperando que sean atendidas a la brevedad.

396. Finalmente, agradecería a su Gobierno que al terminar el proceso de elección de los magistrados de las altas cortes, me informe sobre el proceso de elección de magistrados de las Altas Cortes y la manera en que se han implementado o no las recomendaciones ya expuestas.

Comunicaciones recibidas

397. No se recibió hasta la fecha respuesta alguna a esta comunicación.

Comunicaciones enviadas

398. El 31 de Diciembre de 2009, la Relatora Especial envió una carta de alegación con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias y la Relatora Especial sobre la situación de los defensores de los derechos humanosen 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:

399. 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.

400. 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.

Comunicaciones recibidas

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

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

402. En cuanto a los hechos que refiere el caso, el Ministerío Publico 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.

i. Fue presentada queja alguna?

403. 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

404. 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:

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

406. 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 Otzín 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.

407. 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 Invesstigación 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.

408. El 18 de enero de 2010, el Ministerio Público informó:

409. El Sub-Comisario de PNC Justino Isaías Jrónimo Alvarado, Jefe de la División Especializada en Investigación Criminal de la Policia 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:

410. "….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 Otzín, 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…".

Comunicado de prensa

411. El 5 de octubre de 2009, la Relatora Especial envió el siguiente comunicado de prensa:

412. "La reciente elección de magistrados de la Corte Suprema de Justicia (CSJ) de Guatemala ignoró los principios de transparencia, objetividad e idoneidad necesarios en este tipo de proceso".

413. La Relatora expresó así su preocupación ante el hecho de que el Congreso de la República de Guatemala haya decidido elegir a los magistrados de la CSJ en la sesión plenaria del 30 de septiembre, sin haber establecido una metodología y un cronograma para una elección ordenada, para valorar y evaluar a cada candidato de conformidad con la legislación guatemalteca y los estándares internacionales de la materia.

414. Asimismo, la Relatora Especial lamentó que, en la fase que le competía al Congreso en esa elección, no se hayan atendido las recomendaciones* formuladas por su antecesor, Leandro Despouy, en su última visita a Guatemala.

415. "Las recomendaciones del Relator Especial de la ONU se elaboraron con el objeto de contribuir a la superación de las graves deficiencias del sistema de justicia en el país," advirtió la Sra. Knaul de Albuquerque e Silva.

416. La Relatora Especial hizo un llamado urgente para que el pleno del Congreso de la República garantice que en la elección de los magistrados de la Corte de Apelaciones se cumpla con los aspectos antes señalados y que se facilite la participación efectiva de la sociedad civil, a fin de asegurar que las Altas Cortes se integren por magistrados independientes, probos y competentes, como lo exigen los estándares internacionales.

417. *Recomendaciones del anterior Relator Especial, Leandro Despouy: http://www.oacnudh.org.gt/documentos/comunicados/20097211239370.ComunicadoRelatorDespouy(21jul2009)%20(3).pdf

Observaciones de la Relatora Especial

418. La Relatora Especial agradece la respuesta a la carta de alegación de 31 diciembre de 2009 que informa sobre la apertura de una investigación sobre el asesinato del Sr. Fausto Leonel Otzín Poyón. Al respecto, la Relatora Especial apreciaría recibir información sobre el desarrollo de las investigaciones y las relativas acciones penales.

419. La Relatora lamenta que no se haya recibido respuesta a las comunicaciones enviadas con fecha 9 de abril y 2 de octubre de 2009 e invita al Gobierno de Guatemala a proporcionar información relevante lo antes posible. En particular, la Relatora Especial apreciaría recibir una respuesta del Gobierno de Guatemala con respecto a al proceso de elección de magistrados de la Corte Suprema de Justicia y de la Corte de Apelaciones que fueron objeto de un llamamiento urgente y de un comunicado de prensa durante el mes de octubre de 2009.

Guinea-Bissau

Communication envoyée

420. Le 6 Avril 2009, le Rapporteur spécial a envoyé un appel urgent avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, du Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants et de la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme sur la situation de Me Luís Vaz Martins, avocat et président de la Ligue des droits de l'homme de Guinée-Bissau, Me Pedro Infanda, avocat et M. Francisco José Fadul, Président de la Cour des Comptes et du parti d'opposition Partido para a Democracia Desenvolvimento e Cidadania (PADEC).

Selon les informations reçues :

421. Le 1er avril 2009, un homme armé habillé en civil se serait rendu aux bureaux de la Ligue des droits de l'homme à la recherche de Me Luís Vaz Martins, qui n'était alors pas présent. L'homme aurait demandé l'adresse du domicile de Me Luís Vaz Martins et aurait

déclaré qu'il voulait tuer celui-ci car la Ligue des droits de l'homme était trop « bavarde ». Auparavant, Me Luís Vaz Martins aurait dénoncé l'arrestation et la torture de Me Pedro Infanda.

422. Me Pedro Infanda aurait été arrêté par des militaires le 23 mars 2009 quelques heures après qu'il ait tenu une conférence de presse au cours de laquelle il déclarait, au nom de son client, M. Jose Americo Bubo Na Tchute, ancien Chef de la Marine de Guinea Bissau, que le nouveau Chef du personnel des Forces Armées n'était pas compétent pour le poste. Me Pedro Infanda aurait été conduit de son bureau à l'installation militaire Quartel Amura de Bissau, où il aurait été gravement battu avec des bâtons, et ce pendant quatre jours. Il se serait vu refuser l'accès à un traitement médical, à sa famille et à son avocat. Son corps serait intégralement couvert de bleus.

423. Il est également allégué que M. Francisco José Fadul aurait été agressé le 1er avril 2009 par quatre militaires qui l'auraient frappé avec la crosse de leurs fusils et lui auraient dit qu'il était « trop bavard ». En l'occurrence, le 30 mars 2009, M. Francisco José Fadul aurait tenu une conférence de presse appelant le Gouvernement à traduire en justice les militaires coupables de corruption et autres crimes. M. Francisco José Fadul aurait des blessures sur tout le corps, notamment à la tête et une blessure à l'arme blanche sur un bras.

424. MM. Pedro Infanda et Francisco José Fadul seraient actuellement en soins intensifs à l'hôpital national Simão Mendes à Bissau.

425. De vives préoccupations sont exprimées pour l'intégrité physique et morale de MM. Luís Vaz Martins, Pedro Infanda et Francisco José Fadul ainsi que pour celle des autres membres de la Ligue des droits de l'homme.

Communications reçues

426. Le Rapporteur spécial regrette de devoir constater qu'il n'a reçu du Gouvernement de la Guinée-Bissau aucune réponse à l'appel urgent envoyé le 6 avril 2009 et demande que le Gouvernement lui transmette au plus tôt des informations précises en réponse à ces allégations.

Honduras

Comunicaciones enviadas

427. El 16 de Octubre de 2009, la Relatora Especial ha enviado una carta de alegación junto al Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes en relación con el Sr. Milko Duran Céspedes.

Según las informaciones recibidas,

428. El 12 de agosto de 2009, entre las 4:00 y 4:15 p.m., el Sr. Milko Duran Céspedes fue detenido por soldados del ejército mientras transitaba por la catedral, en el centro de Tegucigalpa. Los soldados lo llevaron a una plaza bajo el Congreso, donde fue entregado a dos policías con uniforme azul. Los policías lo llevaron a un parque grande, donde había varias personas tiradas en el piso. El. Sr. Duran Céspedes comenzó a hablar y un policía le golpeó con el tolete en el pecho. Después de unos minutos subieron a todos los detenidos a un camión del ejército y los llevaron a una cancha de futbol. Permanecieron todos durante una hora dentro del camión y después los llevaron a las graderías.

429. Después de dos horas, un Sub-Comisionado de apellido Madrid llevó al Sr. Duran Céspedes con el Sr. Denis Casula, un oficial de la Dirección Nacional de Investigación Criminal (DNIC). El Sr. Duran Céspedes fue llevado a una oficina donde lo interrogaron los dos oficiales, cuestionándolo sobre su estadía en el país y sus posibles nexos con el

Presidente Hugo Chávez o con las Fuerzas Armadas Revolucionarias de Colombia (FARC), debido a su doble nacionalidad venezolana-colombiana. El interrogatorio fue grabado en una cámara digital. El oficial Casula le pidió que firmara unos documentos, los cuales él no pudo leer, por lo que se negó.

430. El oficial Casula insistió, y cuando éste se negó, le hizo la cabeza hacia atrás y le comenzó a dar golpes en la garganta y en el pómulo izquierdo con el puño. Lo amenazó con someterlo a choques eléctricos, le golpeó la cabeza con una regla de madera, los dedos con un objeto de hierro y le pateó las costillas durante 45 minutos, hasta que finalmente el Sr. Duran Céspedes firmó los documentos.

431. A las 12 a.m. fue trasladado a las celdas del Séptimo Comando Regional (CORE 7), donde ingresó en una celda con 24 otras personas, incluidas dos mujeres. A las 2:00 a.m. la policía lo llevó al hotel donde se estaba hospedando, y después de que los oficiales tomaron sus documentos y otras pertenencias, regresaron al CORE 7. Al siguiente día fue visto por una defensora pública y examinado por un médico forense, aunque no recibió tratamiento médico.

432. El Sr. Duran Céspedes fue imputado y el juez dictó auto de prisión en su contra por el delito de manifestación ilícita. Su abogada defensora interpuso un incidente de nulidad por violación a derechos y garantías constitucionales desde el momento de su detención y por haber sido llevado a un lugar no autorizado para la detención de personas. Sin embargo, el juez Esteban Quevedo declaró sin lugar el incidente. Asimismo, el oficial Casula fue propuesto por el Ministerio Público como testigo para sustentar la acusación de los delitos en contra del Sr. Duran Céspedes. En su resolución, el juez indicó que los supuestos hechos de tortura serían objeto de otro proceso, pero no instruyó al Ministerio Público a iniciar diligencias de investigación.

Comunicaciones recibidas

433. No se recibió hasta la fecha ninguna respuesta a esta comunicación.

Comunicaciones enviadas

434. El 16 de noviembre de 2009, la Relatora Especial envió un llamamiento urgente conjuntamente al 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 en relación a los actos de intimidación y hostigamiento a jueces, abogados, oficiales de justicia y defensores públicos, después del golpe de Estado ocurrido en 28 de junio de 2009:

435. En este contexto, quisiera hacer referencia al comunicado de prensa emitido el 10 de julio de 2009 por el Relator Especial sobre independencia de jueces y abogados que me antecediera en el mandato, expresando su condena y censura al comportamiento "…..de la Corte Suprema de Justicia, que participa en el engranaje de disolución del Estado de Derecho al apartarse de las reglas de independencia e imparcialidad que deben caracterizar a dicho órgano.

436. De acuerdo a la información recibida recientemente, la Corte Suprema habría continuado manifestándose públicamente a favor del golpe de Estado calificándolo como "sucesión constitucional".

437. Asimismo, también se me ha informado que ese Alto Tribunal de Justicia habría ordenado procesos disciplinarios, traslados forzosos, y otras acciones de intimidación y hostigamiento contra: Guillermo Lopez Lone, Tirza Flores Lanza, Luis Alonso Chévez de la Rocha, Elvia Ondina Varela, Mauricio Mateo García, Ramón Enrique Barrios, Ricardo Pineda, Osman Antonio Fajardo Morel, Fabiola Carcamo, Maritza Arita, Juan Carlos

Zelaya y Sigfredo Lozano Martínez, todos ellos se habrían manifestado, de distintas formas legales, a favor del reestablecimiento del Estado democrático.

438. Según surge de las alegaciones recibidas, las medidas disciplinarias y los traslados forzosos aplicados a los mencionados profesionales del derecho, habrían sido impuestas mediante actuaciones violatorias de las garantías del debido proceso y en franco detrimento de la independencia e imparcialidad del sistema de justicia hondureño. Los actos denunciados también serían violatorios del ejercicio del derecho a la libertad de conciencia, a la libertad de pensamiento y expresión, y a la libertad de reunión y manifestación.

439. Se ha denunciado también que los actos de persecución y hostigamiento han estado dirigidos particularmente hacia los magistrados miembros de la "Asociación de Jueces por la Democracia", organismo que ha sostenido permanentemente la necesidad de restablecer el Estado de Derecho.

440. Se teme que los actos de hostigamiento e intimidación en contra de magistrados, defensores públicos y demás auxiliares de justicia, puedan estar relacionados con su actividad desarrollada a favor del restablecimiento del orden constitucional en Honduras.

Comunicaciones recibidas

441. No se recibió hasta la fecha ninguna respuesta a esta comunicación.

Comunicado de prensa

442. El 10 de julio de 2009, el Relator Especial emitió el siguiente comunicado de prensa:

443. El Relator Especial de las Naciones Unidas sobre la independencia de jueces y abogados, Leandro Despouy, critica a las autoridades de facto de la República de Honduras -encabezadas por el Presidente del Congreso, Roberto Micheletti- y considera improcedente el desempeño de la Corte Suprema de Justicia de ese país. "Condeno y censuro el comportamiento del Congreso, que ha adoptado decisiones que transgreden abiertamente la institucionalidad, y el de la Corte Suprema de Justicia, que participa en el engranaje de disolución del Estado de Derecho al apartarse de las reglas de independencia e imparcialidad que deben caracterizar a dicho órgano", declaró el experto de la ONU.

444. El fuerte pronunciamiento del Relator está motivado por la actuación de las autoridades hondureñas que, con la destitución del Presidente de la República, José Manuel Zelaya, generaron en ese país un quiebre institucional el pasado 28 de junio. El Presidente Zelaya fue secuestrado, detenido y trasladado fuera del país, y reemplazado por el presidente del Congreso.

445. De igual forma, el Sr. Despouy, censura el proceder de la Corte Suprema de Justicia "que ha pretendido avalar y dar sustento legal a la ruptura del Estado de Derecho", hechos que han sido repudiados por la comunidad internacional, la OEA y el sistema de Naciones Unidas.

446. El Relator Especial pide la adopción de medidas urgentes y que la Corte Suprema de Justicia de Honduras adecue su comportamiento al Estado de Derecho, frente a estos acontecimientos que ya han causado varios muertos y heridos entre la población civil.

Comentarios y observaciones del Relator Especial

447. La Relatora Especial lamenta que no se haya recibido hasta le fecha respuesta algun a las comunicaciones enviadas e insta al Gobierno de Honduras a proporcionar información relevante lo antes posible.

India

Communications sent

448. On 5 February 2010, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Mr. Devi Singh Rawat, a lawyer and human rights defender based in Rajasthan, India, working particularly on the issue of torture. From 2006-2008 he worked with the National Project on Prevention of Torture (NPPT) in India, including participation in training sessions.

According to the information received:

449. On 5 January 2010, Mr. Singh Rawat filed a complaint against officers from Adarsh Nagar Police Station in the Ajmer District of Rajasthan, alleging that two individuals, Mr. Gopal Swaroop and a Mr. Rajkumar, had been subjected to acts of torture. He filed his complaint before Judicial Magistrate No. 4, naming police officers Mr. Ramjan Khan, Mr. Sajjan Singh and Mr. Karan Singh as the alleged offenders. The court recorded statements by the complainants and witnesses under sections 200 and 202 of the Code of Criminal Procedure, and adjourned the case until 11 February 2010 to allow for further investigation. The complaint was filed by Mr. Singh Rawat on behalf of a request by the State Law Officer of NPPT.

450. On 30 January 2010, Mr. Singh Rawat was allegedly summoned by SHO Rajendra Singh Rawat of Adarsh Nagar Police Station, where he was asked to withdraw the complaint, or face consequences as a result. However, Mr. Singh Rawat refused to do so.

451. On 31 January 2010 at approximately 11:00am, a fight broke out between police officers and members of the public during elections for Panchayati Raj Institution (PRI) (a local governance body) in Palra Village, which falls within the jurisdiction of Adarsh Nagar Police Station. It is reported that several voters who had travelled to Palra from Khajpura village were arrested by Adarsh Nagar police and prevented from casting their votes. The police allegedly attempted to seize their vehicle, leading to a scuffle which developed into a fight between the police and voters. A police vehicle was damaged and several individuals received minor injuries. Approximately 20 people were arrested at the scene and several had charges filed against them.

452. Mr. Singh Rawat was not present at the scene at the time of the incident, and is resident in another area. He was therefore not reportedly connected in any way to the election under way in Palra village. However, he was arrested later that day, in relation to the violence, at his residence and taken to Adarsh Nagar Police Station. His relatives were not informed of his arrest. It has been reported that the police physically assaulted and abused Mr. Singh Rawat and up to 15 other detainees upon arrival at the police station. Whilst in detention they were forced to remove their clothes and were then photographed. These photographs were later provided to the press.

453. Mr. Singh Rawat was charged with “Voluntarily causing hurt to deter a public servant from his duty” and “Assault or criminal force to deter a public servant from the discharge of his duty” under Sections 332 and 353 of the Indian Penal Code (IPC) and under Section 3 of the Protection Against Property Damage Act for “mischief causing damage to public property”.

454. During a hearing to remand the detainees into custody on 1 February 2010, a bail application was filed on behalf of Mr. Singh Rawat. The hearing was held before Judicial Magistrate No. 5, Mr. Mhendra Dabi, as the presiding officer of the original Jurisdictional

Court No 4, Mrs Neelam Sharma, was on leave. Mr Mhendra Dabi refused Mr. Singh Rawat's bail application and remanded the detainees into custody until 11 February 2010.

455. A second bail application was filed later the same day before a District and Sessions Judge under Section 439 of the Criminal Procedure Code. At a hearing at 2:00p.m on 2 February 2010, Additional District and Sessions Judge No. 2, Mr. Kamal Bagadi granted bail to Mr Singh Rawat and the other detainees. Mr Singh Rawat and the others were released from the Central Prison in Ajmer at 6:30p.m that evening. Charges remain pending against all of the detainees.

456. Concern is expressed that the arrest of and charges against Mr Devi Singh Rawat, in addition to his reported ill-treatment while in detention, are related to his work in defence of human rights, particularly his work against torture and for speaking out against violations of human rights by the authorities.

Communications received

457. At the time this report was finalized, no response to this communication has been received.

Special Rapporteur's comments and observations

458. The Special Rapporteur is concerned at the absence of an official reply and calls upon the Government of India to provide at the earliest possible date a detailed substantive answer to the above allegations.

Indonesia

Communications sent

459. On 1st April 2009, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights defenders 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:

460. 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 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. The Government of Indonesia replied to the latter communication on 19 January 2007.

461. 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. The Special Rapporteurs welcomed the investigatory and prosecutorial efforts which made the successful prosecution of the above-mentioned three individuals possible.

462. In its communication to the Special Rapporteur of 19 January 2007, however, the 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". The Special Rapporteurs share the 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:

463. 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.

464. 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).

465. 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.

466. 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.

Communications received

467. At the time this report was finalized, no response to this communication has been received.

Comments and observations of the Special Rapporteur

468. The Special Rapporteur is concerned at the absence of an official reply and calls upon the Government of Indonesia to provide at the earliest possible date a detailed substantive answer to the above allegations.

Iran (Islamic Republic of)

Communications sent

469. On 23 March 2009, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding the Hosseinieh of Nematollahi-Gonabadi Sufi order and the subsequent detention of Mr. Mohammad-Ali Taban, Mr. Parviz Shams, Mr. Firuz Bidabad, Mr. Ali-Akbar Bonnakdar, Mr. Hassan Kashani, Mr. Mohammad-Sadeq Moradi-Sarvestani, Mr. Amin Karampour, Mr. Mehrdad Karami, Mr. Abolfazl Salehi, Mr. Mikael Qorbani, Mr. Reza Forutan, Mr. Peyman Amrai, Mr. Reza Mehravar, Mr. Moslem Sana'tparast, Mr. Esmail Sana'tparast, Mr. Mostafa Kashi, Mr. Naser Papi, Mr. Esmail Nouri, Mr. Musa Shahryari, Mr. Ali Nazari, Mr. Mohammad Hamrahi, Mr. Reza Shali, Mr. Yadollah Shamsi-Khani, Mr. A'bdolmanaf Qolami-Arjanki, Mr. Solyeman Nouri, Mr. Heshmatollah Vafai and Mr. Turaj Yegane, all members of the Gonabadi Sufi community in Iran.

According to the allegations:

470. On the night of 18 February 2009, about 200 government security forces, police and plainclothes agents surrounded the Hosseinieh of Nematollahi-Gonabadi Sufi order, located in the Takhteh Foulad Cemetery in Isfahan and reportedly demolished the building using bulldozers and loaders.

471. Subsequently, on 21 February 2009, members of the Gonabadi Sufi community from all over Iran gathered in front of the Parliament in Tehran in order to protest the demolition of their place of worship. Security forces and plainclothes agents allegedly arrested more than 850 Sufis to prevent them from protesting in front of the Parliament.

472. Although most of those who were arrested have reportedly since been freed, the 27 above mentioned members of the Gonabadi Sufi community were transferred to unit 240 and 249 of the Evin Prison. The following questions were, inter alia, allegedly asked by the prison personnel to the detainees: "Are you a member of the Gonabadi Sufi Order Dervishes? Name at least ten members of the Gonabadi Sufi Order Dervishes? Why and how did you become a member of the Gonabadi Sufi Order Dervishes?".

473. Families of those who remained detained have allegedly been unable to obtain information about the legal status and health of the detainees. In addition, lawyers representing detained Gonabadi Sufis have been prevented from meeting with their clients.

Communications received

474. At the time this report was finalized, no response to this communication has been received.

Communications sent

475. On 3 June 2009, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Ayatollah Sayed Hossein Kazemeyni Boroujerdi. Mr. Boroujerdi was the subject of a joint urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Rapporteur on

the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on 30 August 2007, and of a joint urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture on 20 December 2006. The Special Rapporteurs acknowledged receipt of the Government's response dated 12 February 2008.

According to the information received:

476. Ayatollah Sayed Hossein Kazemeyni Boroujerdi was sentenced to 11 years' imprisonment in 2007. There are reports that he has been subjected to torture and ill-treatment since his arrest and that he has been reportedly denied adequate treatment for Parkinson's Disease, diabetes, high blood pressure, kidney disease, asthma and a heart condition. He has been held in solitary confinement since 27 January 2009.

477. Ayatollah Sayed Hossein Kazemeyni Boroujerdi is an advocate for democratic elections in Iran. On 1 May, he wrote a letter to the United Nations Secretary General, Ban Ki-Moon, requesting that international observers be sent to Iran, in an effort to assist the Iranian people in holding an open referendum. As a result, he was subjected to beatings on 5 May 2009 and began a hunger strike. Since that day, he has been deprived of family visits, phone calls and communication with his lawyer.

478. In view of his reported conditions of detention, including solitary confinement, the reported beatings he suffered from, and the denial of medical treatment, concern is expressed for Ayatollah Sayed Hossein Kazemeyni Boroujerdi's physical and mental integrity. Further concerns are expressed that the reported beatings and denial of further family visits and access to legal counsel represent reprisals for addressing by letter the Secretary-General of the United Nations.

Comunications received

479. At the time this report was finalized, no response to this communication has been received.

Communications sent

480. On 18 June 2009, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning the situation of Mr Abdolfattah Soltani, a prominent human rights lawyer and founding member of the non-governmental organization Defenders of Human Rights Centre. Mr Soltani was the subject of several urgent appeals and letters of allegations sent on 4 August 2005, 14 December 2005, 31 March 2006, 8 August 2006, 11 August 2006, 15 November 2007 and 12 November 2008.

According to the information received:

481. On 16 June 2009, a group of plainclothes agents reportedly arrested Mr Soltani in front of his home, and took him to an undisclosed location. The whereabouts of Mr Soltani are currently unknown.

482. Serious concern is expressed that the arrest and detention of Mr Soltani may be linked to his peaceful human rights activities in defence of human rights, and may form part of a current pattern of harassment against human rights defenders. In view of his incommunicado detention, further concern is expressed for his physical and psychological integrity.

Communications received

483. At the time this report was finalized, no response to this communication has been received.

Communications sent

484. On 16 July 2009, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Mr Mohammad Ali Dadkhah, Ms Sara Sabaghian, Ms Bahareh Davallou, Mr Amir Raisian and Ms Maliheh Dadkhah. Mr Dadkhah is a lawyer and founding member of the Defenders of Human Rights Centre (DHRC). Ms Sabaghian, Ms Davallou and Mr Raisian are also lawyers.

According to the information received:

485. On 8 July 2009, at approximately 4.00 p.m., three individuals in civilian clothing, entered the law firm of Mr Dadkhah, without presenting an arrest warrant, and arrested Mr Mohammad Ali Dadkhah, along with other lawyers, Ms Sara Sabaghian, Ms Bahareh Davallou and Mr Amir Raisian. The daughter of Mr Dadkhah, Ms Malileh Dadkhah was also arrested. The law firm was subsequently closed.

486. The whereabouts of Mr Mohammad Ali Dadkhah, Ms Sara Sabaghian, Ms Bahareh Davallou, Mr Amir Raisian and Ms Maliheh Dadkhah are currently unknown.

487. Concern is expressed that the arrest and incommunicado detention of Mr Mohammad Ali Dadkhah, Ms Sara Sabaghian, Ms Bahareh Davallou, Mr Amir Raisian and Ms Maliheh Dadkhah may be related to their work in the defence of human rights, in particular Mr Dadkhah's criticism of the use of the death penalty and the execution of several persons on 3 July 2009 on drug trafficking charges. Serious concern is expressed regarding their physical and psychological integrity in light of their incommunicado detention. Further concern is expressed given that Mr Mohammad Ali Dadkhah is the third member of the DHRC currently in detention, along with Mr Abdolfattah Soltani and Ms Mohammad Reza Tajik.

Communications received

488. At the time this report was finalized, no response to this communication has been received.

Communications sent

489. On 16 July 2009, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Mr. Abdolfattah Soltani, a lawyer at the Bar Association of Tehran, a founding member of the Defenders of Human Rights Centre (DHRC) and a long-standing Iranian human rights defender.

490. Following our joint urgent appeal of 18 June 2009, we have now received new information concerning the detention of Mr. Abdolfattah Soltani. Mr. Soltani was reportedly arrested on 16 June 2009 in front of his home in Tehran by four security service agents in plainclothes, who handcuffed him and brought him with them. His whereabouts

were not communicated to his relatives until 9 July 2009, when they were informed that Mr. Soltani was being held in Section 209 of Evin prison in Tehran. Section 209 is reportedly a part of the prison run by the Ministry of Intelligence, where political prisoners are detained.

491. No charges have been brought against Mr. Soltani so far. He has not been presented before a judge.

492. It was further alleged that Mr. Soltani, who has already been detained and repressed on several occasions in the past, is being kept in detention merely in order to prevent him from carrying out his human rights activities, which he is fully entitled to develop according to the Declaration on Human Rights Defenders, adopted on 9 December 1998 by the United Nations General Assembly.

493. Fears have been expressed for Mr. Soltani's physical and psychological integrity.

Communications received

494. At the time this report was finalized, no response to this communication has been received.

Communications sent

495. On 29 October 2009, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding the 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:

496. 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.

497. 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.

Communications received

498. At the time this report was finalized, no response to this communication has been received.

Communications sent

499. On 4 December 2009, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders received regarding Mr. Kian Tajbakhsh, a social scientist and senior research fellow at the New School in New York who previously worked as a consultant for the Open Society Institute and the World Bank. Mr. Tajbakhsh is a dual Iranian-American citizen.

500. The Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the then Special Representative of the Secretary-General on the situation of human rights defenders sent a joint urgent appeal concerning Mr. Tajbakhsh on 9 July 2007. A response from the Government was received on 12 August 2009.

According to new information received:

501. On 9 July 2009 at around 9:00 p.m., Mr. Kian Tajbakhsh was arrested by two individuals who identified themselves as security officials. After an extensive search of his apartment and questioning, he was taken into detention at an unknown location. He was subsequently charged with acting against national security due to his participation in Gulf2000, an internet forum and mailing list hosted by Colombia University, and due to his previous consultancy work with the Open Society Institute.

502. On 1 August 2009, Mr. Kian Tajbakhsh was among the approximately 100 defendants presented before the court on charges of acting against national security.

503. On 20 October 2009, Mr. Tajbakhsh was sentenced by the Revolutionary Court to 15 years in prison.

504. On 29 October 2009, his court-appointed lawyer was denied the possibility to file an appeal on his behalf.

505. On 23 November 2009, new charges against Mr. Tajbakhsh had been introduced by the Revolutionary Court. The judge of the Revolutionary Court allegedly charged him with espionage for the Open Society Institute.

506. Mr. Kian Tajbakhsh has been repeatedly denied access to a lawyer during his pre-trial detention period. A request for a trial lawyer of his choice had also been denied. The court assigned him a lawyer at the trial, but there was insufficient time to prepare for the defence; it appears that the lawyer assigned to Mr. Tajbakhsh did not represent him properly at the trial.

507. Concern is expressed that the arrest, detention and subsequent sentencing of Mr. Kian Tajbakhsh may be related to his peaceful activities in defence of human rights. Further concern is expressed that Mr. Kian Tajbakhsh did not have access to an independent lawyer during his trial and that he was denied the possibility of lodging an appeal against his sentence. Further serious concern is expressed since the new charges presented on 23 November 2009 against Mr. Kian Tajbakhsh may carry the death penalty.

Communications received

508. At the time this report was finalized, no response to this communication has been received.

Communications sent

509. On 5 January 2010, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, 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 concerning the arrest and incommunicado detention of a large number of human rights defenders, lawyers, journalists and bloggers in the wake of the anti-government protests during the observance of Ashura on 27 December 2009.

According to information received:

510. Mr. Reza Al-Bacha, a Syrian journalist employed by Dubai TV, was arrested on Sunday, 27 December 2009.

511. Mr. Mashaallah Shamsolvaezin, spokesperson for the Association of Iranian Journalists and the Press Freedom Committee, and the editor of reformist Iranian newspapers, was arrested on 28 December 2009 in his home by plain clothes officers. Allegedly the men did not present an arrest warrant, only a document with the heading of the Revolutionary Court, which however did contain neither his name nor any reasons for his arrest.

512. Mr. Badrolssadat Mofidi, the Secretary General of the Association of Iranian Journalists was arrested on 28 December 2009.

513. Mr. Emadeddin Baghi, a prominent human rights defender and the founder of the Society for the Defence of Prisoner's Rights, winner of the Martin Annals Award in 2009 and a leading advocate against the death penalty, was arrested on 28 December 2009 in his home by plain clothes officers. Mr. Baghi reportedly suffers from heart and nerve conditions which were further aggravated by his previous detentions.

514. Ms. Noushin Ebadi, the sister of Nobel Peace Prize winner Shirin Ebadi, a dentistry professor, was detained on 28 December 2009 and held at an unknown location since.

515. Mr. Mortaza Kazemian, a journalist working for several newspapers and reformist websites, was arrested by men in plain clothes at his home in Tehran on 28 December 2009

516. Ms. Mansoureh Shojaie, who contributes to various women's rights websites, including www.feministschool.com, was arrested in the evening of 28 December 2009.

517. Mr. Kivan Mehrgan, journalist working at the daily newspaper Etemaad; Mr. Nassrin Vasiri, journalist for the ILNA news agency and Mr. Abdolreza Tajik, a reporter, were also arrested on the same day.

518. Since 28 December 2009, further arrests have also taken place, including Mr. Hesmatollah Tabarzadi, a student activist; Mr. Alireza Beheshti, director of the website Kalame and Mr. Mostafa Izadi, Mr. Kevyan Mehregan, who are journalists. Ms. Zohreh Tonkaboni, member of the organization 'Mothers for Peace' and the Secretary General and Deputy Secretary General of the Cultural Foundation, Mr. Baran Morteza Haji and Mr. Hasan Rasouli, were also among those arrested.

519. Mr. Mohammad Sadegh Javadihessar, columnist for the now closed daily Etemad-e Melli, was arrested on 30 December 2009, after having been summoned by the Ministry of Intelligence. It is reported that books and his computer's hard drive have also been confiscated following a search of his home.

520. Ms. Maryam Zia, children's right activist, President of the NGO 'Struggle for a World Deserving of Children' and member of the 'One Million Signatures Campaign' was arrested on 31 December 2009 in her home by plain clothes officers.

521. On 1 January 2010, Mr Nemat Ahmad, a lawyer representing imprisoned journalists; Mr. Mahsa Hekmet, journalist working for the now closed Etemad-e Melli newspaper, as well as Mr. Mohammed Reza Zohdi, former editor of the now closed newspaper Arya have been arrested.

522. Ms. Parisa Kakei, journalist and blogger for the weblog http://parisad.blogspot.com was arrested on 2 January 2010 after being summoned by the Ministry of Intelligence.

523. Concern is expressed that the arrest and detention at unknown location and without charges of the above-mentioned journalists, lawyers, bloggers and human rights defenders may be related to their activities in defence of human rights and promoting democracy in

Iran. In light of their alleged incommunicado detention, further serious concern is expressed regarding the physical and psychological integrity of those arrested.

Communications received

524. At the time this report was finalized, no response to this communication has been received.

Communications sent

525. On 19 January 2010, the Special Rapporteur sent an urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concerning Mr. Payam Jahangiry, a 28-year-old student of political science at Shiraz University.

According to the information received:

526. Mr. Payam Jahangiry, a supporter of the opposition movement in the Islamic Republic of Iran known as the "Green Movement", which emerged after the contested presidential election in June 2009, was arrested on 5 December 2009 at his home in Shiraz. The arresting officers of the security services at first identified themselves as workers from an electricity provider and forced their way in as Mr. Jahangiry opened the door. The officers then revealed their real identities, searched his home, and confiscated various personal belongings, including four computers and various documents and photographs. Mr. Jahangiry is currently being held at the Artesh Sevvom detention centre in Shiraz. He has not been allowed access to a lawyer, however, has been permitted two visits by his family.

527. Several students and other individuals are reported to have also been arrested before, during and after demonstrations in connection with the National Student Day in Iran on 7 December, which marks the killing of three students by security forces in 1953.

528. Concerns are expressed that the reported arrest and detention of Mr. Payam Jahangiry have been carried out solely in connection with his reportedly peaceful and legitimate exercise of his rights to freedom of opinion and expression, assembly, association, and to take part in the government of one's country, directly or through freely chosen representatives.

Communications received

529. At the time this report was finalized, no response to this communication has been received.

Communications sent

530. On 27 January 2010, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on violence against women, its causes and consequences regarding a woman and a man who have been sentenced to death by stoning for adultery, Ms. Sareimeh Ebadi, aged 30, mother of two children, and Mr. Bu-Ali Janfeshani, aged 32, father of one.

According to the information received:

531. A criminal court in Oroomiyeh, West Azerbeijan 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.

532. On 6 January 2010 (or 8 January, according to other reports received), Branch 12 of the West Azerbeijan Court of Appeals upheld the death sentence. Both defendants are held in Oroomiyeh central prison.

Communications received

533. At the time this report was finalized, no response to this communication has been received.

Ccomments and observations of the Special Rapporteur

534. The Special Rapporteur regrets the absence, at the time of the finalization of the report, of an official reply to all ten above-mentioned communications. She considers response to her communications as an important part of the cooperation of Governments with her mandate, and calls upon the Government of Iran to transmit responses to the outstanding communications.

535. More generally, the Special Rapporteur remains concerned at the copious and consisten information about the difficult situation of human rights defenders - notably lawyers - in the country, as reflected in the above-mentioned communications sent to the Government of Iran. In this respect, the Special Rapporteur notes that the majority of the cases mentioned above and addressed by her mandate concern the situation of defense lawyers and the situation of other human rights defenders which often face judicial and other proceedings - which fall short of the fair trial principles - as a consequence of their professional activity. In this respect, the Special Rapporteur would like to stress once again the importance for Governments to respect and take into account, *inter alia*, the Basic Principles on the Role of Lawyers adopted in Havana, Cuba, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from 27 August to 7 September 1990, aimed at assisting Member States to protect and ensure the proper role of lawyers.

536. In this context, the Special Rapporteur wishes to remind the Government of his request to visit that country, made in 2006. The Special Rapporteur is hopeful that the Government will invite the mandate-holder in the near future.

Iraq

Communications received

537. On 21 October 2009, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. regarding the use of the death penalty in Iraq since May 2009.

According to the information received:

538. 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.

539. 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.

540. 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.

Communications received

541. The Government replied on 22 December 2009. Translation awaited.

Comments and observations of the Special Rapporteur

542. 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. She is therefore unable to make observations at this stage.

Israel

Communication sent

543. On 23 July 2009 the Special Rapporteur sent an urgent appeal regarding the legal foundations and practices of the military justice system applied to Palestinians in the occupied Palestinian territory, particularly in relation to Military Order 378:

544. At the outset, I would like to note that the applicability of the regime of international humanitarian law during an armed conflict does not preclude the application of human rights law. This point was confirmed by the Human Rights Committee in its general comments Nos. 29 and 31 and in its concluding observations on Israel (CCPR/CO/78/ISR, para. 11) and by the International Court of Justice (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. 2006 Reports, 226, para. 25).

545. Furthermore, the International Court of Justice stated that the protection offered by human rights conventions did not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in article 4 of the International Covenant on Civil and Political Rights (ICCPR) which covers situations of public emergency which threaten the life of the nation (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion, I.C.J. Reports 2004, 136, para. 106).

546. Second, it is my view that the applicability of the regime of international humanitarian law does not preclude accountability of States parties under article 2, para. 1 of the ICCPR for the actions of their authorities outside their own territories. This has already been pointed out by the Human Rights Committee and the International Court of Justice which have confirmed that human rights are legally binding upon a State when it acts outside its internationally recognized territory [See Official Records of the General Assembly, Fifth-ninth session, Supplement No. 40 (A/59/40), annex III and I.C.J. Reports 2004, 136, at 179 (para. 109)].

547. Therefore, as a State party to the ICCPR, Israel is obliged to honour the rights laid down in it of anyone within its power or effective control, even if not situated within the territory of Israel. It is for this reason that the Israeli military justice system applied to the

population of the occupied Palestinian territory must comply also with applicable international human rights law.

548. In this connection, I would like to draw your Excellency's Government attention to several substantive areas that would indicate shortcomings in the military justice system regarding fundamental fair trial guarantees.

549. 1) According to the information at my disposal, between 1990 and 2006, more than 150,000 Palestinians, both civilians and those implicated in the conflict, have been brought before Israeli military courts. Military Order 378 'Concerning Security Provisions' of 20 April 1970 established the jurisdiction of the military courts. The law appears to grant the military courts jurisdiction that enables them to try any Palestinian individual – resident or non-resident of the occupied Palestinian territory – regardless of whether the offence was committed within that territory or not. In its section III, the Military Order 378 lists the offences for which Palestinians can be brought before the military courts. The most common charge used is article 53 (a) of the Military Order 378 entitled 'Offences against the Maintenance of Public Order' which carries up to ten years of imprisonment. This provision appears also to be used against children as young as 12 years for throwing stones at the 'Wall'.

550. To illustrate, according to the new information received, the following minors have been charged, accused or convicted under this provision:

551. Husam H., 15 years old, male, from Zeita, near Turkarm: arrested on 7 January 2009 and sentenced to three months imprisonment and a fine of New Israeli Shekel (NIS) 500.

552. Hamzi F., 15 years, male, from Sa'ir, Hebron: arrested on 11 January 2009 and sentenced on 23 February 2009 to four months in prison, further four months of suspended sentence and a fine of NIS 750.

553. Habib M., 17 years old, male, from Quaryut Village, near Nabulus: arrested on 14 January 2009 and detention extended by the Salem Military Court.

554. Bashir Q., 12 years old, male, from Tura al Gharbiya, near Jenin: arrested on 19 January 2009 and sentenced on 15 February 2009 to a fine of NIS 750 and 1 month of probation.

555. Osaid Q., 12 years old, male, from Tura al Gharbiya, near Jenin: arrested on 20 January 2009 and sentenced on 15 February 2009 to a fine of NIS 750 and 1 month of probation.

556. Imad A., 15 years old, male, from Tura al Gharbiya, near Jenin: arrested on 20 January 2009, sentenced on 15 February 2009 to a fine of NIS 750 and 1 month of probation.

557. Mohammad A., 13 years old, male, from Tura al Gharbiya, near Jenin: arrested on 20 January 2009, sentenced on 15 February 2009 to a fine of NIS 750 and 1 month of probation.

558. Amir Q., 13 years old, from Tura al Gharbiya, near Jenin: arrested on 20 January 2009, sentenced on 15 February 2009 to a fine of NIS 750 and 1 month of probation.

559. Omar Z., 14 years old, male, from Husan Village, near Bethlehem: arrested on 26 January 2009 and sentenced to 91 days of imprisonment and a fine of NIS 1000.

560. Ahmad Q., 15 years old, male: arrested on 1 January 2009 near Qalandiya checkpoint, transferred to Ofer Prison and then Telmond and Damoun prisons inside Israel, sentenced to four and a half months of imprisonment and a fine of NIS 1000.

561. In this connection, I would like to refer your Excellency's Government to General Comment No. 32 of the Human Rights Committee in which it emphasized that the trial of civilians in military or special courts could raise serious problems as far as the equitable, impartial and independent administration of justice was concerned. Therefore, the Committee stressed the need that all necessary measures be taken to ensure that such trials are held under conditions which genuinely afford the full guarantees stipulated in article 14 of the ICCPR.

562. According to the Committee, trials of civilians by military courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials. This argument was also underscored by the Committee in its decision concerning communication 1172/2003 (Madani vs. Algeria). In this decision, the Committee considered "[t]hat the State party must demonstrate, with regard to the specific class of individuals at issue, that the regular civilian courts are unable to undertake the trials, that other alternative forms of special or high-security civilian courts are inadequate to the task and that recourse to military courts is unavoidable. The State party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14 […]." The Committee further noted that "Nor does the mere invocation of domestic legal provisions for the trial by military court of certain categories of serious offences constitute an argument under the Covenant in support of recourse to such tribunals."

563. In my opinion, the exercise of jurisdiction by a military court over civilians not performing military tasks is normally inconsistent with the fair, impartial and independent administration of justice. This should even more evidently apply in cases of minors.

564. Furthermore, the Human Rights Committee has stated that deviating from fundamental principles of fair trial is prohibited at all times (General Comments No. 29, para. 11 and No. 32, para. 6). It is reported that those individuals arrested by the Israeli army under the Military Order 378 do not have access to legal counsel during the investigation. In addition, families of these individuals are rarely informed about their whereabouts following the arrests.

565. The right to legal counsel is one of the fundamental principles of fair trial, which is enshrined in article 14, para. 3 (b) and (d) of the ICCPR. In addition, I would like to point your Excellency's Government to the specificities of the right to be assisted by a lawyer which are 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 to:

566. 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".

567. 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".

568. 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."

569. 3) From the information received, there appears to be a practice by which Palestinian detainees are being made to sign confessions. In several cases, these statements were written in Hebrew, a language that very few detainees comprehend. It is reported that

once these confessions are obtained, they constitute primary evidence against Palestinian detainees in the military courts.

570. According to information at my disposal, Hamzi F., who was arrested on 11 January 2009 and accused of throwing stones, was threatened with physical violence if he did not confess, slapped across the face. He then signed papers written in Hebrew without knowing of the contents. On 23 February 2009, he was sentenced to four months in prison, further four months were suspended and a fine of NIS 750 was imposed.

571. Furthermore, Mohammad F., 16 years old, male, from Hebron, was arrested on 23 January 2009 and accused of throwing stones at soldiers. He was then placed in a jeep and transferred to Kirya Police station, beaten with a stick, pushed, punched and kicked all over his body for about five minutes. When he was interrogated for one hour, he denied the accusation. When he was given papers in Hebrew, he initially refused to sign. However, when the interrogator threatened to beat him, he signed a confession in Hebrew. On 2 March 2009, the was sentenced to 4 and a half months in prison with a further four and a half months suspended sentence and a fine of NIS 700.

572. Information was further received on Mohammad M., 14 years old, male from Al Jalazun Camp, Ramallah. He was arrested on 13 January 2009 for carrying a knife through Qalandiya checkpoint and then accused of wanting to stab a soldier. He first denied the accusation and was then slapped and kicked at Qalandiya checkpoint. He was then transferred to Al Maskubiya. When the interrogator told him he could go home of he confessed, he first denied the allegations, but then signed papers written in Hebrew without fully understanding the contents. He appeared last in court on 6 April 2009. He was sentenced to 10 months of imprisonment, 12 months of probation and a fine of NIS 2000.

573. The prohibition of self-incrimination constitutes another fundamental fair trial principle. In this context, I would like to refer your Excellency's Government to article 14, para. 3 of the ICCPR, which stipulates: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
(g) Not to be compelled to testify against himself or to confess guilt".

574. 4) The applicable law appears not to provide for the charges to be given 'promptly'. Article 21 (a) of Military Order 378 stipulates that "Prior to the accused's appearance in a miliary court, the nature of the charges and details thereof shall be recorded in the charge sheet which shall be brought by the prosecutor before the court. A copy of the charge sheet shall be given to the accused before his hearing." This implies that the defendant may only learn about the charges laid against him/her prior to the actual start of the trial. In addition, it appears that the indictments containing the charges are written in Hebrew.

575. In that regard, I would like to point to article 14, para. 3 (a) of the ICCPR, which stipulates that "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

576. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him".

577. 5) According to article 8 of the Military Order 378, sentence 2, "The accused may be defended by an advocate." However, the applicable law appears not to provide for the right to choose counsel.

578. In addition, applicable law appears not to provide the right to adequate time and facilities for the preparation of the defense. To illustrate, the law does neither provide for guaranteed access to court materials nor does it require translation of evidentiary materials or court materials into a language that the defendant understands. Furthermore, in practice, lawyers appear to experience difficulties in having access to their detained clients. If access

is granted, the facilities do seldom provide for the confidentiality of the meeting. Furthermore, lawyers are often provided with incomplete prosecution material.

579. Several cases have been reported in which lawyers have been assigned to unrepresented defendants once the accused are brought into the courtroom.

580. Furthermore, the law provides for the appointment of free legal assistance. However, this only applies where a person is accused of an offence carrying a sentence of ten years or more.

581. According to the information at my disposal, Tarik K., 17 years old, male, from Balata Refugee Camp, was arrested on 22 January 2009 and accussed of membership of a banned organization, planning to carry out a suicide bombing and planting explosive devices. His hands were tied tightly with plastic ties and he was blindfolded. He was then transferred to Huwwara Interogation and Detention Center where he remained for several hours. He was later transferred to Al-Jalame Interrogation and Detentions Center which is located in Israel and kept in solitary confinement. On 25 January 2009, he was interrogated for about one hour, but refused to confess. He was subsequently placed in solitary confinement for two weeks and then taken to a cell containing an informant to whom he confessed. He was then further interrogated and on 22 February 2009 transferred to Megiddo Prison, Israel. He saw a lawyer for the first time after his confession. He appeared last in court on 21 June 2009; the next court appearance is scheduled for 26 July 2009.

582. In this connection, I would like to refer your Excellency's Government to article 14, para. 3 of the ICCPR, which states that: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

583. To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

584. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”

585. Furthermore, the Basic Principles on the Role of Lawyers stipulate in principle 8: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

586. 6) While according to Military Order 378, the Israeli Evidence Ordinance applies to the proceedings in military courts, which provides for the presumption of innocence, the percentage of acquittals appears to be very small. According to information at my disposal, in 2006 full acquittals were obtained in just 0,29 percent of the total of cases tried by the military courts, which may indicate that the fundamental fair trial principle of the presumption of innocence has not been effectively implemented.

587. In this connection, I would like to point to article 14 para. 2 of the ICCPR, which stipulates that “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

588. 7) The applicable law appears not to provide for any guarantee to be tried without undue delay. However, the law seems to provide that when an accused has been held in detention for two years without a military court trial reaching a verdict, the matter shall be brought before the Military Court of Appeals.

589. In this regard, I shall like to point to Article 14 (c) of the ICCPR which provide for the right to be "tried without undue delay".

590. 8) Section 18 of Military Order 378 provides for the right to examine witnesses for the prosecution. However, a decision of the Israeli Military Court of Appeal reportedly provides that as a standard procedure, investigators for the Israeli Security Agency will give testimony in camera.

591. It appears that in practice very few full evidentiary hearings are heard by the military courts. According to the information received, full evidentiary hearings took only place in 1,4 percent of cases concluded by the military courts in 2006. It appears that sentences are far harsher in cases where defense lawyers demanded for a full evidentiary hearing, including summoning witnesses and presenting testimony.

592. In this context, I would like to refer to the fundamental principle of the equality of arms in judicial proceedings. Therefore, article 14, para. 3 (e) of the ICCPR provides for the right "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

593. 9) Article 11 of the Military Order 378 provides that "The military court shall hold cases brought before it in public". A military court may make an exception from this rule if it considers it appropriate to do so in the interests of the security of the Israeli Defence Forces, justice, or for public safety. However, it appears that access to the military courts is generally highly restricted, requiring prior authorisation from the military authorities and where access is granted, it is limited to two immediate family members and an occasional observer.

594. In this regard, I would like to bring to your attention to another fundamental fair trial principle contained in article 14, para. 1 of the ICCPR, which stipulates "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing […]. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."

595. 10) Judges in the military courts are military officers in regular or reserve service, i.e. members of the Israeli Defence Forces. It appears unclear how the independence of these judges from the military hierarchy is guaranteed in relation to their selection and appointment, tenure and disciplinary measures, including dismissal.

596. In this connection, I would like to point again to article 14 para. 1 of the ICCPR, which guarantees to everyone a hearing before a "competent, independent and impartial tribunal".

597. 11) Lastly, information received suggests that each year approximately 700 children and adolescents (below the age of 18), who are from the West Bank, are prosecuted by Israeli military tribunals. Military Order 132 defines a Palestinian child as any person under the age of 16. This is in contrast to Israeli domestic law which defines a child as a person under the age of 18. Relevant legislation also provides that children as young as 12 may be prosecuted in the military courts. Palestinian minors who are arrested by the Israeli military are prosecuted in the same jurisdiction as adults, i.e. there is no separate system for juvenile justice.

598. In this regard, I would like to point to the Convention on the Rights of the Child which specifically recognises the particular vulnerability of children by providing that detention should be a measure of last resort and that states should implement measures whenever appropriate that steer children away from judicial proceedings.

599. Furthermore, the Human Rights Council, in its resolution 10/2, recognized in:

600. paragraph 7 "that every child and juvenile in conflict with the law must be treated in a manner consistent with his or her rights, dignity and needs, in accordance with international law, including relevant international standards on human rights in the administration of justice, calls on States parties to the Convention on the Rights of the Child to abide strictly by its principles and provisions and to improve the status of information on the situation of juvenile justice;" and, in its

601. paragraph 9, "encourages States, that have not yet done so, to integrate children's issues in their overall rule of law efforts and to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency as well as with a view to promoting, inter alia, the use of alternative measures such as diversion and restorative justice, and ensuring compliance with the principle that deprivation of liberty of children should only be used as a measure of last resort and for the shortest appropriate period of time as well as to avoid wherever possible the use of pre-trial detention for children."

602. In sum, I am concerned that the above-mentioned legal foundations and practices of the military justice system do not comply with international standards. I therefore urge your Excellency's Government to initiate a review of applicable legislation with a view to amending it as well as to rectify the aforementioned practices.

Communication received

603. On 4 November 2009, the Government of Israel replied to the communication sent on 23 July 2009 by the Special Rapporteur.

604. The Government in its response gave background information about the Israeli military courts and indicated that the Judges in the military courts are required to make difficult decisions on a daily basis. The military courts system has opted for maximum transparency, befitting a judicial system. Hearings are conducted openly, cases in deliberation are provided for review, and reports on its operations are issued regularly. The courts system is an independent system and the independent discretion of a judicial system is on of its most important principles. Review of the system is carried out through the appeals instance. In administrative matters, reviews are carried out by the military courts headquarters.

605. That the military courts have determined that it is in their authority to criticize the legality of orders issued by the military commander according to the principles of international human rights law and the basic laws of the State of Israel.

606. On appointment of judges, the Government indicated that the military justice system is an independent system and military judges maintain their independence and personal discretion in their decisions. Military judges are not subjected to any authority except the authority of the law. The judges are appointed by the regional commander, but this is only a confirmatory signature similar to appointment by the President of the State of Israel. The military commander has no say regarding their decisions. The entity that appoints judges is an independent and external committee. Since 2004, the committee is an independent entity and it examines each candidate thoroughly, both in active service and reserve service. The position of the Bars representative in the committee is significant, so as is the position of other member of the committee.

607. On law and the legal proceedings the government indicated that the substantial law and the legal proceeding common in the military courts are similar and almost identical to those in civilian courts in Israel. Evidence laws in the military courts are identical by law to those in Israel (Section 9 to the order for Security Directives 5730-1970 states "as regards evidence laws the military court shall act as per the rules obligating in criminal matters in courts in the State of Israel") and the same standard is used. As regards detention laws, regardless of the various arrangements set forth by the legislator, the court has adopted the principles of the basic laws and the detention law, which action has brought about changes in legislation that greatly improve the condition of suspects and accused persons (for example the grounds for arrest were adopted, the obligation to list the suspicions and to submit evidence was enacted, the arrest period was limited unit the end of proceedings).

608. On publicity of hearing the Government indicates that the military courts are strict in upholding the publicity of hearings and are not deterred from instructing that a hearing be open to the public even against the opinion of other senior persons in the defense forces.

609. On accessibility to rulings and legislation the Government indicated that as of 2000, military court files are published regularly, once a year. The files are sent to all the legal libraries. All military courts of appeal rulings are distributed by known procedure, according to a procedure worked out together representatives from the Military Courts Attorney's Committee, to four different attorneys from all districts, who have volunteered to distribute the rulings forward.

610. On the right to know the charge and translation the Government indicated that in the past most of the indictments were translated into Arabic, but as no requests were made to receive these translations, the practice has changed and today indictments are translated as per the accused request.

611. On the right to representation the Government indicated that in the appointment of an Attorney the military courts do not avoid appointing a defense attorney funded by the Civil Administration. They do this not only in severe cases, but also in minor cases where there is no obligation to appoint a defense attorney. In 99.9% of the cases the accused is represented by a defense attorney. Palestinian defense attorney are granted full access to the military courts.

612. On the presence of the accused person by law (Section 35 to the order for Security Directives) the accused is entitled to be present in hearings in his case. exceptions are made in cases where the accused does not behave properly in court or when permission is granted by the court due to the accused medical condition.

613. On the right to trial without undue delay the government indicated that the right is upheld by the military courts.

Comments and observations of the Special Rapporteur

614. The Special Rapporteur thanks the Government of Israel for its response. She however regrets that despite the details the Government provided with respect to the military court system, the Government has not addressed the concerns of jurisdiction by military courts over civilians not performing military functions or the concerns on the scope of applicability of Military Order 378 especially when it relates to minors.

Communication Sent

615. On 13 November 2010, the Special Rapoprteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on the situation of human rights defenders regarding Mr. Mohammad Othman, human rights defender and volunteer with the Palestinian "Stop the Wall Campaign" and

partner of the NGO "Centre on Housing Rights and Evictions" (COHRE). Mr. Othman assisted COHRE with fact-finding missions to the occupied Palestinian territories and worked with COHRE on issues related to Israel and the occupied Palestinian territories.

According to information received:

616. Mr. Mohammad Othman, returning from Norway where he carried out advocacy work and met with Government officials, was arrested on 22 September 2009, at the Allenby Bridge Crossing between Jordan and the West Bank. Mr. Othman was placed in detention at the Huwwara detention centre and then transferred on 24 September 2009 to the Kishon (Jalameh) interrogation centre where he was placed in solitary confinement.

617. The Kishon Military Court extended his detention on 29 September 2009 for ten days. The Salem Military Court further extended his detention period on 8 October, 19 October and 27 October 2009. On 1 November 2009, the Court rejected an appeal against the extension of his detention. On the same day the military court prosecutor requested that Mr. Othman be prevented from meeting his lawyers until the next court hearing. The Salem Military Court sustained the proposal at a hearing on 2 November 2009, in the absence of both Mr. Othman and his attorneys. An appeal from Mr. Othman's lawyers challenging the application of the military prosecution preventing him from contacting his lawyers had been rejected by the Military Court of Appeals on the basis that the appeal should be filed directly with the High Court of Israel.

618. Mr. Othman has reportedly been subjected to lengthy interrogation sessions, some of them lasting from 8:00 am until midnight. He has been allegedly threatened that the interrogations could last for up to 180 days. He was reportedly also threatened with life imprisonment and told that "his human rights work would not be helpful as he is now in the hands of the State of Israel."

619. On 8 November 2009, the court extended Mr. Othman's detention period for another ten days and also prolonged the ban on access to his lawyers until 15 November 2009, citing the interests of the interrogation as a reason. Since the ban on contacts with his lawyers, Mr. Othman has been held incommunicado. He receives occasional visits by ICRC delegates.

620. According to information available, to date no charges have been brought against Mr. Othman, nor has he been brought to trial.

621. Concern is expressed that the continued detention of Mr. Mohammad Othman without charges may be related to his work in defence of human rights, especially to his advocacy work and for speaking out against the construction of the separation wall.

Communication received

622. On 26 April 2010 the Government of Israel replied to the communication sent on 13 November 2010, by the Special Rapporteur as follows:

623. The government indicated that in confronting the threat of terrorism and protecting its civilians from suicide bombers and other attackers it has found that the use of administrative detention is, on occasion a necessary and effective measure. Where sufficient, admissible evidence against an individual, the authorities are required to bring that individual to justice, rather than adopt such measures as administrative detention. This measure may be used as an exception only when the evidence is existence is clear, concrete and trustworthy, but for reasons of confidentiality and protection of intelligence sources, cannot be presented as evidence in ordinary criminal proceedings.

624. The government stated that the issuance of administrative detention orders against detainees who pose a danger to public security, in cases as outlined above is recognized by

international law and is in full conformity with Article 78 of the Fourth Geneva Convention 1949. The measure is only used in cases where there is corroborating evidence that an individual is engaged in illegal acts that endanger security and the lives of civilians, and each order is subject to judicial review. Administrative detention orders are limited to six months and any extension requires a reevaluation of the relevant intelligence material, as well as further judicial review. Furthermore, local legislation governing the process grants to all relevant individuals the right to appeal the order to the Military Courts of Appeals, for judicial review. Petitioners may be represented by counsel of their choice at every stage of the proceedings. All individuals have the additional right to petition the Israeli High Court of Justice for a repeal of the order.

625. Information was provided that Mr. Othman was detained in administrative detention in 2009. The last order in his regard was issued on December 22, 2009, and was due to remain in force until January 22, 2010. In the judicial review of the order and after examination of the confidential material against Mr. Othman, the Court stated inter alia, that the information on the basis of Mr. Othman's detention was the suspicion that he was in contact with a foreign agent of a terrorist organization, a suspicion that Mr. Othman confirmed. The court also stated that relevant considerations of protecting security and the public, stood on the basis of the decision to extend his administrative detention. At no point was Mr. Othman's political activity or personal views regarded as a basis for his detention. Mr. Otheman was subsequently released on January 12, 2010. He was represented by a lawyer in all the legal proceeding and court hearings.

Comments and observations of the Special Rappporteur:

626. The Special Rapporteur thanks the Government of Israel for the response and welcomes the release of Mr. Othman. The Special Rapporteur regrets however that the concerns related to the legal basis for the prolonged period of detention of Mr. Mohammad Othman without charges, as well as information on why the regular civilian courts are unable to be the competent judicial authority in relation to the allegations against Mr. Othman, were not addressed.

627. The Special Rapporteur reiterates that in cases of administrative detention the state party must demonstrate, with regard to the specific class of individuals at issue, that the regular civilian courts are unable to undertake the trials that other alternative forms of special or high-security civilian courts are inadequate to the task and that recourse to military courts is unavoidable.

Communication sent

628. On 23 December 2009, the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding the arrest and detention of Mr. Jamal Juma. Mr. Juma has been the coordinator of the "Stop the Wall Campaign", a Palestinian grassroots human rights organization, since 2002.

629. The Chairperson-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders sent a joint communication concerning the arrest and detention of another member of the "Stop the Wall Campaign", Mr. Mohammad Othman, on 13 November 2009.

According to information received:

630. On 15 December 2009, Mr. Jamal Juma was summoned for interrogation by the Israeli Security Forces. After he had been interrogated at the Qalandia checkpoint, Mr. Juma was brought back to his house by security officials, who searched the premises for several hours and confiscated his computer and cell phone. He has been detained at the Moskobiyyeh Interrogation Center since 16 December, without charges and without access to a lawyer or family members. The court decided on 17 December to introduce a ban on contacts with his attorney.

631. The first court hearing in Mr. Juma's case was held on 21 December 2009, at the Moskobiyyeh Interrogation Center in the Russian Compound district of Jerusalem. Although the prosecution requested a 14-day extension of his detention period, the military judge granted only a 4-day extension for interrogation purposes. However, the court decided to interrogate Mr. Juma under the military court system, despite arguments of his attorney that the military court lacked jurisdiction over him, and that as a resident of East Jerusalem he should be brought before a civilian court. The next hearing in Mr. Jamal Juma's case has been set for 24 December 2009.

632. Concern is expressed that the arrest and detention without charge of Mr. Jamal Juma may be directly related to his peaceful activities in defense of human rights, especially to his advocacy work against the construction of the separation wall. In light of his incommunicado detention, further concern is expressed regarding the physical and psychological integrity of Mr. Jamal Juma.

Communication received

633. On 12 February 2010, the Government of Israel replied to the communication sent on 23 December 2009, by the Special Rapporteur as follows:

634. Mr. Juma was arrested on 16 December 2009, and was interrogated by the security forces for suspicions of contacting a foreign agent of a terrorist organization. The interrogation materials in this regard were transferred to the military prosecution in the West Bank for review and decision regarding his indictment. After reviewing his case it was decided not to file an indictment against Mr. Juma at this time. Subsequently Mr. Juma was released on 13 January 2010.

Comments and observations of the Special Rapportuer:

635. The Special Rapporteur thanks the Government of Israel for its response and welcomes the release of Mr. Juma. The Special Rapporteur however regrets that the Government did not provide information the legal basis for the arrest and detention of Mr. Juma without charges and why the regular civilian courts were unable to be the competent judicial authority in relation to the allegations against Mr. Juma.

Japan

Communication sent

636. On 19 March 2009 the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment 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.

637. 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.

638. 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.

Communication received

639. On 15 April 2009 the Government of Japan relied to the Communication sent on 19 March 2009, by the Special Rapporteur as follows:

640. 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. With regard to th information requested in the communication 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, The government of Japan does not have any knowledge about the reasons behind the litigation acts of the defendants.

641. With regard to the information on 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. The Government indicated that in the Japanese criminal proceeding, the appeal to a higher court is broadly applicable to conviction and sentencing under three-tier 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 abolish to mandatory review system. 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, 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. Thus the Government of Japan believes that it would be inappropriate should we decide not to issue

and execution order to an inmate sentenced to death while the procedure of request of retrial or appeal of pardon is pending.

642. 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 International Covenant on Civil and Political Rights. 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.

Comments and observations of the Special Rapporteur

643. The Special Rapporteur thanks the Government of Japan for its response, though she regrets 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. The Special Rapportuer reiterates that - in order to protect the privacy of the persons who are the subject of a communication - information that the special Rapporteur receives from the Government of Japan relating to individual cases could be reproduced in anonymous form in public reports. The Special Rapporteur also regrets that the Government has not addressed the concern about likely violations of the procedural safeguards of the right to life, in particular with respect to the recommendation - also put forward by the Human Rights Committee and the Committee Against Torture - that the Government establish a mandatory system of review in capital cases.

Kazakhstan

Communication sent

644. On 15 July 2009, the Special Rapporteur sent an urgent appeal jointly with the Rapporteur of the Working Group on Arbitrary Detention regarding Mr. Dmitry Parfenov and Mr. Malkhaz Tsotsoria, both vice-presidents of the Kazakh National Atomic Company ("KazAtomProm"), a state-owned nuclear holding company in Kazakhstan.

According to the information received:

645. On 22 May 2009, as they approached their offices late in the morning, Mr. Dmitriy Parfenov and Mr. Malkhaz Tsotsoria were arrested by masked men. The two were taken to the offices of the National Security Committee located at 168 Bogenbai batyr St. in Almaty.

646. Mr. Parfenov remained in the above-mentioned offices until 7:30 pm. He had no access to a lawyer during that time. He was then escorted home for search and seizure and was subsequently taken to an unknown location around 11:00 pm.

647. On 24 May 2009, around midday, the wife of Mr. Parfenov, Mrs. Natalya Yemelyanova, was approached by an unknown man in civilian clothes, who, without

informing her of Mr. Parfenov's exact whereabouts, told her that she could pass on a change of clothes for her husband.

648. The same day, Mrs. Natalya Yemelyanova and Mrs. Maria Geguchadze, the wife of Mr. Malkhaz Tsotsoria, were informed that their husbands had been detained for 72 hours in relation to an ongoing criminal investigation. The wives did not hear from any authorities after the 72 hour period had expired.

649. During the weekend of 23 to 24 May 2009, lawyers contacted the wives telling them they would defend their husbands. It appears that these lawyers are State-appointed. The National Security Committee claims that no access can be granted for "ordinary" lawyers because the case involves classified information.

650. On 26 May 2009, Mr. Parfenov was reported to have been secretly transported to Astana to a private apartment. On 30 May 2009, the wives learned that both men were being held in a "safe house" in Astana under a witness protection programme, based on article 100 of the Criminal Procedural Code. The exact location and conditions of their detention remained unknown.

651. On 4 June 2009, the two wives met with their husbands in the offices of the National Security Service Committee in Astana for about 20 minutes. A member of the National Security Service Committee was present in these meetings. On 13 June 2009, Mr. Parfenov was allowed a second meeting with his wife for 20-30 minutes, which was also overseen by the National Security Service Committee and took place in the pre-trial detention centre of the National Security Service Committee in Astana.

Communication received

652. On 21 September 2009, the Government of Kazakhstan replied to the communication sent on 15 July 2009, by the Special Rapporteur as follows:

653. Concerning the inquiry regarding the vice-presidents of the KazAtomProm State corporation. The preliminary investigation of a criminal case relating to high-ranking KazAtomProm officials involved no violation of the legal rights of Mr. D. Parfenov and Mr. M. Tsotsoria. At the request of the two men, they were provided with a lawyer for legal assistance and the protection of their interests. No preventive measures, such as arrest, were taken against them, since their role in these criminal proceedings is to appear as witnesses.

654. Procedural measures were applied in relation to the two men in conformity with the requirements of the Code of Criminal Procedure of the Republic of Kazakhstan. Mr. Parfenov and Mr. Tsotsoria were provided with witness protection when the investigating body granted them written requests that their personal safety should be assured. Thus, in accordance with the requirements of the provisions of the Code of Criminal Procedure, the investigating body took measures to ensure the safety of the two men.

655. In addition, we hereby inform you that, during the course of the investigation, no complaints or statements relating to violations of any rights were made by Mr. Parfenov or Mr. Tsotsoria.

656. In accordance with the requirements of the Code of Criminal Procedure on secrecy, material relating to a preliminary investigation may not be divulged. Detailed information about the course of the investigation and its findings in these criminal proceedings can therefore not be provided.

Comments and observations of the Special Rapporteur

657. The Special Rapporteur thanks the Government of Kazakhstan for its response, which clarifyies the case of Mr. D. Parfenov and Mr. M. Tsotsoria. Nonetheless, the Special

Rapporteur would appreciate receiving further information about the current situation of Mr. Parfenov and Mr. Tsotoria, in particular as to whether they are still under the witness protection programme and held in a safe house.

Communication sent

658. On 16 September 2009, The Special Rapportuer sent an urgent appeal jointly with the 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 regarding the trial of Mr. Yevgeniy Zhovtis, director of the Kazakhstan International Bureau for Human Rights (KIBHR).

According to the information received:

659. On 3 September 2009, Mr. Yevgeniy Zhovtis was sentenced to four years of imprisonment for vehicular manslaughter.

660. In the evening of 26 July 2009, around 10 pm, Mr. Zhovtis was driving his car on a highway outside of Almaty when his car struck and killed a pedestrian. The victim was reportedly walking down the middle of the dark highway in the same direction as the traffic. After the accident, Mr. Zhovtis immediately stopped the car and called the police and ambulance. He voluntarily underwent a medical test in order to verify presence of any alcohol in his blood. According to this initial medical exam and technical expert analysis, Mr. Zhovtis was neither speeding nor intoxicated. Furthermore, the initial police examination of the scene of the accident reportedly also found that Mr. Zhovtis had no chance to avoid the accident.

661. On 27 July, investigative procedures were launched under Article 296 part 2 of the Criminal Code (violation of the traffic code resulting in manslaughter).

662. On 28 July, the investigative officer allegedly issued a decision as to the fact that Mr. Zhovtis was established as a suspect in the investigation. However, Mr. Zhovtis had not been duly informed of his status as a suspect/accused until 14 August 2009, when the written undertaking not to leave was applied as a restraint measure. From 28 July until 14 August, Mr. Zhovtis participated in a number of investigative procedures on the assumption to be a witness in the case. Due to the failure of investigative authorities to inform him of his procedural status of a suspect, he did not avail himself of any procedural safeguards guaranteed by the Criminal Procedure Code. Furthermore, the technical expertise was allegedly carried out on the basis of factual information submitted exclusively by the investigative authorities, part of which appeared inaccurate. The findings of this technical expertise, which stated that the accident could have been avoided, constituted the sole basis for the prosecutorial indictment.

663. Mr. Zhovtis met with the family of the victim to express his grief over the tragic accident. Mr. Zhovtis reportedly agreed to provide the family a material support of $15,000 to assist them following their loss. However, this agreement was not meant to imply an admission of legal liability from Mr. Zhovtis' side. On 6 August, the mother and the sister of the victim signed a statement confirming that Mr. Zhovtis provided material support to the family and that the family requested the investigating bodies to drop the criminal charges against Zhovtis. However, despite the fact that this document was handed to the investigator, it was not included in the materials of the criminal case, which the defense realized only in the court.

664. The motion of the defense of 18 August 2009 to repeat the technical examination was denied by the investigating officer. This rejection was only communicated to the defence on 24 August 2009.

665. On 20 August, the case was sent to the prosecutor's office and then to the Balkash district court, without the defence being notified of this, which appears to be in violation of Article 276 of the Criminal Procedure Code. On 25 August, the defence sent a complaint regarding this alleged procedural violation to the prosecutor's office of the Almaty region, however no reply was received. On 27 August, the defence brought forward a motion to the Balkhash district court to schedule preliminary hearings in order to review this procedural violation. This motion was dismissed without any reasoning.

666. On 27 August, Mr. Zhovtis's motion for a postponement of the trial to 2 September 2009 was granted by the court.

667. On 2 September 2009, the trial started and was conducted from 11 am to 7 pm. During that day, three motions were filed by the defence, all of which were rejected, reportedly without any reasoned decision. The motions related to 1) the auto-technical examination, which the defence holds was inadmissible due to a number of procedural violations, inaccurate data used and non-impartial findings made; 2) the inadmissibility of all evidence collected by investigative activities conducted during between 28 July and 14 August 2009 according to Article 116 Criminal Procedural Code as Mr. Zhovtis was not notified of his status as suspect, 3) the request to summon to court independent forensic experts who had submitted their conclusions to the defense at the pre-trial stage.

668. On 3 September, the defense filed two more motions, both of which were rejected by the court, allegedly without any substantiated reasoning. The first one was related to a repetition of the auto-technical examination by a commission composed of independent national and foreign experts; the second requested for an additional day for the defence to prepare the final arguments. The court granted both sides only 40 minutes to prepare their final arguments. This did not give Mr. Zhovtis' defense team sufficient time to analyze the arguments and prepare an adequate closing statement in defense of their client.

669. On the second day of the trial, on 3 September, Mr Zhovtis was convicted to four years of imprisonment for vehicular manslaughter and three years of deprivation of his right to drive a vehicle. After the pronouncement of the verdict, Mr. Zhovtis was taken into custody and then transferred to a detention facility in Taldy-Korgan which is several hundreds of kilometres from Almaty where the incident happened and Mr. Zhovtis lives.

670. Mr. Zhovtis intends to appeal the court decision in Taldy-Korgan regional court. An appeal would have to be submitted within 15 days. However, the written copy of the verdict was only obtained by Mr. Zhovtis and his defence team five days after its pronouncement in court. It appears that the substance of the verdict received by Mr. Zhovits differed from the one read out in the court.

671. Information received indicates that, in cases where the parties have reached reconciliation, vehicular manslaughter is either punished with a conditional sentence or no criminal proceedings are instituted in the first place. It is for this reason that the verdict given to Mr. Zhovtis appears not proportional and excessively harsh.

672. In view of the above, concern is expressed that Mr. Zhovtis might have not been afforded a fair trial. Concern is further expressed that this might be related to his activities carried out in the defence of human rights.

Communication received

673. On 18 November 2009, the Government of Kazakhstan replied to the communication sent on 16 September 2009, by the Special Rapporteur:

674. The trial of Mr. Evgeny Zhovtis, the Director of the Kazakhstan International Bureau for Human Rights and the Rule of Law, was based on the fact that a road accident had occurred.

675. According to the verdict, on seeing the high beams of oncoming vehicles, Mr. Zhovtis failed to take precautionary measures and reduce his speed (80 to 90 km/h) and, as a result, a person died.

676. Mr. Zhovtis thus violated section 10.1 of the Highway Code of the Republic of Kazakhstan, which states: "The driver of a vehicle shall not exceed the established speed limit and shall bear in mind the volume of traffic, the characteristics of the vehicle and the road and weather conditions, particularly traffic visibility". In order to comply with the Code, speed must be such that the driver can retain control over the vehicle at all times. In the event of an obstacle to the flow of traffic and/or a road hazard that the driver is able to detect, the driver must take steps to reduce speed, or to stop the vehicle if necessary, or bypass the obstacle in a way that does not endanger other drivers.

677. As a natural person who has broken the law in this case, Mr. Zhovtis is thus subject to the penalties prescribed by national legislation.

678. It is worth noting that Kazakh law is based on continental law, under which in such cases the party who has caused a person's death bears unconditional liability. Under article 67, paragraph 1, of the Criminal Code, release from criminal liability, in the event of reconciliation between the parties, is possible if a minor offence has been committed, i.e. the offence does not involve the death of the victim.

679. Mr. Zhovtis's efforts to achieve reconciliation with the victim's relatives does not mitigate his guilt, inasmuch as he did not admit his guilt. However, the court took into account Mr. Zhovtis's good professional and personal reputation and the testimony of his friends and colleagues and transferred him to a minimum security prison, or special settlement, rather than an ordinary correctional institution. It was also fully acknowledged that Mr. Zhovtis was not drunk, did not exceed the speed limit, had no intention of leaving the scene of the accident, tried to help the victim and called an ambulance and the police.

680. We wish to provide the following information concerning the procedural violations that the defence alleges to have taken place.

681. When Mr. Zhovtis was designated as a suspect by the investigator, there was a clerical error (misprint) involving the date of the order to designate him as a suspect, which was corrected in Mr. Zhovtis's presence as soon as it was noticed, on 14 August 2009 (it was changed from 28 July to 14 August). This means that until 14 August 2009, before seeing the order, Mr. Zhovtis had the status of a witness and only after he signed the order did he become a suspect.

682. Under the law, clerical errors (misprints, corrections) in orders that do not call into question the validity and legality of the investigative activities are admissible as evidence.

683. Of the 15 motions filed by the defence during the trial, 9 were granted (on allowing Mr. V. Tachenko and Mr. D. Koshim to act as public defenders, on postponing the trial, on allowing statements to the press, on extending the time to consult the file, on admitting the victim's relatives' statements concerning compensation for material and moral injury, on calling investigators as witnesses for questioning, on questioning experts and on adjourning the trial).

684. Concerning motions of the defence to repeat the technical examination of the motor vehicle and to conduct a preliminary hearing and submit the criminal case for further investigation:

685. With respect to the first motion, all investigative actions concerning Mr. Zhovtis were carried out with his and his lawyer's direct participation. The information in the expert appraisal was derived from the results of the inspection of the scene of the accident, a reconstruction of events and the testimony of Mr. Zhovtis himself and the witness Mr. S.

Nagorny. In this connection, the agency conducting the inquest/investigation considered that there was no need to carry out another technical examination. Order No. 27-1/972 rejecting the motion was sent to defence counsel in a letter dated 18 August, a copy of which was given to Mr. Zhovtis.

686. With respect to the second motion, by law, a judge takes the decision either to institute the main trial proceedings or to conduct a preliminary hearing. The judge rightly rejected the motion of the defence, as it was filed on 27 August, after the main trial proceedings had already begun (the decision to institute proceedings on 27 August had been taken on 21 August).

687. With respect to Mr. Zhovtis's absence from the appeal trial, we would inform you that under Kazakh law (article 408 of the Code of Criminal Procedure) the presence of a convicted person at an appeal trial is required only if his situation worsens, i.e. if his sentence might be increased. There were no plans to stiffen the penalties in this case, and Mr. Zhovtis's interests were defended by his lawyer during the court proceedings.

688. In general, this unfortunate case has become the object of contention and gross distortion of the facts. There are no grounds for imputing political overtones to the case because Mr. Zhovtis is the Director of the Kazakhstan International Bureau for Human Rights and the Rule of Law, as this criminal case is no different from other cases of this kind.

689. For reference: During the first nine months of 2009, in similar cases, 163 persons were sentenced to deprivation of liberty for a period of 3 to 10 years, including 60 persons who committed offences while under the influence of alcohol and 103 persons (63 per cent) who were sober.

690. The court hearings of the case were transparent, open and impartial. Many Zhovtis supporters and international observers were present at the court of first instance and during the appeal trial.

691. We consider the efforts to exert pressure on the authorities of Kazakhstan in connection with the court's decisions, by focusing attention on a few procedural violations based on information provided by the defence, to be wrongful. All the defence's motions were given timely and thorough replies from the appropriate authorities. There is no reason to doubt the competence and the independence of the judicial system of Kazakhstan.

692. In general, the international mechanism for the protection of human rights and freedoms must not be used as an instrument enabling individuals to evade liability, thus facilitating the violation of the principle of equality before the law and the courts.

Comments and observations of the Special Rapporteur

693. The Special Rapporteur thanks the Government of Kazakhstan for the reply received. The Special Rapporteur would appreciate receiving more information on the appeal hearing of Mr. Zhovtis. In particular, the Special Rapportuer is concerned at the information that, as indicated in the Government reply, under Kazakh law (article 408 of the Code of Criminal Procedure) "the presence of a convicted person at an appeal trial is required only if his situation worsens, i.e. if his sentence might be increased".

Kyrgyzstan

Communication sent

694. On 11 December 2009 the Special Rapporteur sent an allegation letter jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

punishment concerning the ill-treatment of detainees following the events which took place in Nookat on 1 October 2008.

According to the information received:

695. On 1 October 2008, the population of Nookat planned to hold an event dedicated to the Orozo Ait religious feast (Yid al Fitr) in the Central Park, which is an official holiday in Kyrgyzstan. On 27 September, the celebration was banned, but the akim of Nookat Rayon (head of administration) gave permission to celebrate the holiday at the local stadium. When people started to arrive at the stadium, they realized that the police had cordoned it, and no explanation was given by the authorities. The people went to the headquarters of the Nookat Rayon administration, where the akim came out and urged those gathered to disperse, threatening them to resort to legal measures if they did not leave within 30 minutes. During this time, several people came out of the administration building covered with blood, allegedly as a result of having been beaten by the authorities. The people outside became increasingly upset and launched an open confrontation as the police started to disperse them with batons. The police then used tear gas (cheremukha) and light-and-sound grenades (plamya). On 8 October, 32 people were detained and taken to the Nookat Police Department for their involvement in the events.

696. During the initial detention period, the detainees' families were asked by law-enforcement officials to pay for the release of their relatives. According to the allegations, the property of some of the detainees was expropriated for such purposes. However, the families of the detainees were not able to see them during the investigative phase, and only saw them at the trial.

697. The detainees were reportedly subjected to torture at the moment of detention, during their transfers, at the pre-trial facilities o the State Committee of National Security and at the pre-trial facility No. 5 of the Ministry of Justice.

698. Ms. Zaripa Karataevna Adbikarimova, who was pregnant at the time, was arrested at her home on 8 October. The police officers informed that she had to sign some papers and promised to take her back. She took her two-year-old son with her. Upon arrival at the Nookat Police Department, a police officer named Zhanysh pushed her and started to beat her in front of her child. He began to cry and was pushed out into the street. The police later called his grandmother so that she could pick him up. Ms. Abdikarimova was also beaten on her legs with clubs. On the same day, she was taken to the Office of the Prosecutor of Osh and to the Department of the State Committee of State Security of Osh and Osh oblast. She was later transferred to the pre-trial prison of the State Committee of State Security, where she remained for more than six weeks. There, she met her lawyer, whom she only saw on one further occasion during the investigation.

699. In the investigation room at the State Committee of State Security, Ms. Abdikarimova was forced to hold a coat rack in her hands. When her hands grew numb and she dropped it, she was heavily beaten. She was then forced to dance with Mr. Holmohammat Ergashev, one of the detainees, whose face was covered with blood. The authorities poured boiling water on his forehead, but he did not react, as he was almost unconscious. After she refused to dance with Mr. Ergashev, she was beaten. She was then asked to remove her clothes and have sex with him. In order to avoid this, she signed all the documents the authorities asked her to sign.

700. That same evening, an investigator named Talant called her to the investigation room. He asked her to kiss him, and when she refused, he started to harass her. During the trial, Ms. Abdikarimova stated to the court that she had been subjected to sexual violence, but her statements were ignored. The next day, the authorities put a gas mask on her head and let cigarette smoke into the hose. They then threatened to put her on an electric chair

and beat her on her feet. The following day, her head was shaven and she was forced to stand for many hours. After that, she was placed in a cell with chlorinated water.

701. Ms. Abdikarimova suffered a miscarriage as a result of the beatings. She received medical assistance, but after the doctor recommended that she stay in bed, she was taken to a cell where she was forced to stay naked in ankle-deep in chlorinated water. She was also offered to drink urine and was forced to remove her head scarf and sing the Kyrgyz anthem.

702. Two minors, who had also been detained, were tortured for the purpose of obtaining confessions from them. They were beaten and kicked on the genitals. One of the minors was forced to sit naked in a metal tub with cold water, while one end of an electric wire was placed in the water and the other was put in his hand and turned on. They also poured boiling water on his neck and beat him with a rifle butt. When the minors shouted or cried, they were gagged by the investigators. In addition, they were kept in incommunicado detention for several days, without access to their families or to a lawyer.

703. Other detainees were also subjected to the following: beatings with batons on their feet and hands on their ears; suspension with their hands behind their back while they were beaten across their bodies; dousing with cold and boiling water; having plastic bags on their head; having their beards torn or burnt with a lighter; placed naked in a cold concrete room, where the floor was covered with chlorinated water for three days; prohibited from using the toilet; having their fingernails torn; having vodka poured down their throat; and having to war a gas mask before or after doing exercises, where cigarette smoke was sometimes filtered in. In addition, some of the detainees were forced to stand in the "Afghani position", whereby they had to stand with half-bent legs on tiptoes, with their hands behind their backs, for long period of time. If the detainees tried to stand straight, they were severely beaten. Other detainees were taken to the "special room" in the Osh Department of the State Committee of National Security, where they were placed facedown in a metallic trestle bed. They were then handcuffed and beaten across their bodies. Another form of torture that was allegedly used was the electric chair. Detainees would be forced to sit in a metal chair, their hands tied to the armrest, a metallic wire on their heads, while they were threatened with its imminent application.

704. The trial was conducted by Nookat district court in Osh and not in Nookat City, which is 10 hours away by car. The trial started on 21 November. In addition, the process was postponed for several days and later resumed with very short notice. This limited the defense in terms of financial and logistical arrangements, as well as in trying to ensure the presence of witnesses and the collection of evidence. International organizations, human rights representatives and journalists were not allowed to sit in the court's sessions. The verdict was issued on 27 November and they were all convicted. The appeal process began on 17 January, and the verdict was only modified in the case of a minor. It is alleged that there was not a thorough consideration of the complaints and circumstances of the case during the process.

Communication received

705. On 13 Janaury 2010, the Government of Kyrgyzstan replied to the communication sent on 11 December 2009, by the Special Rapporteur.

Comments and observations of the Special Rapporteur

706. 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. She is unable, therefore, to make observations, and expects they will be included in the next report.

Lebanon

Communication sent

707. Le 27 Janvier 2009[1], le Rapporteur Spécial a envoyé un appeal urgent avec le Président-Rapporteur du Groupe de Travail sur la détention arbitraire et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants sur la situation de M. Fadi Sabunah, âgé de 25 ans, demeurant Bab al-Raml à Tripoli.

Selon les allégations reçues :

708. Il aurait été arrêté le 5 octobre 2008 par le Comité de sécurité collectif palestinien sans mandat de justice dans le camp de réfugiés de Beddawi, près de Tripoli. Il aurait ensuite été transféré au service de renseignement de l'armée libanaise et accusé de liens avec une cellule responsable d'attaques ayant visé l'Armée à Abdeh en mai 2008 et à Tripoli en août et septembre de la même année.

709. Gardé pendant une journée au poste militaire de Quba à Tripoli, il aurait ensuite été transféré au ministère de la défense à Al-Yarze, Beyrouth, où il aurait été détenu pendant 35 jours au secret. Le 11 novembre 2008, il aurait été emmené au poste de la police militaire d'Al-Rihania où il serait resté pendant 15 jours avant d'être retourné au ministère de la défense le 26 novembre pour de nouveaux interrogatoires. Depuis le 29 novembre 2008, il serait détenu à la prison de Roumié.

710. Pendant sa détention au ministère de la défense, M. Fadi Sabunah aurait été gravement torturé, parfois près de huit heures par jour sans interruption. Il aurait notamment été suspendu les mains rattachées derrière le dos, violemment battu, forcé de rester debout pendant deux jours et privé totalement de sommeil durant cinq jours. Les officiers, dans le but de lui faire signer de faux aveux, auraient également menacé de violer sa femme devant lui. Un certain M. Nabil Sary aurait participé aux interrogations au ministère de la défense.

711. En dépit du fait qu'il n'a pas la qualité de militaire, M. Sabunah ferait actuellement l'objet de poursuites pénales devant le tribunal militaire de Beyrouth. M. Nabil Sary, qui aurait été impliqué dans les interrogations au ministère de la défense, serait en même temps le juge d'instruction militaire chargé de mener la procédure actuellement en cours contre M. Sabunah.

712. En dépit d'une demande formelle d'examen médical au juge d'instruction chargé du dossier et plusieurs rappels, aucune expertise médico-légale n'aurait été effectuée à ce jour et aucune enquête n'aurait été ordonnée.

713. Des craintes sont exprimées que les preuves qui seront utilisées contre M. Sabunah pendant le procès devant le tribunal, pourraient être essentiellement constituées par des déclarations arrachées au moyen des mauvais traitements.

Communications reçues

714. Par lettre datée du 13/08/09 le Gouvernement a transmis une lettre de M. Nabil Sary, Conseiller à la Cour de Cassation au Liban. La lettre a indiqué que M. Sabounah a comparu devant le juge d'instruction judiciaire en sa qualité de mise en examen dans l'affaire de l'attentat à l'explosif qui avait eu lieu à El Tal le 15 novembre 2008. La comparution avait eu lieu le 19 novembre au cabinet du juge d'instruction à Beyrouth. M. Sabounah avait comparu non ligoté et assisté par son avocat. Il avait nié tous les chefs d'accusation qui lui ont été imputés par le Ministère public. Le 26 Novembre, le juge a demandé au médecin de

[1] This communication has been included in the current report as the reply has been received during the reporting period.

la prison d'effectuer un examen et a renvoyé la demande au Procureur général. Le 14 Janvier 2009, il a été libéré sous caution. M. Sabounah a adressé une demande d'examen médical au juge d'instruction. Le 26 novembre 2008, le juge a chargé le médecin de la prison d'examiner M. Sabounah. Le jour même, le Procureur Général près la Cour cassation a donné l'ordre au directeur de la prison de Roumié de soumettre M. Sabounah à un examen médical et de rédiger un rapport sur l'état de sa santé. M. Sabounah a été examiné par le médecin de la prison. M. Sabounah ne portait aucune trace visible de torture le jour où il a comparu devant le juge. Aucune requête comportant des allégations de torture n'a été communiquée au juge d'instruction. Le juge avait complètement rejeté du dossier de l'instruction les aveux et déclarations faits par M. Sabounah au ministère de la Défense. Le juge n'avait interrogé le détenu qu'une seule fois. Le juge avait toujours la qualité de magistrat d'instruction judiciaire auprès du Conseil judiciaire libanais et n'avait jamais occupé le poste de juge d'instruction militaire à Beyrouth. En autre, le juge n'avait assisté à l'interrogatoire mené contre M. Sabounah au ministère de la Défense par la police militaire.

Commentaires et observations du Rapporteur spécial

715. Le Rapporteuse spéciale remercie le Gouvernement du Liban pour la réponse. Toutefois, elle voudrait avoir des informations plus détaillées sur les allégations de violations procédurales que M. Sabunah aurait souffert (i.e. il aurait été détenu pendant 35 jours au secret et le 11 novembre 2008, il aurait été emmené au poste de la police militaire d'Al-Rihania où il serait resté pendant 15 jours avant d'être retourné au Ministère de la défense le 26 novembre). La Rapporteuse spéciale aimerait aussi avoir des informations sur les développements des poursuites pénales devant le tribunal militaire de Beyrouth.

Communications envoyées

716. Le 29 avril 2009, le Rapporteur spécial a envoyé un appel urgent avec le Président-Rapporteur du Groupe de Travail sur la détention arbitraire et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants sur la situation de M. Amer Hashash, âgé de 32 ans, et son frère, M. Mosbah Hashash, âgé de 38 ans, tous deux de nationalité libanaise.

Selon les allégations reçues :

717. Les deux frères, Amer et Mosbah Hashash, auraient été arrêtés le 16 novembre 2007 par des membres des forces de sécurité interne sans mandat d'arrêt. M. Amer Hashash aurait été arrêté alors qu'il quittait sa maison (bâtiment Ladki, rue de Nouweiri, Beyrouth). Mosbah aurait été arrêté à la résidence de leur mère, à qui il avait rendu visite. Ils auraient ensuite été détenus incommunicado pendant trois mois à la branche de renseignements des forces de sécurité interne (baraques Ibrahim Khoury, rue de Adib Isaac, Ashrafieh, Beyrouth). Pendant ce temps, les deux frères auraient été privés de sommeil et de nourriture pendant trois jours et forcés à rester nus. Ils auraient été battus et immergés dans l'eau froide à plusieurs reprises. Ils n'auraient pas eu accès aux toilettes et aux installations sanitaires pendant de longues périodes. Pendant trois mois, ils n'auraient pas pu changer de vêtements. Les officiers auraient aussi menacé de maltraiter leurs familles s'ils refusaient de coopérer. Il paraitrait que le but de ces traitements était de forcer les deux hommes à signer des aveux, ce qu'ils ont fait. Au mois de février 2008, les frères Hashash auraient été transférés vers la branche de renseignements de la prison Roumieh à Beyrouth, où ils seraient restés pendant un mois et ensuite vers le bâtiment "B" de Roumieh. Bien que leurs familles aient pu leur rendre visite, elles auraient rencontré de nombreux obstacles.

718. Quand les frères ont été présentés devant le juge d'instruction, M. Rachid Mezher, ils auraient dénoncé la torture à laquelle ils auraient été soumis. Cependant, le juge n'aurait pas réagi et n'aurait pas ordonné d'examen médical. Il aurait autorisé la prolongation de

leur détention le 23 février 2008. Leur procès devrait commencer le 24 juin 2009 devant le tribunal militaire de Beyrouth.

Communications reçues

719. Le 17 Juillet 2009, le Gouvernement du Liban a répondu à l'appel urgent et a communiqué aux Rapporteurs spéciaux la correspondance du Ministère libanais de l'intérieur et des municipalités ainsi que la réponse de la Direction générale des forces de sécurité intérieures concernant le cas de frères libanais Amer et Mosbah Hashash.

720. Suite à votre courrier no 9418 du 26 mai 2009, et après en avoir pris connaissance et consulté les unités et sections concernées, nous tenons à apporter les précisions suivantes:

721. Le 16 novembre 2007, à Beyrouth, sur ordre du Procureur général près la Cour de cassation, le juge Saïd Mirza, il a été procédé à l'arrestation des frères Amer et Mosbah Hachach pour appartenance à une organisation fondamentaliste.

722. Lors de leur interrogatoire qui a fait l'objet du procès verbal no 718/302 en date du 16 novembre 2007, ils ont tous deux reconnu appartenir secrètement au groupe al Ansar depuis plus de dix ans.

723. Au cours de l'enquête, les deux accusés n'ont subi aucune violence physique ou torture et ils ont reconnu immédiatement les faits qui leur étaient reprochés, sans pression ni contrainte.

724. À l'issue de l'enquête préliminaire et conformément à la procédure en vigueur, ils ont été déférés devant la justice militaire. Le juge d'instruction militaire a alors, en leur présence, émis à leur encontre un mandat de dépôt, ordonnant leur placement à la prison du siège central des forces de sécurité intérieure.

725. Les deux accusés ont été placés dans des cellules remplissant toutes les conditions sanitaires (chaque cellule est équipée de toilettes).

726. Durant leur détention, les accusés ont subi des examens médicaux journaliers et leurs proches leur rendaient visite régulièrement avec la permission des autorités judiciaires compétentes.

727. En mars 2008, les deux détenus ont été transférés à la prison centrale de Roumieh qui relève de la gendarmerie.

728. En ce qui concerne les questions posées dans la note jointe, la Direction générale des forces de sécurité intérieure a indiqué ce qui suit.

729. Toutes allégations formulées par Amer et Mosbah Hachach sont inexactes.

730. Au cours de leur détention, les deux accusés n'ont déposé aucune plainte, que ce soit directement ou par l'intermédiaire de leurs proches ou de leur avocat.

731. La communication des pièces demandées est du ressort exclusif de la juridiction compétente.

732. Comme indiqué précédemment, les allégations de violation formulées sont sans fondement et aucune procédure n'a donc été engagée.

733. Faute de justification et d'objet, les deux personnes concernées n'ont pas été indemnisées.

734. Une copie du dossier a été déposée auprès de l'avocate générale près la Cour de cassation, Jocelyne Thabet, suite à sa demande et afin qu'elle l'examine.

Commentaires et observations du Rapporteur spécial

735. La Rapporteuse spéciale remercie le Gouvernement du Liban pour la réponse. En même temps, compte tenu aussi de la gravité des allégations, la Rapporteuse spéciale aimerait recevoir des informations complémentaires, en particulier sur le fait que les frères Hashash auraient été détenus incommunicado pendant trois mois à la Branche de renseignements des Forces de sécurité interne, ainsi que sur leur situation actuelle y compris sur le procès judiciaire en cours. Elle voudrait aussi rappeler que le jugement de civils par des tribunaux militaires ou d'exception devrait être exceptionnel, c'est-à-dire limité aux cas où l'État 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 (observation générale n° 32 du Comité de droit de l'homme, paragraphe 22). La Rapporteuse spéciale voudrait aussi recevoir des informations sur la réglementation des visites familiales dans la prison où les frères Hashash se trouvent.

Communication envoyée

736. Le 23 Novembre 2009, la Rapporteuse spéciale a envoyé un appel urgent avec le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants sur la situation de M. Ghazi Faysal Mogalled.

Selon les informations reçues:

737. M. Ghazi Faysal Mogalled aurait été arrêté par le Hezbollah le 8 février 2006. Ensuite, pendant cinq mois, il aurait été détenu dans un établissement du Hezbollah, où il aurait été soumis à des décharges électriques sur la tête et à une simulation d'exécution par gaz. Par conséquent, il souffrirait de problèmes respiratoires. Il aurait également passé cinq mois en isolement dans une cellule de moins de deux mètres carrés. Le 17 juillet 2006, il aurait été transféré dans un autre endroit où il aurait à nouveau été soumis à des décharges électriques et ses doigts auraient été cassés.

738. Trois jours plus tard, M. Mogalled aurait été transféré au centre de détention du Ministère de la Défense. Les services de renseignements militaires lui auraient demandé de fournir des informations concernant des avions israéliens ayant attaqué le Liban en juillet 2006, alors qu'il était en réalité déjà détenu depuis plusieurs mois avant l'attaque. Il aurait passé six mois les yeux bandés dans un couloir. Il serait resté suspendu à une corde rattachée à une poutre jusqu'à 36 heures. De plus, il aurait été soumis au falaga et aux décharges électriques. Il aurait également été recouvert de sable visant à provoquer une irritation de la peau et menacé de viol. Ses dents auraient également été brisées. Chaque fois que le Comité International de la Croix-Rouge lui a rendu visite, il aurait été emmené dans une cellule propre et reçu de la nourriture. Après avoir passé six mois dans un couloir, il aurait été placé en isolement dans la cellule no 15, au deuxième sous-sol, et sa famille aurait été autorisée à lui rendre visite une fois par semaine. Il aurait en outre été forcé de signer des documents.

739. Sa première audience aurait eu lieu le 5 août 2006, devant un juge d'instruction militaire. Il n'aurait pas eu accès à un avocat. Quand il mentionnait la torture à laquelle il aurait été soumis, le juge aurait clos le dossier et reporté l'audience. Suite à cette plainte, il aurait à nouveau été soumis à la position balanco.

740. Le 31 juillet, il aurait été condamné à la prison à vie pour avoir communiqué des informations à Israël. Il aurait également été condamné pour être entré en Israël sans autorisation et avoir travaillé avec l'armée ennemie. Il serait actuellement détenu dans le

bâtiment D de la prison centrale de Roumieh et son audience auprès du tribunal militaire d'appel serait prévue pour le 24 Novembre 2009.

Communication reçue

741. Le 15 février 2010 le Gouvernement du Liban a répondu à l'appel urgent et a transmis la réponse du Ministère de la Défense:

742. M. Ghazi Faysal Mogalled a été arrêté le 21 juillet 2006 et incarcéré au centre de détention du Ministère de la défense nationale pour collaboration avec les Services secrets israéliens et d'autres instances étrangères.

743. L'interrogatoire du détenu a été mené avec un grand professionnalisme, conformément aux législations en vigueur. Contrairement à ses allégations, il n'a été soumis à aucun acte de torture physique. Il serait en effet inconcevable qu'un être humain puisse être suspendu dans la position du balanco pendant trente-six heures. Il n'y a d'ailleurs au centre aucun instrument pour se livrer à une telle pratique. Sont également inexactes les allégations selon lesquelles M. Mogalled aurait été recouvert de sable aux fins de lui causer une irritation de la peau, soumis à des décharges électriques et menacé de viol. De même, on ne l'a jamais menacé de lui briser les dents ni traité de «chien no 43». Ces allégations sont toutes fausses et dénuées de tout fondement. Il n'y a d'ailleurs au centre de détention aucun instrument de torture. Enfin, lorsqu'il est déféré devant un juge pour la première fois, le détenu est en droit de demander à être examiné par un médecin afin que soit établi un bilan détaillé de son état de santé.

744. Avant d'être admis au centre de détention, les détenus sont minutieusement fouillés afin de vérifier qu'ils ne détiennent aucun objet non autorisé ou tranchant avec lequel ils seraient susceptibles de se blesser ou d'attaquer leurs gardiens. C'est le seul moment au cours duquel ils sont déshabillés. Ils sont ensuite immédiatement soumis à un examen médical effectué par le médecin de la prison qui prend connaissance de leur état de santé et vérifie que rien ne s'oppose à leur incarcération. Les détenus sont en outre quotidiennement soumis à un examen médical pour suivre leur état de santé.

745. Les repas auxquels a droit M. Mogalled et tous les autres détenus du centre de détention du Ministère de la défense nationale sont les mêmes que ceux qui sont servis à tous les militaires du centre. Il est de ce fait impossible que les rations qui lui sont fournies soient quotidiennement composées de pain et de pommes de terre, comme le prétend le détenu.

746. L'enquêteur rédige et lit à haute voix le procès-verbal en présence du détenu avant de lui demander de le signer. Si celui-ci refuse de le faire, son refus est consigné dans le procès-verbal. Contrairement à ce que prétend M. Mogallad, ni lui ni aucun autre détenu n'a été contraint de signer des aveux sous la torture.

747. M. Mogallad a comparu devant le juge d'instruction du tribunal militaire et a affirmé que toutes les déclarations qu'il avait faites au cours de l'interrogatoire conduit par la Direction du renseignement étaient exactes et qu'il en confirmait chaque détail. Il a ajouté qu'il avait signé ses déclarations de son plein gré sans y avoir été contraint et qu'il avait demandé à être défendu par un avocat et obtenu satisfaction.

748. Le fait qu'un rapport établi par des organisations, qui prétendent défendre les droits de l'homme, soit fondé sur les fausses allégations d'un détenu accusé de trahison envers son pays et de collaboration avec l'ennemi et qu'un tel rapport soit présenté de façon officielle sur la base de ces allégations, sans qu'il ait été discuté au préalable avec les autorités judiciaires et l'administration du centre de détention, est bien la preuve du manque d'objectivité dudit rapport.

Commentaires et observations du Rapporteur spécial:

749. La Rapporteuse spéciale remercie le Gouvernent du Liban de sa réponse du 15 février 2010. Au même temps, elle voudrait recevoir des informations mises à jour sur l'état judicaire du cas de M. Mogallad, en particulier les résultats de l'audience auprès le tribunal militaire qu'était prévu pour le 24 novembre 2009.

750. La Rapporteuse spéciale voudrait aussi rappeler que le jugement de civils par des tribunaux militaires ou d'exception devrait être exceptionnel, c'est-à-dire limité aux cas où l'État 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 (observation générale n° 32 du Comité de droit de l'homme, paragraphe 22).

Madagascar

Communication envoyée

751. Le 2 juin 2009, la Rapporteuse spéciale a envoyé un appel urgent avec le Président-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants sur la situation de M. Rabenantoandro Lanto, âgé de 48 ans, sénateur de Madagascar élu au titre du parti « Tiako I Madagasikara (TIM) » et président de la Commission de finances du Sénat ; M. Randrianjatovo Henri François Victor, âgé de 61 ans, député du Faratsiho, élu au titre du parti « Tiako I Madagasikara »; M. Rakotomandimbindraibe Mamisoa, âgé de 47 ans, député de Ambatolampy élu au titre du parti « Tiako I Madagasikara »; M. Rakotozandry Raymond, âgé de 49 ans, député de Mandoto élu au titre du parti « Tiako I Madagasikara »; et M. Ralitera Andrianandraina, Directeur de sécurité de la Haute Cour constitutionnelle.

Selon les allégations reçues :

752. Les quatre députés auraient été arrêtés sans mandats d'arrêt le 23 avril 2009 à Ambatoroka-Ambanidia à Antananarivo par les Forces armées du CAPSAT, y compris le Commandant Charles Andrianasoavina sous les ordres de la Haute Autorité de Transition (HAT) et de la Commission Nationale Mixte d'Enquête (CNME). Bien qu'ils n'aient pas résisté à l'arrestation, ils auraient été frappés, giflés et auraient reçu des coups de poing pour les humilier et les intimider. On les aurait aussi forcés de s'agenouiller devant les officiers et de marcher sur les genoux. En résultat de ces traitements, ils auraient eu des bleus, contusions et maux de tête. Ils auraient ensuite été embarqués dans un camion militaire pour être amenés dans trois endroits différents et finalement descendus à Ambohibao, siège de la CNME (Commission Nationale Mixte d'Enquête) pour une garde à vue de 48 heures. Ensuite ils auraient été déférés en prison.

753. Suite à une détérioration de sa santé, M. Lanto Rabenantoandro aurait été transféré à l'hôpital militaire de Soavinandriana, où il aurait bénéficié des traitements médicaux adéquats pendant quelques heures. Le 25 avril 2009, dans la matinée, des militaires armés l'auraient conduit au Palais de Justice à Anosy pour enquête et directement incarcéré dans la maison d'arrêt à Antanimora. Malgré le certificat médical du médecin traitant et la recommandation du médecin pénitentiaire de transférer M. Lanto Rabenantoandro dans un hôpital, l'hospitalisation aurait eu lieu avec un délai considérable.

754. Ralitera Andrianandraina aurait été arrêté le 27 avril 2009 par Alain Ramaroson, responsable de la sécurité au niveau de la HAT - CNME dirigé par le Commandant Charles

Randrianasoavina. Pendant l'arrestation, il aurait été frappé sur la tête et forcé de marcher sur les genoux. Son état de santé serait inquiétant. Ni son avocat ni un médecin n'auraient été autorisés à le voir.

Communication reçue

755. Pas de réponse.

Communication envoyée

756. Le 21 juillet, la Rapporteuse spéciale a envoyé un appel urgent concernant la situation de la justice à Madagascar suite aux ordonnances n°2009-001 et n°2009-002 du 17 mars 2009, instituant un directoire militaire et donnant les pleins pouvoirs à M. Andry Nirina Rajoelina, président de la Haute Autorité de Transition de Madagascar (HAT).

Selon les informations reçues:

757. Plusieurs chefs de juridictions malgaches auraient été destitués par le HAT et remplacés par des magistrats favorables au nouveau régime, et ce contrairement aux règles de droit en vigueur dans le pays. En effet, en vertu de la Constitution, la loi sur le statut des magistrats, la loi sur le Conseil supérieur de la magistrature et divers règlements afférents, le remplacement des juges en chef de Cours et de Juridictions doit être fait par décret présidentiel, sur proposition du Conseil supérieur de la magistrature. Depuis le régime HAT, ces règles ne seraient plus suivies lors de la nomination de nouveaux magistrats.

758. Depuis le nouveau régime, plusieurs haut-gradés de la magistrature, dont le Procureur de la République, des juges d'instruction présidents de tribunal, le Procureur général de la Cour d'appel et le Premier président de la Cour d'appel, auraient été remplacés faute d'avoir obéi aux ordres de la HAT. Les juges de la Haute Cour constitutionnelle auraient également été intimidés et menacés par le HAT, en plus d'être victimes de sanctions disciplinaires. Le ministre de la justice du HAT aurait d'ailleurs saisi tous leurs dossiers. M. Randrianarivelo Désiré, président du Syndicat des magistrats, aurait été arrêté par le nouveau régime et inculpé d'atteinte à la sûreté intérieure de l'Etat, d'usurpation de titre et de fonction et d'incitation à des rassemblements illicites et interdits par les autorités compétentes. Le seul reproche à son égard serait d'avoir été proposé par le Président Marc Ravalomanana à la fonction de Ministre de la Justice.

759. Depuis la prise de pouvoir du HAT en mars 2009, plusieurs arrestations, perquisitions et détentions auraient également été effectuées sans mandat par des milices armées et des militaires. Plusieurs procès auraient été conduits par des juges hors juridiction, et ce sans la présence d'avocats. La plupart des victimes auraient été accusées de porter atteinte à la sûreté de l'Etat. Dans plusieurs cas, on leur aurait également interdit de communiquer avec leur famille et leur avocat pendant plusieurs jours et certains individus auraient été mis en prison sans jugement.

760. Par ailleurs, la HAT aurait également créé une Commission Nationale Mixte d'Enquête qui est censée être « l'outil opérationnel à la disposition de la HAT pour l'exercice de son pouvoir judiciaire et de sécurité sur tous les actes illégaux perpétrés avant, pendant et après la crise ».

Communication reçue

761. Pas de réponse

Commentaires et observations du Rapporteur Spécial

762. La Rapporteuse spéciale regrette qu'aucune réponse n'était reçue aux lettres envoyées le 2 juin et le 21 juillet 2009. La Rapporteuse spéciale demande au Gouvernement de lui transmettre au plus tôt des informations précises et détaillées en réponse à ces allégations.

Malaysia

Communication sent

763. On 12 June 2009 the Special Rapporteur sent an allegation letter jointly 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.

764. In this connection, we would like to draw the attention of your Government to new information we have received regarding the situation of Mr. V. Ganabatirau, Mr. R. Kenghadharan and Mr. M. Manoharan, lawyers of the Hindu Rights Action Force (HINDRAF), Mr. P. Uthayakumar, legal adviser, and Mr. T. Vasanthakumar, organizing secretary of the same organization.

765. The five afore mentioned persons were the subject of a first urgent appeal sent on 27 December 2007 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the former Special Representative of the Secretary-General on the situation of human rights defenders. A second urgent appeal was sent on 21 April 2008, by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. We welcome and thank the responses sent by your Government on 8 February 2008, 28 August 2008 and 19 December 2008.

According to new information received:

766. After being arrested on 13 December 2007, under Section 8(1) of the Internal Security Act (ISA), for carrying out activities threatening the national security of the State, Mr. V. Ganabatirau, Mr. R. Kenghadharan, Mr. P. Uthayakumar, Mr. M. Manoharan, and Mr. T. Vasanthakumar, challenged their detention on several occasions. On 26 February 2008, the Kuala Lumpur High Court rejected their habeas corpus applications. On 14 May 2008, an appeal of this decision was dismissed.

767. A new habeas corpus appeal before the Apex Court is still pending. Although, on 11 February 2009, the Federal Court unanimously dismissed the five HINDRAF leader's motion for review of their habeas corpus application, confirming precedent judicial decisions in which it was stated that the Prime Minister could order a person to be detained under Section 8 of the ISA without waiting for full investigation by the police.

768. On 5 April 2009, 13 detainees under the ISA were removed from the Kemta Prison, Kamunting, Perak, including Mr. V Ganabatirau and Mr. R. Kenghadharan, and were placed under the Restricted Residence Act (RRA). Mr. P. Uthayakumar, Mr. M. Manoharan and Mr. T. Vasanthakumar remained detained under the ISA at the Kemta Prison, Kamunting, Perak.

Communication received

769. On 26 August 2009 the Government of Malaysia replied to the communication sent on 12 June 2009, by the Special Rapporteur.

770. The government gave extensive background information to assist the Speacial Rapporteur in ascertaining whether the actions of the Government and the security personnel were justified. That despite its establishment in 2005, HINDRAF remains a non-registered society, which in itself is a contravention of the Societies Act of 1966 (Act 335) it has been actively promotig ethnic Indian community against Malay-Muslims. This is evidenced when Mr. V. Ganabatirau, Mr. R. Kenghadharan, Mr. P. Uthayakumar, Mr. M. Manoharan, and Mr. T. Vasanthakumar (the detainees) through HINDRAF, have resorted to various tactics that include holding public rallies, gatherings and forums. On 6 Novermber 2007, HINDRAF applied for a permit to hold a gathering to submit a memorandum to the British High Commissioner in Jalan Ampang, Kuala Lumpur. The application was given due consideration and was rejected by the Officer in Charge of Police District on 16 November 2007, and subsequently by the Kuala Lumpur Chief of Police upon appeal. The application and appeal by HINDRAF was rejected on the grounds of maintaining public safety and order. The planned protest would have taken place within the vicinity of a busy shopping discrict with full public access. The proposed gathering venue is also close to where several foreign mission offices are located.

771. Two days prior to the protest the police had obtained an order from the Magistrates Court in Kuala Limpur to restrain HINDEAF from carrying out and/or participating in the said protests. The said order was then served on each of the five detainees on the same day with copies of the same posted at various public places in and around the vicinity of the planned venue, and through media coverage. The necessity of the court order came after the Police found one of the detainees Mr. M. Manoharan, present at the public gathering and brazenly commanding its followers to turn up in full force on the day of the planned rally. Despite the warnings the rally went ahead on 25 November 2007. The demonstrations became violent and the police used water cannons and teargas to disperse the crowds. A total of 54 persons were arrested at the city centre that day. On 13 December 2007 the Minister of Internal Affairs issued detention orders pursuant to section 8 (1) Internal Security Act 1960 against Veraman Mr. V. Ganabatirau, Mr. R. Kenghadharan, Mr. P. Uthayakumar, Mr. M. Manoharan, and Mr. T. Vasanthakumar. Subsequent to the order the five were arrested and they were escorted to the Kamunting Detention Centre to undergo the said detention. In this instance the detainees had been accorded the right to councel, M. Manoharan was allowed to see their family and counsel on 14 December 2007, the day after the arrest. These visitation rights were also given to each Detainee to meet with family members and counsel.

772. The detainees were detained under section 8 of the ISA which is and independent and separate provision from section 73. Section 8 of the ISA detention is independent and can be operated on its own without relying on arrests and inquiries made under section 73 of ISA. The issue of sixty day period does not arise since under Section 8 the Minister has the right to order for the detention for a period of up to two years. The rights and safeguards as enumerated above are applicable and have been utilised by the Detainees. The five detainees on 19 December 2007 filed habeas corpus applications in Kuala Lumpur High Court to challenge the legality of their arrest and detention. They raised two issues in the application namely (a) that the purported detention order issued against them under section 8 (1) of the ISA was unlawful and illegal since there was no formal arrest and detention for investigation as prescribed under section 73 of the ISA. (b) there was non compliance of procedural requirement of section 11 (2) of the ISA Rule 3 (1) of the Advisory Board Rules 1972 where the term terminology “chairman of Advisory Board” was used instead of the required terminology “Secretary of the Advisory Board” for the purposes of the said

detention order with allegation of facts and Form 1 for the purpose of making representations which counsel contended out to vitiate the detention process.

773. The Kuala Lumpur High Court, on 26 February 2008 after hearing extension submissions made by both counsel for the five detainees and Attorney General held that the detention order issues under section 8 (1) of the ISA was not subjected to formal arrest and investigation pursuant to section 73 of the ISA was valid. The Court held that on the first issue, the argument by the counsel ought to be unsuccessful in view of a federal court decision which the court was bound to follow. As regard the second issue, the court held that the alleged non compliance of procedural requirement was not fatal and that would invalidate the detention process as long as such Form 1 was successfully served and ultimately communicated to the Chairman of the Advisory Board. The said applications were dismissed and the detainees appealed to the federal court on 27 February 2008. The hearing was scheduled for 14 January 2008 and adjourned to 12 February 2008. The Advisory Board presided over the cases on 12-15 February and 19and 20 February. The detainees were represented by counsel. During trial a motion by defendants councel to examine the investigating officer was denied as it was deemed prejudicial to national security and would lead to disclosure of informants. This is permissible by virtue of section 16 of the ISA.

774. The government also indicated to the Special Rapporteur the nature of the criminal proceedings and hearings that took place before the Ipoh High court. The government also indicated the nature of the proceedings and hearings that were filed by Uthayakumar and the subsequent appeal to the Federal Court. The government also elaborated on the proceedings brought by Mahoran before the High Court in Kuala Lumpur and subsequent appeal to the federal court.

Comments and observations of the Special Rapporteur

775. The Special Rapporteur thanks the Government of Malaysia for its comprehensive response, which provides clarification on the legal basis of the detention of Mr. P. Uthayakumar, Mr. M. Manoharan, Mr. T. Vasanthakumar, Mr. Ganabatirau and Mr. R. Kengadharan. The Special Rapporteur would like to have more information on the suspension of the detention order and the restrictions imposed to them under Section 10 of the ISA.

776. The Special Rapporteur recalls that deprivation of liberty under administrative detention should be an exceptional measure which is only possible where the security of the State makes it absolutely necessary and must cease as soon as the individual ceases to pose a real threat to State security. Deprivation of liberty on such grounds cannot be prolonged indefinitely.

Mexico

Comunicación enviada

777. El 24 de abril de 2009, el Relator Especial envió un llamamiento urgente junto al Presidente-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, 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 los derechos humanos en relación con la información siguiente:

De conformidad con las informaciones recibidas:

778. El 7 de abril de 2009, cinco hombres fueron arrestados en Tuxtla Gutiérrez, capital del Estado de Chiapas, tras organizar una protesta ante la prisión local donde se encuentran recluidos familiares suyos, quienes pertenecen a una organización de granjeros conocida como MOCRI-CNPA-MN. Tras su arresto, estas cinco personas permanecieron recluidas en régimen de incomunicación durante dos días y fueron trasladadas luego a un hotel en desuso del Municipio de Chiapa de Corzo llamado "Quinta Pitiquito", que la Procuraduría General de Chiapas utiliza como centro de detención.

779. Se informa que uno de los detenidos, el Sr. Erick Bautista Gómez, recibió repetidos golpes de puño en el estómago, bofetadas y tiradas de cabello. Fue amenazado que a su hermana le sucedería "algo desagradable" si él no colaboraba.

780. Se informa asimismo que el 14 de abril de 2009, seis hombres de la comunidad indígena Tzeltal de San Sebastián Bachajón, Municipio de Chilón, fueron detenidos mientras realizaban algunas compras en la localidad de Ocosingo. Estas seis personas fueron también conducidas a la "Quinta Pitiquito". Se informa que habrían sido torturados por los policías que les detuvieron, y tienen marcas visibles de golpes. Una vez detenidos, habrían sido obligados a firmar declaraciones que no comprendían, pues su conocimiento del castellano es limitado. Pese a que estaba presente un intérprete, éste no hablaba tzeltal.

781. Se informa por último que ninguna de estas once personas ha sido formalmente acusada y que permanecen detenidos sin cargos en un centro de detención no oficial. Tienen un acceso restringido a abogados y familiares.

Comunicaciones recibidas

782. En una carta fechada el primero de septiembre de 2009, el Gobierno de México respondió a la comunicación. Según la carta, los hechos presentados en la comunicación fueron parcialmente ciertos. De acuerdo con la información proporcionada por la Fiscalía Especial, los Sres. Eric Bautista Gómez, Pedro López Gómez, Genero Gómez Gómez, Ramiro Hernández Gñomez, Flemón Ruiz Sánchez y Marden Ruiz Gómez, efectivamente fueron detenidos el 7 de abril del 2009, por elementos de la Policía Ministerial de la PGJ Chis con la finalidad de que rindieron su declaración ministerial en relación con el asesinato de la Sra. Martha Gómez Pérez y un ataque contra los Sres Manolo Molina Navarro, Esteban López García y Francisco Oseguera Gutiérrez.

783. Se informó que la detención obedeció a la ejecución de una orden de búsqueda, localización y presentación del 23 de febrero de 2009. De manera inmediata fueron puestos a disposición de la autoridad ministerial por su probable participación en la comisión de los delitos de homicidio calificado y lesiones calificadas.

784. Se informó que, debido a que el Fiscal Especial requería de mayores elementos para comprobar la presunta responsabilidad de los inculpados y por considerar que existía el temor fundado de que se ausentaran o se ocultaran antes de que las investigaciones concluyeran, solicitó al Juez especializado en medidas cautelares del estado de Chiapas obsequiara la medida precuatoria de arraigo, misma que fue concedida por un término de 20 días naturales en la "Quinta Pitiquitos" ubicada en la carretera Tuxtla, Chapa de Corzo, Chiapas. Asimismo se informó que los inculpados fueron visitados por sus familiares y en todo momento estuvieron acompañados de un defensor social adscrito al Tribunal del Justicia del estado, permitiéndose-les tener acceso a la averiguación previa antes de que rindieran su declaración ministerial, así como mantener de manera personal y privada una entrevista con el abogado defensor, asegurando una defensa adecuada a sus intereses.

785. Según la carta del Gobierno, el 7 de abril se emitieron los certificados de los exámenes médicos practicados a los seis hombres detenidos por un médico legista de la Dirección de Servicios de Técnica Forense y Criminalística de la PGJ Chis. La carta proporcionó información en relación con las investigaciones iniciadas en relación con el

asesinato de la Sra. Martha Gómez Pérez y se informó que, después de varios días de investigaciones, el 30 de abril de 2009, el Fiscalía Especial solicitó el levantamiento del arraigo de todos los inculpables con la excepción del Sr. Bautista Gómez. Los otros cinco detenidos fueron liberados. La Fiscalía ejercitó acción penal en contra de Eric Bautista Gómez por su probable responsabilidad en el homicidio. El inculpable fue trasladado a las instalaciones del Centro de Readaptación Social no. 14 "El Amate", quedando sujeto al proceso penal 277/2009 en el Juzgado Primero del Ramo Penal del Distrito Judicial de Tuxtla Gutiérrez, Chiapas. El proceso penal actualmente se encuentra en etapa de instrucción.

786. En relación con el segundo grupo de inculpados, se informó que el 13 de abril 2009, el Sr. Jerónimo Gómez Saragos fue detenido por robo. Se informó que al hacerle una revisión corporal fue encontrado un teléfono celular, propiedad de otra persona.

787. Se informó que el Fiscal Especial solicitó la intervención de un perito médico legista para que dictaminara la integridad física del Sr. Gómez Saragos. Asimismo, se informó que le fue tomada su declaración ministerial con la asistencia del defensor social y un traductor en lenguas tzolizil y tzeltal.

788. Según la carta, de los elementos contenidos en la declaración del Sr. Gómez Saragos, el 14 de abril de 2009, 5 otros hombres fueron detenidos en el municipio de Chilón, Chiapas en relación con una investigación por el delito de robo de una cámara fotográfica y de un teléfono celular. El 17 y 19 de abril de 1009, elementos de la Policía Ministerial pusieron a disposición del Fiscal Especial 2 otros hombres inculpados con motivo de la ejecución de una orden de búsqueda, localización y presentación fundada y motivada.

789. Se comunicó que la detención obedeció a la ejecución de una orden de búsqueda, localización y presentación y que, de manera inmediata, los detenidos fueron puestos a disposición de la autoridad ministerial por su probable participación en la comisión de los delitos de robo con violencia y delincuencia organizada. Se añadió que les fue tomada su declaración con la asistencia del defensor social y un traductor en lenguas tzolizil y tzeltal.

790. El 18 de abril de 2009, el Cuarto Visitador de la Comisión Nacional de los Derechos Humanos (CNDH), acompañado de un médico de la citada institución, se trasladaron a "Quinta Pitiquitos" y visitaron a los hombres detenidos citados para documentar su detención, ofrecerles asesoría, recibir su queja y certificar su estado de salud. Los hombres fueron examinados médicamente y entrevistados en privado, y al final de la entrevista manifestaron que no era su deseo presentar una queja. Los certificados médicos concluyen que los hombres se encontraron sanos y sin huellas de lesiones externas recientes visibles. El 20 de abril de 2009, el Fiscal Especial solicitó y obtuvo del juez especializado en medidas cautelares del estado de Chiapas una orden de arraigo en contra de todos los inculpados, en razón de que se presumía fundamente su participación en delitos de robo con violencia y delincuencia organizada. El juez concedió la solicitud por el término de 40 días en "Quinta Pitiquitos".

791. Los inculpados fueron visitados por sus familiares y en todo momento estuvieron acompañados de un defensor social adscrito al Tribunal de Justicia del estado. Asimismo se les hizo de su conocimiento de sus garantías judiciales como lo es el de tener conocimiento de los delitos que se les acusaban, y otras provisiones de las garantías procesales.

792. Se informó que, el 30 de abril de 2009, el Fiscal Especial ejercitó acción penal en contra de los ochos hombres detenidos por su probable responsabilidad de los delitos citados. Los inculpables fueron trasladados a las instalaciones del Centro de Readaptación Social número 14 "El Amate", quedando sujetos al proceso penal en el Juzgado Primero del Ramo Penal del Distrito Judicial de Tuxtla Gutiérrez, Chiapas. El proceso penal actualmente se encuentra en etapa de instrucción.

Comentarios y observaciones de la Relatora Especial

793. La Relatora Especial agradece la respuesta detallada del Gobierno de México a esta comunicación. Sin embargo apreciaría recibir más información sobre los desarrollos del proceso penal contra los acudasos. La Relatora Especial también quisiera recibir más información sobre la legalidad de la privación de libertad en un centro de detención no oficial, como parece ser la "Quinta Pitiquitos".

Comunicación enviada

794. El 16 de junio de 2009, el Relator Especial envió un llamamiento urgente con la Relatora Especial sobre la situación de los defensores de los derechos humanos en relación con Rommel Cain Chacan Pale, abogado defensor de derechos humanos quien trabaja con el Monitor Civil de la Policía, en el estado de Guerrero. El abogado Chacan Pale recibió una amenaza directa vía telefónica el pasado viernes 5 de junio, en contra de su seguridad e integridad física y la de su familia.

795. El abogado Chacan Pale se dedica a la documentación de abusos de autoridad en contra de la ciudadanía y de los propios integrantes de los cuerpos de seguridad del estado de Guerrero, además de la defensa de las víctimas. El Monitor ha registrado hasta el día de hoy 185 casos relacionados con 16 de las 24 corporaciones policíacas que se encuentran en la región, resaltando 13 quejas relacionadas con el Ejército.

796. El pasado viernes, un interlocutor desconocido amenazó al abogado por teléfono, advirtiéndole que estaba siendo vigilado. La amenaza se habría presentado después de que la Corte Interamericana de Derechos Humanos otorgara medidas provisionales a 107 defensores en el estado, incluido Chacan Pale.

797. Según las informaciones recibidas, éste no es un caso aislado. El 20 de febrero de 2009 Raúl Lucas Lucía y Manuel Ponce Rosas, Presidente y Secretario de la Organización para el Futuro del Pueblo Mixteco (OFPM) fueron encontrados sin vida y con inminentes huellas de tortura. Al día de hoy, el asesinato extrajudicial de Raúl y Manuel permanecería impune.

798. Otro caso es el de Obtilia Eugenio Manuel, presidenta de la Organización del Pueblo Indígena Tlapaneco (OPIT), quien desde 2005 habría sido víctima de amenazas continuas a raíz de las acciones que ha emprendido para documentar y denunciar los abusos del Ejército en las comunidades indígenas de la región. Las amenazas se habrían intensificado a principios de 2009.

799. Según la información recibida, es de conocimiento público que en noviembre de 2008 el Gobernador de Guerrero, Zeferino Torreblanca, y del Comandante de la Novena Región Militar, Enrique Alonso Garrido Abreu, se refirieron a las organizaciones de derechos humanos como "parapetos del narcotráfico".

Comunicaciones recibidas

800. No se recibió hasta la fecha respuesta alguna a esta comunicación.

Comunicación enviada

801. El 31 de Julio de 2009, el Relator Especial envió un llamamiento urgente en relación con la aplicación del fuero militar para la investigación y sanción de violaciones de derechos humanos.

Según la información recibida:

802. A principios de abril de 2009, la Suprema Corte de Justicia de la Nación anunció que asumía jurisdicción sobre la apelación del amparo en revisión N. 989/2009, en el que

familiares de víctimas de violaciones a derechos humanos cometidas por elementos castrenses cuestionan que los militares se juzguen a sí mismos. Según se me informa, la Corte se pronunciará sobre este caso en la semana del 3 de agosto de 2009.

803. El amparo se relaciona con la muerte de cuatro civiles ocurrida el 26 de marzo de 2008, en la comunidad de Santiago de Caballeros, Sinaloa, por un convoy militar. En su momento, y como es la práctica habitual en México en los casos en los cuales un militar activo es acusado de cometer este tipo de delito, la Procuraduría General de la República declinó competencia sobre el caso y la Secretaría de la Defensa Nacional anunció que se realizaría una investigación bajo jurisdicción militar.

804. La Constitución mexicana prevé la jurisdicción militar sólo "para los delitos y faltas contra la disciplina militar". Sin embargo, al interpretar esta disposición, el Código de Justicia Militar establece el fuero militar para los "delitos que fueren cometidos por militares en los momentos de estar en servicio o con motivo de actos del mismo".

805. Por su parte, la Suprema Corte, en una resolución de 2005, limitó el alcance de esta última disposición al precisar "servicio" como "la realización de las funciones propias e inherentes al cargo que desempeña". Sin embargo, el fuero militar sigue siendo utilizado para investigar las numerosas denuncias de violaciones de derechos humanos cometidas por miembros de las fuerzas armadas, sin existir alguna sentencia condenatoria en los últimos años.

806. En la información recibida se resalta la falta de independencia e imparcialidad de los órganos militares de administración e impartición de justicia, lo cual impide el derecho a un recurso judicial efectivo. Uno de los factores que compromete la independencia e imparcialidad es el hecho que las investigaciones son dirigidas por los órganos potencialmente implicados.

807. Asimismo, el Secretario de la Defensa tiene facultades ejecutivas y judiciales dentro de las fuerzas armadas. Dirige tanto las fuerzas armadas como el sistema de justicia militar, y está facultado para ordenar el cierre de una investigación u otorgar indultos a oficiales condenados por tribunales militares. Asimismo, los integrantes de los tribunales militares son militares en activo, subordinados jerárquicamente al ejecutivo.

808. Cuando las víctimas han llevado sus objeciones al uso de la jurisdicción militar a tribunales federales, estos los han desestimado por falta de legitimación. Como resultado, las víctimas no han podido ejercer el recurso de amparo con el fin de que sea la justicia ordinaria la que asuma la investigación del caso. Con ello se restringe considerablemente el derecho de las víctimas a un recurso eficaz en el caso de que hayan sufrido una violación a sus derechos humanos cometida presuntamente por elementos militares. En cuanto al recurso de apelación, las víctimas no pueden apelar una sentencia del Supremo Tribunal Militar, con lo cual los tribunales ordinarios no pueden revisar que la actuación de los tribunales militares hayan respetado los derechos humanos de las víctimas.

809. Quisiera expresar mi preocupación por el hecho de que violaciones de derechos humanos cometidas por miembros de las Fuerzas Armadas puedan ser investigadas y juzgadas por la justicia penal militar. Como ya lo he reiterado en numerosas ocasiones, según una importante jurisprudencia internacional, existe una prohibición de que los militares juzguen las graves violaciones de derechos humanos (A/61/384, párr. 20 y siguientes).

Comunicaciones recibidas

810. No se recibió hasta la fecha respuesta alguna a esta comunicación.

Comunicación enviada

811. El 28 de septiembre de 2009, la Relatora Especial envión una comunicación junto a la Relatora Especial sobre la situación de los defensores de los derechos humano en relación con el ataque contra el Sr. Ricardo Lagunes Gasca, abogado que trabaja para la organización de derechos humanos Centro de Derechos Humanos Fray Bartolomé de las Casas.

812. Con fecha 8 de septiembre de 2009, el Presidente 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, y la Relatora Especial sobre la situación de los defensores de derechos humanos emitieron un llamamiento urgente al Gobierno mexicano en relación con los actos de hostigamiento, vigilancia, amenaza y descalificación que habrían tenido lugar contra integrantes del Centro de Derechos Humanos Fray Bartolomé de las Casas debido a su trabajo en defensa y promoción de los derechos humanos, incluyendo contra las desapariciones forzadas.

Según las informaciones recibidas:

813. El 18 de septiembre de 2009, el Sr. Lagunes Gasca habría visitado a unos clientes en el Ejido Jotolá, municipio de Chilón, para informales sobre la situación de los ejidatarios presos de San Sebastian Bachajón. Mientras conducía de regreso, habría sido emboscado por un grupo de aproximadamente cincuenta personas armadas con armas de fuego, machetes, palos y piedras, quienes habrían cerrado la carretera con piedras y un tronco. A pesar de que el Sr. Lagunes Gasca se identificó como abogado de derechos humanos, el grupo le sacó de su vehículo, le agredió físicamente e intentó llevarle a un destino desconocido. Le habrían dicho también que le iban a linchar. El Sr. Lagunes Gasca sólo logró escapar cuando un grupo de ejidatarios de La Otra Campaña intervino a su favor.

814. Un residente del Ejido de San Sebastián Bachajón, el Sr. Carmen Aguilar Gómez, habría recibido un disparo en el muslo de la pierna izquierda durante el enfrentamiento. A pesar que los residentes del Ejido Jotolá llamaron a la Policía Estatal Preventiva (PEP), ésta no llegó hasta después del ataque.

815. Según nuestras fuentes, los agresores forman parte de un grupo armado denominado Organización para la Defensa de los Derechos Indígenas y Campesinos (OPDDIC), una organización que supuestamente contaría con el apoyo de la PEP. La OPDDIC habría sido responsable de varios ataques, amenazas y actos de intimidación contra residentes de comunidades en Chiapas que se consideran simpatizantes del Ejército Zapatista de Liberación Nacional (EZLN). Después del ataque del 18 de septiembre de 2009, integrantes de la OPDDIC habrían rodeado las casas de los ejidatarios y les habrían amenazado.

816. Se teme que el ataque contra el Sr. Lagunes Gasca esté relacionado con las actividades que realiza como abogado en defensa de los derechos humanos. Además, se expresa preocupación por la integridad física y psicológica del Sr. Lagunes Gasca así como la de los demás miembros del Centro de Derechos Humanos Fray Bartolomé de las Casas.

Comunicaciones recibidas

817. No se recibió hasta la fecha respuesta alguna a esta comunicación.

Comunicación enviada

818. La Relatora Especial envió una carta de alegación con fecha de 13 de enero de 2010 con el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes en relación con denuncias creíbles de tortura y malos tratos, las cuales se resumen en el anexo a esta carta:

Caso I

819. El 16 de junio de 2009, los señores Ramiro Ramírez Martínez, Orlando Santaolaya Villareal, Rodrigo Ramírez y Ramiro López Vásquez fueron detenidos en unos condominios de Playas de Rosarito, en la ciudad de Tijuana, por elementos de la Secretaría de la Defensa Nacional. Los señores no fueron presentados con órdenes de aprehensión. Fueron trasladados a la Segunda Zona Militar, donde permanecieron en detención incomunicada hasta el 20 de junio. El 20 de junio fueron trasladados al 28vo. Batallón de Infantería de la Secretaría de la Defensa Nacional, "Aguaje de la Tuna". El 31 de julio fueron trasladados al Centro Federal de Readaptación Social Número Cuatro "Noroeste", en Tepic Nayarit, donde permanecen detenidos.

820. Durante su detención, traslado y detención en el Aguaje de la Tuna, los señores Ramírez Martínez, Santaolaya Villareal, Ramírez y López Vásquez fueron presuntamente sometidos a diversas formas de tortura y malos tratos. Fueron golpeados y pateados en todo el cuerpo, les aplicaron cargas eléctricas en sus genitales y fueron sometidos a intentos de asfixia con bolsas de plástico, mientras los oficiales intentaban arrancarles las uñas de las manos y de los pies. A la fecha no han recibido atención médica.

821. Los señores Ramírez Martínez, Santaolaya Villareal, Ramírez y López Vásquez Los también fueron amenazados de muerte si no confesaban su responsabilidad en un secuestro. El 17 de junio de 2009, con los ojos vendados, fueron obligados a firmar sus declaraciones ante el Ministerio Público.

822. El 17 de julio de 2009, familiares de los señores Ramírez Martínez presentó una queja ante la Oficina Regional de la Comisión Nacional de los Derechos Humanos. El 20 de octubre, intentaron presentar una queja ante la Procuraduría General de la República en las instalaciones delegacionales del estado de Baja California, pero nunca fueron atendidos. Al día siguiente, el agente del Ministerio Público se negó a recibir la denuncia, indicando que la jurisdicción civil era incompetente para conocer el caso, debido a que los presuntos responsables eran oficiales militares. Ese mismo día, presentaron una denuncia ante el Ministerio Público Militar. Los familiares del Sr. Ramiro López Vásquez presentaron una denuncia ante la Procuraduría General de la República.

Caso II

823. El 24 de junio de 2009, los señores Julio César Magdaleno Meza y Jorge Lomelí, agentes de la Policía Ministerial del estado de Baja California, fueron detenidos por agentes de la Policía Ministerial, quienes les informaron que tendrían que presentarse en las instalaciones de dicha corporación. Aproximadamente una hora y media después, fueron ordenados por el jefe de grupo a entregar sus armas, y fueron llevados a la Dirección de Asuntos Internos en Mexicali.

824. En la Dirección de Asuntos Internos, fueron informados que habían sido detenidos para rendir su declaración como testigos sobre una presunta privación ilegal de libertad. Al salir de la Dirección, un subcomandante los subió a un vehículo para su traslado a la comandancia y trató de esposarles las manos. El señor Magdaleno Meza trató de refugiarse en la Dirección, pero fue informado que tendría que ir esposado como parte del procedimiento de investigación. En ese momento, el señor Magdaleno Meza observó que el señor Lomelí estaba siendo golpeado, así como de la llegada de un gran número de agentes de la Policía Ministerial. Los dos fueron introducidos en vehículos diferentes y llevados al cuartel militar Morelos, en Tijuana.

825. En el cuartel militar, los señores Magdaleno Meza y Lomelí fueron llevados a un cuarto donde les taparon la cara, los ojos y parte de la nariz con cinta adhesiva, les amarraron las manos por detrás, les colocaron vendas en los ojos, les pusieron algodón en

las fosas nasales y les golpearon la cara y el estómago. También les cubrieron la cabeza con bolsas de plástico para intentar asfixiarlos.

826. Posteriormente, fueron llevados por agentes de la Policía Ministerial de Tijuana al poblado de "El Hongo", donde fueron ingresados a otro vehículo. Agentes antisecuestros de Mexicali les quitaron las cintas adhesivas del cuerpo, les dieron de comer y les llevaron a la agencia antisecuestros de Mexicali. Allí rindieron su declaración ante el Ministerio Público de Asuntos Internos el 25 de junio de 2009 y fueron liberados. A partir de esa fecha, los señores Magdaleno Meza y Lomelí fueron buscados por agentes del grupo antisecuestros y sus familiares fueron seguidos y fotografiados. A la fecha, no existe ninguna orden de presentación o de detención en su contra, aunque los dos fueron dados de baja de su trabajo, bajo el argumento de "pérdida de confianza".

827. El 10 de julio, el señor Magdalena Mezo presentó una denuncia por abuso de autoridad, lesiones, tortura, privación ilegal de libertad, uso indebido del servicio público, amenazas, intimidación y tráfico de influencia. El señor Lomelí interpuso una demanda de amparo por la detención ilegal y una denuncia por tortura. Debido al temor por su integridad y el de sus familiares, el señor Lomelí tuvo que dejar la ciudad de Mexicali, mientras que el señor Magdaleno Meza permanece escondido.

Caso III

828. Entre el 15 y 17 de septiembre de 2009, fueron detenidos once policías municipales en Tijuana, Baja California, incluido el señor Ricardo Castellanos Hernández. El señor Castellanos Hernández fue llamado a la Comandancia por el titular de la Secretaría de Seguridad Pública y posteriormente trasladado en una patrulla al Cuartel Militar, sin contar con una orden de aprehensión. Una vez que arribó al Cuartel, fue esposado con las manos por detrás, amarrado de pies y rodillas con cinta adhesiva y vendado de los ojos también con cinta adhesiva. Con el cuerpo casi inmovilizado, fue cuestionado sobre personas relacionadas con el crimen organizado. Al contestar de manera negativa, le fue puesta una capa gruesa de plástico sobre su rostro en varias ocasiones durante tres horas.

829. Al siguiente día, nuevamente fue sujeto a amenazas y torturas. El 18 de septiembre, le removieron la cinta de los ojos y una persona que se presentó como actuaria del Ministerio Público Federal le mostró un amparo en su favor por tortura e incomunicación. El 18 de septiembre, fue llevado al Hotel Real Inn, donde permaneció incomunicado hasta el 20 de septiembre, cuando fue visitado por su esposa. Antes de ser puesto en libertad, fue amenazado de no hablar con los medios de comunicación.

830. El 17 de septiembre, los familiares del señor Castellanos Hernández presentaron una queja ante la Procuraduría de Derechos Humanos de Baja California. Personal de dicha dependencia visitó al señor Castellanos Hernández en el cuartel, pero no le realizó ningún examen médico para confirmar la presunta tortura. Asimismo, se negaron a recibir la queja bajo el argumento de que no presentaba huellas de tortura El 21 de octubre, el señor Castellanos Hernández intentó presentar una denuncia en la Procuraduría General de la República, la cual fue rechazada. El 10 de noviembre, un agente del Ministerio Público Federal de la mesa IV visitó al señor Castellanos Hernández para presionarlo sobre las declaraciones que habría hecho.

Comunicaciones recibidas

831. No se recibió hasta la fecha respuesta alguna a esta comunicación.

Comenarios y observaciones de la Relatora Especial

832. Si bién la Relatora Especial agradece la respuesta detallada del Gobierno de México con respeto al llamamiento urgente enviado el día 24 de abril de 2009, ella lamenta que no

se haya recibido respuesta a las otras cuatro comunicaciones enviadas. La Relatora considera que las respuestas a sus comunicaciones constituyen una parte importante de la cooperación con los estados e insta al Gobierno de México a proporcionar nformación precisa y detallada lo antes posible.

Morocco

Communication envoyée

833. Le 23 octobre 2009, la Rapporteuse spéciale a envoyé un appel urgent avec le Rapporteur spécial sur la promotion et la protection des droits de l'homme et des libertés fondamentales dans le cadre de la lutte antiterroriste et leRapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants sur la situation de Sidi Mohamed Bourouis, né le 17 avril 1969 à Tlemcen, commerçant, demeurant Al Kalaa supérieure, N° 81, Tlemcen Algérie, Sadji Al Ouassini, né le 12 janvier 1966 à Maghnia, commerçant, demeurant rue O N° 46, Maghnia, Algérie, et Khaled Laidaoui, né le 5 avril 1950, demeurant Haï Bouhenak, N° 11, Tlemcen Algérie, tous les trois membres du Front Islamique du Salut.

Selon les allégations reçues:

834. Les trois personnes susnommées auraient fui l'Algérie après l'annulation des élections remportées par le Front Islamique du Salut en 1992. Frontaliers du Maroc voisin, ils s'y seraient réfugiés mais n'auraient pas déposé de demande formelle d'asile.

835. Arrêtés en septembre 1995, ils auraient été accusés par les services de sécurité marocains de soutien au terrorisme et condamnés par le tribunal militaire de Rabat le 10 janvier 1996 à une peine de 14 années de réclusion. Ils n'auraient jamais eu la possibilité de bénéficier du droit de faire appel de leur condamnation. Ensuite, ils auraient purgé la totalité de leur peine de détention et auraient été libérés le 15 octobre 2009.

836. En même temps, les trois hommes auraient appris qu'ils avaient été condamnés par les juridictions algériennes d'exception, mises en place à la suite des événements du janvier 1992. Selon un jugement de la cour spéciale d'Oran en date du 12 juillet 1993, M. Sidi Mohamed Bourouis aurait été condamné à la peine de mort. MM. Sadji Al Ouassini et Khaled Laidaoui auraient également été condamnés par les mêmes juridictions d'exception à des peines d'emprisonnement à perpétuité.

837. Les autorités algériennes ayant requis des autorités marocaines que ces personnes leurs soient délivrées, car elles feraient l'objet de poursuites en Algérie, ils risqueraient de faire l'objet d'un renvoi forcé du Maroc vers l'Algérie. Il paraît que la demande formulée par les autorités algériennes serait en contravention avec une loi d'amnistie (l'Ordonnance n° 06-01 du 27 février 2006) portant mise en œuvre de la Charte pour la paix et la réconciliation nationale.

838. Etant donné les allégations sérieuses que ces trois personnes, suite à un renvoi en Algérie, seraient en danger d'être arrêtés et soumis aux traitements cruels et inhumains, des craintes pour l'intégrité physique et mentale des MM. Sidi Mohamed Bourouis, Sadji Al Ouassini et Khaled Laidaoui sont exprimées.

Communication reçue

839. Pas de réponse

Commentaires et observations du Rapporteur Spécial

840. La Rapporteuse spéciale regrette qu'aucune réponse n'était reçue à sa lettre envoyée le 23 octobre 2009. La Rapporteuse spéciale demande au Gouvernement de lui transmettre au plus tôt des informations précises et détaillées en réponse à ces allégations.

Myanmar

Communication sent

841. On 19 May 2009 the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the situation of human rights defenders, and Special Rapporteur on the situation of human rights in Myanmar regarding the Burma Lawyers' Council, based in Thailand, and its Secretary-General Mr. U Aung Htoo.

According to the information received:

842. On 30 April 2009, the Government of Myanmar issued Order 1/2009. By this order the Burma Lawyers' Council was declared unlawful, based on the Unlawful Associations Act of 11 December 1908. Moreover, the Burma Lawyers' Council was recently labeled as an "enemy of the State" by several state-controlled print media.

843. On 4 May 2009, an arrest warrant was issued against Mr. U Aung Htoo, Secretary-General of the Burma Lawyers' Council. This development coincided with a workshop on "Advancing human rights and ending impunity in Burma" held by the non-governmental organization International Federation for Human Rights jointly with the Burma Lawyers' Council in Bangkok.

844. In the past couple of years, the Burma Lawyers' Council has expressed criticism towards various aspects of the human rights policy implemented by the Government of Myanmar. In addition, the Council has addressed the situation of defense lawyers in the country, in particular cases in which lawyers have been imprisoned for defending their clients.

845. Concern is expressed that the ban on the Burma Lawyers' Council and acts of harassment and intimidation against its members, in particular Mr. U Aung Htoo, may be related to their peaceful activities defending human rights in Myanmar, including in their capacity as lawyers.

Communication received

846. At the time this report was finalized, no response to this communication has been received.

Communication sent

847. On 20 May 2009, the Special Rapporteur sent an urgent appeal sent jointly with the Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the situation of human rights in Myanmar.

848. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the trial against Daw Aung San Suu Kyi, General Secretary of the National League for Democracy (NLD), Daw Khin Khin Win, member of the NLD, her daughter, Win Ma Ma, and John William Yettaw, a national of the United States of America.

849. The mandates of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders sent a communication in relation to earlier developments on this case to your Excellency's Government on 15 May 2009. On 13 November 2008, the Special Rapporteur on the independence of judges and lawyers sent a communication, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the situation of human rights in Myanmar, regarding the case of Mr. Aung Thein and Mr. Khin Maung Shein. The mandate holders wish to thank your Excellency's Government for the reply of 12 January 2009.

According to the new information received:

850. On 18 May 209, the trial against Daw Aung San Suu Kyi, Daw Khin Khin Win and Daw Win Ma Ma and John William Yettaw began (case no. 47/2009).

851. So far, the ad hoc special court, which is held at Insein prison compound and presided over by Judges U Thawng Nyunt and U Nyi Nyi Soe, has registered 22 witnesses, out of which 21 are allegedly policemen and one person is civilian.

852. Daw Aung San Suu Kyi is presented by four lawyers, namely U Kyi Win, U Hla Myo Myint, U Nyan Win and Daw Khin Htay Kywe. Lawyers U Aung Thein and U Khin Maung Shein had applied to be part of the team defending Daw Aung San Suu Kyi. However, their licenses to practice law were revoked by the authorities one day after their application. From November 2008 to March 2009 both aforementioned lawyers were imprisoned for contempt of court after their clients, who were members of the NLD, complained to the court that they had no longer trust in the justice system and expressed the wish to no longer be represented by their defense counsels. On the basis of this, U Aung Thein and U Khin Maung Shein lost their lawyers' licenses. Daw Khin Htay Kywe, U Hla Myo Myint and U Nyan Win also represented Daw Khin Khin Win and Win Ma Ma. Lawyer U Khin Maung Oo represented John William Yettaw. Furthermore, an official of the U.S. Consulate is allowed to assist with an interpreter in the trial against Mr. Yettaw

853. The lawyers of Daw Aung San Suu Kyi, Daw Khin Khin Win, Daw Win Ma Ma and John William Yettaw submitted an appeal to conduct the trial in public. However, this application was rejected by the court. Only the registered witnesses, the lawyers, the judges and the police and military security forces are allowed inside the court room. It is reported that the media are not only prevented to access to the prison compound, but also to talk with the defense lawyers. Insein Road surrounding the prison is reportedly closed off to traffic, and barbed wire fencing has been erected.

Communications received

854. At the time this report was finalized, no response to this communication has been received.

Press release

855. On 16 June 2009, the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights in Myanmar, 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, urged the authorities of Myanmar to ensure that the trial of Aung San Suu Kyi, the leader of the National League for Democracy and Nobel Peace Prize laureate, and two of her aides, is "fair and open."

856. "So far, the trial of Aung San Suu Kyi and her aides has been marred by flagrant violations of substantive and procedural rights," said Leandro Despouy, the Special

Rapporteur on the independence of judges and lawyers. Pointing to the fact that, to date, the trial has mostly been conducted behind closed doors and that the media have been prevented from speaking to the defence lawyers, Despouy said that "Transparency in the administration of justice is a pre-requisite of any State governed by the rule of law."

857. Noting the political transition to which the Myanmar leadership has committed itself, the experts emphasized the requirement in democratic society for trials to be conducted openly. "National and international media should be granted full access to the trial," said the Special Rapporteur on freedom of opinion and expression, Frank La Rue.

858. While the prosecution was allowed to call 14 witnesses, most of them policemen, only one witness called by the defense team has so far been permitted to testify. Applications for another three defense witnesses to testify have been made. Last week a second defense witness was granted permission to be heard in the case. "While this is a significant step forward, the court must ensure that all witnesses who may have relevant evidence are able to testify," Despouy said.

859. "The court has the duty to conduct the proceedings fairly and to respect the rights of the parties as a pre-requisite to the principle of equality of arms and the right to defense," he said, adding that it is essential that the justice system examines the compatibility of Aung San Suu Kyi's continued house arrest with domestic law and international standards.

860. The Chairperson of the UN Working Group on Arbitrary Detention Manuela Carmena Castrilo said the Working Group had declared that the continuation of the house arrest after May 2008 was arbitrary according to international standards and also violated Myanmar's own laws (Opinion 46/2008). For this reason Aung San Suu Kyi needs to be released immediately and unconditionally, the experts concluded.

861. On 14 May 2009, Aung San Suu Kyi and two of her aides were taken by security forces to Insein Prison, where they continue to stand trial before an ad hoc special tribunal. They were charged under Myanmar's State Protection Law 1975 after an individual swam across Lake Inya and spent two nights at Aung San Suu Kyi's home.

862. Aung San Suu Kyi has been subjected to house arrest for more than 13 of the past 19 years. She was rearrested on 30 May 2003, and her house arrest was subsequently extended until it reached the maximum term permitted under Myanmar's own laws in May 2008. It was then illegally extended for another year by the authorities.

863. Therefore, the moment the incident occurred, Aung San Suu Kyi should not have been under house arrest. Furthermore "If the State assumes the responsibility to prevent access to the house of Aung San Suu Kyi," the experts said, "how can she then be held criminally liable for an unwanted intrusion?"

864. Since she was placed under house arrest in 2003, Aung San Suu Kyi has never been brought before a judge. It seems paradoxical that now – one year after the expiration of the house arrest – the justice system is being used to justify a further restriction of her liberty.

865. The five experts called upon the authorities of the Union of Myanmar to allow the justice system to function in an independent and impartial manner, so as to guarantee an open and fair trial for the defendants, and to grant unfettered media access.

Comments and observations of the Special Rapporteur

866. The Special Rapporteur regrets the absence, at the time of the finalization of the report, of an official reply to the above-mentioned communications. She considers response to her communications as an important part of the cooperation of Governments with her mandate, and calls upon the Government of Myanmar to transmit responses to the outstanding communications.

Occupied Palestinian Territory

Communication sent

867. On 16 November 2009, The Special Rapportuer an urgent appeal jointly with the special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding the case of Saleem Mohammed Saleem al-Nabahin, who was recently sentenced to death by a military court in Gaza.

According to the information we have received:

868. 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.

869. 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.

870. 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.

Communications received

871. At the time this report was finalized, no response to this communication has been received.

Communication sent

872. On 7 January 2010, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding the case Mr. Mohammad Abu-Shalbak, aged 46, who is being detained by the Palestinian General Intelligence Force.

According to information received:

873. On 19 July 2009, members of the Palestinian General Intelligence Force went to Mr. Mohammad Abu-Shalbak's home and arrested him, without presenting him with a warrant. For approximately two months, he was denied access to meet with his lawyer and his place of detention was unknown to his family. On 21 September 2009, his family was allowed to visit him for the first time. They were informed that they were allowed to see him for only 10 minutes and they should not ask him questions relating to the reasons for his arrest or the conditions of his place of detention. It is alleged that when his family saw him he was wearing dirty clothes, smelt bad, had lost about half of his weight, had long hair on his face and head and a very pale face. He appeared to be afraid and unable to focus.

874. Mr Abu-Shalbak was brought before a military justice tribunal and not before the civil prosecution within 24 hours of arrest, as required by Palestinian Criminal Procedure No. 3 of 2001. On 13 September 2009, his lawyer obtained a judgment with the High Court of Justice which held that Mr Abu-Shalbak was a civilian and that the case was not under the mandate of military prosecution. The court ordered that he be immediately released.

875. On 7 October 2009, Mr Abu-Shalbak was released, re-arrested eight hours later and was brought before the military prosecution tribunal. During his brief release, Mr Abu-Shalbak indicated that he had spent 43 days standing on his feet, with his eyes covered, his arms and legs tied. During these days he was allowed to rest for one hour and to use the bathroom once a day. It is reported that during his detention his front teeth were broken. During the summer, he was placed in small hot room, and in a small cold room during the winter.

876. Mr Abu-Shalbak suffered from severe abdominal cramps and was taken to military medical services. It is reported that the doctor who examined him ordered that an abdominal ultrasound be done, however it has not yet been performed.

Communications received

877. At the time this report was finalized, no response to this communication has been received.

Comments and observations of the Special Rapporteur

878. The Special Rapporteur regrets the absence, at the time of the finalization of the report, of an official reply to the above-mentioned communications. She considers response to her communications as an important part of the cooperation with her mandate, and calls upon the Government of the Occupied Palestinian Territory to transmit responses to the above-mentioned communication.

Occupied Palestinian Territory - (The Authorities in Gaza)

Communication sent

879. On 16 November 2009, The Special Rapportuer an urgent appeal jointly with the special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding the case of Saleem Mohammed Saleem al-Nabahin, who was recently sentenced to death by a military court in Gaza.

According to the information we have received:

880. 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.

881. 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.

882. 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.

Communications received

883. At the time this report was finalized, no response to this communication has been received.

Comments and observations of the Special Rapporteur

884. The Special Rapporteur regrets the absence, at the time of the finalization of the report, of an official reply to the above-mentioned communications. She considers response to her communications as an important part of the cooperation with her mandate, and calls upon the authorities in Gaza to transmit responses to the above-mentioned communication.

Panama

Comunicación enviada

885. El 1 de marzo de 2009, El Relator Especial envió un llamamiento urgente en relación con Ana Matilde Gómez.

886. El 28 de enero, con una decisión mayoritaria de cinco votos a cuatro, el pleno de la Corte Suprema de Justicia (CSJ) decidió de suspender del cargo a la procuradora de la Nación, Ana Matilde Gómez, y le prohibió abandonar el país sin autorización judicial. En el Ministerio Público, Gómez comunicó que el fiscal auxiliar, Luis Martínez, quedaría a cargo de su despacho. Poco después, la Presidencia emitió un boletín para anunciar la próxima designación de Giussepe Bonissi como nuevo procurador de la Nación.

887. Según la procuradora su suspensión es temporal de acuerdo con el artículo 224 de la Constitución y el 24 del Código Judicial. La Presidencia fundamentó que su comunicado, designando Bonissi, se basa en el numeral 2 del artículo 200 de la Constitución, que señala que el nombramiento del Procurador es función del Consejo de Gabinete. El eventual nombramiento de Bonissi –según el mismo artículo 200 al que apela la Presidencia– tendría que ser sometido a la aprobación de la Asamblea. Por ahora esto no se hizo. Además, mientras que el comunicado de la Presidencia reconoce que la suspensión de Gómez será efectiva por el tiempo que dure el proceso judicial en su contra, el artículo 200 de la Constitución aplica cuando el cese es definitivo, no temporal. Además, la designación de Bonissi, de carácter temporal, violaría la Constitución, que señala que el Procurador encargado debe ser un funcionario del Ministerio Público.

888. En el Órgano Judicial, por ahora, no hay fallo, sino un boletín de la Secretaría de Comunicación que da a conocer que en la solicitud para suspender a Gómez, cinco magistrados votaron a favor y cuatro en contra. La Corte anunció que la resolución relativa a Gómez, será formalizada el próximo 4 de febrero.

Comunicaciones recibidas

889. No se recibió hasta la fecha respuesta alguna a esta comunicación.

Comentarios y observaciones de la Relatora Especial

890. La Relatora lamenta que no se haya recibido respuesta a la comunicación enviada e insta al Gobierno de Panama a proporcionar la información relevante lo antes posible.

Peru

891. El 1 de Mayo de 2009, la Relatora Especial envió un llamamiento urgente con 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 en relación con las amenazas de muerte contra el Sr. Francisco Soberón, la Sra. Gloria Cano y los Sres. Carlos Rivera y Ronald Gamarra. El Sr. Francisco Soberón es Director Ejecutivo de la Asociación Pro Derechos Humanos (APRODEH), organización que ha estado muy involucrada en el proceso del juicio al ex-Presidente Alberto Fujimori. En cuanto a la Sra. Gloria Cano y los Sres. Carlos Rivera y Ronald Gamarra, son abogados de la parte civil en el juicio contra el ex-Presidente.

892. La Sra. Gloria Cano y APRODEH ya fueron objeto de varias comunicaciones de la entonces Representante Especial del Secretario-General para los defensores de los derechos humanos, quien envió varias comunicaciones, con fechas 10 de enero de 2008, 28 de febrero de 2005 y 22 de noviembre de 2004. El Sr. Soberón fue objeto de una comunicación enviada el 16 de noviembre de 2005.

893. La APRODEH es un colectivo de personas comprometidas con la lucha por la plena vigencia de los derechos humanos en el Peru, quienes asumen denuncias y la defensa de las víctimas en el plano nacional e internacional. Asimismo, desarrollan campañas sistemáticas en torno a los casos más graves de violaciones de derechos humanos.

En relación con la información recibida:

894. El 6 de abril del 2009 a las 12:48 de la tarde, a la víspera de la condena al ex-Presidente Alberto Fujimori, APRODEH habría recibido una llamada en su sede. Un hombre les habría dicho lo siguiente: "Los familiares de los terroristas, hemos estado siguiendo el trabajo de APRODEH, con lo de mañana, que los señores Soberón, Gamarra, Cano y Rivera que (sic) se den por muertos". Cabe destacar que esta llamada habría entrado directamente al área legal de la organización APRODEH.

895. Se teme que la amenaza en contra de los Sres. Francisco Soberón, Carlos Rivera y Ronald Gamarra y la Sra. Gloria Cano esté relacionada con su trabajo en el proceso del juicio al ex-Presidente Alberto Fujimori. En vista de lo aquí resumido quisiéramos expresar nuestra preocupación por la integridad física y psicológica de las personas mencionadas.

Comunicaciones recibidas

896. No se recibió hasta la fecha respuesta alguna a esta comunicación.

Comunicación enviada

897. El 25 de Junio de 2009, el Relator Especial envión un llamamiento urgente con la Relatora Especial sobre la situación de los defensores de los derechos humanos en relación con Carlos Rivera Paz, abogado defensor de derechos humanos y miembro directivo del Instituto de Defensa Legal (IDL).

898. El abogado Carlos Rivera fue detenido el 14 de junio de 2009, cuando regresaba al país después de cumplir con compromisos académicos en el exterior. Su orden detención fue emitida por el Juzgado Penal 40 de Lima, por el delito de uso de documento falso público.

Según la información recibida:

899. El proceso penal iniciado contra el abogado Carlos Rivera por denuncia formalizada el 18 de enero de 2008, habría sido adelantado sin que en ningún momento se le notificara de la existencia del mismo, hasta el momento de su detención en junio de 2009. Por consiguiente, el abogado habría estado impedido de ejercer su derecho a la defensa. El abogado no habría conocido los cargos que se le imputaban, ni habría podido llamar testigos de descargo, ni contrainterrogar los testigos presentados por la fiscalía. En suma, no habría podido contradecir ninguna de las pruebas aportadas por el Ministerio Público.

900. Asimismo, según la información recibida, la acusación fiscal individualizó un tipo penal diferente al que había sido materia del proceso penal. Siendo el primero falsificación de documento privado y el segundo, falsificación de documento público; hecho que tampoco habría podido ser contradicho por el acusado, debido a la falta de notificación.

901. De otra parte, se nos informa que el abogado Carlos Rivera, representó a varias de las víctimas en el proceso contra el ex presidente Alberto Fujimori, por el cual fue condenado recientemente. También defendió a Nolberto Durand Ugarte, uno de los desaparecidos en la matanza de El Frontón, penal en el que aquella época, el actual vicepresidente Luis Giampietri, habría comandado la Fuerza de Operaciones Especiales (FOES) de la Marina de Guerra del Peru. La Corte Interamericana de Derechos Humanos condenó al Estado Peruano en este caso y ordenó que se investigara judicialmente el caso, lo que habría generado una serie de investigaciones y diligencias en las que Rivera sigue participando en calidad de abogado. Esto habría motivado que en reiteradas oportunidades, el actual vicepresidente Giampietri lo ataque verbalmente, así como al IDL.

902. Igualmente, se alega que resulta sospechoso que el abogado Rivera haya sido arrestado justo antes de participar en varias audiencias relacionadas con supuestas violaciones de derechos humanos ocurridas durante el anterior periodo de Gobierno del Presidente Alan García.

Comunicaciones recibidas

903. No se recibió hasta la fecha respuesta alguna a esta comunicación.

Comentarios y observaciones de la Relatora Especial

904. La Relatora lamenta que no se ha recibido respuesta a las comunicaciones enviadas. La Relatora considera que las respuestas a sus comunicaciones constituyen una parte importante de la cooperación con los Estados e insta al Gobierno de Peru a proporcionar la información relevante lo antes posible.

Republic of Moldova

Communication sent

905. On 17 April 2009, the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding arrests and the use of force by law-enforcement organs in connection with the demonstrations held around the recent parliamentary elections, and the alleged death of Ion Tabuleac and Valeriu Boboc of injuries sustained in the course of the demonstrations or shortly afterwards.

According to the information received:

906. Following the demonstrations of 6 to 8 April 2009, in Chisinau, public security forces have arrested 129 persons. Many of those arrested, including minors, have reported that they were subjected to beatings with clubs, plastic bottles filled with water, fists and kicking with feet during their arrest and police custody in district police stations as well as in the General Police Commissariat. Many of the detained persons have physical marks that appear to corroborate their claims. Furthermore, we received reports of overcrowding and instances of denial of food. Twenty-five or more individuals were held in a cell measuring approximately eight square meters, they were denied food for two days, and had only limited access to water and basic sanitary facilities.

907. Allegedly, two persons, Ion Tabuleac and Valeriu Boboc, shortly afterwards died of injuries sustained in the course of the demonstrations.

908. On 11 April 2009, members of the Consultative Council for the Prevention of Torture (National Preventive Mechanism under OPCAT) tried to visit several police stations and penitentiary institutions in Chisinau, where individuals were reportedly being detained and ill-treated. Despite the national legal provisions providing that the Consultative Council must be granted access to all places of detention without prior notice, the General Police Commissariat of Chisinau as well as the Central District Police Commissariat refused such access. The Consultative Council received information that two women, who had allegedly been severely beaten, were still held in the General Police Commissariat. The Consultative Council was granted access to penitentiary institution No. 13 only after considerable delay.

Communication received

909. On 23 September 2009, the Government of Moldova replied to the communication sent on 17 April 2009, by the Special Rapporteur as follows:

910. The government indicated that the events of 7-8 April resulted in disturbances of the public order and violent acts by the participants at he demonstrations, which contravene Articles 8 (c) and 19 (a) of the Law on public gatherings from 22.02.08.

911. The participants who infringed national legal acts were charged administratively in accordance with Article 23 of the Law on public gatherings, while others whose acts cumulated on the criminal element were charged, respectively, their cases being examined in accordance with the criminal procedure legislation.

912. During the investigation process, the concerned persons were assisted by defenders (designated or chosen) and, depending on the particular case, by their legal representatives; thus the right to defense was fully assured. Other essential rights provided by national legislation were granted to the apprehended persons, the right to medical assistance, right to formulate requests, right to a translator, right to know the charges which are brought against them.

913. As minors took part on the demonstrations from 7-8 April 2009, the presence of parents and relatives was ensured at the investigation of the cases of law infringements.

914. The personal files of people apprehended on administrative charges in the period of April events were examined exclusively by judicial courts, which issued decisions in this regard.

915. In the period of 10-30 April 2009, on the basis of judicial decisions to remand accused persons in custody 111 persons (including 4 minors) were transferred to the penitentiary No.13 of Chisinau. During the detention in penitentiary, these persons were granted guaranteed by law.

Comments and observations of the Special Rapportuer:

916. The Special Rapporteur thanks the Government of the Republic of Moldova for its response as well as for the clarification it has provided concerning access to counsel and guarantee of fair trial safeguards for whose who were detained. However, the Special Rapporteur would appreciate receiving more information on whether persons below 18 which were considered to be in conflict with the law were prosecuted and tried according to juvenile justice standards as well as on whether – when deprived of liberty – they were separated from adults.

Russian Federation

Communication sent:

917. On 25 June 2009 the Special Rapporteur sent an allegation letter jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights defenders concerning Ms. Aza Gazgireyeva, late deputy head of the Supreme Court of the Republic of Ingushetia.

918. On 10 June 2009, Ms. Aza Gazgireyeva was shot dead in the town of Nazran while taking her children to school.

919. 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.

920. In April 2008, Ms. Gazgireyeva's predecessor, Khasan Yandiyev, who handled cases of large-scale corruption, was shot and killed.

921. Information received indicates that an investigation has been commenced by the Investigative Committee of the Prosecutor's Office.

922. 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.

Communication received

923. On 27 August 2009, the Government of the Russian Federation replied to the communication sent on 25 June 2009, by the Special Rapporteur.

Comments and observations of the Special Rapporteur

924. 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. She is unable, therefore, to make observations, and expects they will be included in her next report.

Communication sent

925. On 20 July 2009, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, 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 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:

926. 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.

927. 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.

928. 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.

Communication received

929. On 27 August 2009, the Government of the Russian Federation replied to the communication sent by the Special Rapporteur on 20 July 2009, as follows:

930. The Government indicated that further to the Special Rapporteurs' 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, they wished to transmit the following information.

931. 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 Khmelnitsky Street, unidentified persons dragged her into a white VAZ 2107 vehicle and drove away to an unknown destination.

932. 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.

933. 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.

934. 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.

935. 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.

936. Searches were carried out on the grounds of Building No. 10, 133 Khmelnitsky 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.

i. The investigation has involved:

937. 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.

938. 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.

939. 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.

940. 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 coning and going.

941. Obtaining vehicle registration records.

942. 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.

943. Arranging for 16 different forensic analyses, the initial results of which are being reviewed and compared with other evidence obtained in the case.

944. Gathering and analysing information on Ms. Estemirova's mobile phone contacts.

i. Moreover, 263 witnesses have been questioned.

945. A range of investigative and operational activities to identify the perpetrators of the crime is currently under way.

946. The Investigative Committee of the Procurator's Office of the Russian Federation is overseeing the progress and outcome of the investigation.

Comments and observations of the Special Rapporteur

947. The Special Rapporteur thanks the Government of the Russian Federation for the detailed response with respect to the investigation into the death of Ms. Natalia Estemirova. The Special Rapporteur calls upon the Government to take all necessary measures to guarantee that accountability of any person guilty of the alleged violation and looks forward to receiving further information from the Government information about the results of the investigation, as well as the details of any resulting prosecutions.

Kingdom of Saudi Arabia

Communication sent

948. On 17 April 2009, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Mr. Bachr b.Fahd b. Safrane AL BACHR, aged 38, previously a professor at Riyad University, ID n.: 1020446611.

According to the allegations received:

949. Mr. Al Bachr was arrested at his home in Riyad on 15 March 2007 by approximately 15 secret service (Al Mabahit) agents in civilian clothes. They took him to an unknown location where, in spite of numerous inquiries by his family, he was held in solitary confinement without any contact with the outside world. After nine months, his family was authorized to pay him a short visit at the Al Alicha secret service detention centre. Since then he has again been detained incommunicado on his own in a freezing underground room, reportedly permanently handcuffed and blindfolded. As a result of these conditions, the health of Mr. Al Bachr has deteriorated. However, he has not received any medical treatment.

950. With a view to the alleged prolonged solitary confinement without any contact with the outside world and the lack of medical care, concern is expressed for Mr. Al Bachr's mental and physical integrity.

Communications received

951. At the time this report was finalized, no response to this communication has been received.

Communication sent

952. On 15 June 2009 the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the situation of human rights defenders, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Mr. Saud al-Hashimi, Mr. Al-Sharif Saif Al-Ghalib, Mr. Musa al-Qirni, Mr. Abdel Rahman al-Shumayri, Mr. Fahd al-Qirshi, Mr. Abdel Rahman Khan and Mr. Abdelaziz al-Khariji. Some of the individuals mentioned were the subject of a communication sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Reporter on Human Rights and counter terrorism, the Special Reporter on the independence of judges and lawyers, the Special Reporter on the question of torture and the then Special Representative of the Secretary-General on the situation of human rights defenders on 8 February 2007.

According to the information received:

953. Dr. Saud al-Sashimi has been on hunger strike since 1 June 2009, at Dhahran prison in western Saudi Arabia. On 5 and 6 June, he was stripped of clothes, save for his underwear, shackled, dragged from his cell and placed in a very cold cell for some five hours, as a result of refusing to consume food. He is reportedly in need of medical treatment.

954. Dr. Saud al-Hashimi, Mr. Al-Sharif Saif Al-Ghalib, Dr. Musa al-Qirni, Dr. Abdel Rahman al-Shumayri, Mr. Fahd al-Qirshi, Mr. Abdel Rahman Khan and Mr. Abdelaziz al-Khariji remain in detention without charges or a trial. They were arrested in February 2007 and have since been held in solitary confinement at Dhahban prison. They were allegedly arrested after they circulated a petition calling for political reform and proposing the establishment of an independent human rights organization in Saudi Arabia.

955. Concern is expressed for the physical integrity of Dr. Saud al-Hashimi. Concern is also expressed for the physical and psychological integrity of Mr. Al-Sharif Saif Al-Ghalib, Dr. Musa al-Qirni, Dr. Abdel Rahman al-Shumayri, Mr. Fahd al-Qirshi, Mr. Abdel Rahman Khan and Mr. Abdelaziz al-Khariji, due to their prolonged detention in solitary confinement.

Communication received

956. On 9 September 2009 the Government of the Republic of Saudi Arabia replied to the communication sent by the Special Rapporteur on15 June 2009 as follows:

957. The Government indicated that Mr. Saud al-Hashimi, Mr. Al-Sharif Saif Al-Ghalib, Mr. Musa al-Qirni, Mr. Abdel Rahman al-Shumayri, Mr. Fahd al-Qirshi, Mr. Abdel Rahman Khan and Mr. Abdelaziz al-Khariji were arrested and charged with engaging in activities involving the collection of donations in an illicit manner and the smuggling and transmission of funds to bodies suspected of using such funds to deceitfully incite Saudi citizens into travelling into locations where disturbances are taking place. The persons are currently being treated in accordance with the kingdoms, judicial standards which respect human rights, prohibit injustice, comply with international rules and conventions, permit visit by relatives, ensure that no physical or mental humiliation or harm is inflicted on the accused and the guarantee of fair trial. Those against whom the charges were substantiated will be referred to the Kingdoms judicial authority, which is well known for its independence and is the only body competent to adjudicate on all crimes, determine penalties after conviction and hand down final judgment on the accused.

Comments and observations of the Special Rapporteur

958. The Special Rapporteur thanks the Government of the Kingdom of Saudi Arabia for its response. The Special Rapporteur notes however that the Kingdom of Saudi Arabia did not provide information on how the legal basis of the detention for each individual mentioned in the communication is compatible with international human rights norms and standards as contained, inter alia, in the Universal Declaration for Human Rights, the Basic Principles on the Role of Lawyers, and the Declaration on Human Rights Defenders.

Communication sent

959. On 25 June 2009 the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding Mr Muhammad Basheer al-Ramaly.

According to the information received:

960. 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.

961. 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.

962. Mr Muhammad Basheer al-Ramaly is currently detained in Hail prison.

Communications received

963. At the time this report was finalized, no response to this communication has been received.

Communication sent

964. On 23 November 2009, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the allegedly imminent execution of Mr. Ali Agirdas, aged 29, of Turkish nationality.

965. According to information received:

966. 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.

967. 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.

968. We are further informed that in Saudi Arabia prisoners are executed without prior notification to them or their families.

Communications received

969. At the time this report was finalized, no response to this communication has been received.

Communication sent

970. On 6 January 2010 the Special Rapportuer sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding several cases of persons sentenced to death on charges of witchcraft or charlatanism.

According to the information we have received:

971. 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-trail 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.

972. 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.

973. 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.

974. 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.

975. 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.

976. 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."

Communications received

977. At the time this report was finalized, no response to this communication has been received.

Comments and observations of the Special Rapporteur

978. The Special Rapporteur regrets the absence, at the time of the finalization of the report, of an official reply to four out of five communications sent to the Government of the Kingdom of Saudi Arabia. She considers response to her communications as an important part of the cooperation of Governments with her mandate, and calls upon the Government to transmit detailed and substative responses to the outstanding communications.

Somalia

Communication sent

979. On 5 June 2009, the Special Rapporteur sent an urgent appeal jointly with the Independent Expert appointed by the Human Rights Council on the situation of human rights in Somalia, Special Rapporteur on extrajudicial, summary or arbitrary executions, and Special Rapporteur on violence against women 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:

980. 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.

981. 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.

982. 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.

983. 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.

984. 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.

Communications received

985. At the time this report was finalized, no response to this communication has been received.

Comments and observations of the Special Rapporteur

986. The Special Rapporteur regrets the absence, at the time of the finalization of the report, of an official reply to the urgent appeal sent on 5 June 2009. The Special Rapporteur calls upon the Government of Somalia to provide a substantive answer to the above allegations at the earliest convenience.

Sri Lanka

Communication sent

987. On 7 April 2009, the Special Rappporteur sent an allegation letter jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishmentconcerning Mr. Sunil Shantha.

According to the information received:

988. At 2:30 p.m. on 1 March 2009, three police officers went to Mr. Sunil Shantha's home. When he identified himself, one of the police officers grabbed him by his stomach,

while the other two officers grabbed him and forced his hands to the back. He was then assaulted on the face, back and stomach, and dragged along the road to a police jeep, where they made him sit on the floor with his legs shackled.

989. Once they arrived at the Meegahatenna Police Station, the police officers assaulted Mr. Shantha with a pole because he was unable to get out of the jeep. Once inside, Mr. Shantha's hands were tied with a rope, and a pole was put through his arms and legs, and lodged between two tables. This method of hanging is locally known as the Dharma Chakra, or wheel of enlightenment. Mr. Shantha was continuously asked to return stolen goods, allegations which he denied.

990. For the next two days, Mr. Shantha was left in the same room with his left leg shackled to one of the table legs, and his right hand to another. During this time, he was given neither food nor water, nor was he allowed to go to the bathroom. He also gave a statement to the Sub-Inspector and signed a piece of paper without knowing what was written on it.

991. On 3 March, he was taken to the Meegahatenna Hospital, where he was examined. The doctor who saw him recommended that he be admitted, but he was taken back to the Meegahatena Police Station. At about 5:30 p.m., he was presented before the Mathugama Magistrate, and threatened by the Sub-Inspector if he mentioned the assault. The Magistrate informed Mr. Shantha that there were two charges of theft and one of assault against him.

992. Mr. Shantha's lawyer informed the Magistrate that he had been assaulted by the police, and he referred him to the Prison Hospital in Kalutara, where he received medical treatment until 11 March. When Mr. Shantha appeared again in court, his legal representative did not appear. She later informed Mr. Shantha's family that she had been threatened by the police. On 13 March, Mr. Shantha was sent home.

993. On 16 March, a complaint was sent to the chairperson of the National Human Rights Commission, the National Police Commission, the Inspector General of Police, the Attorney General and the Senior Superintendent of the Kalutara Police.

Communication received

994. At the time this report was finalized, no response to this communication has been received.

Communication sent

995. On 26 May 2009, the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the situation of human rights defenders, 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 regarding Dr. Thangamutha Sathiyamoorthy, the regional director of health services in Kilinochchi, Dr. Thurairaja Varatharajah, the regional director of health services in Mullaitivu, and Dr. V. Shanmugarajah, medical superintendent at Mullivaaykkaal field hospital.

According to the information received:

996. Dr. Sathiyamoorthy, Dr. Varatharajah and Dr. Shanmugarajah are Government employed and had been treating the sick and wounded in the conflict zone in North-eastern Sri Lanka until they left the "No Fire Zone" with approximately 5,000 other civilians on 15 May 2009. The Sri Lankan Army (SLA) detained the three doctors on 16 May 2009, under

the broad arrest and detention powers of security forces pursuant to the Prevention of Terrorism Act. The physicians were last seen on the morning of 15 May 2009 at a holding area at Omanthai check point. An official of the Ministry of Health stated on 18 May Government forces handed over the physicians to the police.

997. Dr. Shanmugarajah and Dr. Sathiyamoorthy are apparently currently held at a detention centre of the Terrorist Investigation Division (T.I.D) in Colombo. However, their relatives are not aware of their exact whereabouts and neither has had access to a lawyer. Dr. Varatharajah was seriously injured and is reported to have been airlifted by the Sri Lankan Air Forces (SLAF) from the Omanthai check point to an unknown destination.

998. While working in the conflict zone, the doctors provided detailed eyewitness reports to the media and the international community from hospitals and makeshift medical centres. Their reports detailed the suffering of ordinary civilians, many of whom died from war-related injuries. Their reports also highlighted continuous shelling of areas with large concentrations of non-combatants.

999. Concerns are expressed that the three doctors may be held in reprisal for providing information about the situation of civilians in the conflict zone. In view of their reported incommunicado detention at unknown places of detention, which could put them at risk of enforced disappearance, and in view of the reported serious injuries of Dr. Varatharajah, grave concerns are expressed as regards their physical and mental integrity.

1000. 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.

Communication received

1001. In letters dated 28 May 2009, 15 July 2009 and 3 August 2009, the Government responded to the communication sent on 26 May 2009, which are summarized as follows:

1002. Dr.Thangamuththu Sathiyamoorthy, Dr. Veerakethipillai Shanmugarajah and Dr. ThurairajahVaratharajah surrendered to the Army when they have arrived at Omanthai check point on 15 May 2009. Dr. Thurairajah Varatharajah who was injured at the time of surrender was admitted to the General Hospital Colombo on the same day. Later he was discharged (6 June 2009). All the doctors were detained under section 19 (1) of the Emeregncy Regulation on charges of their alleged links with the proscribed LTTE organization, disseminating false information to the international media and supplying medicine including medical equipment to the LTTE from Government hospitals. All the doctors are presently in the protective custody of the Criminal Investigation Department (CID) headquarter Colombo, pending completion of investigation.

1003. Dr. Thurairajah Varatharajah had been visited by ICRC representatives on 28 May 2009 and on 6 June 2009. The spouse and sister of Dr. Thurairajah Varatharajah visited him on 30 May 2009, 13 June 2009, 20 June 2009, 27 June 2009 and 4 July 2009. Dr. Thurairajah Varatharajah was taken to ward No. 32 of the General Hospital Colombo on 24 June 2009 for a medical check-up and brought back to the CID on 26 June 2009.

1004. Dr. Thangamuththu Sathiyamoorthy had been visited by ICRC representatives on 21 May 2009 and on 6 June 2009. The father, mother and brother of Dr. Sathiyamoorthy visited him on 23 May 2009, 30 May 2009, 6 June 2009, 30 June 2009 and 4 July 2009. His spouse and children visited him on 20 June 2009.

1005. Dr. Veerakethipillai Shanmugarajah had been visited by ICRC representatives on 21 May 2009 and 6 June 2009. Family members visited him on 4 July 2009 at the CID.

1006. All three doctors were given healthcare facilities. At a media briefing held on 8 July 2009 at the Media Center for National Security all three doctors have stated that they were forced by the LTTEto speak to foreign media and provided exaggerated information on civilian casualties.

1007. They have also said that they were not under duress to attend the media briefing arranged by the MCNS.

Comments and observations of the Special Rapporteur

1008. The Special Rapporteur thanks the Government of Sri Lanka for its response elaborating on the circumstance surrounding the arrest and detention of Dr. Thangamutha Sathiyamoorthy, Dr. Thurairaja Varatharajah, and Dr. V. Shanmugarajah. The Special Rapporteur however regrets that the Government did not provide information whether the doctors had access to counsel during their detention and if they were guaranteed fair proceedings before an independent and impartial tribunal. The Special Rapporteur would also like to receive information on the current status of the judicial proceedings concerning them.

Communication sent

1009. On 31 December 2009, the Special Rapportuer sent an allegation letter jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning Mr. Wanni Athapaththu Mudiyanselage Nilantha Saman Kumara, aged 31.

According to the information received:

1010. 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.

1011. 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.

1012. 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 bean 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 steeling a water pump.

1013. The following day, Mr. Kumara was once again hung for approximately two hours. Although he needed medical attention, none was provided. That evening, Inspector Atapattu 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.

1014. 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.

1015. 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.

1016. 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.

1017. 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.

1018. 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.

1019. 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.

Communications received

1020. At the time this report was finalized, no response to this communication has been received.

Comments and observations of the Special Rapporteur

1021. While the Special Rapporteur thanks the Government of Sri Lanka for the reply sent to her communication of 26 May 2009, she regrets that no replies have been received to the communications sent on 7 April and 31 December 2009 and calls upon the Government of Sri Lanka to provide a substantive answer to those allegations as soon as possible.

Sudan

Communication sent

1022. On 2 April 2009, the Special Rapporteur sent an urgent appeal jointly with 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 torture and other cruel, inhuman or degrading treatment or punishment 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.

1023. 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.

1024. 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.

1025. 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."

Communication received

1026. At the time this report was finalized, no response to this communication has been received.

Communication sent

1027. On 17 April 2009, the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the situation of human rights defenders, Special Rapporteur on the situation of human rights in the Sudan, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding the incommunicado detention of Mr. Mohamed Al Mahgoub, Director of the North Darfur branch of the Amel Centre for Medical Treatment and Rehabilitation of Victims of Torture.

According to the information received:

1028. On 11 April 2009, officers of the National Intelligence and State Security Services (NISS) arrested Mr. Al Mahgoub at his house in Al Fashir. He has since been detained incommunicado in the NISS premises in Al Fashir. Mohamed Al Mahjoub has so far not been allowed any personal visits or been given access to a lawyer. Mr. Al Mahgoub has not been charged yet of any offence.

1029. Prior to his arrest, on 5 March 2009, Mr. Al Mahgoub had been ordered by the NISS not to leave Al Fashir, on the basis of the National Security Forces Act 1999.

1030. The Amal Centre's offices were closed down by the NISS in Nyala, South Darfur and in Al Fashir, North Darfur. The closure of Amal coincided with that of two other Sudanese non-governmental organisations, the Sudan Social Development Organisation (SUDO) and the Khartoum Centre for Human Rights and Environmental Development (KCHRED), and the expulsion of 13 international humanitarian organisations that were operating in Sudan.

1031. Concern is expressed that the incommunicado detention of Mr. Mohamed Al Mahgoub might be solely related to his legitimate activities in defence of human rights, particularly the rights of victims of torture. Further concern is expressed for his physical and mental integrity.

Communication received

1032. At the time this report was finalized, no response to this communication has been received.

Communication Sent

1033. On 14 December 2009, the Special Rapportuer sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding the situation of Ms. Butheina Omar al Sadiq, Ms. Randa Yousif and Ms. Nafisa al-Nur Hajar.

According to the information received:

1034. On 8 December 2009, while posting flyers at the Al Kalakla Court complex in Khartoum, Ms. Omar Al Sadiq, Ms. Yousif and Ms. Al-Nur Hajar were arrested by the police following an order by Judge Bashir Rahama. The leaflets called on lawyers to renew their membership to the Bar Association to enable them to vote at the next Bar Association elections in January 2010. After having been interrogated by the police, the three lawyers were released. Later the same day, they were re-arrested by agents of the National Intelligence Security Service of Sudan (NISS), and since then have been held in incommunicado detention.

1035. Concern is expressed that the arrest and detention of Ms. Omar Al Sadiq, Ms. Yousif and Ms. Al-Nur Hajar may be directly related to their work in defense of human rights, and in particular for posting information regarding the upcoming Bar Association elections. In view of their incommunicado detention, further concern is expressed for their physical and psychological integrity.

1036. Without expressing at this stage an opinion on the facts of the case and on whether the detention of Ms. Omar Al Sadiq, Ms. Yousif and Ms. Al-Nur Hajar 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.

Communication received

1037. At the time this report was finalized, no response to this communication has been received.

Communication sent

1038. On 30 December 2009, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment 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.

1039. 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:

1040. 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.

1041. 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.

1042. 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.

1043. 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".

1044. 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.

Communication received

1045. At the time this report was finalized, no response to this communication has been received.

Communication sent

1046. On 10 February 2010, the Special Rapportuer sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions.

1047. 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.

1048. 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.

1049. 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.

1050. 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.

1051. 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.

1052. 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.

1053. 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:

1054. 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.

1055. 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.

1056. 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.

1057. 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 Abdulrahaman 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.

1058. Abdulrahman Zakaria Mohammed was executed in El Fasher, North Darfur, on 14 May 2009.

Communication received

1059. On 18 March 2010, the Government of Sudan replied to the communication sent by the Special Rapporteur. 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. She is unable, therefore, to make observations, and expects they will be included in her next report.

Press statement

1060. On 17 April 2009, the Special Rapporteur issued a press statement together with The Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the situation of human rights in the Sudan, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. They strongly condemned the execution of nine men following an unfair trial in Sudan. "It is with great regret and dismay that we have learned about the execution of the defendants who were found guilty of having committed the murder of newspaper editor Mohamed Taha Mohamed Ahmed," said Ms. Manuela Carmena Castrillo, the Chair of the UN Working Group on Arbitrary Detention.

1061. The Working Group on Arbitrary Detention, mandated by the UN Human Rights Council to investigate allegations of arbitrary detention around the globe, issued a legal opinion in November 2008 in which it raised serious questions about the fairness of the trial of the accused who belong to the Fur tribe of the Darfur region of Sudan. They were held in detention for up to four months without contact with the outside world and still bore visible signs of torture when they appeared in court. "No judicial system, and in particular, the judicial system of a country that ratified the International Covenant on Civil and Political Rights on 18 March 1986, can consider as valid a confession obtained under torture and revoked before a court, and a sentence based on such confession," the Working Group stated in its opinion.

1062. Several mandate holders of the Human Rights Council had appealed to the Sudanese Government to stay the execution until all fair trial related concerns were dispelled in their entirety, or the men were given a new trial or released.

1063. “We cannot sit in judgement about whether the defendants were guilty of the gruesome murder of Mr. Mohamed Ahmed. However, in cases involving capital punishment the slightest doubt cast on whether due process has been followed makes an execution inadmissible. This follows from the irreversibility of the death penalty,” Philip Alston, the Special Rapporteur on extrajudicial executions, added.

1064. The nine men – Ishag Al Sanosi Juma, Abdulhai Omer Mohamed Al Kalifa, 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 – were sentenced to death in November 2007, although they revoked their confessions alleging they had been obtained under duress. Requests by the defendants and their lawyers for a medical examination were rejected. An appeal court and the Sudanese Supreme Court upheld the verdict. The Constitutional Court dismissed their final appeal denying any violations of constitutional rights during the proceedings. All men were hanged in a Khartoum prison on 13 April 2009.

Observations of the Special Rapporteur:

1065. While appreciating the response received to her communication of 10 February 2010, the Special Rapporteur regrets that unfortunately she has not received a reply to four out of five communications sent to the Government of Sudan. She considers response to her communications as an important part of the cooperation of Governments with her mandate, and calls upon the Government of Sudan to transmit responses to the outstanding communications as soon as possible.

Syrian Arab Republic

Communication sent

1066. On 10 December 2009, the Special Rapporteur sent an urgent appeal jointly with the 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 regarding Mr. Muhannad Al-Hassani, lawyer, President of the Syrian Human Rights Organization (SHRO) and Commissioner of the International Commission of Jurists. The situation of Mr. Al-Hassani has previously been addressed by an urgent appeal of 3 August 2009 by the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, to which no reply has been received so far from your Excellency’s Government.

According to the new information received:

1067. On 10 November 2009, the Disciplinary Committee of the Damascus Section of the Syrian Bar Association decided to permanently bar Mr. Al-Hassani from practicing law. Among the grounds upon which the disbarment was ordered was that Muhannad Al-Hassani is “the President of an unauthorised organisation (the Syrian Organization for Human Rights)”, the accusation of “publishing false and exaggerated information that weakens the state and its reputation abroad”, and of “attending and documenting the proceedings of the Supreme State Security Court without being the lawyer of those involved in these proceedings,” as well as “violating the law governing this profession as well as the [Bar Association’s] internal rules, and harming the dignity, honour and traditions of this profession”.

1068. Mr. Al-Hassani has been held in detention in Damascus since 28 July and faces criminal charges under Article 286 of the Syrian Penal Code. These charges arise allegedly

from his observation and reporting of an open trial before the State Security Court held on 19 July 2009, and carry a prison sentence of up to 15 years. According to the information received, under the State Security Court Law proceedings of the Court are presumptively public.

1069. It is further reported that during the disciplinary proceedings, which took place on 20 October and 10 November 2009, the Disciplinary Committee gave no credible evidence that Al-Hassani had published any false or exaggerated information of any kind.

1070. Concern is expressed that the disbarment and criminal charges against Mr. Al-Hasani are related to his reportedly peaceful and legitimate activities in defense of human rights, including as a lawyer.

Communication received

1071. On 23 February 2010, the Government of the Syrian Arab Republic replied to the communication sent by the Special Rapporteur. 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. She is unable, therefore, to make observations, and expects they will be included in her next report.

Communication sent

1072. On 23 December 2009, the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishmen regarding Mr. Mustafa Ismail, lawyer, of Kurdish origin. Mr. Ismail writes frequently about the treatment of Kurds in the Syrian Arab Republic and Turkey for a number of foreign-based websites.

According to the information received:

1073. On 12 December 2009, Mr. Mustafa Ismail was arrested at the Air Force Security Branch in Aleppo, where he went following an order from the local security office in Ain Arab.

1074. On 17 December 2009, members of his family went to the same Air Force Security Branch in Aleppo to look for him. However, they were told that Mr. Ismail was not there and were instead ordered to leave.

1075. During the past few months, Mr. Ismail has been questioned several times by members of different security services such as by the Political Security Branch on 3 October, the Military Security Branch on 5 October and the State Security Branch on 7 and 8 November. During those sessions, questions had reportedly surrounded his work for the media, particularly phone interviews he had given to a European-based Kurdish satellite TV station, Roj TV.

1076. On 11 December 2009, Mr. Ismail had posted an article on the website of Levant News citing the order to report to the Air Force Security Branch in Aleppo and pointing to the numerous times that he has been summoned for questioning to security offices since 2000.

1077. So far, the authorities have not acknowledged that Mr. Ismail is in detention or provided any other explanation.

1078. In light of Mr. Ismail's prolonged incommunicado detention, concern is expressed for his physical and psychological integrity.

Communication received

1079. At the time this report was finalized, no response to this communication has been received.

Comments and observations of the Special Rapporteur

1080. The Special Rapporteur thanks the Government of the Syrian Arab Republic for the reply to her communication of 10 December 2009. However, she regrets that no reply has been received to the communication sent on 23 December 2009 and calls upon the Government to provide information in this respect as soon as possible.

Tunisia

Communications envoyées

1081. Le 30 Juin 2009 le Rapporteur Spécial a envoyée un appel urgent avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants et la Rapporteur spéciale sur la situation des défenseurs des droits de l'homme concernant des actes de harcèlement répétés contre un nombre de défenseurs des droits de l'homme tunisiens, y compris Me Radia Nasraoui, présidente de l'Association de lutte contre la torture en Tunisie, Me Raouf Ayadi, ancien Secrétaire général du Conseil national pour les libertés en Tunisie (CNLT), M. Hamma Hammami, mari de Me Nasraoui, Me Samir Dilou, avocat membre de l'Association internationale de soutien aux prisonniers politiques, et Me Abdelwahab Maatar.

1082. Me Nasraoui, Me Ayadi, M. Hamma Hammami et Me Dilou ont fait l'objet de nombreuses communications envoyées par les Procédures Spéciales depuis 2004.

Selon les nouvelles informations reçues :

1083. Le 23 juin 2009, de retour de Genève, Me Nasraoui et Me Ayadi auraient été violemment agressés par un groupe de policiers en civil à l'aéroport de Tunis-Carthage. Ceux-ci auraient sommés Me Nasraoui, Me Ayadi, ainsi que Me Dilou également présent, de les suivre dans un bureau afin d'effectuer une fouille corporelle. En l'absence de justification légale fournie par les policiers, Me Ayadi aurait refusé de se soumettre à cette fouille et aurait été roué de coups par quatre policiers, devant les voyageurs présents. Ses vêtements auraient également été déchirés. Il aurait ensuite été transporté de force dans une pièce isolée où il aurait à nouveau été battu ainsi qu'insulté, puis soumis à la fouille corporelle. Les documents professionnels contenus dans les bagages des trois avocats auraient été inspectés. Les documents de Me Dilou auraient également été aspergés d'un produit chimique les rendant illisibles.

1084. Au même moment, Me Nasroui, témoin de la scène, aurait appelé son mari, M. Hammami, qui l'attendait alors dans la zone d'arrivée. Un policier lui aurait tordu le bras afin d'interrompre la conversation téléphonique et l'aurait jetée à terre et trainée jusqu'à un bureau où elle aurait été fouillée. Son téléphone et son ordinateur portable auraient été jetés plus loin. Me Nasraoui souffrirait de contusions au bras droit.

1085. En quittant la zone de contrôle, Me Nasraoui et Me Ayadi auraient à nouveau été insultés par les agents de la sécurité d'Etat de la force qui les escortaient. M. Hammami aurait été brutalisé alors qu'il protestait contre ce qui venait d'arriver. Un policier aurait porté un violent coup de pied à Me Ayadi, lui entaillant le genou.

1086. Le même jour, Me Mataar aurait subi un traitement similaire à l'aéroport de Sfax, à son retour de Paris. Il aurait également refusé de subir une fouille corporelle et aurait été

détenu pendant deux heures. Un policier lui aurait donné un coup de poing au visage, brisant ses lunettes.

1087. Le 19 mai 2009, Me Nasraoui, de retour de Paris où elle avait été invitée à participer à une conférence organisée par des candidats aux récentes élections européennes, aurait subi une fouille de ses affaires (valise et sacoche) avant de se voir intimer l'ordre d'obtempérer pour une fouille corporelle. Me Nasraoui s'y serait opposée et aurait alors été insultée et escortée jusqu'en dehors de l'aéroport.

1088. De sérieuses craintes sont exprimées quant au fait que les mesures de fouilles corporelles répétées et l'usage excessif de la force contre Me Nasraoui, Me Ayadi, Me Mataar, Me Dilou et M. Hammami soient liés à leurs activités légitimes et non-violentes de défense des droits de l'homme. Des craintes similaires sont exprimées quant au fait que ces nouveaux actes s'inscrivent dans une campagne d'humiliation et d'intimidation à l'égard des personnes précitées.

1089. Par ailleurs, nous souhaitons attirer l'attention du Gouvernement de votre Excellence sur le fait que Me Nasraoui et Me Mokhtar Trifi, Président de la Ligue tunisienne pour la défense des droits de l'homme, se sont entretenus avec la Rapporteuse Spéciale sur la situation des défenseurs des droits de l'homme le 30 juin 2009 à Genève. Eu égard aux faits précités et du fait de leur retour imminent en Tunisie, nous exprimons de vives craintes pour l'intégrité physique et morale de Me Nasraoui et Me Trifi.

Communications reçu

1090. Au moment de la finalisation du rapport aucune réponse à ladite communication n'avait été reçue.

Communications envoyées

1091. Le 5 octobre 2009, la Rapporteur Spéciale a envoyée un appel urgent avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradant, et la Rapporteuse Spéciale sur la situation des défenseurs des droits de l'homme concernant la situation des 38 membres du mouvement de protestation sociale dans la région de Gafsa, Fayçal Ben Ahmed Ben Hassan Ben Amor, Hafnaoui Ben Tahar Ben Othmane, Ali Ben Soltane Ben Ibrahim Jedidi., Thameur Ben Amor Ben Younes Maghzaoui, Ridha Ben Salah Ben Arbi Ezzeddini, Issam Ben Amor Ben Tayeb Fajraoui, Mouaadh Ben Nasser Ben Sassi Ahmadi, Abdessalem Ben Mohamed Ben Ali Helali, Mahmoud Ben Mohamed Imam Ben Mohamed Raddadi, Hedi Ben Amor Ben Ali Bouslahi, Abdallah Ben Soltane Ben Ahmed Fajraoui, Mohamed Ben Salah Ben Makki Al-Baldi, Tarek Ben Mohamed Salah Ben Boubakeur Hlimi, Bechir Ben Mohamed Ben Othmane Abidi, Adel Ben Ali Ben Salah Jayyar, Ismaïl Ben Abdelaziz Ben Farah Aljawhari, Lazhar Ben Ahmed Ben Ammar Ben Abdelmalek, Moudhaffar Ben Bechir Ben Mohamed Abidi, Haroun Ben Mohamed Salah Ben Boubakeur Hlimi, Taïeb Ben Abderrahmane Bellassoued Ben Othmane, Boubakeur Ben Mohamed Al-Arbi Ben Boubakeur, Radhouane Ben Mohamed Ben Ahmed Bouzayyane, Makram Ben Houcine Ben Ali Majdi, Adnane Hajji, Sami Ben Mohamed Ben Tahar Ben Ahmed alias Sami Amaydi, Othman Ben ABderrahman Bellassoued Ben Othman, Ghanem Ben Boujoumaâ Ben Naoui Chrayti, Mahmoud Ben Ali Ben Mohamed Helali, Boujoumaa Ben Naoui Ben Ali Chrayti, Abid Ben Ahmed Ben Messaoud Khlayfi, Habib Ben Abbes Khedhir, Rachid Ben Salah Ben Ali Abdaoui, Hassaan Ben Taïeb Ben Messaoud Ben Abdallah, Mohsen Ben Ahmed Ben Ali Aamaydi, Maher Ben Mohamed Ben Amara Fajraoui, Ridha Ben Lazhari Ben Mohamed Aamaydi, Fahem Ben Kefi Ben Amara Boukaddous et Mouhieddine Ben Amor Ben Mostapha Cherbib.

1092. Ce cas a fait l'objet d'un appel urgent envoyé par l' ancien Rapporteur spécial sur l'indépendance des juges et des avocats, l'ancien Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, le Rapporteur spécial sur la torture, l'ancienne Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et l'ancienne Vice-présidente du Groupe de Travail sur la détention arbitraire le 10 avril 2008. Une lettre d'allégation a également été envoyée le 12 janvier 2009. Nous accusons réception des réponses du gouvernement de votre Excellence aux communications précitées datées du 5 février et du 31 mars 2009 respectivement.

Selon les nouvelles informations reçues :

1093. Le 22 août 2009, la Cour de cassation de Tunis aurait rejeté le pourvoi en cassation des 38 membres précités du mouvement du bassin minier de Gafsa. Cette décision confirme les peines prononcées en appel allant de deux à huit ans de prison ferme à l'encontre de ces personnes pour « participation à une entente criminelle en vue de commettre des attentats contre les personnes et les biens, rébellion armée commise par plus de dix personnes et troubles à l'ordre public ».

1094. Il est allégué que ces personnes n'auraient pas bénéficié d'un procès juste et équitable dans la mesure où les droits de la défense n'auraient pas été respectés. Il est allégué que, le 3 février 2009, la Cour d'appel de Gafsa aurait rendu son jugement sans statuer sur les allégations de torture et les irrégularités du dossier soulevées par les avocats de la défense depuis le début du procès. Par ailleurs, le Procureur n'aurait pas fait de réquisitoire.

1095. Il est également allégué que 33 des ces 38 condamnés seraient détenus dans des centres de détention éloignés de leurs familles dont ils dépendent matériellement, les autres étant en fuite.

1096. Des craintes sont exprimées quant au fait que la condamnation des 38 personnes précitées soit liée à leurs activités non violentes de promotion et protection des droits de l'homme. Des craintes sont également exprimées que les dysfonctionnements cités lors du procès aient compromis le principe du droit à un procès équitable. Compte tenu des allégations d'actes de torture formulées, des craintes sont également exprimées quant à l'intégrité physique et mentale des prisonniers.

Communications reçues

1097. Le 25 janvier 2010, le Gouvernement tunisien a répondu à la lettre d'allégations du 5 octobre 2010. Le Gouvernement précise que selon les éléments de l'instruction préparatoire diligentée par le procureur de la République de Gafsa, les prévenus vises dans la communication ont constitué une entente, sur fond de certains troubles enregistrés dans la région de Gafsa, sud de la Tunisie, afin d'appeler à la désobéissance publique, transformant ainsi le mouvement de contestation pacifique en une véritable rébellion comme l'indique notamment la diffusion de tracts d'incitation à la commission d'actes d'agression et des voies de fait contre les forces de l'ordre.

1098. Les prévenus avaient effectivement mis leur plan à exécution se mettant à la tête d'une manifestation de plusieurs dizaines de personnes au cours de laquelle les agents de l'ordre public étaient la cible de cocktails Molotov et de jets de pierre provoquant ainsi des lésions corporelles à plusieurs d'entre eux. Les édifices publics et privés, voitures et vitrines de commerce n'ont pas été épargnés subissant également des dégâts graves. Il s'en est suivi un état de panique parmi les populations de la région de Gafsa dont la sécurité était bel et bien menacée.

1099. Dans le cadre de l'instruction préparatoire, le juge d'instruction en charge du dossier, a procédé à plusieurs auditions et notamment celle de 7 agents de l'ordre ayant

présenté chacun des expertises médicales faisant état de blessures et de traces de violence occasionnées par des jets de pierre et des coups de bâton.

1100. Par ailleurs, un rapport détaillé des dommages aux édifices publics et privés, appuyé par des expertises techniques et illustré par des photos des édifices saccagés, est inclus dans le dossier de l'instruction.

1101. L'allégation selon laquelle la Cour d'appel de Gafsa avait rendu son jugement « sans statuer sur les allégations de torture et les irrégularités du dossier soulevé par les avocats de la défense depuis le début du procès » est, en fait, une allégation dépourvue de tout fondement. En effet, la cour a consigné ces allégations dans les procès-verbaux d'audience.

1102. Quant à l'examen des allégations de mauvais traitements et d'irrégularité du dossier, toute la procédure d'instruction a été soumise au contrôle de la Chambre d'accusation puis de la Cour de cassation, saisie sur pourvoi formé par certains des prévenus contre l'arrêt de la chambre d'accusation.

1103. En réponse au grief tiré de la nullité des poursuites au motif que les aveux des prévenus aurait été extorqués sous la contrainte, la Cour de cassation a rejeté, par son arrêt du 15 novembre 2008, ledit grief motivant son arrêt par le fait que les allégations des prévenus « n'étaient reflétées dans aucune des pièces du dossier dès lors que les traces d'écorchures et de légers hématomes, constatées sur certains d'entre eux, évoquaient plutôt qu'elles étaient causées par l'affrontement des prévenus aux forces de l'ordre et ne sont nullement en rapport avec les officiers de police judiciaire charges quant à eux de diligenter l'enquête » et à la Cour de cassation de conclure qu' « aucun acte d'agression ne pouvait être imputé aux officiers en charge de l'enquête préliminaire ce qui est de nature à écarter toute contestation de légalité relative aux actes par eux accomplis ».

1104. Ainsi, l'allégation de mauvais traitements a été examinée et tranchée par la Cour de cassation, juridiction dotée du pouvoir de contrôler la régularité des actes d'instruction, laquelle a rendu une décision de rejet, passée en force de chose jugée sur ce grief. En outre l'affrontement violent des prévenus aux forces de l'ordre est certainement de nature à causer des blessures aux deux parties. C'est dans ce cadre que le juge d'instruction a, d'une part, constaté des écorchures et de légers hématomes sur certains des prévenus et a versé, d'autre part, au dossier des expertises médicales dont 7 agents de l'ordre étaient concernes, expertises faisant état de blessures et de traces de violence occasionnées par des jets de pierre et des coups de bâton. La qualification « d'actes de mauvais traitements » ne pouvait être retenue pour les légers écorchures et hématomes des lors qu'ils étaient dus aux affrontements que les prévenus ont eux mêmes provoqués. Il est à préciser qu'aucun des prévenus ou des membres de leurs familles ou de leurs avocats n'a déposé de plainte indépendante pour mauvais traitements.

1105. En l'espèce, les autorités tunisiennes n'ont constaté aucun motif raisonnable laissant croire qu'un acte de mauvais traitement ait été commis. En l'especе, les autorités tunisiennes n'ont constate aucun « motif raisonnable » laissant croire qu'un acte de mauvais traitement ait été commis. En effet, chacun des prévenus étaient en droit, durant sa garde à vue, de demander, conformément à l'article 13 bis du Code de procédure pénale, qu'il soit soumis à examen médical. Cette possibilité appartient également aux membres de leurs familles qui peuvent demander l'examen médical pour leurs proches même si ceux-ci ne l'ont pas fait. Un tel droit a pour objectif de permettre aux détenus de faire constater les traces, physique ou psychologique, de mauvais traitements subis lors de la garde à vue. Les procès-verbaux de la garde à vue font état de l'information donnée aux prévenus de leur droit de demander d'être soumis à un examen médical, ceux-ci avaient déclaré ne pas en avoir besoin. En outre, aucun des membres de leurs familles n'avait présenté de demande dans ce sens ce qui révèle le caractère infondé des allégations de mauvais traitements formulés par les prévenus.

1106. Concernant le respect des droits de la défense des prévenus, les procédures d'instruction et de jugement se sont déroulées conformément à la législation en vigueur et dans le respect total des droits de la défense des prévenus. En effet, Le Procureur de la République a été immédiatement avisé de l'enquête préliminaire et de la mesure de garde a vue décidée a l'encontre des prévenus pour une période de 3 jours conformément aux articles 11 et 13 bis du Code de procédure pénale. Une prolongation de 3 jours supplémentaires a été décidée par ordonnance écrite et motivée du Procureur de la République pour certains prévenus, dictée par les besoins de l'enquête. L'enquête préliminaire menée par la police judiciaire a donc été effectuée en toute légalité sous le contrôle de la justice.

1107. Dès clôture de l'enquête préliminaire, le procès verbal a été transmis au Ministère public qui a décidé de la libération des prévenus gardés à vue et ordonné un complément d'information. Une instruction préparatoire a été par la suite ordonnée par réquisitoire du Procureur de la République en date du 20 juin 2008 aux fins d'instruire sur les faits reproches aux prévenus et procéder à tous les actes nécessaires à la manifestation de la vérité.

1108. Apres accomplissement de tous les actes necessaires à la manifestation de la vérité, le juge d'instruction a procédé à la clôture de l'information et a ordonné le renvoi des prévenus devant la Chambre d'accusation avec un exposé détaillé de la procédure et une liste complète des pièces saisies. L'ordonnance de renvoi devant la Chambre d'accusation a été notifié à chacun des prévenus qui ont décidé d'interjeter appel de l'ordonnance. La chambre d'accusation a rejeté le recours en appel et renvoyé les trois prévenus devant la juridiction compétente pour répondre notamment des chefs d'accusation suivants :

1109. affiliation à une bande et participation à une entente dans le but de préparer et de commettre un attentat contre les personnes et les propriétés (articles 131 et 132 du Code pénal).

1110. fourniture de lieux de réunion et de contribution pécuniaire aux membres d'une bande de malfaiteurs (article 133 du Code pénal).

1111. participation à une rébellion armée par plus de dix personnes au cours de laquelle des voies de fait ont été exercées sur un fonctionnaire dans l'exercice de ses fonctions.

1112. Collecte de fonds sans autorisation (décret du 21 décembre 1944)

1113. Dommage volontaire à la propriété d'autrui (article 304 du code pénal).

1114. Les prévenus se sont pourvus en cassation contre l'arrêt de la Chambre d'accusation. La Cour de cassation n'a décelé dans la procédure d'instruction aucune violation de la loi ou atteinte aux droits de la défense et a, par conséquent, décidé le rejet du pourvoi.

1115. Le procès des prévenus s'est tenu publiquement en première instance devant le tribunal de première instance de Gafsa. Lors de cette audience, le tribunal a recueilli la constitution des avocats des prévenus puis a donné suite à la demande de libération de huit d'entre eux et au renvoi de l'affaire, sur demande des avocats, à l'audience du 11 décembre 2008 pour leur permettre de préparer leurs moyens de défense et poursuivre l'examen de l'affaire. La poursuite de l'examen de l'affaire devait permettre, au tribunal, selon les termes de l'article 143 du Code de procédure pénale, après lecture de l'acte d'accusation, de procéder à l'interrogatoire des prévenus, de recueillir, le cas échéant, la constitution ainsi que les conclusions de la partie civile pour enfin permettre aux avocats de présenter leurs plaidoiries. Cependant, dès le début de l'audience, certains des avocats de la défense ont affiché leur hostilité au respect de la procédure telle que prévue par la loi s'opposant à la poursuite normale de l'examen du dossier et appelant leurs clients à refuser tout interrogatoire. Appelés par le tribunal à présenter leurs plaidoiries afin que leurs demandes

formelles soient examinées en même temps que l'examen du dossier sur le fond, ces avocats s'y sont refusés. Le tribunal a dû alors renvoyer l'affaire en délibéré.

1116. Apres délibéré, le tribunal a rendu son verdict décidant de la relaxe de certains des prévenus et condamnant les autres à des peines allant de deux ans d'emprisonnement avec sursis à 10 ans et un mois d'emprisonnement ferme du chef d'entente criminelle portant atteinte aux personnes et aux biens et rébellion armée par plus de dix personnes au cours de laquelle des voies de fait ont été exercées sur un fonctionnaire dans l'exercice de ses fonctions , jets de pierres sur les propriétés d'autrui et bruit et tapage de nature à troubler la tranquillité des habitants. Les prévenus condamnés ont interjeté appel du jugement. Au cours de l'audience du 3 février 2009, la Cour a tout d'abord procédé à l'interrogatoire des prévenus. L'allégation selon laquelle le président de la séance aurait refusé de lire l'acte d'accusation est totalement infondée, l'accomplissement de cette formalité étant consigné dans le procès-verbal de l'audience. La Cour d'appel a ensuite donné la parole aux avocats qui ont présenté leurs moyens. La Cour a rendu son verdict le 4 février 2009, revoyant à la baisse les peines prononcées à l'encontre de prévenus, non en état de fuite.

1117. Concernant les bases légales de l'arrêt de la Cour de cassation du 21 aout 2009, il y a lieu de préciser que le rejet du pourvoi de Béchir Labidi s'explique par l'omission par l'intéressé d'accomplir les formalités nécessaires à la recevabilité en la forme du pourvoi en cassation. L'intéressé a en effet enfreint à une formalité obligatoire exigée par l'article 263 du Code de procédure pénale selon lequel l'auteur du pourvoi doit, a peine de déchéance, présenter au greffe de la Cour de cassation un mémoire indiquant les moyens du pourvoi et précisant les griefs à l'encontre de la décision attaquée. Les pourvois des autres prévenus ont été en revanche déclarés, en vertu du même arrêt, recevables en la forme mais ont été rejetés quant au fond. La Cour de cassation s'est prononcée à deux reprises et par des formations différentes sur les allégations de mauvais traitements écartant à chaque fois ces allégations pour inexistence d'une quelconque violation de la Convention internationale contre la torture et autres peines ou traitements cruels, inhumains ou dégradants.

1118. Les prévenus condamnés n'ont jamais été mis en cause pour des faits en rapport avec des activités touchant à la défense des droits de l'homme mais pour des faits érigés en infraction par la loi ayant trait au port d'armes, fabrication de cocktails Molotov, agression des agents de l'ordre et détérioration des biens publics et privés. Aucun des chefs de poursuite ne se rapporte à des activités en rapport avec une quelconque participation à des contestations pacifiques ou défense des droits de l'homme.

1119. La condamnation des prévenus n'est donc pas en rapport avec une quelconque participation à des contestations pacifiques ou défense des droits de l'homme. La législation tunisienne et notamment la loi du 24 janvier 1969 réglemente les réunions publiques, cortèges, défilés, manifestations et attroupements. Le régime institué par cette loi est très favorable à l'exercice de la liberté de réunion et de manifestation puisqu'il ne les soumet à aucune autorisation préalable. C'est dans ce cadre légal que plusieurs des habitants de la région de Gafsa ont exercé leur liberté de manifester pacifiquement. Il est toutefois regrettable que certains individus, dont les prévenus susvisés, se soient confondus au sein des manifestants pour appeler à la désobéissance publique et porter atteinte aux personnes et aux biens. Dans ce cas, il y a violation de la loi pénale et non exercice de la liberté de réunion et de manifestation. A cet égard, il y a lieu de rappeler que la Constitution tunisienne et le Pacte international relatif aux droits civils et politiques insistent sur le respect de la sécurité et l'ordre public lors de l'exercice du droit de réunion et de contestation. L'article 21 du Pacte précise que le droit de réunion garanti est le droit de réunion « pacifique ». Il est nécessaire de distinguer les activités de défense des droits de l'homme des activités délictueuses qui portent atteinte à la sécurité des personnes et des biens. Etant justifiées par des faits délictueux commis, les condamnations prononcées à

l'encontre des prévenus reconnus coupables ne violent donc aucun des instruments internationaux de protection des droits de l'homme.

1120. Concernant les conditions de détention des prévenus, l'allégation selon laquelle les prévenus condamnés « seraient détenus dans des centres de détention éloignés de leurs familles dont ils dépendent matériellement » mérite éclaircissement. En effet, l'administration pénitentiaire veille a ce que les condamnes soient incarcérés dans les unités pénitentiaires les plus proches des lieux de résidence de leurs famille afin de leur faciliter l'exercice du droit de visite de leurs proches. Cependant, la prison de Gafsa, unité pénitentiaire la plus proche des lieux de residence des familles des condamnes n'offrant pas, à la date d'incarcération des prévenus, de places libres pouvant les accueillir, ceux-ci on donc été places dans les unités pénitentiaires les plus proches offrant des disponibilités d'accueil. Le rapprochement des prévenus incarcérés des lieux de résidence de leurs familles se fait par ordre de priorité selon les disponibilités, les places étant prioritairement affectées aux détenus les plus anciens. L'impératif d'égalité s'oppose absolument à ce que les prévenus visés dans la communication soient préférés à d'autres en les plaçant prioritairement dans la prison de la ville de Gafsa.

1121. Les condamnés incarcérés en vertu des jugements rendus à leur encontre ont bénéficié d'une mesure de libération conditionnelle et ont été remis en liberté le 4 novembre 2009. Cette libération, accordée pour des considérations humanitaires, trouve son fondement dans l'article 353 du Code de procédure pénale selon lequel la libération conditionnelle peut être accordée « à tout condamné ayant à subir une ou plusieurs peines privatives de liberté qui aura témoigné de son amendement par sa conduite en détention ».

Commentaires et observations du Rapporteur Spécial

1122. La Rapporteur Spéciale remercie le Gouvernement de Tunisie pour la réponse détaillé a la communication envoyée le 5 octobre 2009. Toutefois, elle regrette de devoir constater qu'il n'a reçu du Gouvernement de la Tunisie aucune réponse à l'appel urgent envoyé le 30 juin 2009 et demande au Gouvernement de lui transmettre au plus tôt des informations précises en réponse à ces allégations.

Turkey

Communication sent

1123. On 15 May 2009, the special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism ,Special Rapporteur on the situation of human rights defenders regarding Mr. Hasan Anlar, Deputy Secretary General of the Turkish Human Rights Association (Insan Haklari Dernegi - IHD) and member of the IHD Commission of Prisons, Ms. Filiz Kalayci, member of the IHD Executive Committee and of the IHD Commission of Prisons, Mr. Halil Ibrahim Vargün, former treasurer of the IHD, and Mr. Murat Vargün, all four human rights lawyers by profession.

According to the information received:

1124. On 12 May 2009, the offices and homes of Mr. Hasan Anlar, Ms. Filiz Kalayci, Mr. Halil Ibrahim Vargün and Mr. Murat Vargün in Ankara were searched by officers of the Anti-Terror Unit of the police on the basis of a search warrant and a detention order against the four lawyers. They were arrested and placed in police custody at the detention centre of the Anti-Terror Forces Unit.

1125. The exact terms of the detention order are not known as their lawyers have not been permitted access to the police investigation files, which is in accordance with the Turkish Code of Criminal Procedure. However, it is known that charges against the four lawyers include the criminal offence of "aiding an illegal organization". They are to be presented before the Prosecutor's Office within four days.

1126. On 6 February 2009, the IHD published a report on human rights violations in prisons of Turkey. The report was shared with the Turkish authorities. In addition, the four lawyers had been working on cases of human rights violations that occurred in detention. As a consequence they frequently receive complaint letters from prison inmates.

1127. Concerns are expressed that the arrests and detention of Mr. Hasan Anlar, Ms. Filiz Kalayci, Mr. Halil Ibrahim Vargün and Mr. Murat Vargün have solely been carried out in connection with their activities in the defence of human rights, especially in the defence of prisoners' rights.

Communication received

1128. On 16 July 2009, the government of Turkey replied to the communication sent by the Special Rapporteur on 15 May 2009 as follows:

1129. During recent counter-terrorism operations the law enforcement officials found some evidences that led to a reasonable suspicion suggesting that Hasan Anlar, Filiz Kalavyci, Halil Ibrahim Vargün and Murat Vargün, members of the Turkish Human Rights Association might be involved in the activities of a terrorist organization. Therefore, the Directorate for Security in Ankara requested from the competent court an authorization for a search warrant in connection with an ongoing investigation No. 2007/181.

1130. After consideration of the information submitted to it that set forth grounds for a"probable cause" to obtain evidence of a criminal activity, the 11th Heavy Penal Court of Ankaraauthorized the law enforcement authorities (with its decision No. 2009/460 D. Is, dated 11. 05. 2009) to search the offices and residences of Hasan Anlar, Filiz Kalavyci, Halil Ibrahim Vargün and Murat Vargün.

1131. On 12 May 2009, the searches were conducted according to the terms and conditions of the warrant authorized by the court and in the presence of a lawyer instructed by the Chief Public Prosecutor and Ankara Bar Association.

1132. The relevant information, documents and data storage devices were seized as authorized under the warrant. Since some of these materials were claimed to be protected under attorney client privilege, they were separately registered in witness of those who were present during the search. They were later put in the evidence bags, sealed and signed by the suspects and lawyer with a non-erasable pen. The materials seized during the search were sent to the Office of the Chief Public Prosecutor of Ankara to be submitted to the court for its consideration.

1133. The afore-mentioned persons were detained upon the decision of the Chief Public Prosecutor No. 2007/181. Halil Ibrahim Vargün, Murat Vargün and Hasan Anlar were detained for a total of two days and released on 15 May 2009 after they were heard by the court. Whereas, Filiz Kalayci was released on 15 May 2009, upon a hearing before the court. However, the court imposed a restriction of their freedom to travel abroad.

1134. On 27 May 2009 Filiz Kalayci was arrested following the decision of the 11th Heavy Penal Court of Ankara dated 25 May 2009 and No. 2009/491.

1135. All stages of the investigation have been carried out in accordance with the procedures prescribed by law and under the instructions of the Chief Public Prosecutor. The

searches were carried out in the presence of lawyers. The information, documents and materials seized pursuant to the search warrant were submitted to the Court.

1136. The Directorate for Security of Ankara received no information suggesting that a complaint has been lodged by or on behalf of the afore-mentioned persons. No administrative or other judicial inquiry has been launched in connection with the above-mentioned incidents other than the ongoing investigation commenced by the Office of the Chief Public Prosecutor of Ankara against the four suspects.

1137. In the course of these proceedings the suspects were provided with the opportunity to defend themselves by 19 lawyers. According to the registries of the meetings held with their defence lawyers, the suspects had access to lawyers of their choice at every stage of the investigation.

1138. The 11th Heavy Penal Court of Ankara placed some restrictions on access to investigation files by the defence lawyers since the investigation is at a critical stage where disclosure of certain information is likely to endanger its purposes. Nevertheless, even under certain courts restrictions the defence lawyers are allowed access to main documents such as expert witness reports, minutes of the statements by the suspects, all documents concerning the judicial proceedings in which the suspects have been present under Article 153/3 of the Criminal Procedure Act.

1139. The investigation has been initiated solely on the basis of their suspected involvement in criminal activities of a terrorist organization. It should be underlined that these proceedings have no connection with neither the reports issued by the Human Rights Association nor any legitimate activities carried out in the defence of human rights.

Comments and observations of the Special Rapporteur

1140. The Special Rapporteur appreciates the detailed response from the Government of Turkey and the clarification provided concerning access to counsel. On access to information by counsel the Special Rapporteur would like to reiterate that it is the duty of the competent authorities to ensure that lawyers have access to appropriate information, files and documents in sufficient time to enable lawyers to provide effective legal assistance to their clients.

United Arab Emirates

Communication sent

1141. On 29 January 2010, Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning Mr. Mohamed Mostafa, 21 years, of Palestinian origin.

According to the information received:

1142. On 22 July 2009, Mr. Mostafa (**مصطفى مصباح حسن محمد**) was arrested at a friend's house in Ras al Khayma by members of the State Security forces without an arrest warrant. His family was not informed of the reasons for his arrest. He had then been held incommunicado until 15 December 2009, during which time he was allegedly severely tortured by State Security agents and forced to sign confessions.

1143. In December 2009, Mr. Mohamed Mostafa denied the evidence given in his forced confession before the State Security Prosecutor and stated that he had been tortured to force him to sign it. On 25 January 2010, Mr. Mostafa was presented before the State Security Court. Reports suggest that his forced confessions are being used as sole evidence in the

trial. During the trial he denied again the evidence against him drawn from his confessions and informed the court that he had been tortured. No investigation has so far been initiated by the prosecutor or the judge.

1144. The next court hearing is scheduled for 2 February 2010. His family and lawyers fear that Mr. Mostafa may be expelled to the Syrian Arab Republic, where he studied between September 2007 and November 2008. During his stay in the Syrian Arab Republic, Mr. Mostafa was allegedly closely observed by the Syrian intelligence forces. His family fears that Syrian authorities have requested your Excellency's Government's authorities to arrest Mr. Mostafa.

1145. Concern is expressed about the alleged use of evidence obtained by torture and the possible expulsion of Mr. Mostafa to the Syrian Arab Republic.

Communication received

1146. At the time this report was finalized, no response to this communication has been received.

Comments and observations of the Special Rapporteur

1147. The Special Rapporteur regrets that no reply has been received to the above communication and calls upon the Government of the United Arab Emirates to provide a detailed substantive answer to those allegations as soon as possible.

Venezuela (Bolivian Republic of)

Comunicaciones enviadas

1148. El 14 de agosto de 2008, el Relator Especial envió una carta de alegación[2] en relación con una sentencia de fecha 14 de febrero de 2008 de la Sala Constitucional del Tribunal Supremo de Justicia de la República Bolivariana de Venezuela. Mediante esta decisión, que haría lugar a un amparo presentado por un grupo de ciudadanos solicitando la realización de elecciones para designar a los miembros de la Junta Directiva del Colegio de Abogados de Caracas, se estarían incluyendo resoluciones que podrían afectar las garantías del debido proceso, de la libertad de asociación y el principio de la representación, todo ello expresamente contemplado en las normas de la Constitución Nacional y de los tratados internacionales vigentes.

1149. Según la información recibida, la Sala Constitucional del Tribunal Supremo de Justicia habría hecho lugar al mencionado amparo, y no sólo habría ordenado la realización de elecciones sino que también habría suspendido en el ejercicio de sus funciones a los miembros de la Junta Directiva y del Tribunal Disciplinario, a fin de designar de manera provisional a sus nuevos miembros. Asimismo, los profesionales que resultaron suspendidos no habrían sido citados para intervenir en ese proceso, vulnerándose, por lo tanto, su derecho a la defensa y a las garantías judiciales básicas.

1150. De acuerdo a la información remitida, la Sala Constitucional habría efectuado el nombramiento de los integrantes de la Junta Directiva en una suerte de "intervención" que desconoce el derecho de los agremiados abogados, en este caso, a participar en la elección de sus representantes (artículos 137 y 138 de la Constitución Nacional)

[2] Esta comunicación, si bien anterior al periodo cubierto por este informe esta incluida en ello dado que en el periodo relevante se ha recibido una respuesta del Gobierno que se refiere a esta comunicación.

Comunicaciones enviadas

1151. El 9 de abril de 2009 el Relator Especial envió un llamamiento urgente haciendo referencia a la comunicación enviada al Gobierno de su Excelencia con fecha 14 de agosto de 2008. En la misma solicitaba algunas clarificaciones respecto de una decisión de la Sala Constitucional del Tribunal Supremo de fecha 14 de agosto de 2008, la cual habría hecho lugar a un amparo presentado por un grupo de ciudadanos solicitando la realización de elecciones para designar a los miembros de la Junta Directiva del Colegio de Abogados de Caracas. Mediante dicha decisión se estarían incluyendo resoluciones que podrían afectar las garantías del debido proceso, de la libertad de asociación y el principio de la representación, todo ello expresamente contemplado en las normas de la Constitución Nacional y de los tratados internacionales vigentes.

1152. A la fecha, no he recibido respuesta. Es por ello que quisiera reiterar mi preocupación respecto a la información recibida. Según la misma, la Sala Constitucional no sólo habría ordenado la realización de elecciones sino que también habría suspendido en el ejercicio de sus funciones a los miembros de la Junta Directiva y del Tribunal Disciplinario, a fin de designar de manera provisional a sus nuevos miembros. Asimismo, los profesionales que resultaron suspendidos no habrían sido citados para intervenir en ese proceso, vulnerándose, por lo tanto, su derecho a la defensa y a las garantías judiciales básicas.

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1154. Asimismo, se me informa que recientemente el Poder Ciudadano habría declarado improcedente la solicitud de enjuiciamiento de los magistrados de la Sala Constitucional del Tribunal Supremo de Justicia, instaurada por los antiguos miembros del Colegio de Abogados de Caracas, alegando falta de competencia en la materia.

Comunicaciones recibidas

1155. El 16 de diciembre de 2009, el Gobierno de la Republica Bolivariana de Venezuela respondió a las comunicaciones enviadas el 14 de agosto y el 9 de abril de 2009.

1156. Respuesta a las comunicaciones con fecha 14 de agosto de 2008 y 9 de abril de 2009:La sentencia emanada del Tribunal Supremo de Justicia en fecha 14 de febrero de 2008, surge como consecuencia de la solicitud realizada en ocasión de la solicitud de Amparo Constitucional para la Protección de los Derechos Constitucionales, de las personas que ejercieron el recurso, así como para la protección de "los intereses colectivos de los profesionales de la abogacía miembros del Colegio de Abogados del Districto Capital conjuntamente con Medida Cautelar innominada, en conformidad con los artículos 585 y 588 del Código de Procedimiento Civil, contra el Presidente y demás miembros de la Junta Directiva del Colegio de Abogados del Distrito Capital, el Presidente y demás miembros del Tribunal Disciplinario de ese Colegio y de la Comisión Electoral de esa corporación Gremial, elegida esta última en fecha 21 de agosto de 2003".

1157. La Sala Constitucional, mediante decisión del 9 de julio de 2004, admitió la demanda incoada, otorgando protección cautelar en los siguientes términos:

1158. "...3.1- A quienes ocupan actualmente los cargos de la Junta Directiva del Colegio de Abogados del Distrito Capital se abstengan de realizar cualquier tipo de actuación, bien de representación o que comprometan u obliguen administrativamente al Colegio de Abogados, limitándose únicamente, a realizar actividades de simple administración, así

como aquellas relacionadas con la inscripción de sus nuevos miembros y expedición de credenciales.

1159. 3-2- A quienes ocupan actualmente los cargos del Tribunal Disciplinario del Colegio de Abogados del Distrito Capital, se abstengan de inicar, sustanciar y decidir procedimientos disciplinarios contra los miembros de dicha corporación gremial, así como paralizar aquellos procedimientos iniciados con posterioridad al vencimiento del tiempo para el ejercicio de sus cargos".

1160. La sala una vez escuchados los argumentos de los peticionantes, la contestación realizada por los miembros del Tribunal Disciplinario del Colegio de Abogado de Caracas, su Junta Directiva y su Comisión Electoral pasó a fijar los hechos.

1161. La sala pasa a exponer sus consideraciones para decidir: analiza la naturaleza de la demanda, la cual esta calificada para la protección de derechos o intereses colectivos, los cuales son provenientes de una situación con un origen común, ateniente a grupos, clases gremios o categorías de personas que mantienen entre ellas una relación jurídica básica que los vincula, en ese sentido es identificable el grupo social los abogados del Colegio de Abogados de Caracas "que exigen al Ente Gremial el cumplimiento de una prestación general, cual es la alternabilidad en los cargos de dirección de ese Colegio, por lo que se trata de una acción por derechos o intereses colectivos, y así se declara".

1162. Seguidamente, la Sala pasa a observar que las Elecciones has sido ordenada en tres oportunidades distintas por la Sala Electoral del Tribunal Supremo de Justicia a saber: Sentencia dictada en fecha 31 de julio de 2003, N°103, Expediente 03000041, Sentencia del 11 de febrero de 2004 fallo N° 15, Expediente N° 03000118 y por ultimo Sentencia dictada en fecha 14 de julio de 2004, N°97, Expediente 03-000041. Las cuales ordenaban la realización de las elecciones del Colegio de Abogados del Distrito Capital, coordinadamente con el Consejo Nacional Electoral. Las Elecciones realizadas anterior a la sentencia del 14 de febrero de 2008, no contaban con dicho aval.

1163. Las elecciones deberán ser convocadas atendiendo a las pautas contenidas en las Normas para Regular los Procesos electorales de Gremios y Colegio Profesionales, publicada el 7 de agosto de 2009 en Gaceta Electoral. Asimismo, el Consejo Nacional Electoral es el único órgano que tiene la competencia para aprobar el proyecto electoral sometido a su consideración y autorizar la convocatoria de dichas elecciones, pero ello no ha sucedido en virtud de la negativa de las autoridades del Colegio de Abogados que no han asumido su responsabilidad ni han cumplido con las instrucciones del fallo N°1329 del 113 de julio de 2004.

1164. Según la Sentencia del Sala constitucional, las partes durante el proceso, no presentaron documentación alguna sobre la imposibilidad de cumplir con lo ordenado por la Sala Electoral al respecto de la realización de las elecciones. La actuación omisiva de los directivos del Ente Gremial "se ha traducido en una grosera transgresión a los derechos a la participación política, a la alternabilidad en el ejercicio del poder y al sufragio; así como a una violación del juez natural que ha de conocer de los procesos disciplinarios de los profesionales colegiados; derechos que han sido denunciados por la parte actora como lesivos a su situación jurídica y del resto de miembros de dicho ente gremial como colectivo".

1165. Por tales consideraciones, la Sala Constitucional del Tribunal Supremo de Justicia, ordenó la conformación de una Comisión Electoral ad hoc, la cual tiene mandato de organizar el proceso electoral conjuntamente con el Consejo Nacional Electoral, tal como lo ordenó la Sentencia del 14 de Julio de 2003. Finalmente su instruye a la Comisión Electoral a los fines de garantizar a todos los abogados, solventes o no con el Colegio de Abogados, el derecho al sufragio, ya que tal exclusión constituye una traba infundada para el ejercicio del derecho al sufragio, consagrado constitucionalmente.

1166. El Estado Venezolano concluye que la intervención del Máximo Tribunal del país para la resolución del conflicto, tuvo fundamento constitucional, a partir del ejercicio de un amparo para la protección de derechos e intereses colectivos, como consecuencia de la omisión de la Comisión de Abogados del Distrito Capital, de desarrollar los comicios para la elección de la Junta Directiva y Tribunal Disciplinario de dicho ente gremial, las cuales fueron ordenadas en tres ocasiones por la Sala Electoral del Tribunal Supremo de Justicia e incumplidas por la Comisión Electoral que para ese momento tenia dicha potestad.

1167. Actualmente, si bien fueron designadas y debidamente juramentadas las autoridades por la Sala Constitucional del Tribunal Supremo de Justicia, a los fines de brindar protección a los derechos constitucionales de los agremiados, continúan en el ejercicio de sus funciones las autoridades que resultaron electas con fecha 10 de noviembre de 2005, en clara contravención al mandato cautelar de la Sala Constitucional, quedando de parte de la Comisión Electoral la realización de las nuevas elecciones de conformidad con el ordenamiento legal vigente.

Comenetarios y observaciones de la Relatora Especial

1168. La Relatora Especial agradece la respuesta del Gobierno de Venezuela a las comunicaciones del 30 de marzo y 9 de julio de 2009. Sin embargo, la Relatora Especial quisiera reiterar la importancia del respeto de las normas fundamentales enunciadas en los Principios Básicos sobre la Función de los Abogados, adoptados por el Octavo Congreso de las Naciones Unidas sobre la Prevención del Delito y el Tratamiento del Delincuente, celebrado en La Habana (Cuba) del 27 de agosto al 7 de septiembre de 1990. En particular, el numeral 24 de estos Principios establece que los abogados estarán facultados a constituir asociaciones profesionales autónomas e incorporarse a estas asociaciones, con el propósito de representar sus intereses, promover su constante formación y capacitación, y proteger su integridad profesional. El órgano ejecutivo de las asociaciones profesionales será elegido por sus miembros y ejercerá sus funciones sin injerencias extern**as.**

Comunicaciones enviadas

1169. El 9 de marzo de 2009[3] el Relator Especial envió una carta de alegación respecto de algunas preocupaciones relativas a temas relacionados con su mandato:

1170. El 18 de diciembre de 2008 el Tribunal Supremo de Justicia – Sala Constitucional emitió una sentencia en la cual declara "inejecutable" la sentencia de la Corte Interamericana de Derechos Humanos de fecha 5 de agosto de 2008, en la que se ordenó la reincorporación en los cargos de los ex jueces de la Corte Primera de lo Contencioso Administrativo Anna María Ruggeri Cova, Perkins Rocha Contreras y Juan Carlos Apitz B.; se condenó a la República Bolivariana de Venezuela al pago de cantidades de dinero a título de indemnización a las personas mencionadas; así como a la publicación de la sentencia, al pronunciamiento de disculpas públicas y al pago de costas y gastos en los que las personas arriba mencionadas incurrieron.

1171. El Tribunal Supremo de Justicia estimó que la sentencia de la Corte Interamericana de Derechos Humanos se pronunció sobre asuntos que son competencia exclusiva y excluyente del Tribunal Supremo de Justicia y que estableció directrices para el poder legislativo en materia de carrera judicial y responsabilidad de los jueces, "violentando la soberanía del Estado venezolano en la organización de los poderes públicos y en la

[3] Esta comunicación, si bien anterior al periodo cubierto por este informe esta incluida en ello dado que en el periodo relevante se ha recibido una respuesta del Gobierno que se refiere a esta comunicación.

selección de sus funcionarios, lo cual resulta inadmisible"[4]. Para el Tribunal, la ejecución de la sentencia de la Corte Interamericana además afectaría los principios y valores del orden constitucional y podría conllevar aun caos institucional del sistema de justicia, al pretender modificar la autonomía del Poder Judicial previsto en la Constitución y el régimen disciplinario instaurado por la ley.

1172. Asimismo, estima el Tribunal que el fallo de la Corte Interamericana de Derechos Humanos equipara de forma absoluta los derechos de los jueces titulares y los provisorios, lo cual es "absolutamente inaceptable y contrario a derecho"[5]. El Tribunal, citando un fallo de la Sala Político-Administrativa (No. 0673-2008), consideró que la Comisión de Funcionamiento y Reestructuración del Sistema Judicial ejerce la función disciplinaria plena respecto de los jueces titulares que han alcanzado la estabilidad en su cargo, la cual encuentra su base en la aprobación del concurso de oposición respectivo. Sin embargo, respecto de los jueces provisorios, dicha atribución se encuentra a cargo de la Comisión Judicial del Tribunal Supremo de Justicia, la cual tiene la potestad para dejar sus nombramientos sin efecto de manera discrecional. En efecto, sostiene el Tribunal, que el acto administrativo que pronuncia la remoción de un juez provisional no requiere de ningún procedimiento administrativo, puesto que los jueces provisiorios no gozan de la garantía de estabilidad.

1173. El Pacto Internacional de Derechos Civiles y Políticos ratificado por Venezuela[6] establece la obligación internacional del Estado de garantizar el acceso a jueces y tribunales independientes e imparciales en su artículo 14.1. Quisiera recordar al Gobierno de su Excelencia que los principios de estabilidad e inamovilidad del juez son una garantía fundamental para proteger la independencia del poder judicial. Dichos principios deben aplicarse a todas aquellas personas que ejercen funciones jurisdiccionales, incluso a los jueces provisorios, quienes deben gozar de ciertas garantías mínimas que aseguren que actúan de manera independiente, dada la importancia de la función a ellos encomendada, la cual es administrar justicia.

1174. La única excepción a estos principios aceptada por los estándares internacionales son las sanciones que se imponen en el marco de un proceso disciplinario que cumple con las garantías de un juicio justo. Tal como lo ha expresado el Comité de Derechos Humanos, los jueces sólo podrán ser destituidos por razones graves de mala conducta o incompetencia, de conformidad con procedimientos equitativos que garanticen la objetividad y la imparcialidad[7]. El Comité se ha pronunciado en varias oportunidades en este sentido[8].

1175. Asimismo, los Principios básicos relativos a la independencia de la judicatura adoptados por el Séptimo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, celebrado en Milán del 26 de agosto al 6 de septiembre de 1985, y confirmados por la Asamblea General en sus resoluciones 40/32 de 29 de noviembre de 1985 y 40/146 de 13 de diciembre de 1985, establecen que toda acusación contra un juez debe ser tramitada de manera pronta e imparcial con arreglo a un

[4] Tribunal Supremo de Justicia de la República Bolivariana de Venezuela, Sala Constitucional, Sentencia de 18 de Diciembre de 2008, Expediente No. 08-1572, Magistrado Ponente Arcadio Delgado Rosales, p. 11.
[5] Ibidem, p. 15.
[6] Ratificado por Venezuela el 10 de mayo de 1978 ante la Secretaría General de la ONU.
[7] Comité de Derechos Humanos, Observación General 32, Artículo 14 El derecho a un juicio imparcial y a la igualdad ante los tribunales y cortes de justicia, CCPR/C/GC/32, párrafo 20.
[8] Comité de Derechos Humanos, comunicación n. 1376/2005, Soratha Bandaranayake vs. Sri Lanka, CCPR/C/93/D/1376/2005, párrafo. 6.5 y Comité de Derechos Humanos, comunicación n.933/200, Adrien Mundyo Busyo y otros vs. República Democrática del Congo, CCPR/C/78/D/933/200, párrafo 5.2.

procedimiento que respete el derecho a un proceso justo (Principio 17). Principio que ha sido recogido por diversas normatividades internacionales en diferentes regiones del mundo[9].

1176. Además, quisiera llamar la atención del Gobierno de Su Excelencia respecto de lo establecido por el Principio 11 de los Principios arriba mencionados, según el cual, la ley garantizará la permanencia en el cargo de los jueces por los períodos establecidos, su independencia y su seguridad. A este respecto el Comité de Derechos Humanos ha considerado que la destitución de jueces sin que se les dé ninguna razón concreta y sin que dispongan de una protección judicial efectiva para impugnar la destitución, es incompatible con la independencia del poder judicial[10].

1177. Asimismo, el Principio 12 establece que se garantizará la inamovilidad de los jueces, tanto de los nombrados mediante decisión administrativa como de los elegidos, hasta que cumplan la edad para la jubilación forzosa o expire el período para el que hayan sido nombrados o elegidos. El Comité de Derechos Humanos ha manifestado en múltiples ocasiones su preocupación por la existencia de periodos cortos de servicio[11], los cuales ponen en entredicho la independencia del poder judicial. Dicha preocupación se acentúa en los casos en que ni siquiera existe un término corto de servicios, sino que el juez está en situación de provisionalidad, la cual puede ser terminada en cualquier momento por una decisión de naturaleza discrecional.

1178. La Constitución de la República Bolivariana de Venezuela ha recogido los principios de estabilidad e inamovilidad, en especial en su artículo 267, el cual establece:

1179. "La jurisdicción disciplinaria judicial estará a cargo de los tribunales disciplinarios que determine la ley. El régimen disciplinario de los magistrados o magistradas y jueces o juezas estará fundamentado en el Código de Ética del Juez Venezolano o Jueza Venezolana, que dictará la Asamblea Nacional. El procedimiento disciplinario será público, oral y breve, conforme al debido proceso, en los términos y condiciones que establezca la ley. Para el ejercicio de estas atribuciones, el Tribunal Supremo en pleno creará una Dirección Ejecutiva de la Magistratura, con sus oficinas regionales."

1180. Sin embargo, hasta la fecha la Asamblea Nacional no ha adoptado el Código de Ética del Juez y la Jueza Venezolanos, lo que tiene como resultado que el régimen disciplinario no esté regulado de manera clara y que tenga su base en disposiciones que no tienen rango legal[12] , lo que es contrario a los estándares internacionales en la materia. Esto

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[9] Ver Estatuto del Juez Iberoamericano, artículo 20; Recomendación N. R (94) 12 del Comité de Ministros del Consejo de Europa, Principio VI (3), Beijing Statement of Principles of the Indepenendence of the Judiciary in the LAWASIA Region, Principio 26 y Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa, artículo 4 (q).

[10] Comité de Derechos Humanos, Observación General 32, op. cit, párrafo 20.

[11] Ver a título de ejemplo CCPR/CO/71/UZB, párrafo 14.En dicha ocasión el Comité expresó su preocupación por la existencia de periodos de 5 años de servicio de los jueces en Uzbekistán, lo que amenazaba la independencia del poder judicial.

[12] El numeral 4 de las disposiciones transitorias de la Constitución ordenaba que en el plazo de un año desde la instalación de la Asamblea Nacional debía dictarse la legislación referida al sistema judicial, incluyendo las disposiciones del artículo 267. Posteriormente se emitió un Decreto de "Régimen de Transición del Poder Público" el cual creó la Comisión de de Funcionamiento y Reestructuración del Sistema Judicial, a la cual se atribuyó provisoriamente la competencia disciplinaria judicial, la cual según la Constitución debería estar en cabeza de los tribunales disciplinarios. Dicha atribución fue conferida hasta que se aprobara la legislación que determinara los procesos y tribunales disciplinarios, lo cual no ha tenido lugar hasta el momento. Sin embargo, el Tribunal Supremo de Justicia en su sentencia del 18 de Diciembre se 2009 afirmó que el régimen disciplinario de los jueces provisorios – a diferencia de los jueces titulares- en lugar de estar en cabeza de dicha Comisión, está a cargo de la Comisión Judicial del mismo Tribunal.

ha sido a su vez constatado por la propia Sala Constitucional del Tribunal Supremo de Justicia, la cual ya en una sentencia del año 2006 había declarado que existía una inconstitucionalidad por omisión legislativa de la Asamblea Nacional, con motivo de la no promulgación de la normatividad en cuestión. Es por este mismo motivo que en su sentencia de 18 de Diciembre de 2008 una vez más instó a la Asamblea Nacional a que dicte el Código de Ética del Juez y Jueza venezolanos.

1181. Noto con preocupación que los llamados jueces provisorios sean susceptibles de ser removidos "dejando sin efecto" su nombramiento, sin que medie ningún tipo de procedimiento ni causa legal, ya que, tal como lo afirma el Tribunal Supremo de Justicia en su sentencia de 18 de Diciembre de 2008, éstos son de libre remoción y su destitución es discrecional. Como ya ha sido anotado anteriormente, dicha inestabilidad genera un grave peligro para su independencia, presupuesto fundamental para el buen funcionamiento de cualquier sistema judicial, el cual además de hacer parte de los estándares internacionales en la materia, está consagrado en la Constitución de la República Bolivariana de Venezuela[13].

1182. De otra parte, el Tribunal Supremo de Justicia afirma que su decisión no busca interpretar el sentido y el alcance de la sentencia de la Corte Interamericana de Derechos Humanos, ni de desconocer la Convención Americana de Derechos Humanos, ni de eludir el compromiso de ejecutar las decisiones de la Corte Interamericana de Derechos Humanos, sino aplicar un estándar mínimo de adecuación del fallo al orden constitucional interno. Sin embargo, a su vez solicita al poder Ejecutivo que con fundamento en el artículo 78 de la Convención Americana de Protección de los Derechos Humanos, proceda a la denuncia de dicho tratado.

Comunicaciones enviadas

1183. El 30 de julio de 2009, el Relator Especial envió una carta de alegación haciendo referencia a la comunicación enviada al Gobierno de Venezuela con fecha 9 de marzo de 2009. En la misma solicitaba algunas clarificaciones con respecto a la decisión de la Sala Constitucional del Tribunal Supremo de Justicia que declara "inejecutable" el fallo de la Corte Interamericana de Derechos Humanos que ordena la reincorporación en sus cargos de tres ex jueces de la Corte Primera de lo Contencioso Administrativo. Al respecto, el Tribunal Supremo estimó que el fallo de la CIDH equipara en forma absoluta los derechos de los jueces titulares y los provisorios, lo cual es "absolutamente inaceptable y contrario a derecho".

1184. A la fecha, no he recibido respuesta. Es por ello que quisiera reiterar mi preocupación respecto de la información recibida. Según la misma, el Tribunal Supremo sostiene que el acto administrativo que pronuncia la remoción de un juez provisional no requiere de ningún procedimiento administrativo, puesto que los jueces provisorios no gozan de la garantía de estabilidad. En efecto, noto con preocupación que los llamados jueces provisorios son susceptibles de ser removidos "dejando sin efecto" su nombramiento, sin que medie ningún tipo de procedimiento, ni causa legal, ya que, tal como lo afirma el Tribunal Supremo de Justicia, éstos son de libre remoción y su destitución es discrecional. Como he reiterado en varias oportunidades, dicha inestabilidad genera un grave peligro para su independencia, presupuesto fundamental para el buen funcionamiento de cualquier sistema judicial.

1185. De otra parte, he recibido información sobre la existencia de fiscales provisorios, quienes también serían de libre nombramiento y remoción por parte del Fiscal General de la República. Dichos fiscales, serían nombrados a título provisional y podrían ser despedidos

[13] Artículos 253 y siguientes. En particular el artículo 254 que establece que el Poder Judicial es independiente..

sin que medie ningún tipo de proceso. Al igual que en el caso de los jueces provisorios, su nombramiento se haría sin ningún tipo de concurso público y estarían por fuera del sistema de carrera que la Constitución establece. En efecto, la Constitución en su artículo 286 establece que la ley deberá proveer lo conducente para asegurar la idoneidad, probidad y estabilidad de los fiscales o fiscalas del Ministerio Público y deberá establecer las normas para garantizar un sistema de carrera para el ejercicio de su función. Asimismo, el artículo 146 establece que los cargos de los órganos de la Administración Pública son de carrera. Según la información recibida al menos el 90% de los fiscales y fiscales en la actualidad son provisorios.

1186. Quisiera expresar mi preocupación a este respecto, ya que la existencia de fiscales provisorios afecta gravemente la administración de justicia. Es necesario que los fiscales, al igual que los jueces, gocen de todas las garantías que aseguren su estabilidad en el cargo. Mantener a los fiscales en una situación de vulnerabilidad, abre la posibilidad a que no lleven a cabo su labor de manera imparcial, tal como lo exigen los estándares internacionales en la materia.

1187. A este respecto, la Comisión Interamericana de Derechos Humanos también ha expresado su preocupación, la cual el Relator Especial hace suya. En un informe publicado en el año 2006 la Comisión afirmó: "según algunos estudios, estos fiscales son designados arbitrariamente por el Fiscal General de la República sin ninguna preparación previa, ni selección objetiva de conformidad con la Ley que rige sus funciones. Como consecuencia de ello, estos fiscales son de libre nombramiento y remoción por parte del Fiscal General de la República (…). De acuerdo a lo informado, el Fiscal General de la República nombra a abogados de su confianza -y por consideraciones políticas a un buen número de los fiscales de Venezuela, quienes pueden ser destituidos sin causa alguna, ya que no gozan de estabilidad en su cargo"[14].

1188. Asimismo, quisiera reiterar mi preocupación por la solicitud del Tribunal Supremo de Justicia al Poder Ejecutivo en el sentido de denunciar la Convención Americana de Derechos Humanos. Denunciar la Convención, además de poner en peligro la integridad del Sistema Interamericano, constituiría un retroceso en materia de protección internacional de los derechos humanos.

1189. En este contexto, quisiera informar al Gobierno de su Excelencia que he recibido información preocupante sobre varios casos en los que se habrían violado las normas fundamentales del proceso justo, debido principalmente a la participación sucesiva de jueces y fiscales provisorios. Tal es el caso del Sr. Eligio Cedeño, especialmente relacionado con la actuación de jueces y fiscales provisorios. El Sr. Cedeño, se encuentra aparentemente detenido desde el 8 de febrero de 2007 en la sede de la Dirección de los Servicios de Inteligencia y Prevención (DISIP) del Ministerio del Interior y Justicia.

i. Conforme la información suministrada:

1190. El 29 de noviembre de 2005, se le habría imputado al Sr. Cedeño la complicidad en los delitos de "contrabando por simulación de importación" y "defraudación tributaria", en el marco de una investigación penal iniciada por la importación de computadoras – que nunca habrían ingresado al país- efectuada por la empresa "Consorcio Microstar". A ese momento, el Sr. Cedeño era Vicepresidente del Banco Canarias, institución que en virtud del control de cambios establecido por el Gobierno, funcionaba como "operador bancario", es decir, recibía la solicitud de los particulares (en este caso de "Consorcio Microstar") para posteriormente, junto con la documentación requerida por la normativa cambiaria venezolana, tramitar por nombre y cuenta del particular interesado su solicitud de divisas ante el organismo regulador. La investigación presuntamente se habría iniciado porque la

[14] OEA/Ser.L/V/II.124, Doc. 7, 27 febrero 2006, párrafo 294

documentación presentada para la tramitación de las solicitudes de divisas, no era concordantes con la realidad. La imputación del delito se habría efectuado, no obstante un convenio suscripto entre la Aduana y el CADIVI (organismo regulador de divisas) por el cual se exonera a los funcionarios de los "operadores bancarios" de cualquier responsabilidad derivada de la obligación de verificar la autenticidad de los documentos que se acompañaran para la tramitación de las solicitudes de divisas.

1191. Según la información recibida, se habrían registrado una serie de irregularidades en la sustanciación del proceso que se tramita contra el Sr. Cedeño. Con fecha 1º de febrero de 2007, la jueza "provisoria" interviniente en la causa habría sido intimidada y amenazada su seguridad y la de su familia, tras haber admitido una querella por falso testimonio, presentada por el Sr. Cedeño. Luego de haber sido obligada a tomar "vacaciones" y tras un intento de secuestro a uno de sus hijos, la magistrada habría decidido renunciar a su cargo.

1192. Posteriormente, el 8 de febrero de 2007, el Sr. Cedeño habría sido detenido por la imputación del delito de "distracción de recursos financieros", delito diferente al que habría sido notificado inicialmente. Es decir que, según lo informado, la jueza "provisoria" interviniente en la causa nunca le habría notificado al Sr. Cedeño sobre la imputación de un nuevo hecho punible, restringiéndosele significativamente su derecho de defensa. Asimismo, la jueza habría admitido sin motivación alguna la totalidad de la acusación presentada por el Ministerio Público. Por su parte los fiscales provisorios actuantes en la causa habrían realizado reiteradas maniobras dilatorias, mediante la reiterada recusación de los jueces intervinientes en la causa.

Comunicaciones recibidas

1193. El 18 de diciembre de 2009, el Gobierno de la Republica Bolivariana de Venezuela respondió a la comunicación enviada el 9 de marzo y el 30 de julio de 2009 con relación a la Sentencia de la Corte Interamericana de Derechos Humanos relacionada con la incorporación en los cargos de los ex-jueces de la Corte Primera del Contencioso Administrativo, Anna María Ruggeri Cova, Perkins Rocha Contreras y Juan Carlos Apitz B. Se transmitió la respuesta del Estado venezolano a la Corte Interamericana de Derechos Humanos sobre el caso antes mencionado, información proporcionada por la Agencia del Estado para los Derechos Humanos de la República Bolivariana de Venezuela:

1194. "En fecha 18 de diciembre de 2008, la Sala Constitucional del Tribunal Supremo de Justicia de la República Bolivariana de Venezuela, dictó la Sentencia N° 1939, mediante la cual resolvió el recurso de interpretación interpuesto, el 4 de diciembre de 2008, por la Procuradoría General de la República, sobre la constitucionalidad de la decisión esta Corte Interamericana de Derechos Humanos, de fecha 5 de agosto de 2008, en la que se ordenó la reincorporación en el cargo de los exmagistrados de la Corte Primera de lo Contencioso Administrativo, Ana María Ruggeri Cova, Perkins Rocha Contreras y Juan Carlos Apitz B., se condenó a la República Bolivariana de Venezuela al pago de cantidades de dinero y a las publicaciones referidas al sistema disciplinario de los jueces.

1195. En la referida Sentencia, la Sala Constitucional declaró inejecutable el fallo de esta Corte Interamericana de Derechos Humanos, de fecha 5 de agosto de 2008, y solicitó al Poder Ejecutivo Nacional proceder a denunciar la Convención Americana sobre Derechos Humanos, de conformidad con lo establecido en el artículo 78 de la Convención.

1196. Como es del conocimiento de esta Corte Interamericana, conforme a lo consagrado en los artículo 335 y 336 de la Constitución de la República Bolivariana de Venezuela, la Sala Constitucional del Tribunal Supremo de Justicia es el último y máximo intérprete de la Constitución y deberá velar por su uniforme interpretación y aplicación.

1197. En aplicación de ese carácter de intérprete de la Constitución, emanado de la voluntad soberana del pueblo reflejada en la Asamblea Nacional Constituyente y posterior

referendo aprobatorio de 1999, la Sala Constitucional analizó la conformidad de la Sentencia dictada por esta Corte Interamericana en el caso de autos, con el texto de la Carta Magna de 1999, dictaminando que con su decisión esta Corte Interamericana:

1198. "dictó pautas de carácter obligatorio sobre gobierno y administración del Poder Judicial que son competencia exclusiva y excluyente del Tribunal Supremo de Justicia y estableció directrices para el Poder Legislativo, en materia de carrera judicial y responsabilidad de los jueces, violentando la soberanía del Estado venezolano en la organización de los poderes públicos y en la selección de sus funcionarios".

1199. De igual forma, según lo dispuso la Sala Constitucional, esta Corte Interamericana utilizó su decisión:

1200. "para intervenir inaceptablemente en el gobierno y administración judicial que corresponde con carácter excluyente al Tribunal Supremo de Justicia, de conformidad con la Constitución de 1999".

1201. Es necesario destacar que, según lo expresa la Sala Constitucional, la intención de la referida decisión no es interpretar el contenido y alcance de la sentencia de esta Corte Interamericana de Derechos Humanos, ni de desconocer el tratado válidamente suscrito por la República que la sustenta o eludir el compromiso de ejecutar la decisión al orden constitucional interno. En tal sentido, la Sentencia de la Sala Constitucional estableció que:

1202. "la ejecución de la sentencia de la Corte Interamericana de Derechos Humanos del 5 de agosto de 2008, afectaría principios y valores esenciales del orden constitucional de la República Bolivariana de Venezuela y pudiera conllevar a un caos institucional en el marco del sistema de justicia, al pretender modificar la autonomía del Poder Judicial constitucionalmente previsto y el sistema disciplinario instaurado legislativamente".

1203. Como se puede apreciar, el cumplimiento de la Sentencia dictada por esta Corte Interamericana de Derechos Humanos, implica para el Poder Ejecutivo Nacional una dificultad jurídica de singular importancia. La obligación de respetar la independencia y autonomía del Poder Judicial, consagrada en el ordenamiento jurídico interno, en la Carta Democrática Interamericana, y demás estándares internacionales sobre la materia.

1204. En efecto, según lo establece el artículo 254 de la Constitución de la República Bolivariana de Venezuela, el Poder Judicial es independiente y el Tribunal Supremo de Justicia gozará de autonomía funcional, financiera y administrativa. De igual forma, como lo exige el artículo 3 de la Carta Democrática Interamericana:

1205. "Son elementos esenciales de la democracia representativa, entre otros, el respeto a los derechos humanos y las libertades fundamentales; el acceso al poder y su ejercicio con sujeción al estado de derecho; la celebración de elecciones periódicas, libres, justas y basadas en el sufragio universal y secreto como expresión de la soberanía del pueblo; el régimen plural de partidos y organizaciones políticas; y la separación e independencia de los poderes públicos".

1206. Asimismo, los Principios Básicos de Naciones Unidas relativos a la independencia de la judicatura, los Principios de Bangalore sobre la conducta Judicial, la Recomendación del Consejo de Europa acerca de la independencia del Poder Judicial, los Principios y Directrices relativos al Derecho a un Juicio Justo y a la Asistencia Jurídica, los Principios de Beijing, las Directrices de Latimer House, y el Estatuto del Juez Iberoamericano, obligan al Estado venezolano a respetar y garantizar la independencia y autonomía del Poder Judicial venezolano.

1207. En razón de todo lo anterior, amen de la voluntad del Poder Ejecutivo Nacional de honrar sus compromisos internacionales es estricto apego al principio de pacta sum servanda, en el presente caso resulta imposible dar cumplimiento a la Sentencia dictada por

esta Corte Interamericana en el caso de referencia, sin afectar el principio de independencia y autonomía del Poder Judicial, ni menoscabar las garantías del Estado Social y Democrático de Derecho".

Comentarios y observaciones de la Relatora Especial

1208. La Relatora Especial agradece la respuesta a las comunicaciones del 9 de marzo y 30 de julio de 2009. Sin embargo, la Relatora sigue estando preocupada por la situación de vulnerabilidad que sufren los fiscales y jueces provisorios. En particular, la Relatora reitera que el hecho que la remoción de un juez provisional no requiera de ningún procedimiento administrativo, y que los llamados jueces provisorios son susceptibles de ser removidos "dejando sin efecto" su nombramiento, provoca una inestabilidad que puede generar un grave peligro para su independencia, presupuesto fundamental para el buen funcionamiento de cualquier sistema judicial. La Relatora lamenta también el incumplimiento de la sentencia dictada al respecto por la Corte Interamericana de Derechos Humanos.

Comunicaciones enviadas

1209. El 16 de diciembre de 2009, la Relatora Especial envió un llamamiento urgente con el Presidente Relator del Grupo de Trabajo sobre la Detención Arbitraria y la Relatora Especial sobre la situación de los defensores de los derechos humanos en relación con la Jueza María Lourdes Afiuni quien, el 10 de diciembre de 2009, ordenó la libertad condicional del Sr. Eligio Cedeño en espera de juicio, cuya detención fue declarada arbitraria por el Grupo de Trabajo sobre la Detención Arbitraria en su Opinión No. 10/2009 del 1º de septiembre de 2009.

Según las informaciones recibidas:

1210. En una audiencia en Caracas el 10 de diciembre de 2009, la Jueza María Lourdes Afiuni otorgó la libertad condicional al Sr. Eligio Cedeño en espera de juicio. La decisión fue acorde con el derecho venezolano y en concordancia con la decisión del panel de apelación de noviembre de 2009, el cual determinó que la detención preventiva del Sr. Cedeño había excedido el plazo máximo. El 10 de diciembre, el Sr. Cedeño habría estado detenido en espera de juicio durante dos años, diez meses y dos días.

1211. En la audiencia del 10 de diciembre, la defensa del Sr. Cedeño puso a conocimiento del tribunal la Opinión No. 10/2009 del Grupo de Trabajo sobre la Detención Arbitraria. La fiscalía no estuvo presente durante la audiencia, y tampoco se había presentado a la audiencia del 8 de diciembre.

1212. En cumplimiento con la orden de la Jueza Afiuni, el Sr. Cedeño fue escoltado del tribunal por dos alguaciles, los señores Rafael Rondón y Carlos Lotuffo, y puesto en libertad condicional. Le fue ordenado que entregara su pasaporte, permaneciera en Venezuela y se presentara ante las autoridades cada 15 días.

1213. Cuando los oficiales de la Dirección de los Servicios de Inteligencia y Prevención (DISIP) del Ministerio del Interior, quienes habrían llevado al Sr. Cedeño a la audiencia, fueron informados de la libertad del Sr. Cedeño, éstos arrestaron a la Jueza Afiuni y a los dos alguaciles. Los dos alguaciles fueron liberados posteriormente. La Fiscalía consideró la legítima libertad del Sr. Cedeño como una fuga ilícita. Se puso en marcha una búsqueda masiva para encontrar al Sr. Cedeño, cuyo paradero se desconoce desde ese momento.

1214. El 11 de diciembre en un acto de presencia ante una asamblea de funcionarios del Gobierno, el cual fue transmitido por televisión nacional y radio, Su Excelencia Presidente Hugo Chávez llamó tanto al Sr. Cedeño como a la Jueza Afuini "bandidos" y acusó a la Jueza Afiuni de corrupción. Pidió también 30 años de prisión para ella y señaló que sí había que cambiar la legislación para ello, lo haría. Su Excelencia Presidente Chávez

públicamente instruyó a la Fiscal General Luisa Ortega Díaz, al Tribunal Supremo de Justicia y a todo el sistema judicial castigar a la Jueza Afiuni con la pena máxima, para que sirviera de ejemplo para otros jueces. También insinuó que los abogados defensores de Cedeño habían incurrido en delitos. La Fiscal Luisa Ortega Díaz concedió entrevistas a la prensa en las que presuntamente difamaba a la Jueza Afiuni.

1215. También el 11 de diciembre, un abogado cercano al Sr. Cedeño, el Sr. José Rafael Parra Saluzzo, quien no forma parte de la defensa del Sr. Cedeño, fue detenido y llevado a la sede de la Dirección de Inteligencia Militar. El Sr. Parra fue puesto en libertad el 12 de diciembre por la noche. De acuerdo con las informaciones recibidas, se encuentra en amenaza inminente de ser detenido nuevamente, así como el resto del equipo de defensa del Sr. Cedeño.

1216. El 12 de diciembre, la Jueza Afiuni fue acusada por presunta corrupción, complicidad en una fuga, conspiración y abuso de poder. Fue trasladada a una cárcel de mujeres con problemas de hacinamiento a las afueras de Caracas, donde se cree se encuentra detenida entre la población carcelaria general. Le ha sido negado el derecho a un defensor público.

1217. En febrero de 2007, otro juez que habría dictado una orden favorecedora para el Sr. Cedeño fue apartado del tribunal y uno de sus hijos se salvó de un intento de secuestro poco tiempo después, por lo que el juez huyó del país. En noviembre, después de que un panel de apelación determinara que la detención preventiva del Sr. Cedeño había excedido el límite establecido por la ley, el juez que emitió la opinión fue apartado del tribunal de apelación y degradado. La decisión fue suspendida por la Sala Constitucional del Tribunal Supremo de Justicia.

1218. Se expresan serias preocupaciones de que el presunto arresto y detención de la Jueza Afiuni se haya llevado a cabo como represalia por el presunto ejercicio legítimo de sus funciones constitucionales y representen un intento por reprimir la independencia de jueces y abogados en el país.

Comunicaciones recibidas

1219. No se recibió hasta la fecha respuesta alguna a esta comunicación.

Comunicado de Prensa

1220. El 30 de Julio de 2009 el Relator Especial emitió el siguiente comunicado de prensa:

1221. “La justicia en Venezuela continúa caracterizada por la pervivencia de un importante número de jueces y fiscales provisorios, sujetos de diversos mecanismos de interferencias políticas que afectan su independencia”, advierte el Relator Especial de la ONU para la independencia de los jueces y abogados, Leandro Despouy.

1222. El experto en derechos humanos señala en un comunicado público que su preocupación manifestada en ocasiones previas se ha visto ratificada por una serie de hechos recientes, debido a “la falta de independencia de un importante número de jueces y fiscales provisorios quienes están sujetos a su remoción absolutamente discrecional: sin causa, ni procedimiento ni recurso judicial efectivo”.

1223. Entre estos hechos, el Relator Especial cita la “inejecución” por parte de Venezuela de un importante fallo internacional de la Corte Interamericana de Derechos Humanos, en el cual se estableció que incluso los jueces provisorios deben gozar de niveles de estabilidad, y se le requirió al Estado su cumplimiento.

1224. Despouy ha mostrado su preocupación, entre otros temas fundamentales, por la reforma de la Ley Orgánica del Tribunal Supremo de Justicia, con el objeto de ampliar el

número de sus magistrados y su posterior designación con criterios de afinidad política; así como por la utilización de la justicia con otros fines a través de jueces y fiscales provisorios.

1225. "El derecho de toda persona a la justicia debe contar con la existencia de jueces independientes e imparciales", señala el Relator Especial, "y para ello, la estabilidad de los jueces es un elemento esencial", tal como lo establece el Pacto Internacional de Derechos Civiles y Políticos, del cual Venezuela es signatario.

1226. Despouy manifiesta su preocupación por distintas actuaciones de jueces provisorios y sus consecuencias, como la reciente remoción de la jueza "provisoria" Alicia Torres, dos días después de que denunciara haber sido víctima de acoso por parte de la jueza Presidenta del Circuito Judicial Penal de Caracas, con el fin de dictar medidas cautelares contra el Presidente de Globovisión, Guillermo Zuloaga Núñez, y su hijo.

1227. Cita también la medida de censura solicitada, como en el caso anterior, por fiscales provisorios contra los mensajes de promoción del derecho de propiedad producidos por las ONG Cedice y Asoesfuerzo, que fue rechazada por la jueza "provisoria" Rosa Margiotta Goyo. El Relator espera que ni en este ni en otros casos, los jueces "provisorios" sean removidos sin causa legal, sin debido proceso y sin derecho a ejercer una revisión judicial.

1228. Por último, el experto de la ONU manifiesta su preocupación por la imputación penal de la abogada Perla Jaimes, consultora jurídica de la televisora Globovisión, por oponerse legalmente al allanamiento de una casa donde funcionan oficinas del presidente de dicho medio de comunicación social.

1229. En este sentido, el Relator Especial invoca el respeto y aplicación de los Principios Básicos sobre la Función de los Abogados, que establece, entre otros principios, que "los gobiernos garantizarán que los abogados puedan desempeñar todas sus funciones profesionales sin intimidaciones, obstáculos, acosos o interferencias indebidas".

Comunicado de Prensa

1230. El 16 de Diciembre de 2009, la Relatora Especial, junto al Presidente-Relator del Grupo de Trabajo sobre la Detención Arbitraria y a la Relatora especial sobre la situación de los defensores de los derechos humanos, expresó su profunda preocupación por el controvertido arresto de una jueza en Venezuela, al que describieron como "un golpe del Presidente Hugo Chávez a la independencia de magistrados y abogados en el país". La Jueza María Lourdes Afiuni, de acuerdo con la información disponible, fue arrestada por agentes de la policía de inteligencia poco después de haber ordenado la libertad condicional en espera de juicio del Sr. Eligio Cedeño. La detención del Sr. Cedeño había sido declarada arbitraria por el Grupo de Trabajo sobre la Detención Arbitraria de Naciones Unidas el 1 de septiembre de 2009, citando violaciones al derecho a un juicio justo. El 10 de diciembre de 2009, su equipo de abogados defensores presentó la opinión de los expertos de la ONU en una audiencia ante la Jueza Afiuni, tras la cual fue puesto en libertad condicional después de casi tres años de detención en espera de juicio.

1231. "Estamos particularmente preocupados por las alegaciones de que el Presidente Hugo Chávez atacó tanto al Sr. Cedeño como a la Jueza Afiuni calificándolos de 'bandidos' y acusó a la Jueza Afiuni de corrupción", destacó el grupo de expertos de la ONU.

1232. En un acto con funcionarios de Gobierno, transmitido por televisión y radio nacionales, el Presidente venezolano también exigió una condena de 30 años de prisión para la Jueza Afiuni, aún cuando nueva legislación fuese necesaria para alcanzar ese objetivo.

1233. El Presidente Chávez instruyó públicamente a la Fiscal General y al Presidente de la Corte Suprema para que castigaran a la Jueza Afiuni con la pena máxima, con el fin de

prevenir acciones similares por parte de otros jueces. También sugirió que los abogados defensores del Sr. Cedeño habían incurrido en delitos por haber solicitado su libertad. Según se ha informado, la Fiscal General Luisa Ortega Díaz dio declaraciones a la prensa en las que presuntamente difamaba a la Jueza. Los dos alguaciles que acompañaron al Sr. Cedeño fuera de la Corte y uno de sus abogados fueron brevemente detenidos en relación con este caso, pero pronto liberados.

1234. "Las represalias por ejercer funciones constitucionalmente garantizadas y la creación de un clima de temor en el poder judicial y en los abogados no sirve a otro propósito que el de socavar el estado de derecho y obstruir la justicia", manifestaron los expertos. "Es imperativo que se ponga a la Jueza Afiuni en libertad inmediata e incondicional", agregaron.

1235. La Jueza Afiuni fue acusada de presunta corrupción, complicidad en una fuga, conspiración criminal y abuso de poder, según se ha informado; asimismo, le ha sido negado un defensor público. Se teme, además, que los abogados defensores venezolanos del Sr. Cedeño estén bajo amenaza inminente de arresto. También se ha informado que, en noviembre, otro juez de Caracas fue degradado y removido de la corte de apelaciones después de haber determinado que la detención preventiva del Sr. Cedeño había excedido los límites establecidos por la ley.

Comentarios y observaciones de la Relatora Especial

1236. La Relatora Especial agradece al Gobierno de Venezuela por las respuestas enviadas. Sin embargo, la Relatora debe subrayar que en el periodo que concierne este informe han tenido lugar en Venezuela episodios muy preocupantes relativos a la independencia de la judicatura y que conciernen su mandato.

1237. La Relatora lamenta la falta de respuesta a la comunicación del 16 de diciembre de 2009, que concierne el caso de la jueza Afiuni, que le preocupa sumamente. La Relatora apreciaría una respuesta a esta comunicación.

Viet Nam

Communication Sent

1238. On 19 June 2009, the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on extrajudicial, summary or arbitrary executions 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:

1239. 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.

1240. 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.

1241. 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 her other inmates, such as limited visits and food.

1242. 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 appraised 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.

Communication received

1243. On 20 August 2009, the government of Viet Nam replied to the communication sent by the Special Rapporteur and indicated as follows:

1244. Mrs Pham Thi Tuzet 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.

1245. During the period of provisional detention for investigation and 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.

1246. 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 Viet Namese laws, particularly the Criminal Procedure 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 final appeal will be soon convened to review Mrs Pham Thi Tuyet Lan's case to ensure that justice is done.

1247. According to the 1985 Criminal Code of Viet Nam, 44 serious criminal offenses were subject to capital punishment. In the process of review 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 the age of 36 months of age.

1248. 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 reduction from 29 to 21 the number of criminal offenses which are subject to the death penalty. The criminal offenses which were 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 equipment (Article 234)

Comments and observations of the Special Rapporteur

1249. The Special Rapporteur appreciates the response from the Government of Viet Nam and for clarifying the concerns raised with regard to representation by a lawyer during all steps of the investigation and the trials as well as about the provisions of criminal law that she had allegedly violated. The Special Rapporteur - while welcoming that, in June 2009, the Government has eliminated the death penalty for various crimes, including other financial crimes - regrets that it continues to be imposed for the offence of embezzlement, for which Mrs. Pham Thi Tuyet Lan received the death sentence.

1250. The Special Rapporteur would also appreciate receiving further information regarding the appeal of Mrs Pham Thi Tuyet Lan.

Communication sent:

1251. On 23 June 2009, Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and 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 concerning the situation of Mr. Le Cong Dinh, a human rights lawyer and former Vice-President of the Ho Chi Minh City Bar Association.

According to the information received:

1252. Mr Le Cong Dinh was reportedly arrested on 13 June 2009 at his office in Ho Chi Minh City by agents of the Public Security Police.

1253. Following his arrest, the Investigation Agency of the Ministry of Public Security stated at a press conference that Mr Le Cong Dinh had "connived with overseas subversives to publish documents distorting the Government's socio-economic policies". Mr Le Cong Dinh was later charged with "conducting propaganda against the State", under article 88 of the Penal Code. If convicted on this charge, he faces a possible sentence of up to 20 years of imprisonment.

1254. It was further reported that Mr. Le Cong Dinh has recently spoken out against the extraction of bauxite in the Central Highlands, and has also called for political reform in Viet Nam.

1255. Concern is expressed that the arrest and detention of Mr Le Cong Dinh may be linked to his peaceful activities in defence of human rights including in the exercise of his right to freedom of opinion and expression. Further concern is expressed for his physical and psychological integrity while in detention.

Communication received

1256. In a letter dated 6 July 2009, the Government responded to the communication sent on 23 June 2009 as follows.

1257. On 13 June 2009, the Investigation Agency of Viet Nam arrested Mr. Le Cong Dinh, who resided in Ho Chi Minh City and worked for the Le Cong Dinh Law Firm, which is a one-member company limited, on accusation of having violated Article 88 of the Penal Code of Viet Nam. The arrest was done in strict compliance with the sequence and procedures stipulated in Article 62 and 63 of the Criminal Procedures Code of Viet Nam.

1258. Mr. Le Cong Dinh was trained in law in Viet Nam and was sent abroad for further study. Since he came back, he has been given favorable conditions to practice his

profession. He was the Vice Chair of the Ho Chi Minh Bar Association and used to write articles for newspapers such as the Thanh Nien, Tuoi Tre, Sai gon Tiep Thi, Saigon Economic Times, Tia Sang magazines… and the BBC Viet Namese. He also gave many interviews for BBC, RFI and RFA. This fact alone demonstrated that Mr. Le Cong Dinh fully enjoyed the rights to freedom of expression and opinion, and the state of Viet Nam had no preconception or discrimination against him.

1259. The arrest of Mr. Le Cong Dinh was not due to the reasons mentioned in your letter that Mr. Le Cong Sinh was against the extraction of bauxite in the Central Highlands, called for "political reforms" or his "peaceful activities in defense of human rights" and "the exercise of his right to freedom of opinion and expression". Le Cong Dinh contacted and colluded with a number of exile Viet Namese organizations and groups abroad, including those listed by the Viet Namese Government as terrorist groups, in an attempt to prepare for riots and cause social instability and public disorder with the ultimate goal of overthrowing the State of Viet Nam.

1260. Since 2005, Le Cong Dinh has communicated with Nguyen Sy Binh, head of the exile U.S. based organizations of "People's Action Party" and "Viet Nam Democratic Party", who maintained close ties with heads of other exile groups, such as Ha Dong Xuyen (Viet Tan Group),Pham Nam Dinh (Democratic Get-Together Group), Doan Viet Hoat (Viet Nam Vision Group) with a view to designing the action plans to involve and establish subversive organizations in Viet Nam in order to realize the plot of "attacking from the outside to cause disorder inside the country". Le Cong Dinh was assigned to collaborate for the development of organizations in Viet Nam to establish an illegal entity called "Viet Nam Democratic Party" and "Viet Nam Labour Party" and communicate with anti-Viet Namese State abroad. Le Cong Dinh was chosen by the hostile forces and anti-state exile forces to be trained abroad for sabotage activities against the state, including the one organized by Viet Tan in Pattaya, Thailand in late February 2009. Le Cong Dinh has visited the U.S. and Thailand for many times to meet with Nguyen Sy Binh to discuss and set out action plans to prepare for the opportunity to overthrow the regime in Viet Nam, which Dinh and his accomplices believed to arrive by the end of 2009 and early 2010. Le Cong Dinh participated in compiling a book, which served as the action platform for the group, called "the Road for Viet Nam" and he drafted the "New It should be recalled that "Viet Tan", with which Mr. Le Cong Dinh has collaborated, was founded in 1982 and led by Hoang Co Minh. The ultimate goal of this organization was to abolish the regime in Viet Nam. This organization conducted many infiltrations into Viet Nam by armed terrorist groups abroad, such as the Dong Tien II operation in December 1986 and July 1987. It is a terrorist group and has conducted terrorist actions against Viet Nam. At present, Viet Tan continues to operate under the cover of democracy and human rights while actually attempting to overthrow the Viet Namese State.

1261. It should be also recalled that the "United Front of Patriotic Forces for the Liberation of Viet Nam", chaired by Le Quoc Tuy, conducted many acts to overthrow the State of Viet Nam. During 1981 to 1984 alone, this organization sent over 10 armed groups from abroad to infiltrate into the Viet Namese territory. Especially, during the 10th infiltration from the sea, many were captured or killed; the leaders, Tran Van Ba, Mai Van Hanh and 19 others were arrested when they landed on the coast of Ca Mau.

1262. Following his arrest, on 17 July 2009, Le Cong Dinh had admitted his acts of law violations, expressed his deep regret for his wrongdoings and asked the State for leniency.

1263. During the process of investigation before the trial, Le Cong Dinh is entitled to enjoy the rights of the suspected offender. His health is normal. The arrest of Le Cong Dinh conducted by Viet Namese investigation agency, the investigation as well as the introduction of instance, the trial have been and will be openly carried out on the basis of equity and objectivity in accordance with the sequence and procedures stipulated in existing

Viet Namese laws, particularly the Criminal Procedures Code. These law provisions are also in line with international standards on human rights, particularly Articles 19c, 20 and 21 of the International Covenant on Civil and Political Rights.

Comments and observations of the Special Rapporteur

1264. The Special Rapporteur thanks the Government of Viet Nam for its response, though is still concerned about the arrest, detention and trial of Mr. Le Cong Dinh. The Special Rapporteur would appreciate receiving further information on the development of his case, as well as on the exact charges that are imputed to him.

Communication sent

1265. On 24 December 2009, the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Father Thadeus Nguyen Van Ly, a Catholic priest, aged 63 years. Father Ly was already the subject of the Working Group on Arbitrary Detention's Opinion No. 20/2003 (Viet Nam), adopted on 27 November 2003 and a joint urgent appeal by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression dated 23 February 2007. We acknowledge receipt of your Excellency's Government's response dated 18 May 2007. The Special Rapporteur on freedom of religion or belief has previously sent two communications to the Government of Viet Nam regarding Father Thadeus Nguyen Van Ly (see E/CN.4/1993/62, para. 68 and A/56/253, para. 77) to which your Excellency's Government replied (see E/CN.4/1994/79, para. 80 and E/CN.4/2002/73, para. 114).

According to new information received:

1266. On 11 December 2009 Father Nguyen Van Ly was transferred back to Ba Sao prison, where he is currently serving an eight-year prison sentence for "carrying out propaganda against the Socialist Republic of Viet Nam," (Article 88 of the Viet Namese Criminal Code). He was arrested on 18 or 19 February 2007 and sentenced on 30 March 2007 following a trial that lasted approximately four hours. He was denied access to counsel before and during the trial.

1267. At Prison Hospital 198, which is run by the Ministry of Public Security in Hanoi, Father Ly had been recovering from a second stroke suffered in detention on 14 November 2009. Father Ly remains partially paralyzed on the right side of his body.

1268. During his detention, Father Ly has been mainly held in solitary confinement. He has suffered from high blood pressure and other health problems. In the seven months before the stroke, he had several bouts of ill-health for which the prison authorities neither provided a proper diagnosis nor adequate medical treatment.

1269. Father Ly was first imprisoned for his criticism of the policies of the Viet Namese Government on religion in the late 1970s, and has already spent approximately 17 years in prison in relation to his activities promoting respect for human rights, including freedom of opinion, expression and religion. He is one of the founders of the internet-based movement "Bloc 8406" which supports democracy, and has helped to set up other political groups which have subsequently been banned in Viet Nam. He also secretly published a journal entitled "To Do Ngon Luan".

1270. Grave concerns are expressed in respect of Father Nguyen Van Ly's state of health, particularly in view of reports that he has been transferred back to the prison despite not having fully recovered from a stroke.

Communication received

1271. On 19 March 2010, the government of Viet Nam replied to the communication sent on 24 December 2009, by the special Rapporteur as follows:

1272. Mr Nguyen Van Ly was accuses of activities violating Viet Namese laws and sentenced to 8 years in prison by the Peoples court of Thua Thien Hue Province on 30 march 2007 according to article 88 of the Penal Code. He was allowed to have counsel but he refused to do so. The arrest, provisional detention and trial against Mr. Ly have been carried out in strict compliance with the sequence and procedures stipulated in existing Viet Namese 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. Many foreign diplomats and journalists, including those who came from the US were allowed to attend the court. There is no complaint lodged by and on behalf of Mr Ly.
Allegations that Mr.Ly was denied access to councel, not provided adequate medical treatment are totally untrue.

Comments and observations of the Special Rapporteur

1273. The Special Rapporteur thanks the Government of Viet Nam for its response, though it does not clarify what the grounds for the deprivation of liberty and trial of Father Nguyen Van Ly were. The Special Rapporteur would like to receive more precise information on the exact criminal charges against him. The Special Rapporteur would appreciate receiving further information on the development of his case.

Communication sent

1274. On 25 January 2010, the Special Rapporteur sent an allegation letter jointly with the 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 concerning the sentencing of four human rights defenders, Mr. Le Cong Dinh, Mr. Le Thang Long, Mr. Nguyen Tien Trung, and Mr. Tran Huynh Duy Thuc.

According to information received:

1275. On 20 January, a court in Ho Chi Minh City convicted Mr. Le Cong Dinh, Mr. Le Thang Long, Mr. Nguyen Tien Trung and Mr. Tran Huynh Duy Thuc under article 79 of the 1999 Penal Code for "organizing campaigns in collusion with reactionary organizations based abroad" that were "designed to overthrow the people's Government […] with the help of the Internet", such as posting articles online, cooperating with "hostile" groups abroad and, in Mr. Dinh's case, attending a class on non-violent political change.

1276. Mr. Le Cong Dinh and Mr. Le Thang Long were sentenced to five years of imprisonment, while Mr. Nguyen Tien Trung and Mr. Tran Huynh Duy Thuc were sentenced to seven and 16 years of imprisonment respectively. Mr. Dinh, Mr. Long and Mr. Trung were also sentenced to three years of house arrest upon completing their terms in prison, while Mr. Thuc was sentenced to five years of house arrest upon completing his term in prison.

1277. The prosecution allegedly gave no evidence to support the indictment, the trial did not allow meaningful defense for the accused, and the judges deliberated for only 15

minutes before returning with the judgment, which took 45 minutes to read. It has been alleged that the judgment had been prepared in advance of the hearing.

1278. Relatives, diplomats and foreign journalists were prohibited from entering the courtroom, but some were allegedly allowed to follow the trial via a closed-circuit television in an adjacent room.

1279. Concerns regarding the arrest and detention of, and subsequent charges against Mr. Le Cong Dinh were expressed to your Excellency's Government on 23 June 2009 and 21 December 2009. We acknowledge receipt of your Excellency's Government's reply dated 6 July 2009, in which it was affirmed that Mr. Le Cong Dinh was arrested for contacting and colluding with a number of exiled Viet Namese organisations and groups abroad "in an attempt to prepare for riots and cause social instability and public disorder with the ultimate goal of overthrowing the State of Viet Nam".

1280. We remain deeply concerned that Mr. Le Cong Dinh, Mr. Le Thang Long, Mr. Nguyen Tien Trung, and Mr. Tran Huynh Duy Thuc have been sentenced to long prison terms for their peaceful and legitimate activities in defence of human rights and for exercising their right to freedom of opinion and expression in a non-violent manner.

1281. In addition, we are concerned that the sentencing of these four individuals may constitute an attempt to silence criticism prior to the National Congress of the Communist Party. Further concern is also expressed regarding the increasing number of arrests of independent lawyers, bloggers and pro-democracy activists since May 2009.

Communication received

1282. On 7 April 2010 the Government of Viet Nam replied to the communication sent by the Special Rapporteur on 25 January 2010, as follows:

1283. Mr. Le Cong Dinh was arrested on 13 June 2009, and accused of activities violating Viet Names laws. On 20 January 2010, the peoples court of Ho Chi Minh City sentenced him to 5 years in prison and 3 years probation according to article 79 of the Penal Code which reads ' those who carry out activities, establish or join organizations with intent to overthrow the peoples administration shall be subject to between five and fifteen years of imprisonment'

1284. During the period of his provisional detention for investigation and the trial, Mr Le Cong Dihn is entitled to enjoy the rights of suspected offender without discrimination or ill treatment, including the rights to be assisted by a lawyer of his own choosing and to be visited by his own family. However, he refused the lawyers assistance and wanted to be defended by himself. His personal decision confirmed by his family was respected.

1285. The decision of the Ho Chi Minh City Bar Association disbarring Mr Dinh results from his activities violating the rules and regulations of the Association, such as article 2 of the Rules of the Ho Chi Mihn Bar Association, which in part reads ' the lawyer has to respect and obey the law' and the article 7 (on the rights and obligations of the lawyer) of the Viet Namise Bar Association. According to the 2006 Law of Lawyer (article 18), the ministry of justice has revoked the licence to practice law of Mr Dihn. All these decisions, made by the Ho CHI Mihn Bar Association and the Ministry of Justice, are strictly in accordance with the existing laws of Viet Nam.

1286. As in many other states of law in the world, in Viet Nam, all violations by law, causing harm to national security must be punished in order to ensure the respect of law and to guarantee the peace, security and development which are the common interest of the society. Activities carried out by these four men are well organized and Cleary aimed to wipe out the existing Constitution and to overthrow the State. The punishment of these violation activities is absolutely in compliance with standards of the international law. the

arrest, provisional detention for investigation and trial against Mr. Le Cong Dinh, Mr. Le Thang Long.

1287. Mr. Nguyen Tien Trung, and Mr. Tran Huynh Duy Thuc have been carried out in strict compliance with the sequence and procedures stipulated in existing Viet Namese 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. In the spirit of openness and transparency, Viet Nam has allowed many foreign diplomats and journalists, including those who came from the US and some European countries to attend the court.

Comments and observations of the Special Rapporteur

1288. The Special Rapporteur thanks the Government of Viet Nam for its response. However, she is still concerned about the arrest and detention of Mr. Le Cong Dinh, Mr. Le Thang Long, Mr. Nguyen Tien Trung, and Mr. Tran Huynh Duy Thuc and would like to receive more precise information on the exact criminal charges against each of them. The Special Rapportuer would also like to receive information relating to the status of the criminal proceedings as well as receive a response from the Government on how article 79 of the 1999 Penal Code, which carries penalties of 12 to 20 years of imprisonment, life imprisonment or capital punishment for persons who carry out activities, establish or join organisations with intent to overthrow the people's administration, is compatible with applicable international standards, notably the principle that laws restricting the right to freedom of expression must be accessible, unambiguous, draw narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful; and with the principle that any sanctions must be proportionate and the least intrusive means to attain a legitimate aim.

Republic of Yemen

Communication sent

1289. On 29 April 2009, Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and Special Rapporteur on violence against women, its causes and consequences 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.

1290. 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).

1291. 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.

1292. 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.

Communication received

1293. At the time this report was finalized, no response to this communication has been received.

Communications sent

1294. On 5 February 2010, Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the alleged imminent execution of Messer's Shaikh Khalid Nahshal, Mabkhout 'Ali Nahshal and Abduh Muhammad Nahshal.

According to information received:

1295. 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,

1296. 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.

Communication received

1297. At the time this report was finalized, no response to this communication has been received.

Communication sent

1298. On 22 February 2010, the Special Rapporteur sent an urgent appeal jointly with the Chair-Rapporteur of the Working Group on Arbitrary Detention concerning Mr. Azzam Hassan Ali, born on 22 October 1972, a Yemeni national, identity card No. 03010007596, issued on 26 April 2005 by the Personal Affairs Department of the Aden Governorate, usually residing at Block 22, No. 124, Al Mansoora Department, Aden Governorate.

According to the information received:

1299. Mr. Hassan Ali was arrested on 20 October 2007 after presenting himself at the Political Security Headquarters of Al Mansoora. Following his arrest, Mr. Hassan Ali was first detained incommunicado and tied up in chains for four months at the Political Security Headquarters. Approximately in January 2008, Mr. Hassan Ali was transferred to the Central Prison of Al Mansoora, where he was detained with convicted individuals, although he was not charged with any crime or subjected to any legal proceedings. He did not have access to a lawyer.

1300. Mr. Hassan Ali has previously been arrested, in 2005 and 2006, by the Yemeni security services for reasons unknown to the family. He was released without charge both times, but was obliged to present himself on a monthly basis at the Political Security Headquarters.

1301. Mr. Hassan Ali is suffering from depression. His detention has lasted two years and four months to date, and he does not see how this situation may change at any time in the near future. He therefore decided to go on a hunger strike. Presumably because of his hunger strike, on 25 January 2010, Mr. Hassan Ali was transferred to Fatah Prison in the Al Tawahi Directorate, which is a high-security prison run by the Political Security, so that the media would not have access to information concerning his case.

1302. Mr. Hassan Ali's state of health is critical and he indicated to continue his hunger strike until his release. Mr. Hassan Ali's family has been approached by Government officials to exert pressure on him. Mr. Hassan Ali's mother has also commenced a hunger strike from a hospital, where she is currently admitted.

1303. In view of reports about Mr. Hassan Ali's hunger strike commenced in alleged prolonged detention without charge or trial, grave concerns are expressed in relation to his state of health.

Comments and observations of the Special Rapporteur

1304. The Special Rapporteur regrets the absence of an official reply to the communications sent. She considers response to her communications as an important part of the cooperation with her mandate and calls upon the Government of Yemen to provide at the earliest possible date a substantive answer to the above allegations.

Zimbabwe

Communication sent

1305. On 15 May 2009, the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and Special Rapporteur on the situation of human rights defenders regarding the arrest and detention of

Mr Alec Muchadehama, a human rights lawyer. Mr Muchadehama has offered legal assistance to several members of the Movement for Democratic Change (MDC) and human rights defenders. Mr Muchadehama was the subject of communications sent by 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 on 11 May 2007 and 28 March 2007. Responses to these two communications have not yet been received.

According to the information received:

1306. On 14 May 2009, Mr Alec Muchadehama was reportedly arrested at the Rotten Row Magistrates' Court in Harare by two police officers from Harare Police Station's Law and Order Section. The charges against Mr Muchadehama are unclear.

1307. Concern is expressed that the arrest and detention of Mr Muchadehama may be linked to his legitimate activities in defence of human rights, in particular the legal assistance he has provided to political activists belonging to the opposition. Further concern is expressed for his physical and psychological integrity while in detention.

Communications received

1308. At the time this report was finalized, no response to this communication has been received.

Comments and observations of the Special Rapporteur

1309. The Special Rapporteur regrets the absence of an official reply to the communications sent and calls upon the Government of Zimbabwe to provide at the earliest possible date a substantive answer to the above allegations.