LEANDRO DESPOUY

HACIA UNA JUSTICIA INDEPENDIENTE Y EFICAZ

Informes 2006-2007 al Consejo de Derechos Humanos
y a la Asamblea General de Naciones Unidas
del Relator Especial sobre la independencia
de los magistrados y abogados

Protección de los derechos humanos
y acceso a la justicia

Proyecto

"Independencia y acceso a la justicia en América Latina" 07CAP2-0386
Asamblea Permanente por los Derechos Humanos (APDH)
Agencia Española de Cooperación Internacional para el Desarrollo (AECID)

Colección
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Leandro Despouy
expresa su gratitud y reconocimiento
a las siguientes organizaciones argentinas que
acompañan con probado y notorio interés cada una de
las actividades que realiza como Relator Especial desde 2003.

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CV de Leandro Despouy

Leandro Despouy es Relator Especial sobre la independencia de los magistrados y abogados del Consejo de Derechos Humanos de las Naciones Unidas desde 2003 (ex Comisión de Derechos Humanos). Fue presidente de la Comisión de Derechos Humanos de la ONU (2001) y también de la Subcomisión de Prevención de Discriminaciones y Protección a las Minorías, hoy Subcomisión de Promoción y Protección de Derechos Humanos (1987). Se desempeñó como Relator Especial sobre Extrema Pobreza y los Derechos Humanos (1996), Relator Especial sobre Personas con Discapacidad y los Derechos Humanos (1991) y Relator Especial sobre Países bajo Estado de Sitio o de Excepción (1985-1997); presidió la Primera Conferencia Internacional de Estados Partes en la Convención contra la Tortura y otros Tratos Crueles, Inhumanos y Degradantes (1987) y fue miembro del Grupo de Expertos y Asesores del Comité Internacional de la Cruz Roja (1986-2002).

Como experto de Naciones Unidas, ha llevado a cabo tareas de fortalecimiento institucional en varios países y participó activamente en las negociaciones tendientes a la resolución de la crisis haitiana (1993-1994). Como diplomático (embajador extraordinario y plenipotenciario), ha ejercido la Dirección General de Derechos Humanos (1986-1989) y la Representación Especial de este sector en la Cancillería argentina (2000-2001), entre otros cargos.

En su actual carácter de Relator Especial del Consejo de Derechos Humanos de Naciones Unidas sobre la independencia de jueces y abogados, ha realizado entre 2006-2007 los informes y actividades aquí reunidos, que abarcan tanto aspectos vinculados a la situación de la Justicia en el mundo como las visitas realizadas a distintos países.

En junio de 2008, la Fundación de la Unión Internacional de Magistrados entregó a Leandro Despouy el Premio Internacional Justicia en el Mundo, en mérito a su trayectoria en derechos humanos y a la constante defensa por la independencia de jueces y abogados.

Desde 2002 es presidente de la Auditoría General de la Nación de la República Argentina.

Prólogo

En agosto de 2003 fui designado Relator Especial para la independencia de los jueces y abogados de la Comisión de Derechos Humanos, hoy Consejo de Derechos Humanos de las Naciones Unidas. Desde entonces, me avoco *ad honorem* a esta labor, cumpliendo, al mismo tiempo, con el mandato constitucional de presidir, desde marzo de 2002, la Auditoría General de la Nación de mi país, la República Argentina.

Convencido de que la actividad pública plantea obligaciones inexcusables, desde 2006, una vez por año, voluntariamente rindo cuentas ante mis conciudadanos, colegas y autoridades sobre todas las actividades que desarrollo en pos de la justicia y de sus principales actores en el mundo, como también lo hago, por demanda de mi cargo de Relator Especial, ante la Asamblea General y el Consejo de Derechos Humanos de la ONU. En cada una de estas presentaciones en el país[1] he recibido el acompañamiento cálido y amigable de organizaciones y personalidades del ámbito jurídico y de derechos humanos. A todos ellos expreso mi sincera gratitud por el aporte de sus experiencias y reflexiones que, sin lugar a dudas, han contribuido a enriquecer la dimensión de mi mandato.

Destaco en esta oportunidad a la Asamblea Permanente por los Derechos Humanos (APDH), de la República Argentina, Asociación Civil ONG con status consultivo II ante Naciones Unidas que ejecuta el **Proyecto «Independencia y acceso a la justicia en América Latina» 07CAP2-0386**, subvencionado por Agencia Española de Cooperación Internacional para el Desarrollo (AECID). En este contexto, se inicia con este libro la colección especial «Independencia y acceso a la justicia en América Latina». [2]

En junio de 2008 la Fundación de la Unión Internacional de Magistrados, generosamente me entregó el premio Justicia en el Mundo. Por cierto, estoy muy agradecido a la prestigiosa entidad que representa a unos 100.000 jueces del mundo pero, quienes realmente merecen tan alta distinción son fundamentalmente aquellos que cada día obran para que la independencia del Poder Judicial y la vigencia de la justicia sean objetivos realizables. Por ello lo dediqué a los más altos dignatarios, a los fiscales, a los defensores públicos y demás auxiliares de la Justicia. También hice una dedicatoria especial a los abogados que, sin duda, cumplen una función decisiva e insustituible. Mi homenaje estuvo dirigido en particular a aquellos que lo hicieron en condiciones tan riesgosas que llegaron a pagar con su propia vida el mandato irrenunciable de ejercer la defensa, como sucedió en nuestro país en la década del 70. En nombre de todos ellos evoqué la memoria de Silvio Frondizi, gran jurista, académico y siempre abogado defensor a quien tuve el honor de acompañar en aquellos años.[3]

[1] Estas presentaciones se realizaron: en 2006 en el Ministerio de Relaciones Exteriores, Comercio Internacional y Culto y en 2007 en el Consejo Argentino para las Relaciones Internacionales (CARI),

[2] También disponible en formato electrónico en el sitio: http://www.apdh-argentina.org.ar/piajal/index.htm

[3] Se acompaña como anexo, el discurso de recepción del premio.

El estado de la Justicia en el mundo y el mandato del Relator Especial

El mandato nace de la preocupación de Naciones Unidas ante una realidad ineludible: en la mayoría de los países, los operadores de la Justicia encuentran numerosas y serias dificultades para desempeñar sus funciones de manera independiente y con frecuencia ven comprometidas su seguridad y su integridad personal. La dimensión actual del mandato y su extensión universal, obedecen tanto a la evolución de la agenda internacional como al hecho de que, siendo la Justicia una de las bases del sistema democrático y del Estado de derecho, la independencia de los magistrados y de los abogados no puede examinarse sin prestar atención al contexto institucional más amplio y a los diversos factores que influyen en el funcionamiento del Poder Judicial.

Por ello, en la actualidad, el mandato comprende el conjunto de aspectos estructurales y funcionales del Poder Judicial y sus disfunciones como, por ejemplo, la corrupción o la discriminación en el acceso a la justicia que, en contextos muy diversos, pueden afectar la vigencia y el goce efectivo de los derechos humanos. Incluye la administración de justicia tanto en situaciones ordinarias como en períodos de conflicto o de transición. Abarca la Justicia civil y la militar, las jurisdicciones ordinarias y las excepcionales, así como las novedades relacionadas con la Corte Penal Internacional y los demás tribunales penales internacionales. Incluye asimismo, el derecho a la verdad en el contexto de la lucha contra la impunidad, el derecho por el acceso a la justicia y el derecho a un justo proceso en todas las circunstancias, inclusive bajo estados de excepción o situaciones análogas.

Permanentemente se solicita a los Estados que adopten medidas que respeten y garanticen la seguridad e independencia de los operadores de Justicia, y también se pide a las Naciones Unidas que hagan de la defensa de la justicia un asunto prioritario. Los diversos informes reunidos en esta publicación muestran que la independencia del Poder Judicial puede verse afectada por circunstancias que van desde lo operativo hasta lo estructural, debido a -por ejemplo- la existencia, en numerosos países, de sistemas judiciales afectados por una notoria escasez de medios materiales, presupuestarios y de recursos humanos adecuadamente formados, lo que dificulta su eficaz desempeño. También se observa que en varios países la centralización geográfica de los sistemas de justicia es de tal magnitud que sólo cuentan con tribunales judiciales la capital y grandes ciudades, quedando al margen amplias zonas rurales. Por otra parte, el costo que representa un proceso judicial, con frecuencia sobrepasa la capacidad económica de los individuos. Estos límites se tensan al máximo en situaciones de conflicto armado y post-conflicto, ocasiones que provocan la parálisis del sistema judicial, de modo tal que los individuos no tienen posibilidad alguna de acceder a la justicia. Además, pese a los progresos alcanzados en el ámbito del derecho internacional en materia de derechos humanos, la desigualdad en el acceso a la justicia sigue siendo uno de los factores que afecta a amplios sectores de la sociedad, principalmente a las personas en situación de extrema pobreza, las minorías, las poblaciones indígenas y en general a los grupos más vulnerables.[4]

[4] Dicho tema fue evocado ante la Asamblea General de Naciones Unidas en su 62° período de sesiones y ante el Consejo de Derechos Humanos en junio de 2008. Ver Informe A/HRC/8/4 13 de mayo de 2008 que integra la presente publicación.

La actuación de la Relatoría adopta diferentes modalidades y se apoya en un marco normativo muy amplío[5]. Una de las actividades más importantes que realiza regularmente son las numerosas intervenciones a través de llamados urgentes, cartas de alegación y comunicados de prensa, a partir de múltiples denuncias que recibe sobre situaciones que afectan el sistema judicial, sus actores y sus beneficiarios en todas las regiones del mundo. [6]Esto pone de manifiesto hasta qué punto los sistemas judiciales y sus actores están constantemente expuestos y con frecuencia ven comprometidas su seguridad e independencia; la labor del Relator tiende a ofrecerles protección y, paralelamente, a jerarquizar la labor de la justicia defendiendo su independencia y su importante tarea.

Otra actividad clave la constituyen las misiones a países. Dichas visitas son una herramienta sumamente ágil y eficiente para entablar un diálogo directo con todos los actores nacionales que participan de la Justicia y resguardan su independencia. En ciertas circunstancias -como fuera el caso en Ecuador en 2004- las misiones permiten ofrecer a los Estados una ayuda independiente y desinteresada para resolver situaciones conflictivas o adoptar medidas institucionales o legales decisivas.

Justicia para las Naciones Unidas

El 19 de agosto de 2003, Sergio Viera de Mello, entonces Alto Comisionado para los Derechos Humanos y otras veintiuna personas perdieron la vida en el ataque mortal lanzado contra las Naciones Unidas en Bagdad. Desde entonces, sigue impune este crimen atroz que, más allá de las personas y sus familiares, atañe gravemente a la autoridad de la organización.

El 19 de junio de 2007, en mi condición de Relator Especial formulé un llamado urgente al Gobierno iraquí, a través de un comunicado de prensa, con el objeto de evitar la inminente ejecución de Awraz Andel Aziz Mahmoud Sa'eed; sin embargo, el 3 de julio de 2007 fue ejecutado en la horca. Era el único sobreviviente de las siete personas supuestamente partícipes en el atentado, o que habrían tenido conocimiento de algunos aspectos del mismo; seis ya habían perdido la vida en diversas circunstancias violentas (atentados, o enfrentamientos, o ejecuciones sucedidos en territorio iraquí). Así se desvaneció la posibilidad de lograr un testimonio que podría haber aportado al esclarecimiento del trágico atentado cuando, según fuentes de la ONU, el acusado se había mostrado dispuesto a testimoniar acerca de todo lo que conocía sobre el hecho.

[5] El marco normativo abarca un conjunto de Instrumentos Internacionales de Derechos Humanos, en particular, la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos, los distintos Convenios Regionales pertinente, y otras normas de derecho internacional más específicas: Principios Básicos relativos a la independencia de la Judicatura de 1985; Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias de 1989, Principios Básicos sobre la Función de los Abogados de 1990; Directrices sobre la Función de los Fiscales de 1990 y Principios de Bangalore sobre la Conducta Judicial de 2004, y el Código Ético Iberoamericano.

[6] Durante 2006 se realizaron 100 llamamientos urgentes, de los cuales 98 se hicieron conjuntamente con otros relatores y 46 cartas de alegación (25 en forma conjunta con otros relatores) que comprendieron a situaciones en 63 países. En 2006 el número de intervenciones realizadas se incrementó en un 67 por ciento con respecto a 2005. Desde el 1º de enero de 2007 hasta el 29 de febrero de 2008 se han enviado 136 comunicaciones, de las cuales, 91 fueron llamamientos urgentes (3 del mandato del relator y 88 en conjunto con otros mandatos) y 45 fueron cartas de alegación (11del mandato del Relator y 34 en conjunto con otros mandatos). Desde el 16/1/07 al 15/3/08 se enviaron comunicaciones a 51 países.

El carácter público del reclamo no buscaba solamente una reacción positiva del Gobierno iraquí; también procuraba movilizar a la comunidad internacional y particularmente a los gobiernos de los países occidentales que se reconocen como los principales actores de la arquitectura institucional del nuevo Iraq, incluyendo aquellos altos dignatarios que siempre han proclamado una franca estima y admiración por Sergio Viera de Mello.

En su 8ª Sesión en Ginebra (2-18 de junio de 2008) insté al Consejo de Derechos Humanos a constituir una comisión integrada por expertos eminentes para dar inicio al esclarecimiento de los hechos, autores y circunstancias del atentado contra la ONU en Bagdad. La propuesta tuvo muy buena acogida entre las delegaciones del Consejo. Inclusive la misión de Brasil, públicamente subrayó su interés en la creación de esta comisión en virtud de la absoluta impunidad que aún rodea este trágico episodio, al interés legítimo de la institución cuya autoridad se ha visto dañada, considerando el altísimo valor que otorgan las Naciones Unidas a la lucha contra la impunidad y en defensa del derecho a la verdad, persistentemente violado hasta la fecha.

La abolición de la pena de muerte reconoce una tendencia positiva en el mundo y cada día hay más Estados que prohíben este brutal castigo. Mi oposición a dicha pena se funda en razones de principios basados en el respeto al derecho a la vida.[7] Con relación a Iraq, me opuse a la ejecución, entre otros, del dictador Saddam Hussein cuyo proceso en virtud de los crímenes atroces cometidos bajo su régimen debió ser un ejemplo de lucha contra la impunidad y a favor del derecho a la verdad, y, desafortunadamente, no cumplió siquiera con reglas elementales de un justo proceso.

Finalmente, reitero mi agradecimiento a la APDH por su interés en la labor de esta Relatoría, y a las organizaciones argentinas que me han acompañado, sostenido e inspirado desde el inicio de esta actividad. Especialmente correspondo a: la Asociación de Magistrados y Funcionarios de la Justicia Nacional, la Federación Argentina de la Magistratura, la Asociación Civil Justicia Democrática, la Asociación de Mujeres Jueces de Argentina, el Colegio Público de Abogados de la Capital Federal, la Federación Argentina de Colegios de Abogados, la Asociación de Abogados de Buenos Aires y la Facultad de Derecho de la Universidad de Buenos Aires. Expreso asimismo mi especial gratitud a todos los operadores de Justicia que en la Argentina como en el resto de América Latina y del mundo, luchan por cumplir su misión con coraje y ética y se aferran a preservar su independencia.

[7] En apoyo a la tendencia abolicionista que se desprende de los instrumentos internacionales y de la jurisprudencia de los órganos de supervisión, en mis informes he abogado por la abolición de la pena de muerte. En los casos en que es admitida, se propugna la renuncia a su aplicación por tiempo indefinido o hasta el cambio de legislación y, de no ser así, se exige que los procesos judiciales cumplan con las garantías del debido proceso y con el derecho a apelar ante una instancia superior antes de la condena definitiva. Asimismo, he propiciado vivamente la más amplia ratificación del Segundo Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos, destinado a abolir la pena de muerte.

ANEXO

Texto completo del discurso pronunciado por Leandro Despouy, al recibir la Décima Edición del Premio Justicia en el Mundo en Madrid, el 25 de junio de 2008.

Al agradecer la altísima distinción que me ha sido otorgada, querría presentarles algunas de mis reflexiones más caras sobre las asombrosas transformaciones que se han producido en el mundo a partir de la incorporación de los derechos humanos, de los que la Justicia es hoy la principal garante.

En segundo lugar, quisiera hacer un breve repaso de lo que, a la luz del mandato del Relator Especial, he podido percibir como los problemas que más aquejan a la Justicia y al desempeño de sus principales actores: jueces, fiscales, abogados y demás auxiliares, los desafíos que deben confrontar y el papel de la comunidad internacional en la promoción y defensa de esos valores. A modo de aliento y reconocimiento, deseo también rendir homenaje a quienes cumplen con empeño y entereza la noble tarea de impartir justicia y, en especial, a aquellos que lo hacen poniendo en riesgo su tranquilidad, su seguridad personal y muchas veces su propia vida.

Grandes progresos del siglo XX y desafíos del que comienza

En un ámbito como este, nadie se sorprenderá si digo que entre las mayores transformaciones de las últimas décadas en el mundo debemos contar las que han tenido lugar en el campo del derecho.

Cuando ingresé al ámbito internacional en los años 70, forzado por las vicisitudes institucionales que signaron a mi país y me obligaron al exilio, los derechos humanos eran una representación genérica, casi abstracta, vacía de exigibilidad, al extremo de que, en las sesiones públicas de la Subcomisión y de la Comisión de Derechos Humanos de la ONU, no se podía pronunciar el nombre del país al que se estaba aludiendo por las violaciones perpetradas; y las referencias, aunque sugestivas, debían ser, necesariamente, imprecisas. Por ejemplo, se decía: «en un pequeño país del Cono Sur de América Latina ubicado en las márgenes del Río de la Plata» o « un gran país agrario ubicado en su margen opuesta», para mencionar al Uruguay o a la Argentina respectivamente.

Sin embargo, cuánto ha cambiado y cuánto hemos transitado nosotros mismos como actores de ese cambio. Eso me digo cuando verifico que, como relator especial, puedo enviar a diario comunicaciones urgentes a los gobiernos solicitando información precisa sobre algún tema o situación. O al concluir mis informes sobre los países que he visitado, con clara conciencia de que habrán de ser objeto de un debate público tanto en el Consejo de Derechos Humanos como en la Asamblea General. Son progresos impensables hace apenas tres décadas, pero lo cierto es que el tratamiento de temas delicados y trascendentes como la lucha contra la impunidad, la justicia en transición, el derecho a la verdad, el acceso a la justicia, y otros de actualidad y alcance universal, integran hoy mi mandato de relator especial, que además ha transformado al derecho de defensa y demás garantías del debido proceso en uno de los ejes centrales de su actividad tutelar.

El mundo que precedió al surgimiento de mi mandato estuvo signado por la confrontación de la Guerra Fría. En ese mundo prevalecían las relaciones entre los Estados y los únicos protagonistas de la vida internacional eran los gobiernos. Las cuestiones de los derechos humanos estaban sometidas al hermetismo de los vínculos bilaterales, donde las críticas o cualquier otro señalamiento podían ser interpretados como injerencias en las cuestiones internas.

La entrada en vigor de los pactos internacionales a mediados de los años 70 dio respaldo jurídico a la Declaración Universal de los Derechos Humanos de 1948 y cristalizó la dimensión ética que debe imperar en las relaciones jurídicas y en las relaciones internacionales en general. La Declaración se ha ido transformando en una suerte de Constitución Universal y es sin duda, el principal legado que le deja el siglo pasado al que comienza. Sin embargo, estas grandes transformaciones deben ser evaluadas a la luz de los significativos desafíos que nos impone la actualidad.

Transformaciones en el ámbito de la Justicia

En realidad, son muchos los progresos que se verifican en el papel de la justicia dentro del sistema democrático, el Estado de Derecho y la vigencia de los derechos humanos. En esta oportunidad sólo señalaré los más vinculados a mi mandato de relator.

a. Una gran conquista es la armonización y la complementariedad tuitiva que se reconoce hoy entre las normas del derecho internacional humanitario y las normas del derecho internacional de los derechos humanos.

b. Otra, sin duda, es el carácter *erga omnes* que hoy se confiere a las obligaciones que engendran los tratados de derechos humanos. Esas obligaciones contienen una doble dimensión: la de cumplirlas y la de reclamar si otros no lo hacen. En esto hay, claro está, un verdadero compromiso de lucha por la vigencia universal de los derechos humanos, que enfatiza la dimensión ética, incorporada muy recientemente por estos instrumentos en las relaciones internacionales.

c. En ese sentido, es importante señalar que los convenios de derechos humanos no regulan relaciones recíprocas entre Estados, sino que en el centro de la protección está el ser humano, lo cual crea una suerte de «orden público internacional» donde, por primera vez, el eje principal de preocupación es la persona y no los Estados.

d. De esta manera se ha ido afianzando en los pueblos y en los gobiernos la convicción de que el prestigio de un país no se funda sólo en su poderío económico o militar, sino, sobre todo, en la forma en que sus habitantes acceden al pleno goce de sus derechos humanos y libertades fundamentales.

e. En cuanto a la justicia, cabe destacar la actividad creadora de derecho por parte de los jueces, al aplicar las normas generales a una realidad social que cambia en forma acelerada, lo que se traduce en una interpretación actualizada de la normativa vigente. Además, la incorporación de impor-

tantes avances tecnológicos en la producción de la prueba confiere sustento científico a estos progresos del derecho. Esto se verifica, por ejemplo, en la preservación de la identidad de los menores separados en forma fraudulenta de sus padres, mediante el uso de técnicas basadas en el ADN. Sin esta articulación entre tecnología y derecho, difícilmente se hubiese podido recuperar casi cien niños y niñas que han podido ser identificados, en algunos casos 30 años después de su apropiación ilegal, como ha sucedido en mi país gracias a la ímproba labor de las Abuelas de Plaza de Mayo. Así también se ha jerarquizado a nivel mundial el trabajo llevado a cabo por el Equipo de Antropología Forense en la identificación de personas desaparecidas.

f. Paralelamente al reconocimiento de la obligación de los Estados de remover los obstáculos que impiden o dificultan el acceso a los tribunales, hoy se destaca el creciente papel que desempeñan los jueces para garantizar el derecho de igualdad en el acceso a la justicia y ello, a lo largo de todo el proceso. Esto se expresa particularmente en la imperiosa necesidad de garantizar la igualdad de posibilidades entre las partes y de remover y compensar las desigualdades que surgen de la realidad social. Ejemplo de ello es la frecuente aplicación del principio *pro actione* en virtud del cual el juez debe buscar la interpretación más favorable al ejercicio de la acción, eludiendo su rechazo *in limine* si lo que se ha incumplido es una mera formalidad, o va en detrimento de la parte más desfavorecida. En el fondo, lo que está en juego es la responsabilidad del juez de garantizar un justo proceso y, al hacerlo, impartir justicia.

g. Vinculado a lo anterior, debemos destacar el rol ascendente que juegan los defensores públicos en el derecho de defensa y la importancia que se reconoce hoy a la asistencia legal calificada.

h. Otro progreso significativo es la frecuente aplicación del principio *pro homine,* según el cual, frente a una pluralidad de normas aplicables a una misma situación jurídica, el intérprete debe elegir la norma que brinde una protección más favorable a la persona, en el sentido de darle la mayor extensión posible a las que consagran derechos y la menor extensión a las que posibilitan restricciones, limitaciones o suspensiones.

Jueces a favor de la justicia

Un hecho auspicioso es la creciente participación de los jueces en la solución de sus propios problemas y en todo aquello vinculado a la Justicia, como lo acredita la notable labor que desarrolla la Unión Internacional de Magistrados, cuyo desenvolvimiento destaco y estimulo.

En este contexto quisiera poner de relieve la experiencia vivida en el Ecuador. Como se sabe, a fines de 2004 el Poder Judicial del Ecuador se encontraba en una delicada situación a consecuencia de la destitución inconstitucional de la Corte Suprema de Justicia, precedida de una medida similar con respecto a los miembros del Tribunal Constitucional y del Tribunal Supremo Electoral. Ello suscitó reiteradas intervenciones en mi calidad de Relator Especial, ya que la crisis política y social desencadenada a partir de estos acontecimientos generó un clima de inestabilidad institucional de tal magnitud que culminó con la destitución del presidente de la República, Lucio Gutiérrez.

En respuesta a una invitación cursada por el Gobierno, realicé una primera misión a principios de 2005 y elaboré un informe preliminar sobre la situación en el país[8] que presenté a la Comisión de Derechos Humanos en Ginebra, días antes de la caída del presidente Gutiérrez. El informe instaba a las autoridades a restablecer el estado de derecho y recomendaba constituir una Corte Suprema de Justicia independiente.

En julio de 2005, visité nuevamente el país, ya durante el gobierno de transición del presidente Alfredo Palacio, quien se manifestó dispuesto a cumplir con las recomendaciones del Informe: y se estableció un mecanismo *ad hoc* para seleccionar los miembros de la Corte mediante un Comité de Calificación. A fin de conferir mayor transparencia al proceso de selección de magistrados, promovimos el establecimiento de veedurías nacionales e internacionales, de conformidad con la legislación ecuatoriana y con los tratados internacionales. El proceso de selección, que culminó con la designación de 31 jueces y 21conjueces de la Corte Suprema de Justicia, contó, por primera vez en la historia del Ecuador, con audiencias públicas y participación ciudadana. La originalidad de esta experiencia reside en la transparencia y el control ciudadano que caracterizó al proceso de selección de jueces, en la supervisión por parte de observadores nacionales e internacionales y en la participación de jueces de otros países de la región y de instancias internacionales de la órbita judicial, como es el caso de la Unión Internacional de Magistrados (UIM).

Asimismo, la presencia de las Naciones Unidas en el proceso de integración de la nueva Corte, y la forma en que se articularon los distintos componentes del sistema de la ONU constituye una verdadera innovación en las actividades de esta relatoría y de las Naciones Unidas y, a su vez, un precedente de la positiva cooperación que puede establecerse entre la ONU y otros organismos, como son la OEA, la Comunidad Andina de Naciones (CAN) y las asociaciones de abogados y magistrados del ámbito nacional e internacional.

El ejemplo precedente pone de relieve no sólo el rol que la UIM está jugando hoy en el mundo, sino también la forma en la que la relatoría ha servido de puente entre el universo de las Naciones Unidas y el mundo judicial. Ello explica que en mis informes ante el Consejo de Derechos Humanos y la Asamblea General de las Naciones Unidas insista en la importancia de la incorporación de jueces y juristas en las labores de cooperación técnica que lleva a cabo la organización. El establecimiento de redes, mecanismos de cooperación y de consulta a nivel internacional es un tema que hoy está presente en el diálogo judicial en el mundo, tal como se analizó en ocasión del encuentro que compartimos con presidentes de cortes supremas del mundo, en el seminario convocado en Boston por la American Society of International Law y la Harvard Law School, en diciembre de 2006.

Por último, quiero destacar la legitimidad y natural gravitación que ha adquirido la exigencia de que los gobiernos consulten a los integrantes del Poder Judicial cuando se trata de la adopción de medidas o reformas legales o institucionales que puedan tener incidencia en él y, en particular, las que puedan afectar su independencia. Esta exigencia de la Relatoría es algo novedoso y representa un progreso significativo en la medida en que sitúa a los jueces como interlocutores insustituibles cuando se deciden cuestiones de su incumbencia.

[7] E/CN.4/2005/60/Add.4

Problemas y desafíos

Claro está que este diagnóstico sobre los progresos del derecho y la actuación de la Justicia sería incompleto y un tanto artificial si no se señalaran, al mismo tiempo, los graves problemas que la aquejan y los crecientes desafíos que confronta. Consciente de la extensión del repertorio, sólo citaré algunos:

◊ Los Estados de excepción continúan siendo una fuente de violaciones graves, y en algunos casos masivas, de los derechos humanos. Con asombrosa frecuencia se transforman en un instrumento de represión y persecución, prolongando ilegalmente su aplicación en forma indefinida. Lo preocupante es que con asiduidad se limita el accionar de la justicia civil, se reduce el ámbito de intervención de los jueces y, en ciertas oportunidades, ellos mismos son destinatarios de las restricciones de derechos que se imponen.

◊ Otro tema preocupante es el mantenimiento o predominio de la justicia militar por sobre la justicia civil, en transgresión de los estándares y directivas internacionales que prohíben que tribunales militares juzguen a civiles, y que juzguen a sus propios pares cuando estén acusados de violaciones graves de los derechos humanos.

◊ Pese a las directivas de las Naciones Unidas de que se respeten los derechos humanos en el arduo combate de vencer al terrorismo, en muchos países las medidas adoptadas han tenido un impacto negativo pues implicaron un desplazamiento de la justicia ordinaria a favor de tribunales especiales, administrativos o de excepción. Tal es el caso de lo que, junto a otros relatores especiales, verificáramos en el Informe sobre los detenidos en la Bahía de Guantánamo y que tuvo un gran impacto en la opinión pública mundial. Recientemente, un fallo ejemplar de la Corte Suprema de los EE UU respaldó estas premisas y reconoció el derecho de habeas corpus que la Constitución norteamericana reconoce a todos sus ciudadanos. La historia muestra la eficacia de la lucha que puede llevar adelante la justicia sin sacrificar ninguna de sus principales garantías; entre otros, por ejemplo, el caso de Italia lo acredita. Además, como consecuencia de situaciones de crisis interna o como consecuencia de la lucha contra el terrorismo, el debilitamiento de la justicia se expresa no sólo en las limitaciones que afectan el debido proceso sino también en la erosión que sufren otros derechos, como el de libertad de expresión, asociación, manifestación, etc.

◊ Un ámbito particularmente crítico es el que se relaciona con la problemática del acceso a la justicia y, en particular, la que concierne a ciertos grupos sociales en situación de vulnerabilidad. Barreras económicas, sociales, culturales, políticas, de género, que limitan y dificultan en muchos casos el acceso a la justicia de sectores importantes de nuestras sociedades. En otros se transforman, lisa y llanamente, en impedimentos para ciertos grupos, como es el caso de algunas minorías étnicas, religiosas, lingüísticas, migrantes, solicitantes de asilo, poblaciones desplazadas, etc.

Ilustra esta afirmación mi propia experiencia: he visitado países donde las dificultades de acceso a la justicia de la mujer se expresa incluso en el hecho de que ninguna mujer integraba el poder judicial. No obstante, cabe destacar que en la actualidad los Estados tienen la obligación internacional de garantizar el acceso a la justicia y el derecho de defensa, para lo cual deben adoptar

políticas públicas e instrumentar servicios sociales. En América Latina, la representación en causas penales por parte de defensores públicos, suele superar el 80% de los casos totales del sistema. En Argentina, por ejemplo, el 60% de las personas sometidas a juicio oral son defendidas por defensores oficiales. Por su actualidad quisiera señalar como un hecho preocupante la reciente Resolución del Parlamento Europeo sobre el tratamiento de la inmigración, la que ha suscitado creciente rechazo en la comunidad internacional y fundada perplejidad en América Latina, sobre todo si se piensa que nuestras poblaciones son, predominantemente, de origen europeo.

◊ Vivimos uno de los momentos de mayores contrastes de la historia. Por un lado, están quienes disfrutan con avidez de los fascinantes prodigios de los avances tecnológicos, la cultura, la revolución informática, las excitantes promesas de la era espacial, etc. Por otro lado, está esa inmensa cantidad de personas que lleva adelante una vida marcada por la indigencia, la adversidad y la marginación. De esta manera, mientras que para una parte de la humanidad la velocidad del cambio se acelera, para la otra permanece estática e incluso retrocede. Es en el contexto de esta suerte de movilidad decadente donde radica la razón de nuestras más preocupantes certezas. Porque lo más grave no es que sean pocos o que cada día puedan ser menos los que avanzan, sino que son muchos, cada día más, los que descienden y éstos lo hacen a una velocidad que provoca escalofríos. Según la OMS, el asesino, el verdugo más eficaz y despiadado, y también la principal causa de sufrimiento en esta tierra, es la miseria. Lo más grave no es sólo su amplitud y crecimiento sino el cada día mayor nivel de conflictividad que ha adquirido la pobreza y su fuerte incidencia sobre otros factores de la misma índole, como son las presiones migratorias, el comercio ilegal de estupefacientes, el terrorismo, que definen las causas estructurales de nuevos fenómenos de violencia.

◊ Y en este mundo dominado por las secuelas de una conflictividad mayúscula: guerras, conflictos armados, terrorismo, inestabilidad, dos cuestiones hacen centro en el edificio de la justicia e implican, cada vez, un nuevo y original desafío: luchar contra la impunidad de las violaciones graves, muchas veces crímenes de guerra o contra la humanidad; y el cuidadoso, delicado y sabio equilibrio que se necesita para reconstruir la institucionalidad durante los períodos de transición, en los cuales la justicia habrá de ser el cimiento y la columna vertebral del Estado de Derecho. La problemática de la «justicia en transición» tiene en la actualidad una dimensión mucho mayor de la que en general se puede suponer, puesto que una cincuentena de Estados atraviesa por esa situación y suscita la atención de la Relatoría.

◊ En igual sentido, los avances registrados en la actividad punitiva de la Corte Penal Internacional son objeto de una constante atención y apoyo por parte de la Relatoría. El inicio del primer proceso en el ámbito de la Corte Penal Internacional es indicativo del logro de los objetivos que marcaron su creación. Al mismo tiempo, merecen destacarse las distintas experiencias de tribunales internacionales –como los de Ruanda, de la ex Yugoslavia, de Sierra Leona, Timor del Este– y la constitución de cortes especiales en Camboya. Se trata de notorios avances que abonan la convicción de que estamos frente a un derecho penal fuertemente enriquecido por las innovaciones que introduce el derecho internacional.

El valor de la justicia ante la injusticia

Habría deseado disertar ante ustedes acerca de la justicia como valor y sobre el valor de la justicia, porque más allá de su expresión normativa, su dimensión ética o valorativa también sustenta nuestro comportamiento.

Así lo refleja Platón en su Apología de Sócrates, cuando estigmatiza como el acto supremo de sujeción a la ley la decisión de su maestro de ingerir la cicuta para dar cumplimiento a una decisión que, aunque injusta, está fundada en la ley. En esta lectura ¿no hay acaso un claro homenaje a la justicia más allá de su perversa aplicación?

Qué importante sería poder dialogar hoy con aquellos ardientes precursores del humanismo que construyeron un pensamiento nuevo, de proyección universal, en épocas en que la esclavitud, que es la negación absoluta de todo derecho, era todavía una política institucional. Quiero decir, en síntesis, que las conquistas duramente alcanzadas en el plano de la justicia a lo largo de la historia de la humanidad, son el resultado no sólo de la búsqueda de un ideal sino también de la lucha empecinada y tenaz contra su opuesto: la injusticia.

He recurrido a esta imagen del anverso y el reverso para introducir mi última reflexión, pues no deja de ser una irónica paradoja que la sola pertenencia a ese andamiaje institucional que conforma el sistema judicial pueda implicar, aún hoy, una profesión de riesgo. En efecto, las múltiples intervenciones realizadas por la relatoría desde su creación muestran hasta qué punto los jueces, abogados, fiscales y demás auxiliares de justicia son objeto de intimidación, presión y actos de violencia que pueden llegar, en algunos casos, al asesinato o la desaparición forzada por el solo hecho de ejercer sus respectivas funciones. Las estadísticas así lo muestran.

En los casos registrados durante 2006, alrededor del 55% de las comunicaciones –que conciernen a unas 148 situaciones en 54 países–, se refieren a este tipo de violaciones. Las amenazas, intimidaciones y actos de agresión a abogados representan el 17% de las comunicaciones enviadas por el Relator Especial, mientras que los jueces y fiscales representan el 4%; las detenciones arbitrarias y persecuciones judiciales de abogados representan el 26% de las comunicaciones, y las de jueces y fiscales el 4%; mientras que los asesinatos de abogados, jueces y fiscales representan 4% del total de las comunicaciones.

En algunos países, el nivel de agresiones es muy elevado. Por ejemplo, en Guatemala, la Relatoría Especial ha registrado el asesinato de 16 funcionarios judiciales y amenazas a 63 de ellos, con 2 secuestros y 2 exilios entre enero de 2005 y agosto de 2006; y en Filipinas, no menos de 15 abogados y 10 jueces fueron asesinados impunemente entre 2001 y mediados de 2006. Frente a ello, las autoridades no siempre ofrecen una adecuada protección ni condenan de manera clara tales hechos delictivos, quedando frecuentemente impunes.

Asimismo, ciertas circunstancias de carácter institucional no sólo suelen afectar el funcionamiento del poder judicial sino a su independencia, llegando a poner en peligro el Estado de derecho. En

muchos casos, los procesos de reforma del poder judicial, en particular el Consejo de la Magistratura, o el estatuto de los jueces, etc, en vez de avanzar en pos de la independencia del sistema judicial, implican verdaderos retrocesos. Esta situación se agudiza cuando, por ejemplo, el nombramiento de los jueces es de carácter provisional o depende directamente del Jefe de Estado.

También es muy frecuente que tanto abogados como magistrados sean identificados con las causas que están tratando. Suele suceder que los gobiernos interpreten la acción de esos jueces y abogados en pro de los derechos humanos y las libertades fundamentales como una intromisión en el campo de la política. Y por ello es bastante común que, frente a los riesgos que enfrentan por sus convicciones y actividades, los operadores de justicia se vean obligados a dimitir, mudarse a otra ciudad, vivir en la clandestinidad o directamente exiliarse.

Las restricciones presupuestarias y otro tipo de medidas similares de índole económica inciden fuertemente en la remuneración de los jueces y no sólo afectan el funcionamiento del sistema judicial sino que, en muchos casos, tienen por finalidad afectar su independencia. Por su amplitud y gravedad se trata de un fenómeno que debe ser analizado en profundidad y las herramientas más eficaces que se verifican para evitar su desarrollo están todas vinculadas al reconocimiento de la plena autonomía presupuestaria del poder judicial.

Dedicatorias

Nunca he sido juez y me honra que sean los jueces del mundo los que me otorgan este galardón que recibo, ante todo, como un reconocimiento al mandato que cumplo y que me ha permitido ejercer una amplia, férrea y constante defensa de miles de personas que en los más diversos puntos del planeta representan, de distinta forma, a la Justicia. Es en ellos en quienes pienso en este momento cuando estoy ante ustedes, en este lugar tan solemne y significativo. Por ello es que quiero dedicar este Premio:

a los más altos dignatarios de la Justicia, que, además de cumplir el mandato de impartirla, asumen públicamente la responsabilidad institucional de defender su independencia y a quienes con respeto y solidaridad han extendido su compromiso a situaciones que se desarrollan más allá de sus propias fronteras;

a los fiscales, defensores públicos y demás auxiliares de justicia que cumplen su tarea con empeño y dedicación. Me conmueve la imagen de los jueces de paz, de los que trabajan en tribunales en zonas rurales y alejadas, de los que ejercen sus funciones en tribunales itinerantes que, más allá de las lejanías y las dificultades materiales, llevan a cabo su ímproba labor con humildad y con la clara conciencia de que están cumpliendo una misión fundamental;

a los abogados, que también cumplen una función decisiva e insustituible en el dinámico escenario donde se imparte la justicia. En esta oportunidad, mi homenaje está dirigido en particular a aquellos que lo hacen con devoción y valentía y a quienes lo han hecho en condiciones tan riesgosas que llegaron a pagar con su propia vida el mandato irrenunciable de ejercer la defensa. Así lo hicieron

en mi país un gran número de abogados argentinos que fueron víctimas de atentados criminales en la década del 70.

En nombre de todos ellos quisiera evocar la memoria de Silvio Frondizi, gran jurista, académico y siempre abogado defensor, a quien tuve el honor de acompañar en muchas de esas actividades. Hoy recuerdo que ambos ejercíamos la defensa del mismo perseguido político el día en que fue cruelmente asesinado. Aquella fue mi última defensa en la Argentina, antes de partir al exilio.

A mi padre, también abogado, cuya conducta y sabia humildad grabaron en mi sangre las huellas indelebles del valor y la bondad de la justicia.

Madrid, 25 de junio de 2008

Síntesis de la publicación

Hacia una Justicia independiente y eficaz. Informes 2006-2007 al Consejo de Derechos Humanos y a la Asamblea General de Naciones Unidas del Relator Especial sobre la independencia de los magistrados y abogados es una publicación del **Proyecto «Independencia y acceso a la justicia en América Latina» 07CAP2-0386** ejecutado por la Asamblea Permanente por los Derechos Humanos (APDH), subvencionado por la Agencia Española de Cooperación Internacional para el Desarrollo (AECID). Ambas entidades inician con este libro del jurista argentino Leandro Despouy la **Colección «Independencia y acceso a la justicia en América Latina»**.

Precedidos por un Prólogo del autor y el discurso de recepción del Premio Justicia en el Mundo que le fuera otorgado por la Fundación de la Unión Internacional de Magistrados en junio de 2008, se reproducen los informes presentados por Leandro Despouy en su condición de Relator Especial para la independencia de los jueces y abogados ante la Asamblea General y el Consejo de Derechos Humanos de las Naciones Unidas en el período 2006-2007 según el siguiente orden: los informes orales anteceden a los respectivos informes presentados ante el Consejo de Derechos Humanos y ante la Asamblea General; luego se incluyen: el Informe sobre la Misión a Maldivas, la Nota preliminar sobre la Misión a la República Democrática del Congo y el Informe sobre países. Los informes están identificados con la sigla de Naciones Unidas y datos de URL que permiten su búsqueda en Internet. La publicación tiene una doble numeración: arriba se encuentra la numeración original y abajo la correlativa, que es la que se identifica en el Índice.

Integran esta recopilación los siguientes documentos:

a) Informe oral presentado ante el Consejo de Derechos Humanos, Ginebra, 11 de junio de 2007.

b) Informe oral presentado ante el Plenario de la Asamblea General de Naciones Unidas, en su 62° período de sesiones, 25 de octubre de 2007.

c) Informe General al Consejo de Derechos Humanos (18 de diciembre de 2006). Identificado bajo la sigla A/HRC/4/25. Describe las actividades llevadas a cabo durante el año 2006 y examina las distintas situaciones que desde 1994 a la fecha han suscitado su intervención, focalizando en aquellas que representan amenazas directas a los actores del sistema judicial, y en otras de carácter estructural que afectan su funcionamiento e independencia y que inciden sobre la vigencia del estado de derecho.
Analiza el impacto de los estados de excepción sobre los derechos humanos, en particular las limitaciones que entrañan para el desempeño de la judicatura. También referencia leyes antiterroristas, de seguridad nacional e inmigración. Propone invitar a los Estados a adecuar su legislación interna y sus prácticas nacionales a los principios, jurisprudencia y estándares internacionales que rigen la vigencia de los estados de excepción y a estos efectos señala los aspectos que imperativamente debe reunir toda legislación al respecto. Sugiere que se elabore una declaración internacional que cristalice la jurisprudencia y el conjunto de principios que regulan la protección de los derechos humanos bajo los estados de excepción.

Con el telón de fondo de la dramática degradación de la situación en Iraq y de la sentencia pronunciada por el Alto Tribunal Penal Iraquí, el Relator reitera las críticas que formuló en octubre de 2006 ante la Asamblea General y recomienda la participación de las Naciones Unidas para conformar un tribunal independiente que responda a los parámetros internacionales en materia de derechos humanos.
Finalmente, expresa su satisfacción por la adopción de la Convención Internacional para la protección de todas las personas contra las desapariciones forzadas, e insta a los Estados a su pronta ratificación.

d) Informe presentado ante la Asamblea General de Naciones Unidas, en el 62° período de sesiones, sobre los Derechos civiles y políticos, en particular las cuestiones relacionadas con la independencia del poder judicial, la administración de justicia y la impunidad. Informa sobre las dos misiones que llevó a cabo en 2007, a la República de Maldivas y a la República Democrática del Congo, recogiendo algunas de sus principales recomendaciones. Ofrece un panorama general (basado en un análisis de las múltiples intervenciones realizadas por esta Relatoría entre 1994 y 2006) de las situaciones y circunstancias que afectan principalmente a la independencia del poder judicial desde lo operativo hasta lo estructural.
Llama la atención de la Asamblea General sobre las reiteradas violaciones del derecho a un juicio justo y otros derechos humanos que se verifican bajo situaciones de estados de excepción. En este sentido, informa a la Asamblea sobre la acogida favorable del Consejo de Derechos Humanos a su propuesta de organizar un seminario de expertos que estudiará el impacto de los estados de excepción sobre los derechos humanos.
Finalmente, analiza la situación de la justicia internacional. Hace un seguimiento de la Corte Penal Internacional y de la situación en el Iraq, en particular respecto del Alto Tribunal Penal Iraquí, temas de los que se viene ocupando en sus informes anteriores presentados ante el Consejo de Derechos Humanos y la Asamblea General. Asimismo, continúa el análisis de las actividades de las Cámaras Excepcionales de Camboya.

e) Informe sobre la Misión a Maldivas, presentado al Consejo de Derechos Humanos en el cuarto período de sesiones, identificado bajo la sigla A/HRC/25Add.2, 2 de mayo de 2007. Aporta una visión general del sistema judicial de Maldivas y de las dificultades a las que se enfrentan actualmente los principales responsables de la administración de justicia.
Destaca deficiencias que presenta el sistema judicial de este país, por ejemplo una grave escasez de jueces y abogados en la mayor parte del territorio, y el hecho de que las investigaciones penales están a cargo exclusivamente de la policía, sin que fiscales ni jueces desempeñen ninguna función de control.
Recomienda al ministerio público que se establezca el cargo de Fiscal General, separado del de Ministro de Justicia, que forma parte del Gabinete y, por lo tanto, debería conservar únicamente su función de asesoramiento jurídico al Gobierno. Se destaca una positiva labor de codificación, en particular la elaboración de un nuevo Código Penal y un nuevo Código de Procedimiento Penal con miras a armonizar la *sharia* con el *common law*.
Se señala la urgencia de introducir reformas profundas en el sistema judicial de Maldivas para que cumpla los criterios internacionales mínimos de independencia y eficiencia en un sistema de gobernanza democrática. Se encomia la decisión del Gobierno de acometer una amplia reforma constitucional y legislativa tendente a instaurar la separación de poderes y crear una judicatura independiente, así como la de celebrar en 2008 las primeras elecciones democráticas en el país. Considera particularmente importante la aprobación urgente del proyecto de Constitución que está examinando

en la actualidad el Majlis especial (Asamblea Constituyente), e insta a los principales partidos políticos a que reanuden las conversaciones para que ese texto pueda aprobarse a más tardar el 31 de mayo de 2007, según lo previsto en el programa de reforma del Gobierno.

f) Nota preliminar sobre la Misión a la República Democrática del Congo, identificada bajo la sigla A/HRC/4/25/Add.3, del 24 de mayo de 2007. El informe final del Relator, que contiene conclusiones y recomendaciones sobre su visita, se presentó ante el Consejo de Derechos Humanos de las Naciones Unidas en junio de 2008. Esta Nota preliminar ofrece algunas conclusiones y recomendaciones. Señala que el sistema judicial se encuentra en un estado alarmante, especialmente por el poco personal judicial –tanto en fiscalías como en el Poder Judicial y los tribunales del país-. Además, los jueces no cuentan con los recursos logísticos y físicos para desempeñar sus funciones de una manera digna y profesional.
Se informa que el acceso a la justicia es muy difícil para la mayoría de la población a causa de la corrupción, la falta de recursos financieros, la lejanía geográfica de los tribunales y los problemas de transporte, y la falta de conocimiento de los mecanismos de apelación. Los jueces y abogados también tienen dificultades para acceder a los textos legislativos y jurisprudencia;
Un dato muy alarmante es que la mayoría de las violaciones de los derechos humanos son cometidas por las fuerzas armadas y la policía, en virtud de la legislación nacional, dentro de la jurisdicción de los tribunales militares.
Se acoge con satisfacción los esfuerzos realizados por la Oficina de Derechos Humanos de la ONU en la República Democrática del Congo y por organizaciones de la sociedad civil para luchar contra la impunidad, tareas que no pueden compensar las deficiencias del sistema judicial.

g) Informe sobre la situación en países (A/HRC/4/25/Add.1, 5 April 2007). (En inglés, español y francés) Refleja situaciones concretas que afectan a la independencia del Poder Judicial o la violación del derecho a un juicio justo en 63 países. Presenta todas las respuestas recibidas del Gobierno del país en cuestión, en respuesta a las denuncias concretas, y los respectivos comentarios y observaciones. Además contiene:
a) Resúmenes de los llamamientos urgentes y cartas de denuncia transmitidas por el Relator Especial a las autoridades gubernamentales entre el 1 de enero de 2006 y el 15 de enero de 2007, y de los comunicados de prensa emitidos durante el mismo período; b) Síntesis de las respuestas recibidas de varios Estados entre el 1 de enero de 2006 y el 15 de enero de 2007; c) Observaciones y comentarios específicos.
Se bien el tipo de denuncias recibidas abarca una amplia gama de temas, más del 40 por ciento de las comunicaciones enviadas se refieren a denuncias relacionadas con las amenazas contra los abogados.
El Relator destaca que, en comparación con años anteriores, ha gozado de una mayor cooperación por parte de los gobiernos. De hecho, 34 de los 63 Estados mencionados en el presente informe han proporcionado una respuesta sustantiva a sus comunicaciones.

CONSEJO DE DERECHOS HUMANOS
5º período de sesiones
Tema 2 del orden del día

APLICACIÓN DE LA RESOLUCION 60/251 DE LA ASAMBLEA GENERAL, DE 15 DE MARZO DE 2006, TITULADA «CONSEJO DE DERECHOS HUMANOS»

Presentación del Relator Especial sobre la Independencia de los Magistrados y Abogados, Sr. Leandro Despouy (Argentina)

Ginebra, 11 Junio 2007

Gracias Señor Presidente.

En esta presentación oral informaré brevemente sobre las principales actividades e intervenciones realizadas luego de la última sesión del Consejo y sobre los distintos Informes que presento en esta oportunidad ante este Consejo, a saber: el Informe General, el Informe sobre la situación en los países y los informes sobre las dos misiones que he llevado a cabo: a la República de Maldivas y a la República Democrática del Congo. Haré también una breve referencia a la situación en Ecuador.

I. ACTIVIDADES DEL RELATOR ESPECIAL

Por limitaciones de tiempo, me remito al Informe General que contiene en detalle el conjunto de actividades realizadas durante el 2006 y hasta la fecha. Por ahora interesa destacar, mi participación en el 61° período de sesiones de la Asamblea General de Naciones Unidas, en Nueva York, oportunidad en la que presenté un informe (A/61/384) que analiza la situación de la justicia militar en el mundo y recomienda la adopción de las directrices elaboradas al respecto por el experto Emmanuel Decaux. Tanto en Ginebra como en New York mantuve reuniones con representantes de varias misiones permanentes y de numerosas organizaciones gubernamentales y no gubernamentales. Asimismo, y continuando con las actividades de promoción de la Relatoría participé y expuse en diversos seminarios tanto nacionales como internacionales. A nivel académico, cabe destacar la conferencia magistral sobre el Futuro del Derechos Internacional, en la Université de la Sorbonne Nouvelle, París, en mayo de 2006, en el marco de la segunda Conferencia de la Sociedad Europea de Derecho Internacional. Asimismo, fui invitado por la American Society of International Law y la Harvard Law School para participar en el seminario sobre «Diálogo Judicial Transnacional: Fortaleciendo las Redes y los Mecanismos para la Cooperación y Consulta Judicial» en diciembre de 2006. En dicha oportunidad presenté una ponencia por escrito sobre «Las Perspectivas del Diálogo y la Cooperación Judicial»(ver http://www.harvardilj.org/online/107).

II- INFORME GENERAL

El Informe General que presento a esta 5° sesión del Consejo de Derechos Humanos, ofrece, en primer lugar, (a) una perspectiva general sobre los diferentes factores que afectan al sistema judicial; luego aborda (b) el impacto de los estados de excepción y las leyes afines sobre los derechos humanos y la administración de justicia y, finalmente, evoca (c) acontecimientos relevantes de la justicia internacional.

SITUACIONES QUE AFECTAN LA INDEPENDENCIA DE LOS JUECES, FISCALES, ABOGADOS O AUXILIARES DE JUSTICIA

Con el propósito de ofrecer un panorama general sobre las situaciones y circunstancias que afectan a la Justicia, desde lo operativo hasta lo estructural, el Informe analiza las múltiples intervenciones y misiones realizadas por la Relatoría entre 1994 y 2006. La primera conclusión a la que llego es que en todas las regiones del mundo, los operadores de justicia corren el riesgo o se enfrentan con situaciones que entrañan violaciones de sus derechos humanos. Se trata de hostigamientos, intimidaciones, denigraciones y amenazas -conforme expuse en mi Informe sobre Países (E/CN.4/2006/52/Add.1)- que pueden llegar a la desaparición forzada, el asesinato o la ejecución extrajudicial de jueces, fiscales o abogados por el mero hecho de llevar a cabo su labor.

Los casos registrados durante 2006 ponen de manifiesto la frecuencia de los fenómenos señalados: en alrededor del 55% de las comunicaciones, que conciernen unas 148 situaciones en 54 países, se denuncian violaciones de los derechos humanos de los jueces, abogados, fiscales y auxiliares de justicia. Las amenazas, intimidaciones y actos de agresión a abogados representan el 17% de las comunicaciones enviadas por el Relator Especial, mientras que los jueces y fiscales reciben el 4%; las detenciones arbitrarias y persecuciones judiciales de abogados representan el 26% de las comunicaciones, y las de jueces y fiscales, el 4%; mientras que los asesinatos de abogados, jueces y fiscales representan 4% del total de las comunicaciones.

En algunos países, el nivel de agresiones es muy elevado. Por ejemplo, en un país latinoamericano, la relatoría especial ha registrado el asesinato de 16 funcionarios judiciales y amenazas a 63 de ellos, con 2 secuestros y 2 exilios entre enero de 2005 y agosto de 2006; y en un país asiático, no menos de 15 abogados y 10 jueces fueron asesinados impunemente entre 2001 y mediados de 2006.

Frente a ello, las autoridades no siempre ofrecen una adecuada protección ni condenan de manera clara tales hechos delictivos, quedando frecuentemente impunes. Es por ello que aliento al Consejo de Derechos Humanos a incrementar aún más sus esfuerzos en defensa de la labor que desarrollan los distintos actores vinculados a la administración de justicia y a examinar anualmente la magnitud y gravedad de los fenómenos a fin de recomendar a los Estados la adopción de medidas concretas para garantizar la protección y seguridad de los operadores judiciales.

NORMAS Y PRÁCTICAS QUE AFECTAN EL ESTADO DE DERECHO, AMENAZANDO EL NORMAL FUNCIONAMIENTO DEL SISTEMA JUDICIAL Y DEL DERECHO A UN JUSTO PROCESO

En mi informe he identificado ciertas circunstancias de carácter institucional que no sólo afectan al funcionamiento del poder judicial sino también a su independencia, y hasta pueden llegar a poner en peligro el estado de derecho.

La corrupción en el poder judicial es uno de los ataques más letales y uno de lo flagelos más difíciles de erradicar. Si bien es frecuente que se atribuya una gran incidencia en la corrupción al bajo nivel de remuneraciones de los jueces y abogados y a la falta de autonomía financiera del poder judicial, los factores son múltiples y cobran especial relevancia la dependencia ideológica y política de los jueces.

La lentitud de la justicia es otro fenómeno tan frecuente como preocupante. Es habitual que esta violación al derecho de una sentencia en un plazo razonable derive de la innecesaria complejidad de los procedimientos judiciales combinada con el excesivo número de causas que llegan a la más alta instancia judicial.

La desigualdad en el acceso a la justicia es otro factor que afecta a amplios sectores de la sociedad y principalmente a los grupos más vulnerables. Con frecuencia estos grupos también se ven afectados por la falta de cumplimiento de las sentencias, sobre todo las relativas a derechos económicos, sociales y culturales, evidenciando de tal modo, la relación entre determinantes económicos y sociales y la administración de justicia.

He registrado también con alarmante preocupación que en muchos casos los procesos de reforma del poder judicial en vez de avanzar en pos de la independencia del sistema judicial, terminan restringiéndola. En este sentido, las graves interferencias del poder ejecutivo en la composición y el funcionamiento de la Corte Suprema, son temas recurrentes en las denuncias recibidas, así como el nombramiento provisional de magistrados y su dependencia directa del Jefe del Estado.

Asimismo, la creación de jurisdicciones especializadas, si bien generalmente se perciben como un hecho positivo, a menudo responde a intereses políticos coyunturales y su funcionamiento no siempre se ajusta a los estándares del debido proceso.

En ocasiones la identificación entre la fiscalía y el ejecutivo es de tal magnitud que el papel de los abogados y los jueces a lo largo del proceso se reduce hasta convertirse en una mera formalidad.

Con relación a los abogados, se han registrado situaciones recurrentes de ausencia, carácter inadecuado o falta de respeto a las garantías para el libre ejercicio de la profesión; así como de dificultades en el acceso a sus clientes o a la documentación del caso, y de desigualdad de armas durante el desarrollo del proceso.

DESAFÍOS PARTICULARES

Entre los problemas registrados en lo que va de mi mandato, los que revisten mayor gravedad y que más quejas suscitaron, han sido el juzgamiento de civiles por parte de tribunales militares y de éstos a sus pares por graves violaciones de los derechos humanos y la creación de tribunales de excepción que entrañan generalmente la violación del principio del juez natural.

Asimismo, el creciente número de quejas recibidas por algunas leyes destinadas a combatir el terrorismo, así como las de seguridad nacional y leyes de asilo, me han generado particular preocupación en tanto limiten o inhiban la acción de la justicia y confieran amplios poderes al ejecutivo.

Otros reclamos referidos a la adopción de leyes de amnistía que sustraen de la acción de la justicia a responsables y autores de violaciones graves y sistemáticas de los derechos humanos, y la negación del hábeas corpus o el amparo frente a la desaparición forzada de personas, revisten suma gravedad.

La cuestión de la pena capital también ha sido objeto de múltiples controversias. En lo que atañe a este mandato, si su aplicación es el resultado de un proceso que no cumplió con las garantías prescritas, no sólo configura una violación del derecho a un justo proceso sino también del derecho a no ser privado arbitrariamente de la vida.

Asimismo, he podido constatar en varias alegaciones recibidas que en muchos casos los Estados no respetan el derecho al asilo ni el principio de no devolución de personas potencialmente expuestas a violaciones de los derechos humanos en su país de origen u otro donde igualmente corran riesgo. Tal es el caso de tres solicitantes de asilo uzbecos que yo mismo visité durante mi misión a Kyrguiztán y que luego fueron remitidos por las autoridades de Kyrguiztán a Uzbekistán, país en el que corren serios riesgos de sufrir graves violaciones a sus derechos fundamentales (cartas de diciembre de 2005 y de junio de 2006).
Por otra parte, también se ve reflejada en un gran número de quejas la dificultad que entraña para muchos Estados la coexistencia del derecho positivo moderno y el derecho religioso y/o el derecho tradicional o tribal.

PROTECCIÓN DE LOS DERECHOS HUMANOS BAJO LOS ESTADOS DE EXCEPCIÓN

Razones que fundamentan su adopción:
Todos los sistemas jurídicos del mundo prevén la posibilidad de que los gobiernos adopten medidas excepcionales para hacer frente a situaciones de crisis. En la actualidad, la declaración del «Estado de excepción» sólo puede tener por objetivo preservar el orden constitucional y restablecer la normalidad cuando peligra la vida organizada de una comunidad. Pero más allá de su propósito y finalidad, en la práctica los Estados de excepción continúan siendo fuente de graves violaciones de los derechos humanos y el accionar de la justicia se ve, con frecuencia, gravemente limitado.

Si bien los precedentes establecidos por los órganos convencionales y extraconvencionales han permitido avanzar en la regulación jurídica de los Estados de excepción, en la actualidad se registran múltiples desviaciones en el comportamiento institucional de los Estados que inciden negativamente en el ejercicio de los derechos humanos, en particular, en el ámbito del derecho a un juicio justo y la independencia de la judicatura.
Con respecto al derecho a un juicio justo sobresale la violación de los derechos al hábeas corpus, a la asistencia letrada de propia elección, a apelar ante un tribunal independiente, a una sentencia pública, a presentar los propios testigos y a un proceso público. Son frecuentes también la detención indefinida, sin cargos y sin juicio, la detención prolongada incomunicada, la obtención de confesiones mediante tortura, el dictado de sentencias a raíz de tales confesiones, la violación del principio non bis in idem y el recurso indiscriminado a la detención preventiva.
En lo que concierne a la independencia de la judicatura, se constata la adopción de medidas dirigidas a evitar que actúe como contrapeso del poder ejecutivo. Esas medidas incluyen, por ejemplo, el reemplazo de los

tribunales ordinarios por tribunales o comisiones militares, el hostigamiento a jueces, fiscales y abogados, las purgas y traslados de jueces adonde no interfieran con el ejecutivo, la sumisión del poder judicial al ejecutivo, y la descalificación y desconocimiento de sentencias judiciales por parte del ejecutivo.
Nuevas amenazas han dado pie a nuevos modos de suspender los derechos humanos en contravención a las obligaciones asumidas por los Estados. Frecuentemente se constata el recurso a medidas de excepción en el contexto de situaciones ordinarias, o bien el desconocimiento de varios de los principios que regulan la legalidad de los Estados de excepción en situaciones de crisis, a saber: los principios de proclamación, notificación, amenaza excepcional, proporcionalidad y no discriminación, entre otros. Junto con la pervivencia de Estados de excepción ilegalmente prolongados y las consiguientes violaciones de derechos humanos, hoy es corriente la adopción de restricciones que sobrepasan ampliamente las limitaciones y derogaciones permitidas en situaciones ordinarias generalmente a través de leyes de seguridad nacional, leyes antiterroristas y leyes de inmigración.

Objetivo y alcance:
Teniendo en cuenta que es bajo situaciones de crisis donde es mayor el número y la gravedad de las violaciones que se cometen y la aparición de nuevos fenómenos que inducen a la adopción o reforzamiento de leyes de seguridad nacional, de lucha contra el terrorismo, etc, que entrañan generalmente graves restricciones a los derechos humanos superando las restricciones aceptables en situaciones ordinarias, es que se propone la elaboración de una declaración internacional en esta materia.

Dicho instrumento tendría por finalidad reunir en un mismo texto -de carácter declarativo- el conjunto de normas y principios que regulan la protección de los derechos humanos bajo los Estados de excepción. Ello permitiría a los Estados adaptar su legislación a los estándares internacionales contenidos en la misma, y a los órganos de control o supervisión, contar con un instrumento unificado aplicable a todos los Estados, cualquiera fuese el régimen jurídico que los sustente, y aún cuando no hayan procedido a la ratificación del Pacto Internacional de Derechos Civiles y Políticos[1] , ni de los Convenios del Derecho Internacional Humanitario[2] ni de los convenios regionales que lo regulan[3].

Contenido:
La mencionada declaración deberá cristalizar el conjunto de principios y prácticas existentes contenidos en la normativa internacional y receptar la doctrina y jurisprudencia más reciente que refuerzan la tutela de los derechos humanos y de las libertades fundamentales bajo los Estados de excepción. La declaración fijará los estándares internacionales que todo Estado debe respetar.

Propuesta:
A tal fin, recomiendo al Consejo de Derechos Humanos que establezca un mecanismo encargado de elaborar dicha declaración. Previamente solicite a la Oficina del Alto Comisionado la organización de un seminario de especialistas en la materia a efectos de que proponga al Consejo las directrices básicas del instrumento y las modalidades para su elaboración.

[1] Ver específicamente el artículo 4 del Pacto Internacional de Derechos Civiles y Políticos.
[2] Entre otros, los Convenios de Ginebra de 1949 y los Protocolos Adicionales I y II.
[3] Entre otros, el art. 15 de la Convención Europea para la protección de los Derechos Humanos y las Libertades Fundamentales y el art. 27 de la Convención Interamericana sobre Derechos Humanos.

Es en este contexto que tengo el placer de informar a los miembros del Consejo que hoy entre la 1:00 y las 3:00 tendré un briefing sobre esta temática y sobre la oportunidad de la adopción de una declaración. Espero que los miembros del Consejo puedan participar en esta discusión.

ACONTECIMIENTOS RELEVANTES DE LA JUSTICIA INTERNACIONAL

Alto Tribunal Penal Iraquí (ATPI)

Desde sus inicios, a partir de la adopción de su estatuto, y durante el posterior desarrollo de los procesos contra Saddam Hussein y sus aliados, he seguido de cerca los avatares del Alto Tribunal Penal Iraquí. En reiteradas ocasiones he expresado mis reservas, principalmente con respecto a cuatro grandes cuestiones en tanto violatorias de los principios y estándares internacionales de derechos humanos, a saber: los vicios en la constitución del Tribunal, las numerosas limitaciones de su Estatuto, el impacto de la inseguridad y violencia reinante en el desarrollo de los juicios, y la facultad del Tribunal de aplicar la pena de muerte. Lamentablemente, los acontecimientos que se sucedieron luego de finalizado el Informe que presento han confirmado mis pronósticos más pesimistas.

En el proceso por la matanza de Dujail, el 5 de noviembre de 2006 el jurado del Alto Tribunal condenó a Saddam Hussein y a tres de sus colaboradores a la pena de muerte. Por otro lado, sentenció a penas privativas de la libertad a los otros cuatro coacusados. Posteriormente, el 26 de diciembre de 2007, la Cámara de Apelaciones del ATIP confirmó la sentencia de Saddam Hussein y de seis de sus colaboradores, en tanto que incrementó la condena para Taha Yasin Ramadan, pasando de prisión perpetua a pena de muerte.

Aplicación de la pena de muerte:

Si bien la humanidad evoluciona hacia la abolición de la pena de muerte, para aquellos que militan a su favor sólo es admisible cuando la misma resulta de un juicio que cumpla con los estándares internacionales de imparcialidad e independencia y respete todas las garantías del debido proceso. La ejecución de Saddam Hussein y dos coacusados, el 30 de diciembre de 2006, como consecuencia de un proceso que muy lejos estuvo de brindar las garantías judiciales suficientes -tanto procesales como materiales- ha configurado una de las más graves violaciones de los derechos humanos fundamentales, cual es la de la privación arbitraria del derecho a la vida. Asimismo, la inmediata ejecución de la pena de muerte ha privado a las víctimas de los crímenes cometidos por los condenados -distintos a los de Dujail-, de su derecho a la justicia, a la verdad y a obtener reparación.
Por otra parte, el 20 de marzo de 2007, fue ejecutado Taha Yassin Ramadan, no obstante la intensa presión de la comunidad internacional tendiente a evitar otra lamentable ejecución resultante de un proceso judicial plagado de vicios y arbitrariedades. Tal es así, que Ramadan fue condenado inicialmente a prisión perpetua, condena que luego fuera modificada a pena de muerte a requerimiento de la Cámara de Apelaciones por considerar la condena inicial «demasiado clemente» y sin siquiera esgrimir las razones jurídicas que motivaron el incremento de la pena.

Con respecto al juicio por la matanza de Anfal, desafortunadamente en lo que va de este segundo proceso contra los aliados de Saddam Hussein, no se han corregido las irregularidades cometidas

durante el proceso de Dujail. Persiste el clima de violencia, inseguridad e intensas presiones políticas y las limitaciones del Estatuto que rige al Alto Tribunal –a las que hiciera referencia en anteriores informes- no han sido subsanadas.

Cámaras Excepcionales de Camboya

Tanto en mi anterior informe, como en este que presento, he expresado mi satisfacción por la constitución de las Cámaras Excepcionales de Camboya a fin de juzgar a los máximos líderes del Khmer Rouge por los aberrantes crímenes cometidos entre abril de 1975 y enero de 1979. Asimismo, he celebrado la toma de juramento de los jueces nacionales e internacionales que las integran; la transparencia del proceso instaurado para la elaboración del reglamento interno y el inicio de las investigaciones a cargo de los fiscales.

MISIONES REALIZADAS

MISIÓN A LA REPÚBLICA DE MALDIVAS

Del 25 de febrero al 1° de marzo visité la República de Maldivas, invitado por el Gobierno a fin de asistir a las autoridades en la implementación de una serie de reformas legales en el marco de un plan de reforma integral adoptado por el Presidente de la República en marzo de 2006, específicamente en lo relativo al establecimiento de una judicatura independiente como parte de un sistema de real y efectiva separación de poderes.

La República de Maldivas emerge de una historia colonial reciente ya que recién logró su independencia en el año 1965. Por lo tanto, aún conserva sus tradicionales instituciones y sistema legal, basado en una combinación del Common Law con la ley Sharia. Esta circunstancia, sumada a los vertiginosos cambios económicos y sociales en los que se vio inmerso en los últimos tiempos -principalmente debido al gran desarrollo de la industria del turismo- plantea el gran desafío de modernizar las instituciones y el marco jurídico a fin de adaptarlos a esta nueva realidad y a los principios y estándares internacionales sobre derechos humanos.

Quisiera agradecer al Gobierno la oportunidad que me brindó de analizar tanto la situación del sistema judicial, como el contenido y alcance de las reformas legales en curso con el objeto de adaptarlas de conformidad con los compromisos internacionales suscriptos por la República. A tal fin, mantuve reuniones con el Presidente de la República, varios ministros, funcionarios judiciales y representantes de la comunidad legal del país.

La visita al país me permitió verificar una serie de deficiencias que adolece el sistema judicial y que plantean la necesidad de implementar profundas reformas, tanto estructurales como sustanciales. Bajo el actual marco constitucional, el Poder Judicial carece de independencia ya que se encuentra bajo la órbita del Presidente de la República y, por lo tanto, no logra cumplir adecuadamente con su rol de administrar justicia de manera eficaz y eficiente, de modo tal de garantizar el ejercicio y goce de las libertades y derechos reconocidos por los tratados internacionales de derechos humanos.

En cuanto al cumplimiento de los derechos y garantías del debido proceso, he registrado con suma preocupación la frecuencia con que se llevan a cabo prolongadas detenciones preventivas sin las adecuadas revisiones judiciales; la celebración de juicios sin que el acusado cuente con la correspondiente representación legal; y la ejecución de investigaciones criminales exclusivamente en manos de la policía, sin ningún tipo de revisión por parte de jueces o fiscales.

Resulta también preocupante la seria insuficiencia de jueces y abogados que afecta al sistema judicial, debida –principalmente- a las particulares características geográficas del país y a su escasa capacidad de suministrar la apropiada capacitación y entrenamiento legal para la formación de futuros profesionales del derecho.

Otras verificaciones:
Quisiera referirme particularmente al flagelo del tráfico y consumo de drogas que afecta gravemente al país y que en los últimos tiempos ha adquirido serias proporciones. En ocasión de mi visita a la prisión de Maafushi he podido constatar que el enfoque punitivo del sistema de justicia penal, mediante la criminalización de los jóvenes consumidores de drogas y la imposición de severas penas privativas de la libertad en ausencia de programas de prevención y rehabilitación, no logró reintegrar a los ofensores a la sociedad, registrándose –por el contrario- altos niveles de reincidencia. Lo que demuestra el fracaso del actual sistema de justicia criminal y la necesidad de crear e implementar con urgencia programas de prevención y rehabilitación.

Es en tal sentido que aliento firmemente las propuestas de reforma impulsadas por el Gobierno en materia de administración de justicia que, en términos generales, tienen como objetivo fortalecer la judicatura y reorganizar el sistema de justicia. Ello fundamentalmente mediante la consagración constitucional del sistema de separación de poderes y de la independencia judicial; el establecimiento de una Corte Suprema de Justicia; la constitución de un sistema de designación y remoción de magistrados; y la reforma del sistema de justicia criminal.
En este sentido, insto a las autoridades maldivenses a velar porque las mencionadas reformas guarden plena conformidad con los principios internacionales de un sistema judicial independiente, eficaz y eficiente, de plena conformidad con los estándares internacionales del debido proceso. Quiero resaltar que tal objetivo sólo podrá ser alcanzado a través del diálogo permanente y fluido entre los diferentes actores políticos y con el apoyo de la comunidad internacional, de ser necesario.
Por último, destaco como un hecho sumamente positivo–en un país que carece de mujeres jueces- la reciente nominación por parte del Ministro de Justicia de la República de tres mujeres para ocupar los cargos de magistradas. Espero que la Comisión de Servicios Judiciales apruebe la nominación sometida a su consideración.

LA MISSION EN LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO

J'ai effectué une visite en République démocratique du Congo du 15 au 21 avril 2007 à l'invitation du Gouvernement. Je tiens à remercier le Gouvernement pour sa coopération, ainsi que la Mission de l'Organisation de Nations Unies au Congo (MONUC) pour l'appui très important qu'il a reçu. Pendant la mission mon équipe et moi nous sommes rendus à Kinshasa, à Bukavu au Sud-Kivu, à Goma au Nord-Kivu et à Bunia dans l'Ituri. Nous avons rencontré le Premier Ministre, plusieurs de ses ministres, des autorités provinciales, des juges et procureurs de différents niveaux des juridictions tant civiles que militaires, les présidents de plusieurs barreaux, des avocats, des associations de juges et d'avocats, des membres d'organisations non gouvernementales (ONG), des membres des différentes composantes de la MONUC et du Programme des Nations Unies pour le Développement (PNUD) ainsi que les principaux bailleurs de fonds du secteur de la justice.

Observations préliminaires

Sorti d'une décennie de conflits extrêmement meurtriers et d'une période de transition qui a duré trois ans, le pays a pu, avec l'appui de la communauté internationale, adopter une nouvelle constitution et organiser les premières élections démocratiques en 2006. Dotée à présent d'un gouvernement démocratiquement élu et d'un cadre constitutionnel approprié, la République démocratique du Congo doit aujourd'hui relever deux grands défis : établir un état de droit et une démocratie fondés sur une séparation effective des pouvoirs et faire face aux séquelles des crimes du passé. Le pouvoir judiciaire dont le rôle est primordial pour relever ces défis, doit être véritablement indépendant et efficace, comme le prévoit la Constitution, afin de pouvoir jouer son rôle de colonne vertébrale de la démocratie et de garant de l'état de droit.

Le rapport final contenant les conclusions et recommandations finales sur cette mission sera présenté au Conseil des droits de l'homme des Nations Unies dans les prochains mois. J'ai, toutefois, soumis d'ores et déjà certaines conclusions et recommandations dans ma note préliminaire. Pendant ma visite, j'ai constaté que la situation du pouvoir judiciaire est très inquiétante, notamment au vu des éléments suivants:

Les magistrats, tant du parquet que du siège, et les tribunaux sont en nombre très insuffisants sur le territoire. En outre, les magistrats ne disposent pas des capacités logistiques et matérielles nécessaires pour exercer leurs fonctions avec dignité et professionnalisme : ils manquent de locaux appropriés, notamment de salles d'audiences, de véhicules pour accéder aux lieux des enquêtes, de matériel informatique de base et des ressources financières nécessaires pour couvrir les frais de fonctionnement de la justice. De plus, les magistrats ne reçoivent pas de rémunération adéquate. Le manque d'indépendance financière de la justice a une incidence directe sur le manque d'indépendance de la justice tant civile que militaire, et nourrit une corruption quasi généralisée des magistrats et des auxiliaires de justice.

Les ingérences du pouvoir exécutif et de l'armée sont encore très fréquentes, en dépit d'une interdiction expresse figurant à l'article 151 de la Constitution. La faiblesse structurelle et financière du pouvoir judiciaire est accrue par les lacunes institutionnelles comme l'absence de contrôle exercé par un Conseil supérieur de la magistrature opérationnel et indépendant, ce qui rend les magistrats vulnérables à ces interférences.

L'accès à la justice est très difficile pour la majorité de la population, à cause de la corruption, du manque de ressources financières, de l'éloignement géographique des tribunaux et des difficultés de transport, ainsi que de la méconnaissance des voies de recours. Les magistrats et avocats ont également des difficultés d'accès aux textes de loi et à la jurisprudence.

Quand il est possible de faire aboutir un procès, dans la plupart de cas les décisions de justice ne sont pas exécutées. Le taux très élevé de non exécution est dû principalement à l'incapacité d'assurer le déplacement des agents responsables, à la corruption de ces agents, à la pauvreté des bénéficiaires des décisions de justice qui doivent contribuer aux frais d'exécution, ainsi qu'à la préférence de certaines communautés pour les règlements à l'amiable selon la coutume. À cela s'ajoute un taux élevé d'évasions, dû notamment à l'état très délabré des prisons, qui est extrêmement préoccupant. Il rend vains les efforts menés par l'appareil judiciaire et contribue à l'impunité.

Il est très inquiétant de constater que la grande majorité des violations des droits de l'homme sont commises par les forces armées et la police et que leur jugement est du ressort des tribunaux

militaires, en application de la législation nationale. Conformément aux normes internationales relatives aux droits de l'homme, le jugement des violations des droits de l'homme commises par des militaires ainsi que le jugement des civils doit être du ressort de la justice civile et non militaire. Ceci est d'autant plus important que le manque d'indépendance affecte tout particulièrement la justice militaire, qui reste soumise à la hiérarchie militaire. La justice militaire est entachée par un nombre très élevé d'ingérences militaires ou politiques qui se traduisent par des refus des hauts gradés d'amener leurs hommes devant les juges militaires, ainsi que par des pressions et des blocages de procès.

La détention préventive est la règle plutôt que l'exception. Elle s'applique à un nombre trop élevé d'infractions et a souvent pour unique objectif d'obtenir de l'argent en vue de la libération du détenu. Il est particulièrement inquiétant de constater que des hommes en uniforme, tels que les militaires et les agents de l'Agence nationale de renseignements (ANR), procèdent fréquemment à des arrestations et des détentions arbitraires, sans que cela soit de leur compétence et pour des faits qui ne constituent souvent pas des délits. Compte tenu des lenteurs de la justice, ou parfois de l'absence de procès, des suspects restent souvent des mois, voire des années, en détention préventive sans qu'un tribunal ait établi leur culpabilité.

Au vu de telles défaillances, force est de constater que la justice ne fonctionne que dans de rares cas et que les violations des droits de l'homme, dont les plus fréquentes et les plus graves sont les viols de femmes, les exécutions sommaires, les détentions arbitraires et les pillages et destructions de biens, restent généralement impunies. Alors qu'un État démocratique ne peut fonctionner sans un pouvoir judicaire fort et indépendant, il est regrettable que la justice soit restée jusqu'à aujourd'hui le parent pauvre des institutions démocratiques du pays.

Dans ce contexte, le Rapporteur spécial se félicite du travail que mène le Bureau intégré des Nations Unies pour les droits de l'homme (BNUDH) en République démocratique du Congo et certaines organisations de la société civile dans la lutte contre l'impunité, notamment en vue d'appuyer le travail des magistrats et de leur fournir des moyens pour mener des enquêtes et faire aboutir des procès. Toutefois, ces interventions ponctuelles ne peuvent pallier les déficiences systémiques du pouvoir judiciaire.

Recommandations préliminaires

À la lumière de ces observations, j'ai formulé les recommandations préliminaires suivantes :

a) La construction d'un pouvoir judiciaire indépendant, fort et efficace doit être une priorité du Gouvernement et des acteurs internationaux actifs dans le domaine de la justice et des droits de l'homme. Sans un renforcement urgent et conséquent du secteur de la justice en République démocratique du Congo, l'état de droit et la consolidation des acquis démocratiques, dans lesquels les Congolais et la communauté internationale ont beaucoup investi pendant ces dernières années, ne pourront devenir une réalité dans le pays. Réaliser cet objectif requiert notamment :

i) Qu'un pourcentage nettement plus important du budget national soit affecté au pouvoir judiciaire, en tenant compte du fait qu'en général le budget de la justice représente entre 2 % et 6 % des budgets nationaux. Ces ressources devraient permettre de mieux rémunérer les magistrats ; de recruter de nouveaux magistrats ; d'attribuer aux magistrats des locaux et des capacités opérationnelles (moyens de transport, matériel informatique, etc.) leur permettant de s'acquitter de leurs tâches ; et de mettre sur pied de nouveaux tribunaux, notamment les tribunaux de paix.

ii) Qu'un plan de reconstruction du pouvoir judiciaire soit élaboré et mis en œuvre par le Ministère de la justice, en étroite collaboration avec les bailleurs de fonds. Dans ce cadre, le Rapporteur

spécial appuie le travail du Comité mixte de suivi du programme-cadre de la justice en République démocratique du Congo, qui réunit le Ministère de la justice et les bailleurs de fonds. Sur la base des résultats de l'audit organisationnel du système judiciaire congolais réalisé en 2004 par la Commission européenne en partenariat avec la Coopération belge, la Coopération française, le Department for International Development du Royaume-Uni (DFID), le PNUD, la MONUC et le Haut Commissariat des Nations Unies aux droits de l'homme en accord avec le Gouvernement de la République démocratique du Congo, ce Comité prévoit l'élaboration d'un plan d'action pour la mise en œuvre du programme-cadre de la justice en République démocratique du Congo. Le Rapporteur spécial est convaincu que le travail de ce Comité est d'une importance décisive pour le renforcement du pouvoir judiciaire dans le pays. Ayant toutefois constaté des retards dans l'élaboration de ce plan, il encourage les membres du Comité à accélérer leur travail afin que ce plan soit adopté dans les plus brefs délais. Des mesures concrètes de reconstruction et d'appui au pouvoir judiciaire devraient commencer à être mises en œuvre au cours de l'année 2007.

iii) Que les autorités du pays reprennent la maîtrise de ses ressources naturelles. La République démocratique du Congo est un pays extrêmement riche, mais jusqu'à présent l'exploitation de ses ressources naturelles n'a pas été mise au profit de sa population. Au contraire, l'exploitation non planifiée ou illégale continue d'être une source importante de conflits et de violations des droits de l'homme et de conduire à des pillages et autres abus. Malgré cela, nul n'a été tenu responsable de cette exploitation illicite. Dans ce contexte, il serait utile de former des magistrats spécialisés dans ce domaine. Récupérer la maîtrise de ses ressources naturelles permettra au pays d'obtenir les moyens nécessaires pour renforcer ses institutions, dont particulièrement la justice, et de faire bénéficier la population de la richesse de son territoire.

b) Pour que le cadre constitutionnel soit mis en œuvre et l'indépendance de la magistrature ne reste pas lettre morte, une série de lois doivent être adoptées avec urgence :

i) La loi portant organisation du Conseil supérieur de la magistrature, organe clef qui sera chargé de gérer la nomination, la promotion et la discipline des magistrats, garantissant ainsi leur indépendance tout en assurant un contrôle efficace de leur conduite, et d'établir le budget du pouvoir judiciaire, clef de son indépendance et de son efficacité ;

ii) La loi sur la mise en œuvre du Statut de Rome, qui va notamment transférer de la justice militaire à la justice civile la compétence pour juger les crimes internationaux ;

iii) Les lois sur l'établissement de la Cour de cassation, la Cour constitutionnelle et le Conseil d'État.

c) La formation des magistrats, particulièrement aux normes d'éthique et de déontologie de la profession et aux normes internationales des droits de l'homme, ainsi que la formation du personnel auxiliaire, devrait être sensiblement renforcée. Il n'existe pas d'organisme assurant la formation initiale des magistrats et des personnels auxiliaires de justice avant leur entrée en fonctions. Dans ce cadre, une école de la magistrature et une école de formation professionnelle des auxiliaires de justice devraient être créées au plus vite.

d) Afin de garantir le droit à la défense tel que reconnu par la Constitution, l'État devrait mettre en place un système de rémunération des avocats commis d'office, par exemple auprès des barreaux, pour que les personnes démunies puissent bénéficier d'une défense de qualité.

e) La reconstruction de la justice devrait se fonder sur le renforcement de la justice civile, qui doit être la seule compétente pour juger des civils ainsi que des violations des droits de l'homme

commises par les militaires et la police. La compétence des juridictions militaires devrait être progressivement limitée aux infractions de nature purement militaire.

f) Le recours à la détention préventive devrait être strictement limité. Ceci évitera également le surpeuplement des prisons. Un délai maximum de détention préventive devrait être fixé par la loi, notamment pour les infractions entrainant une peine de moins de cinq ans de servitude pénale.

g) Un système de suivi de l'exécution des jugements devrait être établi, ainsi qu'un système de prise en charge par l'État des frais judiciaires pour les indigents.

h) Afin d'établir la démocratie sur des bases solides, la justice congolaise et la communauté internationale devraient collaborer pour juger les graves violations des droits de l'homme et du droit humanitaire commises pendant la guerre, à la lumière des expériences de collaboration judicaire en matière de justice transitionnelle ayant donné de bons résultats dans d'autres pays. L'établissement de chambres mixtes, composées de juges nationaux et internationaux, auprès des tribunaux nationaux pourrait être une solution appropriée.

Lors de ses entretiens avec le Rapporteur spécial, le Gouvernement a reconnu que l'existence d'un pouvoir judiciaire indépendant et efficace est la colonne vertébrale de l'état de droit et du développement du pays. Il a aussi reconnu que le pouvoir judicaire est dans un état très critique et qu'il est urgent de le renforcer. Dans ce contexte, je voudrais réitérer qu'il est essentiel que le nouveau Gouvernement fasse de la reconstruction et du renforcement du secteur de la justice la priorité de son programme de consolidation démocratique du pays, et il encourage les efforts que le Gouvernement a indiqué vouloir mener dans ce sens.

SEGUIMIENTO DE RECOMENDACIONES: ECUADOR

Desde la eclosión de la crisis institucional operada en el Ecuador a fines de 2004, he visitado el país en tres oportunidades a fin de registrar su evolución y hacer un seguimiento de las recomendaciones emanadas de los informes elaborados como consecuencia de las misiones que he realizado en el país. En mis diversos informes advertí, en primer lugar, sobre la ausencia de legalidad de las medidas adoptadas por el Parlamento a fines de 2004 y la manera en que éstas afectaron a los tres altos tribunales del país: Tribunal Constitucional, Electoral y la Corte Suprema de Justicia, en virtud de las cuales fueron destituidos todos sus miembros sin juicio político y reemplazados por otros sin que hubiese mediado un proceso de selección, tal como lo establece la Constitución del país. En tal sentido, advertí sobre la urgente necesidad de restablecer el Estado de Derecho y de constituir una Corte Suprema de Justicia independiente. A fin de conferir mayor transparencia al proceso de selección de los magistrados de la Corte, promoví el establecimiento de veedurías internacionales y, en particular, de las Naciones Unidas, de la Comunidad Andina de Naciones y de la Unión Europea. Esta original experiencia, que se caracterizó por la transparencia, el control ciudadano, la supervisión por parte de observadores nacionales e internacionales y la participación de jueces de otros países de la región y de instancias internacionales de la órbita judicial, culminó con la asunción de los miembros de la Corte Suprema de Justicia en noviembre de 2005.

Lamentablemente, una serie de controvertidas decisiones, adoptadas tanto por el Parlamento, como por el Tribunal Supremo Electoral (TSE), han desencadenado una nueva crisis político-institucional en el país, sobre la cual tengo previsto informar en oportunidad de presentar mi

informe ante la Asamblea General en octubre próximo. Por ahora diré que pienso visitar el Ecuador en respuesta a una invitación de la Corte Suprema de ese país para participar de un encuentro entre los Presidentes de las Cortes Supremas de los Países Andinos, con la inclusión de Chile, organizado por la Corte Suprema del Ecuador.

Finalmente, quiero destacar y felicitar la incorporación del nuevo oficial de derechos humanos, el Sr. Guillermo Fernández-Maldonado, a la Oficina del Coordinador Residente del Sistema de las Naciones Unidas en Ecuador, a fin de fortalecer la presencia técnica de la Oficina del Alto Comisionado en el área de justicia y derechos humanos.

FUTURAS MISIONES:

En relación con las futuras actividades de la Relatoría, preveo realizar, en un futuro cercano, misiones a Rusia y a las Filipinas. Quisiera exhortar a los Gobiernos de Túnez, Nigeria, Kenya, Turkmenistán, Uzbekistán, Irán, Sri Lanka y Camboya a responder positivamente a las solicitudes de visita que fueron presentadas por el Relator.

A modo de conclusión, deseo por último manifestar mi gratitud, no sólo a la Secretaría sino además a las oficinas locales de Naciones Unidas y a las ONGs por su apreciable asistencia sin la cual sería imposible llevar a cabo mi mandato.

Muchas gracias

Statement by Mr. Leandro Despouy
Independence of Judges and Lawyers

62nd session of the General Assembly
Third Committee
Item 70 b

DATE October 2007
New York

Informe Oral presentado por el Relator Especial sobre independencia de jueces y abogados, Sr. Leandro Despouy, al 62° período de sesiones de la Asamblea General de Naciones Unidas

25 de octubre de 2007

Con este informe me propongo presentar a la Asamblea General una breve reseña de las principales actividades que he realizado desde mi última presentación, en octubre de 2006, y al mismo tiempo evocar aquellos temas que han concitado mayor preocupación en mi calidad de Relator Especial. El informe de que disponen (A/62/207) evalúa aspectos sustantivos vinculados a la justicia en el mundo y analiza, en particular, situaciones que afectan a la independencia del poder judicial, desde lo operativo hasta lo estructural; los estados de excepción y su impacto sobre los derechos humanos y, en particular, las limitaciones que entrañan para el desempeño de la judicatura. Asimismo, pasa revista a los temas más relevantes de la Justicia Internacional, tales como el seguimiento de la Corte Penal Internacional, de la situación en el Iraq y de las Cámaras Excepcionales de Camboya. Finalmente, incluye información sobre las misiones que llevé a cabo a la República de Maldivas y a la República Democrática del Congo, recogiendo algunas de mis principales recomendaciones.

Actividades realizadas

Una de las actividades más importantes de la Relatoría son las intervenciones que regularmente realizo a través de llamados urgentes, cartas de alegación y comunicados de prensa, como resultado de las múltiples alegaciones que recibo. Durante el 2006, fueron enviados: 100 llamamientos urgentes, de los cuales 98 se enviaron conjuntamente con otros Relatores y 46 cartas de alegación, 25 en forma conjunta con otros Relatores, que comprendieron a situaciones en 63 países de todas las regiones del mundo. En el 2006 el número de intervenciones realizadas se incrementó en un 67 por ciento con respecto al 2005. Esto pone de manifiesto hasta qué punto los sistemas judiciales y sus actores están constantemente expuestos y con frecuencia ven comprometidas su seguridad e independencia. Además, en junio, participé en la reunión anual de los Procedimientos Especiales, y también presenté a la quinta sesión del Consejo de Derechos Humanos mi informe general, el informe sobre las comunicaciones enviadas a los gobiernos con sus respectivas respuestas, el informe sobre la misión realizada a Maldivas así como una nota preliminar sobre la misión a la República Democrática de Congo. En dicha ocasión, participé activamente en las deliberaciones para la adopción del Código de Conducta y el Manual de los Procedimientos Especiales. Asimismo, mantuve reuniones con representantes de varias misiones permanentes acreditadas en Ginebra a fin de coordinar los preparativos para las misiones que tengo previsto realizar, representantes de organizaciones gubernamentales y no gubernamentales y de órganos de derechos humanos de Naciones Unidas. También participé como expositor en varios seminarios y encuentros nacionales e internacionales –que detallo en mi informe y en el Anexo I del presente- con el objeto de difundir las actividades de esta relatoría.

Situaciones que afectan a la administración de la justicia y la independencia de jueces, fiscales y abogados

El informe que presento a esta Asamblea General ofrece un panorama general de las situaciones y circunstancias que afectan principalmente a la independencia del poder judicial en el mundo, desde lo operativo hasta lo estructural. Las agrupé en: a) situaciones que afectan la independencia de los jueces, fiscales, abogados o auxiliares de justicia; b) normas y prácticas que afectan el estado de derecho, amenazando el normal funcionamiento del sistema judicial y el derecho a un justo proceso; y c) ciertos desafíos particulares para el poder judicial y su independencia.

En base al análisis de las múltiples intervenciones realizadas por la Relatoría entre 1996 y 2004, he verificado -entre otras circunstancias- que, en muchos países, con frecuencia los operadores judiciales no pueden desempeñar sus funciones de manera independiente y ven comprometidas su seguridad y protección personal y familiar. Se trata de hostigamientos, intimidaciones, denigraciones y amenazas que pueden llegar a la desaparición forzada, el asesinato o la ejecución extrajudicial de jueces, fiscales o abogados por el mero hecho de llevar a cabo su labor. Lamentablemente, las autoridades no siempre ofrecen una adecuada protección ni condenan de manera clara tales hechos delictivos, quedando con frecuencia impunes. Frente a ello, he recomendado al Consejo, en mi último informe, que incremente aún más sus esfuerzos en defensa de la labor que desarrollan los distintos actores vinculados a la administración de justicia y que recomiende a los Estados la adopción de medidas concretas para garantizar la protección y seguridad de los operadores judiciales.

Entre las circunstancias de carácter institucional que afectan al funcionamiento y a la independencia del poder judicial -y que incluso pueden llegar a poner en peligro el estado de derecho- se encuentran la corrupción en el poder judicial y la lentitud o morosidad en la administración de justicia. También, en muchos casos, los procesos de reforma del sistema judicial, en vez de avanzar en pos de su independencia, terminan restringiéndola**.** Otro factor es la desigualdad en el acceso a la justicia que afecta a amplios sectores de la población y principalmente a los grupos más vulnerables.

Con respecto a los desafíos particulares que enfrenta el poder judicial y que han generado más quejas de la Relatoría, he registrado la detención de personas sin cargos ni juicio, el juzgamiento de civiles por parte de tribunales militares y de militares a sus pares por graves violaciones de los derechos humanos, y la creación de tribunales de excepción que generalmente entrañan la violación del principio del juez natural. Así como también, la adopción de leyes de amnistía que sustraen de la acción de la justicia a responsables y autores de violaciones graves y sistemáticas de los derechos humanos; y la negación del hábeas corpus o el amparo frente a la desaparición forzada de personas.

Por último, como Relator he recibido un creciente número de quejas en virtud de la sanción de algunas leyes destinadas a combatir el terrorismo, leyes de seguridad nacional, o leyes de asilo, que limitan o inhiben la acción de la justicia, confieren amplios poderes al Ejecutivo e implican limitaciones al ejercicio de los derechos humanos, similares y, en algunos casos, mayores, a las que se producen durante la vigencia de un estado de excepción.

Protección de los derechos bajo estados de excepción

Teniendo en cuenta que los estados de excepción siguen siendo fuente de graves violaciones de los derechos humanos, en junio de 2007 propuse al Consejo de Derechos Humanos que se llevara a cabo una reflexión en profundidad sobre las normas y principios que regulan la protección de los derechos humanos en dichas circunstancias, en el marco de un seminario internacional de expertos organizado por el ACNUDH. El Consejo acogió la propuesta y el seminario de expertos se celebrará los días 3 y 4 de diciembre de 2007 en Ginebra. El evento tendrá por finalidad reforzar la protección de los derechos humanos en situaciones de crisis, poniendo de relieve los estándares internacionales que regulan los estados de excepción y que se desprenden de la doctrina y la jurisprudencia desarrolladas por los órganos regionales e internacionales de derechos humanos, especialmente los de alcance universal. Podría también sentar las bases de un texto declarativo que recoja los avances normativos y jurisprudenciales así como los principios que conforman, en la actualidad, los estándares internacionales que regulan esta materia. Confío que las conclusiones del evento representarán una sólida contribución para los Estados y servirán de base a futuras iniciativas del Consejo de Derechos Humanos.

Acceso a la justicia

La desigualdad en el acceso a la justicia es otro factor que afecta a amplios sectores de la sociedad y principalmente a los grupos más vulnerables. Por ello, tengo la intención de abordar este tema en mi próximo informe general al Consejo de Derechos Humanos, aportando un amplio análisis de los diferentes factores y circunstancias que impiden un adecuado e igualitario acceso a la justicia, condición esencial para la efectiva implementación de los derechos humanos. Este análisis vendrá aparejado con recomendaciones destinadas a contribuir a mejorar el acceso a la justicia en el mundo. En el presente informe a la Asamblea General, verán que esbozo desde ya un breve panorama.

En primer lugar, señalo que los sistemas judiciales de numerosos países se ven afectados por una notoria escasez de medios materiales, presupuestarios y en recursos humanos adecuadamente formados, que dificulta su eficaz desempeño. También observo con preocupación que en varios países la centralización geográfica de los sistemas de justicia es de tal magnitud que sólo cuentan con tribunales judiciales la capital y las grandes ciudades, quedando al margen del sistema amplias zonas rurales. En este sentido, las relaciones entre el acceso a la justicia ordinaria y el acceso a los sistemas de justicia indígena o tradicional es un tema que me interesa especialmente. En otras ocasiones, no se trataría de una incapacidad institucional sino de una ausencia de voluntad por parte de las autoridades gubernamentales para facilitar el adecuado e igualitario acceso a la justicia a los individuos y, especialmente, a los grupos más vulnerables**.** Por otra parte, el costo que representa un proceso judicial con frecuencia sobrepasa la capacidad económica de los individuos. Otro gran obstáculo reside en la falta de información y conocimiento de los individuos sobre los derechos y garantías de los que son titulares y los procedimientos a seguir. La no-discriminación es un requisito imprescindible para que pueda hablarse de un adecuado acceso a la justicia. Finalmente, en el informe analizo cómo los límites al acceso a la justicia encuentran su máximo exponente en las situaciones de conflicto armado y post-conflicto. En numerosas ocasiones los conflictos provocan la parálisis casi total del sistema judicial, de modo tal que los individuos no tienen posibilidad alguna de acceder a la justicia.

Corte Penal Internacional

En tanto jurisdicción complementaria y no excluyente de la justicia nacional, la CPI ofrece la ventaja de poder realizar investigaciones y perseguir y juzgar a las personas en las que recae la principal responsabilidad de crímenes de guerra, crímenes de lesa humanidad y actos de genocidio, cuando las autoridades nacionales no puedan o se niegan a hacerlo. En estos últimos años, la Corte ha dado pasos importantes en pos de su afianzamiento que merecen ser destacados. Me refiero a la entrada en vigor del Acuerdo sobre los Privilegios e Inmunidades de la Corte, la instalación en La Haya de la Secretaría de la Asamblea de los Estados Partes en el Estatuto de Roma y de la Corte, y la firma de un acuerdo que determina las bases jurídicas de la cooperación entre la Corte y las Naciones Unidas. Igualmente**,** doy la bienvenida a las ratificaciones que se produjeron desde septiembre de 2006 al Estatuto de Roma por parte de los Gobiernos del Chad y de Montenegro, y más recientemente, por el Gobierno de Japón. No obstante, deseo reiterar mi preocupación por la firma de acuerdos bilaterales de inmunidad entre los Estados Unidos de América y Estados Partes en el Estatuto de Roma con la finalidad de sustraer a los ciudadanos estadounidenses de la jurisdicción de la Corte.

Celebro asimismo los avances que se registran en algunas situaciones concretas como, por ejemplo, la detención y entrega a la CPI de Thomas Lubanga Dyilo, hecho que sólo fue posible debido a la cooperación del Gobierno de la República Democrática del Congo con el Consejo de Seguridad de las Naciones Unidas y los Estados Partes en el Estatuto de Roma. Por el contrario, me parece preocupante la falta de cooperación del Gobierno del Sudán con la CPI así como la falta de un acuerdo de relación entre la Corte y la Unión Africana, circunstancia que obstruye seriamente las investigaciones y la comparecencia de los sospechosos ante los jueces de la CPI. También advierto al Gobierno de Uganda y a los líderes del Ejército de Resistencia del Señor (LRA) sobre la necesidad de llegar a un acuerdo que excluya cualquier tipo de amnistía para los crímenes de guerra, los crímenes contra la humanidad, el genocidio y graves violaciones de derechos humanos, de modo de lograr un equilibrio entre la necesidad de impartir justicia y la de alcanzar una paz duradera en la región.

Alto Tribunal Penal Iraquí – Pena de muerte y derecho a la verdad

En mis informes precedentes, he tenido la oportunidad de recalcar aquellos aspectos más críticos vinculados a la conformación y al desempeño de dicho tribunal, en particular la ausencia de garantías durante su desempeño tanto para los jueces que lo integran como para los abogados que actúan ante él. Prueba de ello es que en el proceso relativo a la matanza de Dujail, un juez, varios candidatos a juez, tres abogados defensores y un empleado del tribunal fueron asesinados. La falta de garantías incide en forma mayúscula con respecto a los propios acusados, sobre todo si se piensa que, en dicho proceso, la mayoría de ellos fueron condenados a muerte y la misma se ejecutó de inmediato, como fue el caso de Saddam Hussein y otros imputados. En este contexto es que he solicitado en forma reiterada a las autoridades iraquíes de cesar en la aplicación de la pena de muerte y he señalado incluso el negativo impacto que las ejecuciones realizadas tendrían - y de hecho han tenido - sobre el derecho a la verdad para las víctimas de los graves crímenes cometidos bajo el régimen de Saddam Hussein.

En esta oportunidad, quiero referirme en forma específica a la ejecución en la horca, el 3 de julio último, de Awraz Abdel Aziz Mahmoud Sa'eed no obstante mi solicitud pública, días previos, de suspender la misma. En efecto, de las siete personas sospechadas de haber tenido conocimiento o algún tipo de participación en el atentado contra la sede de la ONU en Bagdad en agosto del 2004, seis habían muerto en distintos actos de violencia, presumiblemente víctimas de enfrentamientos con las fuerzas de ocupación o con las fuerzas de seguridad iraquí, y Mahmoud Sa'eed era el último sobreviviente. Además, había manifestado su disposición a colaborar con las autoridades de la ONU en el esclarecimiento del trágico atentado que costó la vida a 22 personas, entre ellas Sergio Vieira de Mello, Alto Comisionado de las Naciones Unidas para los Derechos Humanos y Representante Especial del Secretario General. El fundamento de mi solicitud era, primordialmente, el derecho a la verdad de las víctimas del atentado y de sus familiares, y la autoridad de las propias Naciones Unidas que, de concretarse esta ejecución, se vería – como en efecto se vio - gravemente afectada al perderse la última pista de que se disponía para aproximarse a la verdad. Cuando solicité la no ejecución de la pena de muerte, Mahmoud Sa'eed ya se encontraba con su sentencia confirmada por parte de la Corte de Casación de Bagdad, pero ante la importancia de los fundamentos esgrimidos confiaba que las autoridades iraquíes receptarían mi reclamo. Más aún, el carácter público del llamado pretendía interesar también a las autoridades de aquellos países que han jugado un rol decisivo en la instauración del régimen actual en Iraq y en la presencia de Naciones Unidas en dicho país.

Cámaras Excepcionales de Camboya

El atento seguimiento de esta cuestión reposa en la importancia que reviste para el pueblo camboyano el establecer la verdad acerca de los graves crímenes cometidos por los Khmers Rojos, como en el probado interés que encierra para la comunidad internacional la experiencia camboyana en la lucha contra la impunidad. En este sentido, cabe destacar la adopción por unanimidad del Reglamento Interno de las Cámaras el 12 de junio de 2007, y las posteriores detenciones de Kaing Guek Eav «Duch» y de Nuon Chea, dos de los más altos líderes del régimen del Khmer Rouge, por la presunta comisión de crímenes de lesa humanidad y de crímenes de guerra y de lesa humanidad respectivamente. En una declaración conjunta, los jueces nacionales e internacionales resaltaron su compromiso de llevar a cabo los juicios sin dilaciones y asegurando, al mismo tiempo, el respeto de los más altos estándares internacionales de un proceso justo, imparcial y transparente. Sin embargo, quiero expresar mi preocupación por la transferencia de uno de los jueces de las Cámaras Excepcionales a la presidencia de la Corte de Apelaciones por decisión del poder ejecutivo y sin consulta al Consejo Superior de la Magistratura, órgano competente y garante de la independencia de la magistratura. Máxime teniendo en cuenta que este traslado va a retrasar los juicios en un momento tan esencial para la labor investigativa de las Cámaras.

Misión a la República de Maldivas

Entre el 25 de febrero y el 1° de marzo de 2007 visité la República de Maldivas, invitado por el Gobierno, a fin de brindarle asistencia en el marco de un plan integral de reformas constitucionales y jurídicas tendientes a establecer una judicatura independiente y un sistema de real y efectiva separación de poderes. El informe de la visita tiene por objeto aportar una visión general del sistema jurídico de Maldivas y de las dificultades a las que se enfrentan actualmente los principales responsables de la administración de justi-

cia. La visita demostró que la situación actual del sistema judicial, donde el Common Law coexiste con la ley Sharia, requiere de reformas urgentes y profundas que le permitirán cumplir con los criterios internacionales mínimos de independencia y eficiencia en un sistema democrático.

Estos objetivos sólo podrán alcanzarse a través del diálogo entre las diferentes fuerzas políticas del país y, si así lo solicitara el Gobierno de Maldivas, con el apoyo de la asistencia técnica y financiera de la comunidad internacional. En la actualidad, el sistema judicial de Maldivas depende del Presidente de la República y, por lo tanto, no está en condiciones de cumplir con su rol fundamental de administrar justicia en forma equitativa e independiente y de salvaguardar y proteger el ejercicio y goce de los derechos humanos. Específicamente, en lo que hace al cumplimiento de los derechos y garantías del debido proceso, son frecuentes: las detenciones preventivas sin las adecuadas revisiones judiciales; los juicios en los que el acusado no cuenta con la correspondiente representación letrada; y las investigaciones penales exclusivamente a cargo de la policía, sin el debido control judicial de fiscales o jueces. Verifiqué también una grave escasez de jueces y abogados en la mayor parte del territorio y una insuficiente capacidad interna para impartir una adecuada capacitación jurídica y entrenamiento legal a los futuros profesionales del derecho. Asimismo, constaté con suma preocupación el drástico incremento del tráfico y consumo de drogas que afecta gravemente al país. Al respecto, el enfoque punitivo del actual sistema de justicia penal, mediante la imposición de severas penas privativas de la libertad a los jóvenes consumidores de drogas en ausencia de programas de prevención y rehabilitación, ha producido altos niveles de reincidencia sin lograr la reinserción de los jóvenes a la sociedad.

En el informe he enfatizado la necesidad de adoptar con urgencia profundas reformas en el sistema judicial de Maldivas para que el mismo se adecue con los estándares internacionales mínimos de independencia y eficiencia en un sistema democrático. En ese sentido, si bien se encuentra bajo análisis en el Majlis Especial (Asamblea Constituyente) un proyecto de reforma constitucional cuya adopción está prevista para el 30 de noviembre de 2007, noto con profunda preocupación que el diálogo entre los principales actores políticos se ve interrumpido continuamente, poniendo en serio riesgo la adopción del nuevo texto constitucional en el plazo acordado. Destaco la importancia del cumplimiento de este plazo ya que resulta esencial para la concreción de las demás reformas previstas por el Gobierno tendientes a instaurar la separación de poderes, crear una judicatura independiente y celebrar en el 2008 las primeras elecciones democráticas en el país.

Luego de mi visita, he observado con gran satisfacción la designación en julio de este año de las primeras tres mujeres jueces en la historia del país, lo que constituye un paso alentador en la perspectiva de romper con la discriminación de género imperante dentro del poder judicial. Al mismo tiempo, he conocido con viva inquietud el alejamiento de sus funciones en el Estado de tres importantes funcionarios notoriamente identificados con las reformas diseñadas en el Poder judicial y con la democratización del país, como son el ex ministro de Justicia, Mohamed Jameel Ahmed, el ex Canciller, Ahmeed Shaheed y el ex Procurador General, Hassan Saeed.

Resulta crucial para el destino del país el respeto del cronograma trazado (reforma del sistema judicial, de la Constitución, etc). Agradezco la apertura y colaboración de las autoridades y encuentro crucial el apoyo y que se lleven a cabo los cambios institucionales y la democratización del país.

Misión a la República Democrática de Congo

Entre el 15 y el 21 de abril de 2007 visité la República Democrática de Congo, cuyo informe presentaré en los próximos meses al Consejo de Derechos Humanos. Como puse de manifiesto en la nota preliminar sobre la misión (A/HRC/25/Add.3), la situación del poder judicial en el país es sumamente preocupante, en particular, habida cuenta de los siguientes factores : el número de jueces y tribunales en el país es claramente insuficiente a lo que se suma el alto porcentaje de inejecución de las resoluciones judiciales; las injerencias del poder ejecutivo y del ejército en el poder judicial son aún muy frecuentes; el acceso a la justicia se ve dificultado debido a la lejanía geográfica de los tribunales y las dificultades de transporte, la falta de recursos financieros y el alto nivel de corrupción.

Asimismo, se comprueba que la mayoría de las violaciones a los derechos humanos son cometidas por miembros de las fuerzas militares y de la policía cuyo enjuiciamiento es llevado a cabo por tribunales militares en franca violación a las normas internacionales. Las detenciones preventivas suelen ser la norma y no la excepción, y los sospechosos permanecen en detención preventivas durante meses e incluso años, sin haber sido declarados culpables por ningún tribunal.

Entre las recomendaciones preliminares oportunamente formuladas, cabe destacar las siguientes : debería asignarse al poder judicial un porcentaje mucho más elevado del presupuesto nacional ya que por ahora es de 0,5 por ciento; el Ministerio de Justicia debería elaborar y aplicar un plan de regeneración del poder judicial en estrecha colaboración con los donantes internacionales; las autoridades congoleñas deberían recuperar el control de sus recursos naturales para que el país pueda disponer de los medios necesarios para reforzar sus instituciones; a fin de garantizar la independencia de la judicatura, el Parlamento debería adoptar urgentemente una serie de leyes y, sobre todo, la ley relativa a la organización del Consejo Superior de la Magistratura, y la ley relativa a la aplicación del Estatuto de Roma de la Corte Penal Internacional; debería limitarse progresivamente la competencia de la justicia militar y reforzarse la justicia civil, que debe ser la única habilitada para juzgar a los civiles y para enjuiciar las violaciones de derechos humanos cometidas por los militares y la policía; el recurso a la detención preventiva debería estar estrictamente limitado.

No obstante agradecer una vez más a las autoridades congoleñas por haber recibido la misión, y el diálogo constructivo establecido con las autoridades del país en la perspectiva de colaborar con la construcción de su sistema judicial, me veo en la obligación de manifestar mi creciente preocupación por el franco deterioro producido luego de mi visita y, en particular, por algunos cambios efectuados en las más altas autoridades de la justicia militar. Asimismo, continúa dilatándose la adopción de leyes esenciales para garantizar la implementación de las normas constitucionales adoptadas en 2006 sobre la independencia del poder judicial; la lucha contra la impunidad no está dando resultados, por el contrario, los veredictos más recientes han absuelto a la casi totalidad de sospechosos por la comisión de crímenes internacionales y graves violaciones de los derechos humanos en el país, como es el caso de Khawa Panga Mandro.

Más recientemente formulé un llamado urgente al Gobierno de la RDC a raíz de la situación de cuatro magistrados militares del Tribunal de Garnison de Kisangani, que fueron objeto de detenciones ilega-

les, maltrato, vejaciones y amenazas de muerte por parte de un comando dirigido por el General Jean Claude Kifwa. Además de una violación flagrante de los derechos humanos, el comportamiento del alto militar implica un grave atentado a la dignidad y autoridad de la magistratura del país. Por lo que espero que estos hechos, que comprometen al Ejecutivo, sean debidamente investigados y sancionados, y el resultado de dichas acciones me sea comunicado con urgencia para estar en condiciones de informar debidamente al Consejo de Derechos Humanos en oportunidad de la presentación de mi informe anual.

Próximas misiones

Tengo previsto realizar una misión a la Federación de Rusia en la última quincena de mayo de 2008 y una misión a Guatemala en el primer semestre de 2008. Al mismo tiempo, espero una respuesta positiva cuanto antes del Gobierno de Fiji a raíz de la grave crisis política e institucional que atraviesa el país después del golpe de Estado de diciembre de 2006 y de las presuntas irregularidades en la destitución del entonces Presidente de la Corte Suprema, Daniel Fatiaki. Igual solicitud ha sido formulada a los gobiernos de Bangladesh, Camboya y Filipinas. De igual manera quedan pendientes respuestas a mis pedidos de visita por parte de los Gobiernos de la República Islámica del Irán, Kenya, Nigeria, Sri Lanka, Túnez, Turkmenistán y Uzbekistán.

Está comprobado que las visitas a los países son de gran utilidad pues ofrecen un marco de diálogo constructivo con los gobiernos y los demás actores nacionales, posibilitando así un conocimiento directo de la realidad, la formulación de diagnósticos ajustados a las misma y de recomendaciones susceptibles de ser implementadas. Todo ello en la perspectiva de resolver cuestiones concretas que afecten al sistema judicial, a sus actores y destinatarios, y que, en forma genérica repercutan negativamente sobre el conjunto de los derechos humanos.

Conclusión y recomendación

Teniendo en cuenta que la administración de justicia es uno de los pilares del estado de derecho y del sistema democrático, la defensa de la justicia debe incorporarse como tema prioritario en la agenda de las Naciones Unidas. En este contexto, la Organización tendría que privilegiar la temática de la justicia tanto en sus debates y análisis como en sus actividades de apoyo y cooperación técnica, sobre todo en relación con los países que atraviesan una situación de transición, o bien están saliendo de un conflicto armado que hubiese impactado gravemente en la conformación del Estado. Por último, deseo manifestar mi gratitud, a los Gobiernos que han cooperado, a la Secretaría y a las oficinas locales de Naciones Unidas. Asimismo, a las ONG por su apreciable asistencia sin la cual sería imposible llevar a cabo mi mandato.

Muchas gracias

ANEXO I

Actividades del Relator Especial desde noviembre de 2006 hasta octubre de 2007

Los días 28 y 29 de junio de 2007, participé como expositor en un encuentro de Cortes Supremas de Justicia de la región andina organizado por la anterior Corte Suprema del Ecuador, cuya constitución e integración contribuí a impulsar en 2005, junto a las Naciones Unidas y la Organización de los Estados Americanos, cuando los jueces que integraban la Corte ecuatoriana fueron destituidos inconstitucionalmente y se generó una grave crisis institucional.

A nivel académico, cabe destacar la conferencia magistral sobre el futuro del derecho internacional, en la Université de la Sorbonne Nouvelle, París, en mayo de 2006, en el marco de la segunda Conferencia de la Sociedad Europea de Derecho Internacional. Asimismo, fui invitado por la American Society of International Law y la Harvard Law School para participar en un seminario dirigido a altos dignatarios de la Justicia de diferentes regiones del mundo sobre el tema «Diálogo judicial transnacional: fortaleciendo las redes y los mecanismos para la cooperación y consulta judicial» (ver *http://www.harvardilj.org/online/107)* en diciembre de 2006. En dicha oportunidad presenté una ponencia por escrito titulada «Las perspectivas del diálogo y la cooperación judicial». Donde se destaca el importante rol que pueden jugar los propios magistrados en la defensa de la independencia de los sistemas judiciales a través del diálogo, intercambio de experiencias y acciones de solidaridad.

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APLICACIÓN DE LA RESOLUCIÓN 60/251 DE LA ASAMBLEA GENERAL, DE 15 DE MARZO DE 2006, TITULADA "CONSEJO DE DERECHOS HUMANOS"

Informe del Relator Especial sobre la independencia de los magistrados y abogados, Leandro Despouy

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Resumen

Luego de describir las actividades llevadas a cabo por el Relator Especial sobre la independencia de los magistrados y abogados durante el año 2006, el presente informe examina las distintas situaciones que desde 1994 a la fecha han suscitado su intervención, focalizando en aquellas que representan amenazas directas a los actores del sistema judicial y en aquellas de carácter estructural que afectan su funcionamiento e independencia y que inciden sobre la vigencia del estado de derecho. Ello con el objeto de ofrecer una perspectiva general de las principales constataciones recogidas a lo largo de estos últimos 12 años.

Midiendo la gravedad y magnitud de los problemas que afectan el sistema judicial y el estado de derecho, el Relator Especial propone al Consejo de Derechos Humanos que preste aún más atención a la problemática de la administración de justicia y de la independencia de sus actores. Invita a consolidar los mecanismos de defensa de la judicatura, en particular a través de la relatoría especial, cuya capacidad de acción debería ser reforzada. Asimismo, subraya la urgencia de que las Naciones Unidas privilegien la temática de la Justicia tanto en sus actividades de apoyo a los Estados como en su análisis de la dimensión institucional de su actividad. Finalmente, propone incorporar a estos esfuerzos el aporte y la experiencia de las organizaciones nacionales e internacionales de juristas que actúan en defensa de una judicatura independiente.

Respondiendo a la solicitud reiterada por varias delegaciones gubernamentales y no gubernamentales en el contexto del diálogo interactivo en la Asamblea General, la Comisión y el Consejo de Derechos Humanos, el Relator Especial analiza también el impacto de los estados de excepción sobre los derechos humanos, en particular las limitaciones que entrañan para el desempeño de la judicatura. Con esta misma perspectiva, hace también referencia a leyes antiterroristas, de seguridad nacional e inmigración. A la luz de dicho análisis, propone invitar a los Estados adecuar su legislación interna y sus prácticas nacionales a los principios, jurisprudencia y estándares internacionales que rigen la vigencia de los estados de excepción, y a estos efectos señala los aspectos que imperativamente debe reunir toda legislación al respecto. Teniendo en cuenta las graves violaciones de los derechos humanos constatadas en dichas circunstancias, sugiere que se elabore una declaración internacional que cristalice la jurisprudencia y el conjunto de principios que regulan la protección de los derechos humanos bajo los estados de excepción.

Con el telón de fondo de la dramática degradación de la situación en el Iraq y de la sentencia pronunciada por el Alto Tribunal Penal Iraquí, el Relator Especial reitera las críticas que formuló en octubre de 2006 ante la Asamblea General y recomienda la participación de las Naciones Unidas para conformar un tribunal independiente que responda a los parámetros internacionales en materia de derechos humanos.

Finalmente, expresa su satisfacción por la adopción de la Convención Internacional para la protección de todas las personas contra las desapariciones forzadas, e insta a los Estados a su pronta ratificación.

ÍNDICE

INTRODUCCIÓN

1. Este es el 13º informe presentado al Consejo de Derechos Humanos (antes Comisión de Derechos Humanos) desde que se estableció el mandato del Relator Especial sobre la independencia de los magistrados y abogados en 1994, y el cuarto presentado por el actual Relator Especial. Este informe está presentado en cumplimiento de la decisión 1/102 del Consejo.

2. En el presente documento, el Relator Especial analiza la actividad realizada desde el inicio del mandato a través del procedimiento de las comunicaciones y de las misiones a países, con el fin de ofrecer al Consejo una perspectiva general de la naturaleza y la magnitud de los ataques sufridos por el sistema judicial. También aborda una cuestión específica y de amplio alcance, cual es el impacto de los estados de excepción y las leyes afines sobre los derechos humanos y la administración de justicia. Finalmente, evoca acontecimientos relevantes de la justicia internacional, siendo este un tema que piensa profundizar en el futuro.

I. ACTIVIDADES EMPRENDIDAS EN 2006

A. Reuniones internacionales

3. En Ginebra, tras asistir a la primera sesión del Consejo de Derechos Humanos, el Relator Especial participó del 19 a 23 de junio de 2006, en la 13ª Reunión anual de los procedimientos especiales. Del 20 a 25 de septiembre, tomó parte en Ginebra en el segundo período de sesiones del Consejo de Derechos Humanos, donde presentó sus informes sobre las actividades llevadas a cabo en el 2005. El 23 de octubre, participó en el sexagésimo primer período de sesiones de la Asamblea General de Naciones Unidas, en Nueva York, donde presentó su informe A/61/384 y pormenorizó sus actividades durante el año 2006. Allí analiza, en particular, la situación de la justicia militar en el mundo y recomienda que se adopten las directrices elaboradas al respecto por el experto Emmanuel Decaux. La presentación dio lugar a un extenso y rico debate de fondo.

4. Del 31 de julio al 4 de agosto, el Relator Especial contribuyó al XVII Curso Internacional sobre Independencia Judicial, Derechos Humanos y la Carta Democrática Interamericana, organizado por la Comisión Andina de Juristas y la Agencia Española de Cooperación Internacional en Cartagena de Indias (Colombia). En su intervención hizo referencia a la independencia judicial como garantía de la función jurisdiccional.

5. El 26 de septiembre, intervino en la Conferencia de la Unión Interparlamentaria sobre "El derecho y la justicia bajo el examen de los parlamentos", en Ginebra, centrando su intervención sobre la cuestión de "La presunción de inocencia, la igualdad de armas y el derecho a ser juzgado en un plazo razonable: ¿qué pueden hacer los parlamentos para garantizar que estén reunidos estos elementos claves del derecho a un justo proceso?", así como sobre la cuestión de "Cómo asegurar una justicia independiente e imparcial, pilar de la democracia".

B. Consultas y preparación de visitas a países

6. En junio, el Relator se reunió en Ginebra con varios ministros y con miembros de diferentes misiones permanentes así como con representantes de organizaciones gubernamentales y no gubernamentales, incluso la Unión Interparlamentaria (UIP). En octubre, en Nueva York, mantuvo también reuniones con representantes de algunas misiones permanentes y de numerosas organizaciones no gubernamentales.

7. En junio, el Relator Especial se reunió en Ginebra con el Ministro de Relaciones Exteriores de la República de las Maldivas, quien le reiteró la invitación de su Gobierno para realizar una misión a dicho país. Al respecto, el Relator efectuó consultas con funcionarios de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos para preparar la visita, prevista para noviembre, pero luego tuvo que postergarla a inicio de 2007. El Relator agradece al Gobierno de Maldivas su amable invitación así como su comprensión por las dificultades que lo obligaron a aplazar la visita.

8. En el curso de 2007, el Relator Especial prevé también realizar misiones a Camboya, en el marco del seguimiento a una misión de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos, y a la Federación de Rusia. De ser posible, a Kenya y a la República Democrática del Congo, mientras que en 2008 prevé visitar Guatemala. Agradece a los gobiernos que ya confirmaron su invitación, estando pendientes las respuestas de los de Camboya, Kenya y de la República Democrática del Congo. Para el futuro, ha expresado su voluntad de realizar visitas a Filipinas, Nigeria, la República Islámica del Irán, Sri Lanka, Túnez, Turkmenistán y Uzbekistán, quedando aún pendiente las respuestas de los respectivos Gobiernos.

C. Llamamientos urgentes, cartas de transmisión de denuncias a los gobiernos y comunicados de prensa

9. En el documento A/HRC/4/25/Add.1 figura un resumen de las denuncias transmitidas a varios gobiernos y las respuestas recibidas, junto con estadísticas sobre los años 2004, 2005 y 2006. A modo indicativo, entre el 1º de enero y el 8 de diciembre de 2006 se realizaron 97 llamamientos urgentes, 39 cartas de alegación y 9 comunicados de prensa. A estas 145 comunicaciones, relativas a situaciones en 54 países, el Relator Especial recibió 51 respuestas por parte de 29 países.

II. CLASIFICACIÓN DE LAS SITUACIONES TRATADAS POR EL RELATOR ESPECIAL ENTRE 1994 Y 2006

10. Una de las principales actividades del Relator Especial consiste en examinar las alegaciones que recibe y definir el tipo de intervención a realizar[1]. A estos efectos, el Relator Especial dispone, bajo el título genérico de "comunicaciones", de dos herramientas que le permiten consultar a los gobiernos acerca de: a) situaciones que podrían afectar la

[1] Según su contenido y alcance, dichas alegaciones pueden ser individuales o conjuntamente con uno o varios otros relatores especiales.

independencia de jueces, fiscales, abogados o auxiliares de justicia; b) situaciones que podrían configurar una violación de las normas internacionales para un justo proceso; o c) otros factores que afecten el adecuado desempeño del poder judicial y por lo tanto el estado de derecho. Se trata de llamamientos urgentes, enviados cuando la situación denunciada presenta cierta premura, y de cartas de alegación, que se remiten cuando los hechos denunciados son particularmente complejos y se necesitan precisiones fácticas o de orden jurídico para estar en condición de actuar. El Relator Especial puede además emitir comunicados de prensa si estima que una violación de las normas internacionales ya sucedió o está a punto de suceder. A esto se suman las visitas a los países en base a una invitación oficial; estas visitas permiten analizar, con el conjunto de los actores interesados, la amplia gama de temas y situaciones que, directa o indirectamente, afectan al sistema judicial. En este sentido, las comunicaciones cumplen un rol predominantemente disuasivo, mientras que las misiones permiten profundizar el conocimiento de las realidades nacionales, intervenir en los niveles adecuados, incluso en aspectos estructurales, y hacer un mejor seguimiento de las recomendaciones.

11. Se presenta a continuación un panorama general de las situaciones y circunstancias que afectan la administración de justicia, desde lo operativo hasta lo estructural, según resulta de las intervenciones y misiones realizadas por el Relator Especial entre 1994 y 2006. Al ser el objetivo identificar las diferentes clases de situaciones que afectan al sistema judicial, y dado el gran número de países a los que, a lo largo de los años, el Relator Especial tuvo que dirigirse, la exposición no incluye referencias a países o situaciones específicas. Dichas referencias se encuentran en los documentos pertinentes presentados anualmente a la Comisión y luego al Consejo de Derechos Humanos.

12. Para facilitar el análisis de las situaciones identificadas, se las clasificó en: a) situaciones que afectan la independencia de los jueces, fiscales, abogados o auxiliares de justicia; b) normas y prácticas que afectan el estado de derecho, amenazando el normal funcionamiento del sistema judicial y el derecho a un justo proceso; y finalmente c) ciertos desafíos particulares para el poder judicial y su independencia como, por ejemplo, la vigencia de un estado de excepción. Es más que frecuente que una misma queja revele la combinación de varios de estos aspectos, y que una violación se vincule o se potencie con otras.

13. Cabe precisar que en todos los casos el fundamento de la actuación de la relatoría especial no es exclusivamente la persona del juez o del abogado, sino ante todo el rol que cumplen ambas figuras en la preservación del ejercicio de los derechos humanos y libertades fundamentales en beneficio del conjunto de la población. No responde a móviles de orden corporativo sino al rol central que jueces, abogados y demás auxiliares de la justicia juegan en la defensa y preservación de los derechos humanos y, en general, la vigencia del estado de derecho.

A. Situaciones que afectan la independencia de los jueces, fiscales, abogados o auxiliares de justicia

14. La actividad de la relatoría especial desde 1994 indica que, en todas las regiones del mundo, los operadores de justicia se enfrentan con situaciones que entrañan una violación de sus derechos humanos. Se trata de amenazas, hostigamientos, intimidaciones, denigraciones e interferencias de distinta índole. Las amenazas pueden ser directas, anónimas o bajo identidad disfrazada; hechas por teléfono, por carta o por correo electrónico; se puede tratar de interferencias en la correspondencia, campañas de prensa, allanamiento del domicilio, o

impedimentos para viajar, incluso para participar en eventos o cursos de capacitación sobre derechos humanos o derecho internacional público. Lamentablemente, se trata también de agresiones físicas, amenazas de secuestro o secuestro, desaparición forzada, detención arbitraria, tortura y hasta asesinatos o ejecuciones sumarias. Frente a estas situaciones, es común que las quejas que llegan al Relator Especial aleguen la falta o la inadecuada protección y acción por parte de las autoridades aun cuando hayan sido formuladas denuncias policiales o judiciales.

15. La práctica indica que están particularmente expuestos a estas situaciones los operadores de justicia conocidos por ser activos en la defensa de los derechos humanos, como los abogados de víctimas de desapariciones forzadas o de ejecuciones extrajudiciales, los que tratan temas sensibles como, por ejemplo, terrorismo, crimen organizado como la trata de personas, propiedad de las tierras, protección del medio ambiente y defensa de los recursos naturales, defensa de ciertos grupos vulnerables de población como los pueblos originarios, las minorías étnicas, lingüísticas, religiosas o culturales que critican el sistema vigente y defienden sus derechos, o las mujeres víctimas de violencia o discriminación, y también los que se oponen a la guerra o militan por la independencia de su territorio. También son muchos los casos de magistrados víctimas de presiones, intimidaciones, amenazas de muerte, o directamente de tentativas de asesinato, por investigar la implicación de personalidades políticas u otras vinculadas al poder en asesinatos u otras violaciones graves de los derechos humanos. Es bastante común que, frente a los riesgos que enfrentan por sus convicciones y actividades, los operadores de justicia se vean forzados a dimitir, mudarse a otra ciudad, vivir en la clandestinidad o directamente exiliarse y que sus familiares también estén amenazados. No siempre las autoridades ofrecen una adecuada protección ni condenan de manera clara tales hechos delictivos, los cuales quedan, frecuentemente, impunes.

16. Son sobre todo los jueces y abogados los que se encuentran en estas situaciones, en particular cuando se los identifica con las causas que están tratando. Es frecuente que los gobiernos interpreten la acción de esos jueces y abogados en pro de los derechos humanos y las libertades fundamentales como una intromisión en el campo de la política. Es común que los abogados sean perseguidos y arrestados al ser identificados con sus clientes y sigan siendo objeto de intimidaciones por las autoridades después de ser liberados. Esto, a su vez, conlleva que las personas acusadas de delitos sensibles tengan dificultades para encontrar a abogados que los defiendan.

17. Los casos registrados durante 2006 ponen de manifiesto la frecuencia de los fenómenos señalados: en alrededor del 55% de las comunicaciones, que conciernen unas 148 situaciones en 54 países, se denuncian violaciones de los derechos humanos de los jueces, abogados, fiscales y auxiliares de justicia. Las amenazas, intimidaciones y actos de agresión a abogados representan el 17% de las comunicaciones enviadas por el Relator Especial, mientras que los jueces y fiscales reciben el 4%; las detenciones arbitrarias y persecuciones judiciales de abogados representan el 26% de las comunicaciones, y las de jueces y fiscales, el 4%; mientras que los asesinatos de abogados, jueces y fiscales representan 4% del total de las comunicaciones. En algunos países, el nivel de agresiones es muy elevado. Por ejemplo, en un país latinoamericano, la relatoría especial ha registrado el asesinato de 16 funcionarios judiciales y amenazas a 63 de ellos, con 2 secuestros y 2 exilios entre enero de 2005 y agosto de 2006; y en un país asiático, no menos de 15 abogados y 10 jueces fueron asesinados impunemente entre 2001 y mediados de 2006.

B. Normas y prácticas que afectan el estado de derecho, el normal funcionamiento del sistema judicial y el derecho a un justo proceso

18. De las alegaciones tratadas y las misiones realizadas desde 1994, surge con claridad que ciertas circunstancias de carácter institucional afectan no sólo al funcionamiento del poder judicial sino a su independencia, y pueden llegar a poner en peligro el estado de derecho.

19. La corrupción en el poder judicial es uno de los ataques más letales al estado de derecho y uno de los flagelos más difíciles de erradicar. Los factores son múltiples, y es frecuente atribuir una gran incidencia en la corrupción y la morosidad de la justicia al bajo nivel de las remuneraciones de los jueces y abogados y a la falta de autonomía financiera del poder judicial. Sin embargo, el Relator Especial destaca la relevancia de otros factores como la dependencia ideológica o política de los jueces. La actividad de la relatoría especial demuestra que estas circunstancias -sobre todo donde se combinan varios factores y existe un marco institucional débil con una cultura de la corrupción- inciden en forma decisiva sobre la capacidad de los jueces para actuar de manera eficiente, independiente e imparcial, respetando las reglas de ética profesional. Las situaciones evocadas se dan con especial facilidad en países que carecen de una sólida formación en las nociones de independencia del poder judicial y las normas internacionales para un juicio equitativo. Por esta razón, la relatoría especial ha impulsado vivamente la adopción de los Principios de Bangalore sobre la Conducta Judicial y su adscripción por los Estados.

20. Las quejas recibidas y las misiones realizadas muestran que la lentitud de la justicia es un fenómeno tan frecuente como preocupante. Es corriente que esta violación del derecho a una sentencia en un plazo razonable derive de la innecesaria complejidad de los procedimientos judiciales combinada con el excesivo número de casos que llegan a la más alta instancia judicial. Especialmente en los países en transición, se presentan también problemas debidos a la infraestructura física inadecuada, a la que suele sumarse la penuria crónica de recursos financieros, materiales y de personal de apoyo para operar. En situaciones de conflicto, actos de pillaje y vandalismo pueden complicar seriamente la labor del poder judicial, y se comprueba que no siempre los Estados toman las medidas necesarias para castigar a los responsables o crear las condiciones para reconstruir rápidamente el aparato judicial debilitado.

21. Son muchas y complejas las quejas que aluden a la desigualdad en el acceso a la justicia, fenómeno que afecta especialmente a los grupos más vulnerables (por ejemplo, niños, personas con enfermedades mentales), a los que sufren discriminaciones y persecuciones (por ejemplo, por su sexo, su orientación sexual, su origen étnico, sus convicciones religiosas o sus prácticas espirituales) y a ciertos movimientos sociales (por ejemplo, defensores de los derechos humanos, ambientalistas, defensores de los recursos naturales). Con frecuencia estas personas se ven afectadas también por la falta de cumplimiento de las sentencias, sobre todo las relativas a derechos económicos sociales y culturales. Ambos fenómenos, el del acceso a la justicia y el incumplimiento de las sentencias cuando se trata de derechos económicos sociales y culturales, muestran la relación entre los determinantes económicos y sociales y la administración de justicia.

22. En muchos casos, los procesos de reforma que conciernen el poder judicial, el Consejo de la Magistratura, o el estatuto de jueces y abogados, en vez de avanzar en pos de la independencia del sistema judicial, implican verdaderos retrocesos, pues la restringen. Esto se constata sobre

todo en los contextos de gran vulnerabilidad institucional, como suelen ser los períodos de transición, o bien cuando la ley es impulsada por el ejecutivo para responder a necesidades políticas coyunturales y el Parlamento no cumple su rol de contrapeso, y tampoco se respetan las prescriptivas consultas al propio poder judicial. La reforma de la Corte Suprema es, sin lugar a dudas, uno de los temas más sensibles y donde la transparencia del proceso de designación de los jueces es determinante para generar la confianza de la ciudadanía en todo el sistema de administración de justicia. Las graves interferencias del poder ejecutivo en la composición y el funcionamiento de la Corte Suprema y la corrupción en su interior son temas recurrentes en las quejas que se reciben y constituyen una de los más graves "enfermedades" del estado de derecho. Si bien se perciben generalmente como hechos positivos las reformas que incluyen la creación de jurisdicciones especializadas -por ejemplo, los tribunales encargados de los conflictos relativos a la tierra o la justicia de menores- éstas tampoco están libres de riesgo. Las alegaciones recibidas muestran que la creación de dichas jurisdicciones no sólo responde a menudo a intereses políticos coyunturales sino que su funcionamiento no siempre se adecua a las disposiciones del artículo 14 del Pacto Internacional de Derechos Civiles y Políticos.

23. Tratándose de los jueces, resulta frecuente que el estatuto de la magistratura y las garantías legales para el ejercicio de su función tengan características que, de hecho, amenacen su independencia, por ejemplo, cuando el nombramiento de los jueces es de carácter provisional y depende directamente del Jefe de Estado. Sin llegar a este extremo, pueden existir prácticas que ponen a los jueces en situación de precariedad y afectan sus condiciones de empleo y promoción: se trata de comportamientos discriminatorios en razón de, por ejemplo, las afinidades políticas, las convicciones religiosas, las convicciones en materia de derechos humanos, el sexo o la orientación sexual, la discapacidad física, el origen étnico.

24. Asimismo, en ocasiones la identificación entre la fiscalía y el ejecutivo es de tal magnitud que el papel de los abogados y los jueces a lo largo del proceso se reduce hasta convertirse en una mera formalidad. En muchos países de Asia central, por ejemplo, la procuraduría que en los juicios penales y civiles representa al Estado tiene un peso decisivo en el contenido de las sentencias, al extremo de que éstas generalmente no se apartan de lo solicitado por la procuraduría.

25. En cuanto a los abogados, la relatoría especial ha registrado muchas quejas de distinta índole, que remiten a situaciones recurrentes de ausencia, carácter inadecuado o falta de respeto a las garantías para el libre ejercicio de la profesión. Ocupan un lugar prominente la falta de acceso a sus clientes, completa o bien en condiciones no satisfactorias de confidencialidad; la falta de acceso a la documentación del caso, completa o parcial y no en plazos oportunos; y la desigualdad de armas durante el desarrollo del proceso. Es además común que los abogados se vean expuestos a situaciones que afectan su desempeño en defensa de sus clientes: por ejemplo, cambios sin aviso del calendario de las audiencias, decisión de celebrar el proceso a puerta cerrada, desconocimiento por el tribunal de pruebas y testimonios claves, o nombramiento de un abogado de oficio. Estas circunstancias vulneran seriamente los derechos de la defensa y por ende los de los procesados. Es frecuente que los jueces o abogados se vean expuestos a enjuiciamiento, amenazas o sanciones económicas o profesionales, a raíz de acciones que en realidad en nada contradicen a sus obligaciones profesionales y deontológicas.

26. En algunos países, se constatan conflictos entre el ejecutivo y las asociaciones de abogados; en otros, la libertad de asociación y la libertad de expresión de los abogados se ven directamente transgredidas por medidas como el cierre de los colegios profesionales o bien limitaciones impuestas a su funcionamiento como es el retiro del control de la matrícula. Asimismo, se han denunciado maniobras destinadas a asegurar que se elija para presidir el colegio a una persona cercana al ejecutivo. La relatoría también ha registrado casos en que los colegios de abogados han amenazado sancionar a sus miembros por participar en eventos destinados a la formación en derechos humanos.

27. La libertad de expresión de los operadores de justicia sobre temas relacionados con su actividad profesional plantea cuestiones muy delicadas. En muchos casos, las autoridades gubernamentales intimidan a abogados y magistrados por expresar opiniones sobre los casos en los que intervienen, incluso en los relativos a violaciones de los derechos humanos; esto acontece sobre todo en países en los que no existe ningún tipo de regla que recoja los principios internacionales sobre este tema.

C. Desafíos particulares

28. A continuación, el Relator Especial invita al Consejo a prestar una atención especial a otros desafíos que debe enfrentar el poder judicial y que en algunos casos amenazan el estado de derecho.

29. El juzgamiento de civiles por parte de tribunales militares y de éstos a sus pares por graves violaciones de los derechos humanos es uno de los problemas registrados de mayor gravedad y que más quejas suscita. Por esta razón, además de sus frecuentes intervenciones, el Relator Especial presentó en el sexagésimo primer período de sesiones de la Asamblea General un informe sobre la situación de la justicia militar en el mundo (documento A/61/384) y recomendó que se adoptaran las directrices elaboradas por el experto de la Subcomisión de Promoción y Protección de los Derechos Humanos, Emmanuel Decaux.

30. Un tema recurrente para esta relatoría especial es el de las limitaciones que afectan el desempeño de la judicatura durante la vigencia de un estado de excepción, institución jurídica que se analiza con más en detalle en el capítulo siguiente.

31. En general, la creación de tribunales de excepción se asocia a una grave violación del principio del juez natural que afecta, en particular, el derecho de la defensa y otras garantías procesales previstas en el artículo 14 del Pacto Internacional de Derechos Civiles y Políticos. Por ejemplo, la práctica de jueces "sin rostro", destinada a ponerlos a salvo de represalias, es objeto de muchas quejas pues plantea el problema de la regularidad misma de los procedimientos, y puede convertirse en una denegación de justicia. Si bien es indispensable garantizar la seguridad de los jueces y de los testigos, ello no debe menoscabar la independencia y la imparcialidad de la justicia.

32. En los tres últimos años, el Relator Especial ha podido constatar el creciente número de quejas que suscitan las restricciones de derechos que entrañan algunas leyes destinadas a combatir el terrorismo, así como leyes de seguridad nacional y leyes de asilo, en la medida en que limitan o inhiben la acción de la justicia y confieren amplios poderes al ejecutivo.

Comúnmente, dichas leyes suspenden la vigencia del hábeas corpus o el amparo y establecen un mecanismo de control interno o de apelación que excluye la intervención del poder judicial.

33. Otros reclamos están referidos a la adopción de leyes de amnistía que sustraen de la acción de la justicia a responsables y autores de violaciones graves y sistemáticas de los derechos humanos. Reviste especial gravedad la negación del hábeas corpus o el amparo frente a la desaparición forzada de personas. Estos temas han sido tratados en el informe precedente sobre la lucha contra la impunidad y el derecho a la verdad, presentado por el Relator Especial (documento E/CN.4/2006/52).

34. Es objeto de múltiples controversias la cuestión de la pena capital. En lo que a este mandato atañe, si su aplicación tiene lugar luego de un proceso que no cumplió con las garantías prescritas, no sólo se configura una violación del derecho a un justo proceso sino también del derecho a no ser privado arbitrariamente de la vida. Muchas intervenciones han tenido por objeto impedir la aplicación de la pena capital a menores, a personas con discapacidad o con problemas de salud mental.

35. Respecto del derecho de asilo y de la obligación de los Estados de respetar el principio de no devolución de personas potencialmente expuestas a violaciones de los derechos humanos en su país de origen u otro donde igualmente corran riesgo, el Relator Especial comprueba que, en general, las alegaciones se refieren a la aplicación indebida de normas nacionales que contradicen las normas internacionales o a la proliferación de garantías diplomáticas que en ningún caso cumplen los requisitos para habilitar la extradición.

36. Un importante número de quejas muestra la dificultad que entraña para muchos Estados la coexistencia del derecho positivo moderno y el derecho religioso y/o el derecho tradicional o tribal. En las comunicaciones dirigidas al Relator Especial surgen con frecuencia la lapidación por adulterio, los crímenes de honor, el matrimonio forzado de menores y las amputaciones por robo. Muchos de estos temas tienen una notoria dimensión de género que ha llevado a intervenciones conjuntas con la Relatora Especial sobre la violencia contra la mujer, sus causas y consecuencias. En todos los casos, la actuación del Relator Especial tiene como marco jurídico de referencia el derecho internacional de los derechos humanos, que si bien toma en cuenta los sistemas tradicionales de justicia, los considera válidos siempre y cuando sus valores y prácticas respeten los estándares internacionales.

III. IMPERIO DEL DERECHO Y ESTADOS DE EXCEPCIÓN

A. Regulación jurídica del estado de excepción

37. Todos los sistemas jurídicos del mundo prevén la posibilidad de que los gobiernos adopten medidas excepcionales para hacer frente a situaciones de crisis. En la actualidad la declaración del estado de excepción sólo puede tener por objetivo mantener el orden constitucional y preservar las instituciones cuando peligra la vida organizada de una comunidad. Éste es el punto de partida para el análisis del estado de excepción, institución que, apartándose de la máxima *necessitas legem non habet*, se concibe como herramienta fundamental del estado de derecho. Antes de la creación de la Organización de las Naciones Unidas, y con ésta, de un régimen internacional de protección de los derechos humanos, la concepción imperante de los estados de

excepción tenía un marcado carácter absolutista. La declaración y el mantenimiento del estado de excepción se vinculaban al ejercicio de la soberanía del Estado, siendo escasa su regulación legal, que, en muchos casos, se limitaba a prever la autoridad que regiría dicha situación.

38. Una de las principales tareas acometidas por el derecho internacional en materia de derechos humanos ha sido precisamente poner fin a dicha concepción, delimitando el marco jurídico que rige el estado de excepción. El texto de referencia -por su alcance universal con respecto a los países, sujetos y derechos protegidos- es el artículo 4 del Pacto Internacional de Derechos Civiles y Políticos, que establece los requisitos formales y materiales para poder implementar el régimen de excepción. Ese artículo ha sido comentado extensamente por el Comité de Derechos Humanos, particularmente en su Observación general Nº 29 sobre el artículo 4 (los estados de excepción)[2]. La demora en la entrada en vigor del Pacto llevó a la Comisión de Derechos Humanos a implicarse en la clarificación y defensa de los derechos humanos, incluso durante los estados de excepción. La Subcomisión y la Comisión establecieron un procedimiento especial bajo el mandato sucesivo de dos relatores especiales, primero Nicole Questiaux[3] y después Leandro Despouy. En este último caso, el mandato consistió en la elaboración de una lista anual de países que hubiesen proclamado el estado de excepción y en un informe final presentado a la Comisión de Derechos Humanos en el año 1997[4]. Dicho informe recoge directrices para orientar la labor legislativa de los Estados y enuncia los principios jurídicos que rigen la declaración y vigencia del estado de excepción.

B. Principios que rigen el estado de excepción: relación con la administración de justicia

39. Desde el punto de vista del derecho internacional, el estado de excepción, su declaración y su régimen se rigen por ocho principios fundamentales, que tienen una importante aplicación en el ámbito de la administración de justicia.

40. El principio de legalidad remite a la necesaria preexistencia y respeto de normas claras y precisas sobre el estado de excepción. Asimismo, implica la existencia de mecanismos de control, que incluyen a la judicatura, para verificar que el estado de excepción se ajuste a la norma. El respeto al principio de legalidad durante el estado de excepción conlleva, consecuentemente, el respeto tanto de las normas relativas a la declaración y régimen del estado de excepción, como del cuerpo normativo dirigido al control del poder ejecutivo por parte del poder judicial. Si bien formalmente el principio de legalidad se satisface invocando una causal prevista por la ley, lo cierto es que la indeterminación normativa de numerosos tipos penales, en especial los relativos al terrorismo, provoca serios problemas. En este sentido, numerosos

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[2] *Documentos Oficiales de la Asamblea General, quincuagésimo sexto período de sesiones, Suplemento Nº 40* [A/56/40 (Vol. 1)], anexo V.

[3] Véase E/CN.4/Sub.2/1982/15.

[4] Véase el informe del Relator Especial sobre los derechos humanos y los estados de excepción a la Comisión en su 49º período de sesiones (E/CN.4/Sub.2/1997/19 y Add.1); véase también, L. Despouy, *Los derechos humanos y los estados de excepción*, Universidad Autónoma de México, 1999.

Estados han incorporado en sus legislaciones definiciones claramente atentatorias al principio de legalidad. El derecho internacional de los derechos humanos prescribe la tipificación precisa y clara de los delitos y las penas correspondientes, que solamente son enjuiciables después de su codificación. Dado el desacuerdo sobre el concepto de terrorismo, resulta fundamental que los tribunales tengan plena independencia y competencia para supervisar la legislación antiterrorista y su implementación. Resulta particularmente ilustrativa una reciente sentencia de la Corte Suprema de Filipinas, que estimó que si bien la proclamación del estado de excepción el pasado febrero de 2006 tras un fallido golpe de Estado era constitucional, en varios aspectos no superaba el test de constitucionalidad, en especial, el mandato dirigido a las fuerzas del orden en relación con los actos de terrorismo, puesto que la falta de definición de "terrorismo" originaba una inseguridad jurídica que podía resultar en arbitrariedades[5].

41. El principio de proclamación alude a la publicidad de la declaración, motivos y duración del estado de excepción. Se trata de un acto interno estrictamente regulado tanto en su aspecto procesal como en el sustantivo. Si bien los tratados no son explícitos al respecto, se entiende que la proclamación compete a los poderes políticos del Estado. Más discutido es el rol del poder judicial con respecto a sus facultades para verificar los requisitos formales y sustantivos del acto de proclamación. Dejando esta segunda cuestión para cuando se aborde el principio de amenaza excepcional, hay unanimidad sobre el rol fundamental de la judicatura en el control de los requisitos formales del estado de excepción. Valgan como ejemplo los casos sudafricano y colombiano. La Constitución sudafricana obliga a que el estado de excepción sea declarado por el Parlamento, y otorga un amplio margen a los tribunales para que decidan sobre la validez de la declaración y de los actos adoptados en virtud de la misma. Por su lado, la Constitución colombiana prevé que la declaración del estado de excepción se haga por decreto presidencial y que luego lo revise la Corte Constitucional. Se prevé expresamente que dicho decreto debe respetar el derecho internacional de los derechos humanos, lo cual es analizado por la propia Corte Constitucional. Al análisis según el derecho internacional y la consiguiente declaración de inconstitucionalidad ha contribuido, presentando *amicus curiae* ante la Corte, la oficina en Colombia del Alto Comisionado de Naciones Unidas para los Derechos Humanos.

42. El principio de notificación tiene una función de publicidad similar al de proclamación, en este caso con respecto a la comunidad internacional: los Estados que declaran un estado de excepción deben informar inmediatamente a los demás Estados parte en un convenio, explicitando las disposiciones suspendidas y las razones en que se funda. Sólo si se cumple este requisito el Estado puede invocar ante el órgano de control pertinente las restricciones introducidas. Durante los 12 años de mandato, el Relator Especial sobre los estados de excepción adoptó la práctica de enviar una nota verbal a todos los Estados solicitando información acerca de la existencia y régimen aplicado en cada estado de excepción -razones de la proclamación, derechos limitados, etc.- que por un conducto u otro le era comunicado. De esta forma se transfirió al ámbito internacional el poder de fiscalizar el cumplimiento de las obligaciones de los Estados bajo estados de excepción que los órganos internos no suelen supervisar.

[5] G.R. N.º 171396. May 3, 2006, *Randolf et al.*, *David et al. v. Gloria Macapagal-Arroyo*.

43. El principio de temporalidad implica la estricta correlación entre la duración del estado de excepción y la circunstancia que ha dado lugar a su adopción. La violación del principio de temporalidad suele transformar los estados de excepción en estados permanentes por medio de los cuales el ejecutivo concentra facultades extraordinarias. En este supuesto, la judicatura desempeña un rol relevante para garantizar el respeto del principio de temporalidad cuestionando la legalidad de las prórrogas sucesivas del estado de excepción. Sin embargo, el ejercicio de este poder por parte de la judicatura es frecuentemente contestado, por entenderse que son los poderes políticos los que deben valorar las circunstancias que motivan la declaración y vigencia del estado de excepción. Ello no ha impedido que vaya cobrando fuerza la intervención de la judicatura para poner término al estado de excepción una vez desaparecidas las causas que le dieron origen. En este sentido, y frente a los múltiples ejemplos de prolongación indebida del estado de excepción, la Corte Constitucional colombiana ha señalado que la restricción de derechos fundamentales "ha de tener como propósito esencial la preservación de esos mismos bienes, que de ninguna manera pueden ser destruidos sino provisoriamente limitados, con el propósito de que la obediencia al derecho se restaure y las libertades y derechos recobren la vigencia plena"[6].

44. El principio de amenaza excepcional se refiere a la naturaleza del peligro, al presupuesto de hecho que permite declarar el estado de excepción. Debe tratarse de un peligro excepcional, actual o inminente, real y concreto, que involucre a toda la nación, de manera que las medidas de restricción o limitación de derechos permitidas en situación de normalidad resulten manifiestamente insuficientes. La existencia de tal amenaza está estrechamente relacionada con el control judicial de la proclamación del estado de excepción, concretamente, con el control sustantivo de la "amenaza excepcional". Si bien la proclamación corresponde *prima facie* a los poderes políticos, que están mejor situados para valorar el alcance de la emergencia, lo cierto es que dado el uso recurrente de medidas de excepción no justificadas, varios altos tribunales han cuestionado de modo incidental los motivos alegados para declarar el estado de excepción. En relación con el terrorismo, no cualquier actividad terrorista califica para declarar el estado de excepción, puesto que la misma debe poner en peligro real y concreto la vida organizada de la nación. Así, por ejemplo, en la decisión del Comité Judicial de la Cámara de los Lores del Reino Unido cuando derogó parte de la *Anti-Terrorism Act*, se cuestionó que el terrorismo fuera una amenaza excepcional que pusiera en peligro la vida de la nación[7].

45. El principio de proporcionalidad apunta a la necesaria adecuación entre las medidas adoptadas y la gravedad de la situación. Ello implica que las restricciones o suspensiones impuestas lo sean en la medida estrictamente limitada a la exigencia de la situación. Este principio prefigura y condiciona el ejercicio de las facultades de excepción, y se basa en la necesaria conexidad con los hechos constitutivos del estado de excepción y la adecuación, necesidad y estricta proporcionalidad de las medidas[8]. Los órganos judiciales deben tener facultades para anular las medidas de excepción innecesarias o que vayan más allá de lo permitido por la ley nacional y los tratados internacionales. Este principio, al igual que uno de

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[6] Sentencia C-939/02 de 31 de octubre de 2002, *op. cit.*, consideraciones y fundamentos, párr. 7.

[7] *A. v. Secretary of State for the Home Department*, 2005, 2 A.C. 68 (H. L.), 130.

[8] *Loc. cit.* (nota 6), párr. 5.

sus fundamentos -la legítima defensa- supone la existencia de un peligro inminente y exige una relación de adecuación entre éste y los medios utilizados para repelerlo. A su vez, éstos, para ser legítimos, deberán ser proporcionales a la gravedad del peligro. Por esta razón, si la excusa del estado de excepción debe ser tratada en el derecho internacional como un concepto jurídico, es necesario que su apreciación sea de la competencia de una autoridad imparcial. La judicatura, por lo tanto, se encuentra en una posición de especial responsabilidad para valorar la proporcionalidad de las medidas adoptadas en el marco del estado de excepción[9].

46. El principio de no discriminación en el marco del estado de excepción, se infiere tanto del párrafo 1 del artículo 4 del Pacto Internacional de Derechos Civiles y Políticos como, de modo general, del principio de no discriminación que subyace al derecho internacional de los derechos humanos. En este sentido, las disposiciones que diferencian el goce de derechos entre nacionales y extranjeros, entre otros los derechos jurisdiccionales, pueden contravenir el principio de no discriminación. Un ejemplo cabe encontrarlo en el Reino Unido y la *Anti-Terrorism, Crime and Security Act* del año 2001. Dicha ley facultaba al Ministro de Interior para detener indefinidamente y sin juicio a extranjeros sospechosos de participar en actividades terroristas que no pudieran ser deportados. Ante la alegación de que los poderes contenidos en la *Anti-Terrorism Act* violaban entre otros el derecho a la libertad personal, el derecho a un juicio justo y el derecho a la no discriminación, el Gobierno esgrimió el argumento de que se estaba en una emergencia. Tres años después, el Comité Judicial de la Cámara de los Lores concluyó que no era aceptable diferenciar las normas que rigen a los extranjeros de las que rigen a los nacionales[10], lo que se expresó en la *Terrorism Act 2006*.

47. Por último, el principio de compatibilidad, concordancia y complementariedad de las distintas normas del derecho internacional prohíbe la adopción de medidas de excepción que, siendo admisibles por un determinado tratado internacional, colisionan con otras obligaciones internacionales, ya sean consuetudinarias o convencionales. El derecho a un juicio justo -que consagran los artículos 14 y 9 del Pacto- debe analizarse en forma complementaria a la luz de las normas de *ius cogens* y sobre la base de las obligaciones que resultan de otras normas del derecho internacional, en particular del derecho internacional humanitario.

48. Existen normas de *ius cogens*, que exigen que incluso durante el estado de excepción se mantengan las garantías generales relativas a la detención. Numerosos precedentes internacionales han identificado muchos otros derechos inderogables, como por ejemplo el derecho a ser informado de las razones de la detención[11], la provisión de garantías frente a la detención incomunicada o indefinida, el derecho a presentar un hábeas corpus, garantías frente a

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[9] L. Despouy, *op. cit.* (nota 4 *supra*), págs. 38 y 39.

[10] Véase nota 7 *supra*.

[11] Estando en vigor las leyes de emergencia en Irlanda del Norte, la práctica de no informar a las personas arrestadas acerca de las razones de detención fue declarada ilegal por los tribunales del Reino Unido. También el TEDH hace referencia a dicha práctica en *Irlanda c. el Reino Unido*, pág. 76, párr. 198.

los abusos durante el interrogatorio[12], y la preservación de los estándares de prueba habituales. Asimismo, son inherentes a los derechos inderogables las medidas procesales dirigidas a asegurar su protección, por lo que las disposiciones relacionadas con dichas medidas no podrán ser derogadas. En este sentido, cabe acoger positivamente la reacción de la Corte Suprema de los Estados Unidos que en el asunto *Rasul c. Bush* señaló que los demandantes tenían derecho a presentar un hábeas corpus ante cualquier tribunal federal[13], oponiéndose de este modo a la posición gubernamental que afirmaba que Guantánamo no es territorio norteamericano y por ello los allí detenidos "no gozan del privilegio de litigar ante los tribunales de los Estados Unidos"[14].

49. Las normas del derecho internacional de derechos humanos y las del derecho internacional humanitario son complementarias. La Corte Internacional de Justicia ha señalado que "la protección que ofrecen los convenios y convenciones de derechos humanos no cesa en caso de conflicto armado, salvo en caso de que se apliquen disposiciones de suspensión como las que figuran en el artículo 4 del Pacto". Asimismo, según la Corte, "algunos derechos pueden estar contemplados exclusivamente en el derecho internacional humanitario, otros pueden estar contemplados exclusivamente en el derecho de los derechos humanos, y otros pueden estar contemplados en ambas ramas del derecho internacional"[15]. Las disposiciones del derecho internacional humanitario -que, por otro lado, básicamente coinciden con lo establecido por el artículo 14 del Pacto- establecen un mínimo inderogable del derecho al debido proceso. De acuerdo con las convenciones de Ginebra y sus respectivos protocolos los derechos a un juicio justo y al debido proceso son inderogables y su infracción constituye una violación grave de las convenciones[16]. Los siguientes elementos conforman una suerte de contenido esencial del derecho al debido proceso[17]: a) derecho a ser informado prontamente de las razones de la detención; b) derecho a los medios de defensa necesarios; c) derecho a estar presente en el juicio; d) presunción de inocencia; e) derecho a guardar silencio; f) derecho a un tribunal independiente e imparcial; g) derecho a apelación; h) irretroactividad de la ley penal; j) derecho a presentar testigos; k) principio de *non bis in idem*; l) derecho a un abogado de la propia elección; m) derecho a la asistencia letrada; n) publicidad de la sentencia. Si estas

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[12] No sólo los abusos están prohibidos, sino también las pruebas invalidadas. Véase a este respecto la Observación general Nº 13 del Comité de Derechos Humanos CCPR/C/21/Add.3, pág 6.

[13] Lamentablemente, la Military Commissions Act aprobada el pasado mes de septiembre de 2006, entre otras medidas regresivas, desoye también este particular.

[14] US Submissions to the Supreme Court in Shafiq Rasul et al. V. George W. Bush et al., "Biref for the Respondents in Opposition"; October 2003, at 18.

[15] ICJ, "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories", dictamen, *ICJ Reports 2004*, párr. 106.

[16] Artículos 130 de la Convención III y 147 de la Convención IV.

[17] Véase artículo 75 del Protocolo I y artículo 6 del Protocolo II.

garantías están previstas en tiempo de guerra[18], su desconocimiento en tiempo de paz no tendría justificación.

50. Además de la complementariedad entre ambas ramas del derecho internacional, la inderogabilidad del derecho a un juicio justo resulta de la obligación que tienen los Estados de respetar y garantizar los derechos reconocidos en los tratados y de ofrecer la posibilidad de interponer un recurso efectivo en caso de violación, tal como prevé el párrafo 3 del artículo 2 del Pacto Internacional de Derechos Civiles y Políticos. Pese a que dicho artículo no se menciona entre los artículos inderogables en el párrafo 2 del artículo 4 del Pacto, constituye una obligación convencional inherente al Pacto que debe respetarse en todo momento.

C. Impacto de los estados de excepción y de otras medidas excepcionales, sobre los derechos humanos y la judicatura

51. Si bien los precedentes establecidos por los órganos convencionales y extraconvencionales han permitido avanzar en la regulación jurídica de los estados de excepción, en la actualidad se registran múltiples desviaciones en el comportamiento institucional de los Estados que inciden negativamente en el ejercicio de los derechos humanos. En particular, en el ámbito del derecho a un juicio justo y la independencia de la judicatura. Con respecto a lo primero sobresale la violación de los derechos al hábeas corpus, a la asistencia letrada de propia elección, a apelar ante un tribunal independiente, a una sentencia pública, a presentar los propios testigos y a un proceso público. Son frecuentes también la detención indefinida, sin cargos y sin juicio, la detención prolongada incomunicada, la obtención de confesiones mediante tortura, el dictado de sentencias a raíz de tales confesiones, la violación del principio *non bis in idem* y el recurso indiscriminado a la detención preventiva. Asimismo, con respecto al poder judicial se constata la adopción de medidas dirigidas a evitar que actúe como contrapeso del ejecutivo. Esas medidas incluyen, por ejemplo, el reemplazo de los tribunales ordinarios por tribunales o comisiones militares, el hostigamiento a jueces, fiscales y abogados, las purgas y traslados de jueces adonde no interfieran con el ejecutivo, la sumisión del poder judicial al ejecutivo, y la descalificación y desconocimiento de sentencias judiciales por parte del ejecutivo.

52. Nuevas amenazas han dado pie a nuevos modos de suspender los derechos humanos en contravención a las obligaciones asumidas por los Estados. Actualmente se constata el recurso a medidas de excepción en el contexto de situaciones ordinarias, desconociendo varios de los principios mencionados, particularmente los de proclamación, notificación, amenaza excepcional, proporcionalidad y no discriminación. Junto con la pervivencia de estados de excepción ilegalmente prolongados y las consiguientes violaciones de derechos humanos, hoy es frecuente la adopción de restricciones que sobrepasan ampliamente las limitaciones y derogaciones permitidas en situaciones ordinarias generalmente a través de leyes de seguridad nacional, leyes antiterroristas y leyes de inmigración[19].

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[18] Convención de Ginebra III, arts. 82 a 108; Convención de Ginebra IV, arts. 43, 65, 67, 71 a 76, 78, 117 y 126; Protocolo Adicional Primero, art. 75; Protocolo Adicional Segundo, art. 6.

[19] A este respecto debe enfatizarse que una medida reviste carácter excepcional más allá de la declaración de estado de excepción si supera las limitaciones permitidas en situaciones ordinarias.

53. La lucha contra el terrorismo plantea nuevos desafíos. El terrorismo se presenta de modo cada vez más frecuente como causal de la declaración del estado de excepción, cuando en realidad puede no serlo y de hecho en muchas ocasiones no lo es. Además de afectar las garantías del debido proceso, el combate al terrorismo se invoca como excusa para restringir o privar otros derechos, como la libertad de expresión, asociación, circulación de personas, etc. En este sentido, algunos Estados han llegado al extremo de crear sistemas paralelos de administración de justicia completamente al margen de los estándares universalmente vigentes y en los que se sustrae la aplicación del derecho internacional de derechos humanos y del derecho internacional humanitario a partir de la calificación del acusado como "terrorista", "subversivo" o "enemigo combatiente".

VI. ACONTECIMIENTOS RELEVANTES DE LA JUSTICIA INTERNACIONAL

A. Alto Tribunal Penal Iraquí

54. El Relator Especial ha seguido desde su inicio, primero con expectación y luego con preocupación, la creación y los avatares del Tribunal Especial Iraquí. La problemática jurídica en torno a dicho tribunal, ahora denominado Alto Tribunal Penal Iraquí, puede dividirse en cuatro grandes puntos.

55. El primero es el referido a la constitución del tribunal y su posible violación de las leyes de la guerra. Efectivamente, los Convenios de Ginebra prohíben a la potencia ocupante la creación *ex novo* de tribunales, y si bien el Estatuto adoptado por la Autoridad Provisional de la Coalición fue luego refrendado por el Consejo de Gobierno y más tarde por las autoridades iraquíes electas, esto no suprime el vicio originario. Los cambios sufridos por un lado por el propio Estatuto del Tribunal, y por otro, su filiación orgánica -puesto que ha visto modificada su dependencia jerárquica en varias ocasiones-, generan serias incompatibilidades con las normas del debido proceso y la independencia judicial.

56. Además de las numerosas limitaciones del Estatuto del Tribunal en lo referente a la competencia temporal y personal, como ha sido señalado en informes anteriores, cabe apuntar que el Estatuto no condice con los estándares internacionales de derechos humanos en múltiples aspectos. El hecho de que no prohíbe las confesiones obtenidas bajo tortura o detención arbitraria, de que recoge ilícitos que fueron definidos como tales solamente después de su comisión por parte del régimen de Saddam Hussein, y que no tutela el derecho a no autoincriminarse, son aspectos que han sido puntualizados por el Relator Especial y por un gran número de organizaciones de defensa de los derechos humanos.

57. El tercer aspecto, y sin duda no menos preocupante, es el referido a la evolución y conducción del proceso relativo a la matanza de Dujail, tanto en su fase de instrucción como en las audiencias del juicio. Un juez, varios candidatos a juez, tres abogados defensores y un empleado del tribunal han sido asesinados durante ese proceso. Otro juez renunció a presidir el caso tras recibir presiones por su anterior afiliación al régimen Baas. El juez que lo reemplazó, y que leyó la sentencia condenatoria, había sido acusado y preso por actividades contrarias al régimen de Hussein. Por otro lado, durante varios meses a los acusados no se les permitió

acceder a un abogado de su elección y, cuando lo tuvieron, los respectivos abogados denunciaron amenazas e injerencias en su labor, al extremo de ser expulsados del juicio.

58. La condena a muerte de varios de los encausados adquiere particular relevancia. Más allá de la repulsa general que suscita hoy en día la pena de muerte, cuyo restablecimiento en Iraq[20] alejó la posibilidad de que las Naciones Unidas cooperaran

en la conformación del Tribunal, existe un sólido consenso incluso por parte de aquellos que apoyan este tipo de condena que la misma sólo puede pronunciarse cuando sean respetadas todas las garantías judiciales. En el proceso seguido a raíz de la matanza de Dujail ello no ha sido así, por lo que de ejecutarse la sentencia, no sólo se estaría violando el derecho al debido proceso sino también el derecho a no ser privado arbitrariamente de la vida. Se trata de la violación de una norma de *ius cogens* que dañaría las bases sobre las que se pretende asentar el nuevo Iraq. Además, tendría un efecto perverso sobre el derecho a la justicia y a obtener reparación por parte de otras muchas víctimas de los graves y reiterados crímenes cometidos por Saddam Hussein. Por último, algunos entienden que la ejecución de la pena de muerte sería un factor agravante de la guerra civil desatada en el Iraq y de la propagación de la violencia en la región.

B. Cámaras Excepcionales de Camboya

59. El Relator Especial expresa su satisfacción por el inicio de las actividades de las Cámaras Excepcionales de Camboya a fin de juzgar a los máximos líderes del Khmer Rouge por los aberrantes crímenes cometidos entre abril de 1975 y enero de 1979. El Relator Especial nota con satisfacción que el 3 de julio de 2006 los jueces nacionales e internacionales que integran el Tribunal tomaron juramento y que inmediatamente después de haber asumido invitaron al público y a algunos expertos a transmitirles comentarios sobre el reglamento interno de las Cámaras. Asimismo, es particularmente positivo el hecho de que los fiscales hayan empezado las investigaciones. En este contexto, el Relator Especial se felicita de la transparencia del procedimiento establecido.

VII. CONCLUSIONES

60. El análisis de las actividades realizadas a través de las comunicaciones y las misiones entre 1994 y 2006 pone de relieve la magnitud y gravedad de las situaciones que atentan contra el sistema judicial y sus actores, y su negativo impacto sobre el estado de derecho.

61. Resulta preocupante que -a pesar de las garantías legales en cada país y de los múltiples instrumentos internacionales destinados a preservar su independencia- abogados, jueces, fiscales y auxiliares de justicia en todas las regiones del mundo, con frecuencia se vean sometidos a presiones, hostigamientos y amenazas que pueden llegar hasta la desaparición forzada, el asesinato o la ejecución extrajudicial por el mero hecho de llevar a cabo su labor.

[20] Tras la efímera suspensión por parte de las autoridades ocupantes.

62. Similar preocupación genera la amplia gama de situaciones que atentan contra la independencia del sistema judicial en el mundo, y el impacto que las mismas tienen sobre el estado de derecho, en la medida que la judicatura es, precisamente, uno de los principales custodios.

63. El número y la frecuencia de las intervenciones que realiza el Relator Especial a través de las comunicaciones o como resultado de visitas a países revela la intensidad de la labor que desarrolla y la necesidad de reforzar este mecanismo de intervención. El apoyo que brindan las organizaciones no gubernamentales y la reacción positiva de los Estados a las comunicaciones del Relator Especial hacen que, en muchos casos, el procedimiento logre prevenir o hacer cesar numerosas violaciones. Además, otras formas de intervención, como la que se llevó a cabo en el Ecuador y en la que se implicó a personalidades e instituciones internacionales y del ámbito judicial en la solución de las situaciones que les atañen, pueden registrarse como experiencias de "buenas prácticas" a seguir.

64. El estado de excepción es una institución jurídica regulada en el marco del estado de derecho, por lo cual la supervisión de la judicatura asume un rol fundamental tanto en el control de la legalidad de su declaración como en la protección de los derechos humanos durante su vigencia.

65. Sin embargo, la actividad de la relatoría especial muestra que la administración de justicia en general y el derecho al debido proceso en particular, figuran entre los principales damnificados por las medidas de excepción. Con frecuencia, el control judicial de los actos del ejecutivo se ve debilitado por medidas cuya finalidad es minar la independencia del sistema judicial durante los períodos de crisis. Asimismo, reformas legislativas y otras disposiciones han generalizado prácticas como la detención indefinida y sin cargos, la restricción del derecho a la asistencia letrada, la expulsión de extranjeros a países donde se practica la tortura, y la conformación de pseudotribunales especiales que no cumplen con los requisitos mínimos de independencia e imparcialidad.

66. El informe recoge también aquellas situaciones donde la judicatura ha respondido con independencia y determinación frente a dichas medidas, poniendo de relieve la importancia de que el poder judicial ponga freno a los actos *ultra vires* de otros poderes. Bajo la premisa de que debe velarse por la preservación de la vida de los ciudadanos a la vez que por la preservación de los valores fundamentales de la nación, algunos tribunales han puesto en cuestión las causales invocadas por los gobiernos para declarar el estado de excepción y, entre otras, han cuestionado que el terrorismo sea una "amenaza excepcional que pone en peligro la vida de la sociedad". Asimismo en muchos casos han anulado medidas particularmente lesivas de los derechos fundamentales.

67. El seguimiento de las actividades que desarrollan los tribunales especializados reviste sumo interés en el quehacer de la relatoría especial. En este informe se hace referencia a dos de ellos, el del Iraq, que ha sido objeto de seguimiento desde hace varios informes y donde ha debido intervenir en numerosas oportunidades como consecuencia del asesinato de jueces, abogados y auxiliares de justicia, y por el no respeto de los estándares internacionales de un juicio justo. En forma positiva se subraya la constitución del Tribunal Especial de Camboya y se alientan los esfuerzos tendientes a poner fin a la impunidad de aquellos que han cometido violaciones graves a los derechos humanos.

68. Por último, las posibilidades de difusión de las actividades de los relatores especiales se han incrementado notablemente a partir de los desarrollos informáticos y la difusión mediática, la que también ha permitido aumentar la eficacia de sus misiones y el interés de la sociedad en sus resultados. Esta visibilidad contemporánea es un factor fundamental y ya inescindible de la labor de los expertos.

VII. RECOMENDACIONES

69. El Relator Especial invita al Consejo de Derechos Humanos a incrementar aún más sus esfuerzos en defensa de la labor que desarrollan los distintos actores vinculados a la administración de justicia y a examinar anualmente la magnitud y gravedad de los fenómenos que afectan al sistema judicial y su independencia a fin de recomendar a los Estados la adopción de medidas concretas destinadas a garantizar a los operadores judiciales la seguridad y protección que requieren para un adecuado desempeño de sus funciones.

70. A la luz de las verificaciones señaladas, resulta imperativo que el Consejo refuerce la labor de la relatoría especial otorgando los medios necesarios para profundizar su labor y facilite un mayor despliegue de sus actividades.

71. Asimismo es importante que las Naciones Unidas privilegien en sus actividades de apoyo y cooperación técnica la temática de la justicia, sobre todo en relación con los países que atraviesen una situación de transición o bien estén saliendo de un conflicto armado que hubiese impactado gravemente en la conformación del Estado.

72. Teniendo en cuenta que la administración de justicia es uno de los pilares del estado de derecho y el sistema democrático, la defensa de la justicia debe incorporarse como tema prioritario en el análisis de los aspectos institucionales que abarca el conjunto de las actividades de las Naciones Unidas.

73. Considerando la dinámica y el protagonismo que han adquirido las organizaciones internacionales y nacionales de juristas que actúan en pro de una judicatura independiente, sería oportuno que las Naciones Unidas incorporasen su aporte y experiencia en las actividades de cooperación técnica que desarrolla, y demás actividades de promoción y defensa de los derechos humanos. Por ello el Relator Especial se propone obrar para producir ese acercamiento entre las Naciones Unidas y el medio judicial.

74. En relación con los estados de excepción, resulta imperativo que los Estados adecuen sin demora su legislación interna y sus prácticas nacionales a los principios, jurisprudencia y estándares internacionales que rigen la vigencia de los estados de excepción[21].

75. Con respecto a la administración de justicia, es imperativo que la legislación relativa a los estados de excepción impida, en todos los casos:

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[21] Se hace referencia en particular a los principios señalados en el Informe 1997, y a la jurisprudencia y observaciones generales del Comité, así como la rica jurisprudencia que surge de los órganos de control de los sistemas regionales.

a) Restar validez a las disposiciones de la Constitución o la ley fundamental, y a la legislación relativa al nombramiento, al mandato o a los privilegios e inmunidades de los miembros de la judicatura, y a su independencia e imparcialidad;

b) Restringir la jurisdicción de los tribunales: i) para examinar la compatibilidad de la declaración del estado de excepción con las leyes, la Constitución y las obligaciones que impone el derecho internacional, y para determinar que dicha declaración es ilegal o inconstitucional, en caso de que haya incompatibilidad; ii) para examinar la compatibilidad de cualquier medida adoptada por una autoridad pública con la declaración del estado de excepción; iii) para iniciar actuaciones judiciales destinadas a hacer respetar o proteger cualquier derecho reconocido por la constitución o la ley fundamental y el derecho nacional e internacional cuya efectividad no sea afectada por la declaración del estado de excepción; iv) para entender asuntos de carácter penal, incluidos los delitos relacionados con el estado de excepción.

76. Teniendo en cuenta que el estado de excepción sigue siendo fuente de graves violaciones de los derechos humanos, el Relator Especial recomienda la elaboración de una declaración internacional que cristalice el conjunto de principios y prácticas existentes y que tienen por finalidad garantizar el respeto a los derechos humanos y las libertades fundamentales bajo los estados de excepción. Un texto así unificado sería una referencia inequívoca para que los Estados adecuaran su conducta a la legalidad internacional durante los períodos de crisis. En este sentido, se recomienda al Consejo de Derechos Humanos que establezca un mecanismo encargado de elaborar dicha declaración y al mismo tiempo recoja la opinión de los sectores concernidos por esta temática. A estos efectos, se solicita al Consejo que pida al Alto Comisionado de Naciones Unidas para los Derechos Humanos la celebración, en el curso de 2007, de un seminario internacional de expertos encargado de sentar las bases del instrumento que se propone.

77. En cuanto al Alto Tribunal Penal Iraquí, el Relator Especial reitera enfáticamente las recomendaciones que formulara en octubre de 2005 ante la Asamblea General: instar a las autoridades iraquíes a seguir el ejemplo de otros países con sistemas judiciales deficientes, acudiendo a las Naciones Unidas para conformar un tribunal independiente que responda a los parámetros internacionales en materia de derechos humanos; y asimismo, que renuncie en todos los casos a la aplicación de la pena capital.

78. En relación con el Tribunal de Camboya, el Relator insta a los jueces a asegurase de que el reglamento interno integre todas la disposiciones necesarias para garantizar que los procesos se lleven a cabo en pleno respeto de los estándares internacionales sobre el derecho a un juicio justo, imparcial e independiente.

79. El Relator Especial insta a todos los Estados a que ratifiquen con prontitud la Convención Internacional para la protección de todas las personas contra las desapariciones forzadas, recientemente adoptada.

Naciones Unidas A/62/207

Asamblea General

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Sexagésimo segundo período de sesiones
Tema 72 b) del programa provisional*
Promoción y protección de los derechos humanos: cuestiones relativas a los derechos humanos, incluidos distintos criterios para mejorar el goce efectivo de los derechos humanos y las libertades fundamentales

Los derechos civiles y políticos, en particular las cuestiones relacionadas con la independencia del poder judicial, la administración de justicia y la impunidad

Nota del Secretario General

El Secretario General tiene el honor de transmitir a los miembros de la Asamblea General, de conformidad con la resolución 5/1 del Consejo de Derechos Humanos, el informe elaborado por el Sr. Leandro Despouy, Relator Especial sobre la independencia de los magistrados y abogados.

Resumen

El presente informe evoca los temas que han sido de mayor preocupación para el Relator Especial durante 2007 luego de la publicación, a comienzos del año, de sus informes sobre las actividades desarrolladas en 2006, que fueran presentados ante el Consejo de Derechos Humanos en junio de 2007. Es el tercer informe que el Relator presenta a la Asamblea General, y en él se destacan las conferencias internacionales en las que participó y las reuniones llevadas a cabo con diferentes actores gubernamentales y no gubernamentales, con el fin de programar sus próximas misiones y hacer el seguimiento de las ya emprendidas. El Relator Especial informa también sobre las dos misiones que llevó a cabo en 2007, a Maldivas y a la República Democrática del Congo, recogiendo algunas de sus principales recomendaciones.

El informe ofrece un panorama general de las situaciones y circunstancias que afectan principalmente a la independencia del poder judicial, desde lo operativo hasta lo estructural. Está basado en un análisis de las múltiples intervenciones

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realizadas por esta Relatoría entre 1994 y 2006. Una de las conclusiones del Relator Especial es que, en la mayoría de los países, los operadores judiciales no pueden desempeñar sus funciones de manera independiente y —con demasiada frecuencia— ven comprometidas su seguridad y protección personal y familiar. Al respecto, insta a los Estados a adoptar medidas concretas destinadas a garantizar su seguridad e independencia. Insta también a las Naciones Unidas a hacer de la defensa de la justicia un tema prioritario en su análisis de las cuestiones institucionales y a privilegiar la temática de la justicia en sus actividades de apoyo y cooperación técnica.

Por otra parte, el Relator Especial llama la atención de la Asamblea General sobre las reiteradas violaciones del derecho a un juicio justo y otros derechos humanos que se verifican bajo situaciones de estados de excepción. En este sentido, el Relator Especial informa a la Asamblea sobre la acogida favorable por parte del Consejo de Derechos Humanos a su propuesta de organizar un seminario de expertos que estudiará el impacto de los estados de excepción sobre los derechos humanos. Este seminario, que se celebrará a finales de 2007, tiene como objetivo recomendar al Consejo de Derechos Humanos la adopción de soluciones respecto a este tema, como por ejemplo la adopción de una declaración que recoja los principios relativos al respeto de los derechos humanos aplicables durante la vigencia de estados de excepción.

Finalmente, el Relator analiza la situación de la justicia internacional. Hace un seguimiento de la Corte Penal Internacional y de la situación en el Iraq, en particular respecto del Alto Tribunal Penal Iraquí, temas de los que se viene ocupando en sus informes anteriores presentados ante el Consejo de Derechos Humanos y la Asamblea General. Asimismo, continúa el análisis de las actividades de las Cámaras Excepcionales de Camboya.

Índice

I. Introducción

1. El Relator Especial sobre la independencia de los magistrados y abogados presenta su tercer informe a la Asamblea General. En él da cuenta de sus actividades más recientes, que incluyen las misiones a Maldivas y a la República Democrática del Congo. También aborda varios temas sustantivos: las situaciones que afectan a la administración de la justicia y a la independencia de jueces, fiscales y abogados; los estados de excepción y su impacto sobre el estado de derecho; y el acceso a la justicia. Finalmente, continúa con el seguimiento a la Corte Penal Internacional, a la situación en el Iraq, en particular respecto al Alto Tribunal Penal Iraquí, y a las Cámaras Excepcionales de Camboya a la luz de las últimas informaciones disponibles.

II. Actividades del Relator Especial

A. Actividades realizadas

2. Entre el 11 y el 20 de junio de 2007, el Relator Especial participó en Ginebra en la decimocuarta reunión anual de los procedimientos especiales asumidos por el Consejo de Derechos Humanos, y en el quinto período de sesiones del Consejo de Derechos Humanos. En esa oportunidad, el Relator Especial presentó al Consejo de Derechos Humanos el informe anual, el informe sobre las comunicaciones enviadas a los gobiernos con sus respectivas respuestas y sendos informes sobre las misiones realizadas a Maldivas y a la República Democrática del Congo. Asimismo, el Relator se reunió con representantes de varias misiones permanentes acreditadas en Ginebra a fin de coordinar los preparativos para las misiones que tiene programadas y con representantes de organizaciones gubernamentales y no gubernamentales y de distintos órganos de derechos humanos de las Naciones Unidas. También hizo una presentación sobre los estados de excepción y su impacto en el respeto de los derechos humanos; en ella se fundamentó sobre la importancia de organizar un seminario, en la perspectiva de adoptar una declaración al respecto. Participó asimismo como expositor en dos seminarios: uno sobre el derecho a la verdad y otro sobre el Alto Tribunal Penal Iraquí.

3. Los días 28 y 29 de junio de 2007, el Relator Especial participó en un encuentro de Cortes Supremas de Justicia de la región andina organizado por la Corte Suprema del Ecuador, cuya constitución e integración él mismo había impulsado en 2005, junto a las Naciones Unidas y la Organización de los Estados Americanos, cuando los jueces que integraban la Corte ecuatoriana fueron destituidos inconstitucionalmente y se generó una grave crisis institucional. En dicha oportunidad el Relator expuso sobre el tema “Independencia judicial y acceso a la justicia” haciendo referencia a los principios internacionales que rigen la independencia judicial.

4. A nivel académico, cabe destacar la conferencia magistral sobre el futuro del derecho internacional, en la Université de la Sorbonne Nouvelle, París, en mayo de 2006, en el marco de la segunda Conferencia de la Sociedad Europea de Derecho Internacional. Asimismo, el Relator Especial fue invitado por la American Society of International Law y la Harvard Law School para participar en el seminario sobre el tema “Diálogo judicial transnacional: fortaleciendo las redes y los mecanismos para la cooperación y consulta judicial” en diciembre de 2006. En dicha oportunidad

presentó una ponencia por escrito titulada “Las perspectivas del diálogo y la cooperación judicial” (véase *http://www.harvardilj.org/online/107)*.

B. Próximas actividades

5. El Relator Especial prevé realizar una misión a la Federación de Rusia a fin de 2007 o en el primer semestre de 2008, y a Guatemala en el primer semestre de 2008. Prevé también realizar una misión a Fiji, Camboya y Filipinas. Con respecto a estos últimos países, el Relator Especial espera recibir pronto una respuesta de los Gobiernos que permita la realización, lo antes posible, de estas importantes misiones. De igual manera queda a la espera de las positivas respuestas a sus pedidos de visita por parte de los Gobiernos de la República Islámica del Irán, Kenya, Nigeria, Sri Lanka, Túnez, Turkmenistán y Uzbekistán, para poder realizar misiones a estos países en el futuro próximo.

III. Misiones realizadas

A. Misión a Maldivas

6. Entre el 25 de febrero y el 1º de marzo de 2007 el Relator Especial visitó Maldivas, invitado por su Gobierno, a fin de asistirlo en la implementación de una serie de reformas legales en el marco de un plan de reforma integral adoptado por el Presidente de la República en marzo de 2006, en particular en lo referente a las reformas constitucionales y jurídicas tendientes a establecer una judicatura independiente y un sistema de real y efectiva separación de poderes. Durante su misión, el Relator Especial se reunió con el Presidente de la República, varios ministros, funcionarios judiciales, representantes de la comunidad legal del país, miembros de organizaciones no gubernamentales y representantes de partidos políticos, que lo informaron sobre las cuestiones que se plantean actualmente en Maldivas en lo concerniente al funcionamiento e independencia del poder judicial. El Relator se entrevistó asimismo con reclusos de la prisión de Maafushi.

7. El Relator Especial agradece al Gobierno de Maldivas por haberle brindado la oportunidad de analizar la situación del sistema judicial y examinar el estado actual y el alcance de las reformas tendientes a adecuar el sistema judicial de conformidad con los compromisos internacionales asumidos por Maldivas, en particular con los emergentes del Pacto Internacional de Derechos Civiles y Políticos y el Pacto Internacional de Derechos Económicos, Sociales y Culturales, ratificados recientemente por el país. Valora muy positivamente la preocupación y el interés del Gobierno por avanzar rápidamente hacia ese objetivo.

8. El informe sobre la visita (A/HRC/4/25/Add.2) tiene por objeto aportar una visión general del sistema judicial de Maldivas y de las dificultades a las que se enfrentan actualmente los principales responsables de la administración de justicia. La visita demostró que la situación actual del sistema judicial de Maldivas requiere de reformas urgentes y profundas que le permitirán cumplir con los criterios internacionales mínimos de independencia y eficiencia en un sistema democrático. Estos objetivos podrán alcanzarse a través del diálogo entre las diferentes fuerzas políticas del país y, si así lo solicitara el Gobierno de Maldivas, con el apoyo de la asistencia técnica y financiera de la comunidad internacional.

9. En la actualidad el sistema judicial de Maldivas depende del Presidente de la República y, por lo tanto, carece de la independencia necesaria para cumplir con su rol fundamental de administrar justicia en forma equitativa e independiente y salvaguardar y proteger el ejercicio y goce de los derechos humanos.

10. En cuanto al cumplimiento de los derechos y garantías del debido proceso, son frecuentes: las detenciones preventivas sin las adecuadas revisiones judiciales; los juicios en los que el acusado no cuenta con la correspondiente representación letrada; y las investigaciones penales exclusivamente a cargo de la policía, sin el debido control judicial de fiscales o jueces, lo que plantea graves problemas en cuanto al respeto de los derechos y garantías del debido proceso en la fase de investigación. Entre otras verificaciones, el Relator Especial detectó una grave escasez de jueces y abogados en la mayor parte del territorio, como consecuencia —entre otros factores— de su particular configuración geográfica, y una insuficiente capacidad interna para impartir una adecuada capacitación jurídica y entrenamiento legal —principalmente en lo relativo al *common law*— a los futuros profesionales del derecho del país.

11. En lo concerniente al Ministerio Público, el Relator Especial recomienda la creación del cargo de Fiscal General, que deberá ser absolutamente independiente del poder ejecutivo y deberá desempeñar un rol importante durante las investigaciones policiales.

12. El Relator Especial también ha podido constatar que se está iniciando una positiva labor de codificación de la legislación del país. En particular, se está elaborando un nuevo código penal y un nuevo código de procedimiento penal con miras a armonizar la ley *sharia* con el *common law*.

13. Con respecto a los profesionales del derecho, el Relator Especial verificó que existe en el país una grave escasez de abogados, en particular en el sistema de justicia penal, lo que compromete gravemente el derecho de defensa. Además, no está garantizada la independencia de los abogados, puesto que no existe un colegio de abogados, y es el Ministerio de Justicia el que se ocupa de todas las cuestiones disciplinarias y el que tiene la potestad de otorgar y retirar las licencias de los letrados para que puedan ejercer su profesión. En este contexto, el Relator Especial recomienda la constitución de un colegio de abogados autónomo que pueda garantizar la necesaria independencia de los abogados en el ejercicio de sus funciones. Esa institución debería ocuparse, en particular, de establecer un examen común para el acceso a la profesión, de expedir y retirar las licencias, de garantizar la aplicación de normas mínimas para el ejercicio de la abogacía, de decidir sobre las cuestiones disciplinarias y, en general, de representar en forma independiente los intereses de la profesión.

14. El Relator Especial verificó con suma preocupación el drástico incremento del tráfico y consumo de drogas que afecta gravemente al país. En ocasión de su visita a la prisión de Maafushi ha podido constatar que el enfoque punitivo del sistema de justicia penal, mediante la criminalización de los jóvenes consumidores de drogas y la imposición de severas penas privativas de libertad en ausencia de programas de prevención y rehabilitación, no logró reintegrar a los ofensores a la sociedad, registrándose —por el contrario— altos niveles de reincidencia. Esto demuestra el fracaso del actual sistema de justicia criminal y la necesidad de crear e implementar con urgencia programas de prevención y rehabilitación.

15. Resulta urgente, sin duda, la adopción de profundas reformas en el sistema judicial de Maldivas de conformidad con los criterios internacionales mínimos de independencia y eficiencia en un sistema democrático. Al respecto, el Relator Especial destaca y alienta la decisión del Gobierno de emprender una amplia reforma constitucional y legislativa tendiente —entre otras cosas— a instaurar una real y efectiva separación de poderes, garantizar la independencia de la judicatura y celebrar en 2008 las primeras elecciones democráticas en el país.

16. El Relator Especial considera de suma importancia la pronta aprobación del proyecto de Constitución que se encuentra bajo análisis en el Majlis especial (Asamblea Constituyente). En ese sentido, lamenta constatar que el plazo del 31 de mayo de 2007 —previsto para la adopción de la nueva Constitución— no ha podido ser respetado, debido a que las negociaciones entre los miembros del Majlis especial han llegado a un punto muerto en virtud de la interrupción del diálogo entre los representantes de los principales partidos políticos. Sin embargo, el Relator Especial celebra que el 11 de junio el Majlis especial haya logrado un acuerdo en el que se establece que la reforma constitucional se adoptará para el 30 de noviembre de 2007. En este contexto, insta a los principales actores políticos y a todos los miembros del Majlis especial a continuar su trabajo en el marco de un diálogo permanente y fluido entre los diferentes actores, a fin de adoptar el proyecto de nueva Constitución dentro del nuevo plazo establecido. El respeto de este plazo es esencial para que las demás reformas previstas por la hoja de ruta del Gobierno, de importancia fundamental para la instauración de una democracia en el país, se concreten.

17. Asimismo, el Relator especial nota con gran satisfacción que el país ha designado las primeras mujeres jueces en la historia del país: tres mujeres han sido nombradas en el mes de julio. Considerando que el nombramiento de mujeres jueces había sido una de las recomendaciones más urgentes de su informe, el Relator Especial felicita a las autoridades de Maldivas por la adopción de esta importante medida y las alienta para que continúen con la implementación de medidas efectivas a fin de terminar con la discriminación de género dentro del poder judicial.

18. En conclusión, el Relator Especial brinda su apoyo a todos aquellos que desde el Gobierno, la judicatura y la sociedad civil trabajan por establecer un sistema judicial independiente, imparcial, eficaz y transparente en Maldivas. En tal sentido, insta a la comunidad internacional a proporcionar al Gobierno de Maldivas, en este momento clave de la historia del país, el tipo y el nivel de asistencia sostenible indispensables para alcanzar los objetivos descritos y el éxito de la transición del país hacia la democracia. En particular, exhorta a la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (ACNUDH) y a las organizaciones internacionales de juristas, tales como la Unión Internacional de Magistrados, la International Bar Association y la Comisión Internacional de Juristas, a brindar la colaboración necesaria.

B. Misión a la República Democrática del Congo

19. El Relator Especial visitó la República Democrática del Congo del 15 al 21 de abril de 2007, atendiendo la invitación cursada por el Gobierno. El Relator, acompañado por su asistente, se desplazó a Kinshasa, Bukavu (Kivu del Sur), Goma (Kivu del Norte) y Bunia (Ituri), donde se reunió con representantes del Gobierno, jueces y fiscales de los tribunales civiles y militares, abogados, miembros de

organizaciones no gubernamentales, distintos representantes de la Misión de las Naciones Unidas en la República Democrática del Congo (MONUC) y los principales donantes del sector de la justicia. El Relator Especial desea dar las gracias al Gobierno por haberle permitido analizar sobre el terreno la situación del poder judicial, comprobar las deficiencias de que adolece y poder así formular recomendaciones para facilitar su recuperación.

20. Tras un decenio de conflictos y un período de transición de tres años, el país cuenta desde 2006 con un gobierno elegido democráticamente y un marco constitucional apropiado. A partir de ahora, debe dotarse de un poder judicial independiente y eficiente que pueda desempeñar su papel de apoyo de la democracia y garante del estado de derecho y poner fin a la impunidad casi absoluta que reina en la actualidad en el país.

21. El Relator Especial presentará en los próximos meses al Consejo de Derechos Humanos el informe final sobre su visita, con sus conclusiones y recomendaciones. No obstante, el Relator Especial ya presentó una nota preliminar durante el quinto período de sesiones del Consejo (A/HRC/4/25/Add.3) en la que indica que la situación del poder judicial en la República Democrática del Congo es muy inquietante, en particular habida cuenta de los siguientes elementos:

a) El número de jueces y tribunales en el país es claramente insuficiente. Los jueces no disponen de la capacidad logística y material necesaria para ejercer sus funciones con dignidad y profesionalidad. La inadecuación de la remuneración favorece la falta de independencia y la corrupción casi generalizada de jueces y auxiliares de justicia;

b) Las injerencias del poder ejecutivo y del ejército son aún muy frecuentes. La inexistencia de un Consejo superior del poder judicial que supervise de manera independiente la carrera de los jueces hace que éstos sean vulnerables a esas interferencias;

c) Para la mayoría de la población resulta muy difícil acceder a la justicia, debido a la corrupción, la falta de recursos financieros, la lejanía geográfica de los tribunales y las dificultades de transporte, así como el desconocimiento de los recursos disponibles;

d) En la mayoría de los casos, las resoluciones judiciales no se ejecutan. A eso hay que añadir una elevada tasa de evasiones, debido en particular al estado ruinoso de las prisiones. Todo ello hace que los esfuerzos del aparato judicial sean vanos y contribuye a la impunidad;

e) La gran mayoría de las violaciones de derechos humanos las cometen miembros de las fuerzas armadas y de la policía, cuyo enjuiciamiento corresponde a los tribunales militares. Con arreglo a las normas internacionales, el enjuiciamiento de las violaciones de derechos humanos cometidas por militares y el enjuiciamiento de los civiles debe incumbir a la justicia civil y no a la justicia militar. El país ha de respetar esas normas, tanto más cuanto que la falta de independencia afecta muy especialmente a la justicia militar, que sigue sometida a la jerarquía militar;

f) La detención preventiva suele ser la norma y no la excepción. Se aplica a demasiadas infracciones y a menudo su único objetivo es obtener dinero a cambio de la puesta en libertad del detenido. Con frecuencia los sospechosos permanecen en

detención preventiva durante meses, e incluso años, sin haber sido declarados culpables por ningún tribunal.

22. A la luz de estas observaciones, el Relator Especial formuló las siguientes recomendaciones preliminares:

a) Debería asignarse al poder judicial un porcentaje mucho más elevado del presupuesto nacional. El porcentaje actual es inferior al 0,5% del presupuesto, cuando, por regla general, el presupuesto destinado a la justicia representa entre el 2% y el 6% de los presupuestos nacionales. Estos recursos deberían permitir, en particular, mejorar la remuneración de los jueces, contratar nuevos jueces, dotar a los jueces de locales y de capacidad operacional que les permitan desempeñar sus funciones, y establecer nuevos órganos judiciales, en particular juzgados de paz;

b) El Ministerio de Justicia debería elaborar y aplicar un plan de regeneración del poder judicial en estrecha colaboración con los donantes. En este contexto, el Relator Especial apoya la labor del Comité mixto para el seguimiento del programa marco de justicia en la República Democrática del Congo. El Relator está convencido de que la labor de este Comité es de vital importancia para reforzar el poder judicial en el país, pero, habida cuenta de los retrasos en la elaboración de ese plan, alienta a los miembros del Comité a acelerar su labor para que el plan se adopte a la mayor brevedad posible;

c) Las autoridades del país deberían recuperar el control de sus recursos naturales para que el país pueda disponer de los medios necesarios para reforzar sus instituciones, en particular en el ámbito de la justicia, y para que la población se beneficie de la gran riqueza de su territorio;

d) A fin de desarrollar el marco constitucional y lograr que la independencia de la judicatura sea una realidad, deberían adoptarse urgentemente las siguientes leyes: 1) ley relativa a la organización del Consejo superior del poder judicial, órgano clave encargado del nombramiento, promoción y disciplina de los jueces y de elaborar el presupuesto del poder judicial; 2) ley relativa a la aplicación del Estatuto de Roma, que, en particular, atribuirá a la justicia civil la competencia para enjuiciar los delitos internacionales, que corresponde ahora a la justicia militar; y 3) leyes relativas a la creación de la Corte de Casación, la Corte Constitucional y el Consejo de Estado;

e) La capacitación de los jueces y del personal auxiliar debería reforzarse considerablemente; debería crearse sin demora una escuela de la magistratura y una escuela para la formación profesional de los auxiliares de justicia;

f) A fin de garantizar el derecho de defensa previsto en la Constitución, el Estado debería establecer un sistema de remuneración de los abogados designados de oficio, por ejemplo a través de los colegios de abogados, para que las personas con escasos recursos puedan beneficiarse de una defensa de calidad;

g) Debería reforzarse la justicia civil, que debe ser la única competente para juzgar a los civiles y para enjuiciar las violaciones de derechos humanos cometidas por los militares y la policía. La competencia de los tribunales militares debería limitarse progresivamente a las infracciones de carácter exclusivamente militar;

h) El recurso a la detención preventiva debería estar estrictamente limitado. Debería fijarse por ley un período máximo de detención preventiva, en particular para las infracciones que llevan aparejadas una pena inferior a cinco años de prisión;

i) Debería establecerse un sistema para el seguimiento de la ejecución de las sentencias, así como un sistema por el que el Estado asuma las costas judiciales de las personas sin recursos económicos;

j) La justicia congoleña y la comunidad internacional deberían colaborar a fin de que se juzguen las graves violaciones de derechos humanos y del derecho humanitario cometidas durante la guerra, a la luz de los buenos resultados que ha dado en otros países la colaboración judicial en materia de justicia de transición. Una solución adecuada podría ser la creación de salas mixtas.

23. El Relator Especial celebra que el Gobierno haya reconocido que el poder judicial congoleño, sin el cual no puede haber un estado de derecho ni desarrollo del país, se encuentra en una situación muy crítica y que ha de reforzarse urgentemente. En este contexto, el Relator Especial invita al nuevo Gobierno a que la regeneración y el fortalecimiento del sector judicial sea la prioridad de su programa de consolidación democrática del país, y encomia las iniciativas que el Gobierno se propone llevar a cabo en ese sentido.

IV. Situaciones que afectan la administración de la justicia y la independencia de jueces, fiscales y abogados

24. Con el propósito de ofrecer un panorama general sobre las situaciones y circunstancias que afectan principalmente la independencia del poder judicial, desde lo operativo hasta lo estructural, el Relator Especial ha llevado a cabo un análisis de las múltiples intervenciones realizadas por la Relatoría entre 1994 y 2006. A tal fin, ha podido identificar las circunstancias que con mayor frecuencia afectan al funcionamiento del poder judicial y a su independencia, y que pueden dividirse en tres categorías: a) situaciones que afectan la independencia de los jueces, fiscales, abogados o auxiliares de justicia; b) normas y prácticas que afectan el estado de derecho, amenazando el normal funcionamiento del sistema judicial y el derecho a un justo proceso; y finalmente c) ciertos desafíos particulares para el poder judicial y su independencia. En este contexto, en su último informe al Consejo de Derechos Humanos el Relator Especial recomendó al Consejo incrementar aún más sus esfuerzos en defensa de la labor que desarrollan los distintos actores vinculados a la administración de justicia y recomendar a los Estados la adopción de medidas concretas para garantizar la protección y seguridad de los operadores judiciales.

A. Situaciones que afectan la independencia de los jueces, fiscales, abogados o auxiliares de justicia

25. En todas las regiones del mundo, los operadores de justicia corren riesgos o se enfrentan con situaciones que entrañan violaciones de sus derechos humanos. Conforme a lo expuesto por el Relator Especial en sus informes sobre las comunicaciones a los países, tanto en el de este año (A/HRC/4/25/Add.1) como en los de años anteriores, se trata principalmente de hostigamientos, intimidaciones, denigraciones y amenazas que pueden llegar a la desaparición forzada, el asesinato o la ejecución extrajudicial de jueces, fiscales o abogados por el mero hecho de llevar a cabo su labor. Los casos registrados durante 2006 ponen de manifiesto la frecuencia de los fenómenos señalados: en alrededor del 55% de las comunicaciones, que conciernen unas 148 situaciones en 54 países, se denuncian violaciones de los

derechos humanos de los jueces, abogados, fiscales y auxiliares de justicia. Las amenazas, intimidaciones y actos de agresión a abogados representan el 17% de las comunicaciones enviadas por el Relator Especial, mientras que los jueces y fiscales representan el 4%; las detenciones arbitrarias y persecuciones judiciales de abogados representan el 26% de las comunicaciones, y las de jueces y fiscales el 4%; mientras que los asesinatos de abogados, jueces y fiscales representan 4% del total de las comunicaciones. En algunos países, el nivel de agresiones es muy elevado. Por ejemplo, en un país latinoamericano, la Relatoría Especial ha registrado el asesinato de 16 funcionarios judiciales y amenazas a 63 de ellos, con 2 secuestros y 2 exilios entre enero de 2005 y agosto de 2006; y en un país asiático, no menos de 15 abogados y 10 jueces fueron asesinados impunemente entre 2001 y mediados de 2006. Frente a ello, las autoridades no siempre ofrecen una adecuada protección ni condenan de manera clara tales hechos delictivos, quedando frecuentemente impunes.

B. Normas y prácticas que afectan el estado de derecho, amenazando el normal funcionamiento del sistema judicial

26. Ciertas circunstancias de carácter institucional afectan el funcionamiento y la independencia del poder judicial y hasta pueden llegar a poner en peligro el estado de derecho. La corrupción en el poder judicial es uno de los flagelos más difíciles de erradicar. Si bien es frecuente que se atribuya una gran incidencia en la corrupción al bajo nivel de remuneraciones de los jueces y abogados y a la falta de autonomía financiera del poder judicial, los factores son múltiples y cobra especial relevancia la dependencia ideológica y política de los jueces. La lentitud de la justicia es otro fenómeno tan frecuente como preocupante: es habitual que esta violación del derecho a una sentencia en un plazo razonable derive de la innecesaria complejidad de los procedimientos judiciales combinada con el excesivo número de causas que llegan a la más alta instancia judicial.

27. El Relator Especial ha registrado también con alarmante preocupación que en muchos casos los procesos de reforma del poder judicial, en vez de avanzar en pos de la independencia del sistema judicial, terminan restringiéndola. En este sentido, las graves interferencias del poder ejecutivo en la composición y el funcionamiento de la Corte Suprema son temas recurrentes en las denuncias recibidas, así como el nombramiento provisional de magistrados y su dependencia directa del Jefe del Estado. Asimismo, la creación de jurisdicciones especializadas, si bien generalmente se percibe como un hecho positivo, a menudo responde a intereses políticos coyunturales y su funcionamiento no siempre se ajusta a los estándares del debido proceso. En ocasiones la identificación entre la fiscalía y el ejecutivo es de tal magnitud que el papel de los abogados y los jueces a lo largo del proceso se reduce hasta convertirse en una mera formalidad.

28. La desigualdad en el acceso a la justicia es otro factor que afecta a amplios sectores de la sociedad y principalmente a los grupos más vulnerables. Con frecuencia estos grupos también se ven perjudicados por la falta de cumplimiento de las sentencias, sobre todo las relativas a derechos económicos, sociales y culturales, evidenciando de tal modo, la relación entre determinantes económicos y sociales y la administración de justicia. Este punto se tratará más adelante y será el objeto del próximo informe del Relator Especial al Consejo.

29. Con relación a los abogados, se han registrado situaciones recurrentes de ausencia, carácter inadecuado o falta de respeto a las garantías para el libre ejercicio de la profesión, así como dificultades en el acceso a sus clientes o a la documentación del caso, y desigualdad de armas durante el desarrollo del proceso.

C. Desafíos particulares

30. Los problemas registrados que revisten mayor gravedad y que han suscitado más quejas del Relator Especial han sido el juzgamiento de civiles por parte de tribunales militares y de estos a sus pares por graves violaciones de los derechos humanos, y la creación de tribunales de excepción que entrañan, generalmente, la violación del principio del juez natural. El listado incluye también un creciente número de quejas recibidas en virtud de la sanción de algunas leyes destinadas a combatir el terrorismo, o las de seguridad nacional, o leyes de asilo, que han generado particular preocupación en tanto limitan o inhiben la acción de la justicia y confieren amplios poderes al ejecutivo.

31. Otros reclamos están referidos a la adopción de leyes de amnistía que sustraen de la acción de la justicia a responsables y autores de violaciones graves y sistemáticas de los derechos humanos, y la negación del hábeas corpus o el amparo frente a la desaparición forzada de personas reviste suma gravedad. La cuestión de la pena capital también ha sido objeto de múltiples controversias. Si la aplicación de la pena de muerte es el resultado de un proceso que no cumple con las garantías prescritas, configura una violación del derecho a un justo proceso y también del derecho a no ser privado arbitrariamente de la vida.

32. Asimismo, se ve reflejada en un gran número de quejas la dificultad que entraña para muchos Estados la coexistencia del derecho positivo moderno y el derecho religioso y/o el derecho tradicional o tribal.

V. Protección de los derechos bajo estados de excepción

33. Todos los sistemas jurídicos del mundo prevén la adopción de medidas excepcionales para hacer frente a situaciones de crisis. En la actualidad, la declaración del estado de excepción sólo puede tener por objetivo preservar el orden constitucional y restablecer la normalidad cuando peligra la vida organizada de una comunidad. Pero más allá de su propósito y finalidad, en la práctica los estados de excepción continúan siendo fuente de graves violaciones de los derechos humanos y con frecuencia limitan seriamente la acción de la justicia. Una de las principales tareas acometidas por el derecho internacional en materia de derechos humanos ha tenido por finalidad establecer límites a dichas violaciones, demarcando el ámbito jurídico que rige el estado de excepción. El texto de referencia es el artículo 4 del Pacto Internacional de Derechos Civiles y Políticos, que establece los requisitos formales y materiales para poder implementar el régimen de excepción. Ese artículo ha sido comentado extensamente por el Comité de Derechos Humanos, particularmente en su Observación general No. 29 sobre el artículo 4.

34. Si bien la Observación general No. 29 y los precedentes establecidos por los órganos convencionales y extraconvencionales han permitido avanzar en la regulación jurídica de los Estados de excepción, se siguen registrando múltiples

desvíos en la actuación de los Estados que constituyen violaciones de los derechos humanos, en particular en el ámbito del derecho a un juicio justo y la independencia de la judicatura. Con respecto al derecho a un juicio justo, se trata principalmente de la violación de los derechos al hábeas corpus, a la asistencia de un abogado de propia elección, a apelar ante un tribunal independiente, a un juicio público y a presentar los propios testigos. Son frecuentes también el recurso indiscriminado a la detención preventiva, la detención indefinida sin cargos y sin juicio, la detención prolongada incomunicada, la obtención de confesiones mediante tortura, el dictado de sentencias a raíz de tales confesiones y la violación del principio *no bis in idem*.

35. En lo que concierne a la independencia de la judicatura, se constata la adopción de medidas dirigidas a evitar que actúe como contrapeso del poder ejecutivo. Esas medidas incluyen, por ejemplo, el reemplazo de tribunales ordinarios por tribunales o comisiones militares; el hostigamiento a jueces, fiscales y abogados; las purgas y traslados de jueces adonde no interfieran con el ejecutivo, la sumisión del poder judicial al ejecutivo; y la descalificación y desconocimiento de sentencias judiciales por parte del ejecutivo. Nuevas amenazas han dado pie a nuevos modos de suspender los derechos humanos en contravención a las obligaciones asumidas por los Estados, desconociendo los principios que rigen los estados de excepción, tal como el principio de proclamación, notificación, amenaza excepcional, proporcionalidad o estado de excepción[1]. Frecuentemente se constata el recurso a medidas de excepción en el contexto de situaciones ordinarias. Se registra también la adopción de medidas restrictivas —generalmente a través de leyes de seguridad nacional, leyes antiterroristas y leyes de inmigración— que superan ampliamente las limitaciones y derogaciones permitidas para situaciones ordinarias.

36. Teniendo en cuenta que el estado de excepción sigue siendo fuente de graves violaciones de los derechos humanos, el Relator Especial propuso al Consejo de Derechos Humanos, en su período de sesiones de junio de 2007, la elaboración de un instrumento que tendría por finalidad reunir en un mismo texto —de carácter declarativo— el conjunto de normas y principios que regulan la protección de los derechos humanos bajo los estados de excepción. A tal fin, el Relator recomendó al Consejo que el ACNUDH organizara un seminario de especialistas en la materia a efectos de que reflexionara sobre la elaboración de directrices u otras modalidades para garantizar el respeto de los derechos humanos bajo los estados de excepción, y presentara al Consejo una propuesta basada sobre el resultado de sus trabajos.

37. El Relator nota con satisfacción que el Consejo recibió positivamente esa propuesta. En efecto, muchas delegaciones reconocieron la importancia de este tema y algunas señalaron que en el pasado los estados de excepción habían sido fuente de graves violaciones de los derechos humanos en sus respectivos países. De allí la importancia del seminario de expertos cuya organización está a cargo del ACNUDH, que se realizará a fines de 2007 y la trascendencia que tendrán para el Consejo sus conclusiones y propuestas.

[1] Véase E/CN.4/Sub.2/1997/19 y Add.1.

VI. Acceso a la justicia

38. El Relator Especial se ha pronunciado en múltiples ocasiones, y especialmente en sus informes sobre los países que ha visitado, sobre la falta de acceso a la justicia y sus graves consecuencias en el pleno disfrute de los derechos humanos. El adecuado e igualitario acceso a la justicia, condición esencial para la efectiva implementación de los derechos humanos, constituye un grave problema en numerosos países. En su sentido más amplio, este concepto no implica exclusivamente el acceso al sistema judicial sino que también incluye el acceso a otros mecanismos e instituciones que asisten a los individuos a la hora de reclamar sus derechos y tratar con los organismos estatales, como por ejemplo las comisiones nacionales de derechos humanos, el defensor del pueblo o las instituciones de mediación.

39. Dada la importancia y las dimensiones de la problemática del acceso a la justicia, el Relator Especial tiene la intención de abordar este tema de forma extensa en su próximo informe general al Consejo de Derechos Humanos. En el presente informe a la Asamblea General, esbozará brevemente un panorama de los diferentes factores y circunstancias que impiden un adecuado e igualitario acceso a la justicia.

A. Falta de capacidad y eficiencia del poder judicial y otras instituciones conexas

40. Los sistemas judiciales de numerosos países se ven afectados por una notoria escasez de medios que dificulta el eficaz desempeño de sus funciones. Ello se ve reflejado, con frecuencia, en la insuficiencia de tribunales para tratar el gran número de causas que se presentan ante ellos, sumado a que en muchos casos no disponen de organismos de mediación previos que contribuyan a aliviar dicha sobrecarga de trabajo; y en la falta de recursos tecnológicos y de personal debidamente capacitado y remunerado. Asimismo, en muchos países no se dispone de medios suficientes para garantizar la protección de víctimas y testigos de violaciones de derechos humanos, lo que dificulta el acceso a la justicia de las víctimas. El Relator Especial también verificó con preocupación que en varios países la centralización geográfica de los sistemas de justicia es de tal magnitud que sólo cuentan con tribunales judiciales la capital y las grandes ciudades, quedando al margen del sistema amplias zonas rurales. En ese sentido, las relaciones entre el acceso a la justicia ordinaria y el acceso a los sistemas de justicia indígena o tradicional es un tema que interesa especialmente al Relator Especial. Por otra parte, en numerosos casos la corrupción en el poder judicial ha sido denunciada como uno de los factores que impiden el acceso a la justicia.

B. Ausencia de la voluntad necesaria para permitir y facilitar el acceso a la justicia

41. En otras ocasiones, no se trataría de una incapacidad institucional sino de una ausencia de voluntad por parte de las autoridades gubernamentales para facilitar el adecuado e igualitario acceso a la justicia a los individuos y especialmente, como se menciona más adelante, a los grupos sociales más vulnerables. La excesiva presión del poder ejecutivo sobre el poder judicial hace que en múltiples ocasiones el acceso a la justicia se vea limitado gravemente. Numerosos son los casos en los que a una

persona se le impide el acceso a un defensor o a un juez, y con particular frecuencia en situaciones de detención. El Grupo de Trabajo sobre la detención arbitraria, el Relator Especial sobre la tortura, el Comité contra la Tortura y el Comité de Derechos Humanos de los Parlamentarios de la Unión Interparlamentaria, entre otros, han denunciado esta situación en múltiples ocasiones. En este sentido, en los últimos años el Relator Especial ha constatado con preocupación que los tribunales militares han extendido su jurisdicción, lo que ha resultado ser un obstáculo para muchas víctimas de violaciones de derechos humanos en su búsqueda de justicia; así también las leyes de amnistía representan en muchos casos un insalvable obstáculo al acceso a la justicia.

C. Escasez de recursos económicos y falta de información de los individuos

42. El costo que representa un proceso judicial con frecuencia sobrepasa la capacidad económica de los individuos. Esta circunstancia es especialmente preocupante en los países en desarrollo, que muchas veces carecen de capacidad para garantizar un defensor oficial gratuito y para asumir las costas del proceso de aquellas personas que no disponen de los recursos económicos necesarios para afrontarlos. Otro gran obstáculo para el efectivo acceso a la justicia reside en la falta de información y conocimiento de los individuos sobre los derechos y garantías de los que son titulares y los procedimientos a seguir.

D. Problemas de acceso de los grupos vulnerables

43. La no discriminación es un requisito imprescindible para que pueda hablarse de un adecuado e igualitario acceso a la justicia. Este debe ser garantizado a todos los individuos, sin distinción alguna de raza, color, sexo, idioma, religión, opinión política o de otra índole, origen nacional o social, posición económica, nacimiento o cualquier otra condición social. Sin embargo, en la práctica, son numerosos los grupos que por sus especiales condiciones de vulnerabilidad ven limitado su acceso a la justicia. Esto ha sido denunciado en múltiples ocasiones por los diferentes relatores especiales, grupos de trabajo y comités de las Naciones Unidas con respecto a personas en situación de pobreza, mujeres, y niños; personas con discapacidad; solicitantes de asilo; inmigrantes; indígenas; y grupos discriminados en función de su raza u otra circunstancia.

E. Dificultades especiales en situación de conflicto armado o post-conflicto

44. Los límites al acceso a la justicia encuentran su máximo exponente en las situaciones de conflicto armado y post-conflicto. En numerosas ocasiones los conflictos provocan la parálisis casi total del sistema judicial y los individuos no tienen posibilidades de acceder a la justicia. A menudo los sistemas judiciales de los países en situación de post-conflicto deben enfrentarse a la escasez de personal —por lo general debido a enfermedades, fallecimientos o migraciones—, y a la destrucción total o parcial de las instalaciones edilicias. Además de los asuntos ordinarios, en períodos de conflicto y de transición la justicia debe enfrentarse con

las múltiples violaciones de los derechos humanos y del derecho internacional humanitario que suelen ocurrir durante el conflicto. Si bien el poder judicial es la institución a la que pueden recurrir las víctimas —que tienen derecho a esperar verdad, justicia y reparación—, en tales contextos los tribunales suelen verse completamente desbordados y sin capacidad para administrar justicia.

45. Dada la complejidad y magnitud del problema del acceso a la justicia y su importancia para el respeto y goce de todos los derechos humanos, el Relator Especial quiere abordar este tema en forma extensa en su próximo informe general al Consejo de Derechos Humanos. Asimismo, desea aportar un amplio análisis y hacer recomendaciones que contribuyan a mejorar el acceso a la justicia en el mundo.

VII. Justicia internacional

A. Corte Penal Internacional

46. En tanto jurisdicción complementaria y no excluyente de la justicia nacional, la Corte Penal Internacional ofrece la ventaja de poder realizar investigaciones y perseguir y juzgar a las personas en las que recae la principal responsabilidad de crímenes de guerra, crímenes de lesa humanidad y actos de genocidio, cuando las autoridades nacionales no puedan o se nieguen a hacerlo.

47. En estos últimos años la Corte ha dado pasos importantes en pos de su afianzamiento, tales como la entrada en vigor del Acuerdo sobre los Privilegios e Inmunidades de la Corte, la instalación en La Haya de la secretaría de la Asamblea de los Estados Partes en el Estatuto de Roma y de la Corte, y la firma de un acuerdo que determina las bases jurídicas de la cooperación entre la Corte y las Naciones Unidas, entre otros.

48. Cabe destacar como muy alentadoras las ratificaciones que se produjeron desde septiembre de 2006 al Estatuto de Roma de la Corte Penal Internacional por parte de los Gobiernos del Chad y de Montenegro. No obstante, el Relator reitera su preocupación por la firma de acuerdos bilaterales de inmunidad entre los Estados Unidos de América y Estados Partes en el Estatuto de Roma con la finalidad de sustraer a los ciudadanos estadounidenses de la jurisdicción de la Corte.

49. Asimismo, y continuando con el seguimiento de la evolución de la Corte Penal Internacional, el Relator Especial celebra los avances en cada una de las investigaciones que se están llevando a cabo y que detalla a continuación.

1. República Democrática del Congo

50. El 17 de marzo de 2006 el congolés Thomas Lubanga Dyilo, líder y fundador de la Unión de Patriotas Congoleños, fue detenido y entregado a la Corte Penal Internacional por la presunta comisión de los siguientes crímenes de guerra: a) alistamiento de menores de 15 años, conscripción de menores de 15 años y c) utilización de menores de 15 años para participar activamente en las hostilidades.

51. El 29 de enero de 2007 la Sala de Cuestiones Preliminares I de la Corte encontró suficientes pruebas para confirmar las acusaciones presentadas por la Fiscalía y proceder a juicio. Por lo tanto, el caso de Thomas Lubanga Dyilo es el primero en llegar ante los jueces de la Corte.

52. El Relator Especial destaca la cooperación de la República Democrática del Congo, del Consejo de Seguridad de las Naciones Unidas y de los Estados Partes en el Estatuto de Roma, sin cuya colaboración no hubiera sido posible la entrega y comparecencia de Thomas Lubanga Dyilo ante la Corte Penal Internacional. Asimismo considera un paso positivo las decisiones adoptadas por la Sala I que posibilitaron la participación de cuatro víctimas en el proceso contra el Sr. Lubanga Dyilo.

2. Darfur, Sudán

53. Conforme lo destacara el Relator Especial en sus anteriores informes, en marzo de 2005 el Consejo de Seguridad remitió el caso de Darfur al Fiscal de la Corte Penal Internacional, de conformidad al párrafo b del artículo 13 del Estatuto. En junio de ese mismo año el Fiscal inició formalmente las investigaciones por los crímenes cometidos en el marco del conflicto armado entre las fuerzas de seguridad sudanesas y la milicia Janjaweed contra los grupos rebeldes organizados, entre ellos el Ejército de Liberación Sudanés y el Movimiento de Justicia e Igualdad.

54. En virtud de dicha investigación, el Fiscal consideró que existían razones suficientes para creer que Ahmad Muhammad Harun, ex Ministro del Interior —y actual Ministro de Asuntos Humanitarios— del Sudán y Ali Muhammad al Abd-al Rahman (Ali Kushayb), líder de la milicia Janjaweed, son penalmente responsables por la comisión de crímenes de lesa humanidad y crímenes de guerra en Darfur en 2003 y 2004, y por lo tanto solicitó a la Sala de Cuestiones Preliminares I que emitiera las respectivas órdenes de comparecencia.

55. A la luz de las pruebas remitidas por la Fiscalía, la Sala concluyó que existen fundamentos suficientes para considerar que Ahmad Harun, en virtud de su posición, no sólo tenía conocimiento de los crímenes cometidos contra la población civil y de los métodos utilizados por la milicia Janjaweed, sino que también habría alentado la comisión de tales actos. Asimismo concluyó que existen suficientes pruebas para considerar que Ali Kushayb reclutó, fundó y armó a la milicia Janjaweed, contribuyendo intencionalmente a la comisión de crímenes contra la población civil, y que participó personalmente en algunos de los ataques. Las evidencias recabadas también indican que ambos habrían actuado conjuntamente —y con otros implicados— como parte de un plan sistemático y organizado con el propósito de atacar a la población civil en Darfur. Por considerar que ambos implicados no se presentarían de forma voluntaria ante la Corte, la Sala decidió emitir dos órdenes de arresto, cada una de las cuales contiene 51 cargos por, entre otras cosas, persecución, asesinato, violación y otras formas de violencia sexual, traslado forzoso, saqueo, destrucción de propiedad, actos inhumanos y tortura.

56. El Relator Especial expresa su preocupación por la falta de cooperación del Gobierno del Sudán y por la falta de un acuerdo de relación entre la Corte y la Unión Africana, circunstancia que obstruye seriamente las investigaciones y la comparecencia de los sospechosos ante los jueces de la Corte.

3. Uganda

57. A requerimiento del Gobierno de Uganda, el 29 de julio de 2004 el Fiscal de la Corte Penal Internacional determinó que existían bases razonables para iniciar una investigación sobre los presuntos crímenes cometidos por los líderes del Ejército de Resistencia del Señor (LRA) en el norte de ese país. Como consecuencia de dichas

investigaciones y habiendo constatado que existían evidencias suficientes, el 8 de julio de 2005 la Sala de Cuestiones Preliminares II dictó cinco órdenes de arresto contra cinco dirigentes del LRA por los cargos de crímenes contra la humanidad y crímenes de guerra.

58. El Relator Especial expresa su preocupación porque, habiendo transcurrido más de dos años desde la emisión de las órdenes de arresto, no se ha logrado que ninguno de los cinco sospechosos fuera detenido y entregado a la Corte.

59. El 29 de junio de 2007 el Gobierno de Uganda y el LRA firmaron la tercera fase de un acuerdo de paz, mediante la cual acordaron la creación de una comisión de investigación de los posibles crímenes de guerra presuntamente perpetrados por ambos bandos y la aplicación de un proceso, según la tradición tribal, a los rebeldes que sean acusados de crímenes de guerra. Sin embargo, los principales líderes del LRA han exigido al Gobierno de Uganda, como prerrequisito para la firma de un acuerdo de paz integral, que solicite a la Corte Penal Internacional que suspenda las órdenes de detención emitidas. Al respecto el Fiscal de la Corte ha alertado que, no obstante la inexistencia de un pedido formal en ese sentido, la paz y la justicia deben seguir siendo consideradas como objetivos que se refuerzan mutuamente[2]. El Relator Especial advierte al Gobierno de Uganda y al LRA sobre la necesidad de llegar a un acuerdo que excluya cualquier tipo de amnistía para los crímenes de guerra, los crímenes contra la humanidad, el genocidio y graves violaciones de derechos humanos, y de tal modo lograr un equilibrio entre la necesidad de impartir justicia y la de alcanzar una paz duradera en la región.

4. República Centroafricana

60. El 22 de mayo de 2007 el Fiscal de la Corte Penal Internacional anunció su decisión de iniciar una investigación en la República Centroafricana, a requerimiento del Gobierno de ese país, por los presuntos crímenes cometidos durante el pico de violencia del conflicto armado entre el Gobierno y las fuerzas rebeldes en 2002 y 2003. Posteriormente, la Corte de Casación —el tribunal de mayor jerarquía en ese país— confirmó que el sistema de justicia nacional no tenía capacidad para llevar a cabo los procedimientos necesarios para investigar y enjuiciar los presuntos crímenes de guerra y de lesa humanidad, habilitándose de esta manera la instancia de la Corte de conformidad con el principio de complementariedad. Esta es la primera vez que la Corte inicia una investigación en la cual el número de los presuntos crímenes de naturaleza sexual —específicamente contra mujeres— es mayor al de las presuntas matanzas.

B. Alto Tribunal Penal Iraquí

61. El Relator Especial ha seguido desde sus inicios la constitución y los avatares del Alto Tribunal Penal Iraquí, indicando en varios informes y comunicados de prensa las graves irregularidades que caracterizan su creación y funcionamiento. Con referencia a su constitución, y si bien el Estatuto adoptado por la Autoridad Provisional de la Coalición fue luego refrendado por el Consejo de Gobierno y más tarde por las autoridades iraquíes electas, esto no suprime el vicio originario

[2] Véase “Submission of Information on the status of the execution of Warrants of arrest in the situation in Uganda”, ICC-02/04-01/05-116-Corr.2, 6 de octubre de 2006.

señalado por el Relator en sus informes anteriores. Tampoco el Estatuto del Tribunal condice con los estándares internacionales de derechos humanos en múltiples aspectos: por ejemplo, prevé una competencia personal limitada, que permite al Tribunal juzgar solo a iraquíes, así como una competencia temporal también acotada, puesto que no puede juzgar crímenes cometidos por tropas extranjeras antes de la guerra del Golfo de 1990, ni crímenes de guerra cometidos después del 1° de mayo de 2003, fecha de la ocupación del Irak. Asimismo, el Estatuto no prohíbe las confesiones obtenidas bajo tortura o detención arbitraria, recoge ilícitos que fueron definidos como tales solamente después de su comisión por parte del régimen de Saddam Hussein, y no tutela el derecho a no autoincriminarse.

62. La independencia de los jueces y abogados no está garantizada, como pone de manifiesto el proceso relativo a la matanza de Dujail, por el que fueron condenados a muerte y ejecutados Saddam Hussein y otros inculpados. Un juez, varios candidatos a jueces, tres abogados defensores y un empleado del Tribunal fueron asesinados durante ese proceso. Otro juez renunció a presidir el Tribunal tras recibir presiones por su anterior afiliación al régimen Baas. Más allá de la repulsa general que suscita hoy en día la pena de muerte, el Comité de Derechos Humanos ha indicado repetidamente que el Pacto Internacional de Derechos Civiles y Políticos prescribe que la misma sólo puede aplicarse cuando sean respetadas todas las garantías del proceso justo, detalladas en el artículo 14 del Pacto. En el proceso seguido a raíz de la matanza de Dujail se violaron las garantías para el debido proceso, vulnerando así el derecho a un proceso justo y el derecho a no ser privado arbitrariamente de la vida.

63. Preocupaciones similares sobre graves violaciones a los estándares internacionales en materia de derechos humanos fueron expresadas también por el ACNUDH[3], por el Grupo de Trabajo sobre la detención arbitraria[4] y por el Relator Especial sobre ejecuciones extrajudiciales, sumarias y arbitrarias[5], así como por varias organizaciones no gubernamentales internacionales de derechos humanos.

Pena de muerte y derecho a la verdad

64. El Relator Especial constata con grave preocupación que las personas condenadas a muerte continúan siendo ejecutadas en el Iraq, a pesar de sus reiterados pedidos y los de otros órganos de las Naciones Unidas para que se suspendan estas ejecuciones. Además, en el contexto del Iraq la aplicación de la pena de muerte ha constituido una violación grave del derecho a la verdad de las víctimas de los crímenes cometidos por el régimen de Saddam Hussein.

65. El Relator Especial expresa también su profunda preocupación por las circunstancias en las cuales Awraz Abdel Aziz Mahmoud Sa'eed fue ejecutado el 3 de julio, a pesar de que había pedido expresamente que su ejecución fuera suspendida, puesto que Awraz Abdel Aziz Mahmoud Sa'eed había confesado su participación en el atentado a la Oficina de las Naciones Unidas en Bagdad, en agosto de 2003. En el caso específico de Awraz Abdel Aziz Mahmoud Sa'eed, su

[3] *Amicus curiae* del 8 de febrero de 2007, y comunicados de prensa del 5 de noviembre de 2006 y 3 y 15 de enero de 2007.

[4] Opinión No. 31/2006 del 1° de septiembre de 2006, y comunicados de prensa del 28 de noviembre de 2006 y 24 de enero de 2007.

[5] Véase A/HRC/4/20/Add.1, y comunicados de prensa del 16 de noviembre de 2005, 3 de enero de 2007 y 13 de febrero de 2007.

ejecución ha significado también una violación del derecho a conocer la verdad de las víctimas del atentado de la Oficina de las Naciones Unidas en Bagdad, y una frustración en la obtención de elementos de prueba importantes para el esclarecimiento de este trágico atentado que costó la vida a 22 personas, entre ellas a Sergio Vieira de Mello, Alto Comisionado de las Naciones Unidas para los Derechos Humanos y Representante Especial del Secretario General.

C. Cámaras Excepcionales de Camboya

66. En su informe de 2006 a la Asamblea General, el Relator Especial expresó su satisfacción por la constitución y el inicio de las actividades de las Cámaras Excepcionales de Camboya a partir de la toma de juramento, el 3 de julio de 2006, a los jueces nacionales e internacionales que pasaron a integrarlas. En esta oportunidad destaca la adopción por unanimidad del Reglamento Interno en sesión plenaria de jueces nacionales e internacionales el 12 de junio de 2007, concluyendo así una sesión de dos semanas en Phnom Penh. En una declaración conjunta, los jueces nacionales e internacionales resaltaron su compromiso de llevar a cabo los juicios sin dilaciones y, al mismo tiempo, asegurando el respeto de los más altos estándares de un proceso justo, imparcial y transparente[6].

VIII. Conclusiones y recomendaciones

67. **El Relator Especial invita a la Asamblea General a incrementar sus esfuerzos en defensa de la labor que desarrollan los distintos actores vinculados a la administración de justicia y a examinar los fenómenos que afectan al sistema judicial y su independencia a fin de recomendar a los Estados la adopción de medidas concretas destinadas a garantizar a los operadores judiciales la seguridad y protección que requieren para un adecuado desempeño de sus funciones**.

68. **Teniendo en cuenta que la administración de justicia es uno de los pilares del estado de derecho y del sistema democrático, la defensa de la justicia debe incorporarse como tema prioritario en el análisis de los aspectos institucionales que abarca el conjunto de las actividades de las Naciones Unidas. En este contexto, la Organización tendría que privilegiar la temática de la justicia en sus actividades de apoyo y cooperación técnica, sobre todo en relación con los países que atraviesen una situación de transición o bien estén saliendo de un conflicto armado que hubiese impactado gravemente en la conformación del Estado**.

69. **Los Estados deben adecuar sin demora su legislación interna y sus prácticas nacionales a los principios, jurisprudencia y estándares internacionales que regulan la protección de los derechos humanos bajo los estados de excepción. En este sentido, el Relator Especial está convencido de que el trabajo del seminario de expertos que el ACNUDH organizará antes de finales de 2007**

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[6] Asimismo, el Relator Especial se felicita la reducción de 2.000 a 500 dólares de los EE.UU. del régimen de matriculación aplicable por el Colegio de Abogados de Camboya a los abogados extranjeros, en tanto constituyó un factor que retrasó la adopción del Reglamento Interno de las Cámaras, por el legítimo rechazo que esta regla generó en los jueces internacionales.

aportará insumos muy útiles para facilitar este proceso mediante la elaboración de una declaración que contenga los principios básicos tendientes a garantizar la vigencia de los derechos humanos bajo las situaciones de excepción.

70. **Teniendo en cuenta que el acceso a la justicia es uno de los prerrequisitos para el efectivo goce de los derechos humanos más fundamentales y que el Relator ha comprobado que se trata de uno de los problemas más recurrentes que se presentan en la mayoría de los países, es su propósito abordarlo en profundidad en el próximo informe general al Consejo de Derechos Humanos de las Naciones Unidas**.

71. **El Relator Especial insta a la comunidad internacional a apoyar la labor de la Corte Penal Internacional mediante la ratificación de su Estatuto y la firma de acuerdos de cooperación con el objeto de lograr que la acción de la justicia logre poner fin a la impunidad por la comisión de crímenes aberrantes, como son los crímenes de guerra y de lesa humanidad y los actos de genocidio. En ese sentido, y con particular énfasis, alienta a la Unión Africana a la firma de un acuerdo de relación con la Corte**.

72. **Con respecto al Alto Tribunal Penal Iraquí, el Relator Especial reitera sus recomendaciones precedentes, en particular la necesidad de adecuar su funcionamiento a los estándares internacionales o bien constituir un tribunal penal internacional que cuente con la cooperación de las Naciones Unidas**.

73. **Con respecto a las Cámaras Excepcionales de Camboya, el Relator Especial celebra la resolución favorable vinculada con los honorarios de los abogados internacionales y la adopción del Reglamento Interno; el Relator insta ahora a la fiscalía a emprender su trabajo de indagación en las próximas semanas, para que las primeras audiencias puedan empezar en el primer semestre de 2008, como lo han planteado los jueces nacionales e internacionales en su declaración conjunta de 12 de junio de 2007**.

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CONSEJO DE DERECHOS HUMANOS
Cuarto período de sesiones*
Tema 2 del programa

APLICACIÓN DE LA RESOLUCIÓN 60/251 DE LA ASAMBLEA GENERAL, DE 15 DE MARZO DE 2006, TITULADA "CONSEJO DE DERECHOS HUMANOS"

Informe del Relator Especial sobre la independencia de los magistrados y abogados, Leandro Despouy

Adición

MISIÓN A MALDIVAS**

* El presente documento, que lleva la signatura del cuarto período de sesiones del Consejo de Derechos Humanos, será examinado por el Consejo en su quinto período de sesiones.

** El resumen del presente informe se distribuye en todos los idiomas. El informe completo que figura en el anexo del resumen se distribuye únicamente en el idioma en que se presentó.

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Resumen

El Relator Especial sobre la independencia de los magistrados y abogados, Leandro Despouy, visitó Maldivas en misión del 25 de febrero al 1º de marzo de 2007. Lo había invitado el Gobierno para que prestara asistencia a las autoridades en la aplicación de la hoja de ruta hacia un programa de reforma adoptada por el Presidente en marzo de 2006, en particular en lo referente a las reformas constitucionales y jurídicas tendentes a establecer un sistema judicial independiente y una verdadera separación de poderes. El Relator Especial mantuvo conversaciones detalladas con funcionarios de la administración y de la judicatura y se reunió libremente con diversos otros interlocutores, que lo informaron sobre las cuestiones que se plantean actualmente en Maldivas en la actividad de jueces y abogados; se entrevistó asimismo con reclusos de la prisión de Maafushi. El presente informe, basado en esas conversaciones, tiene por objeto aportar una visión general del sistema judicial de Maldivas y de las dificultades a las que se enfrentan actualmente los principales responsables de la administración de justicia.

El Relator Especial está muy agradecido al Gobierno de Maldivas por haberle brindado una oportunidad única de estudiar *in situ* la situación del sistema judicial y de examinar el estado actual y el alcance de las reformas tendentes a adecuar ese sistema a los compromisos internacionales de Maldivas, en particular a los dimanantes del Pacto Internacional de Derechos Civiles y Políticos y del Pacto Internacional de Derechos Económicos, Sociales y Culturales, a los que se adhirió recientemente el país. Valora muy positivamente la preocupación y el interés del Gobierno por avanzar rápidamente hacia ese objetivo.

La visita demostró que la clave de cualquier progreso reside en una resuelta voluntad política acompañada de la financiación necesaria: la situación actual del sistema judicial de Maldivas hace sin duda urgentemente necesario introducir reformas en profundidad para cumplir los criterios internacionales mínimos de independencia y eficiencia en un sistema de gobernanza democrática. Esos objetivos sólo pueden alcanzarse a través de un diálogo político sostenido entre las fuerzas políticas del país, con el apoyo de la comunidad internacional cuando sea necesario.

En la actualidad el sistema judicial de Maldivas está sometido a la autoridad del Presidente, por lo que carece de la independencia necesaria y no puede cumplir su función fundamental de administrar justicia en forma equitativa e independiente y de salvaguardar y proteger los derechos humanos. Son frecuentes las detenciones preventivas sin revisión judicial adecuada y los juicios en los que el acusado no cuenta con representación letrada. Otras deficiencias del sistema judicial son una grave escasez de jueces y abogados en la mayor parte del territorio, como consecuencia, entre otros factores, de su misma configuración geográfica, y la muy insuficiente capacidad interna para impartir formación jurídica adecuada a los futuros jueces y abogados, excepto en el caso de la *sharia*, para la que la capacidad disponible es mayor. Además, las investigaciones penales están a cargo exclusivamente de la policía, sin que fiscales ni jueces desempeñen ninguna función de control, lo que plantea problemas importantes en lo que se refiere al respeto por los derechos humanos en la fase de investigación. En cuanto al ministerio público, el Relator Especial recomienda que se establezca el cargo de Fiscal General, separado del de Ministro de Justicia, que forma parte del Gabinete y, por lo tanto, debería conservar únicamente su función de asesoramiento jurídico al Gobierno; el Fiscal General debe ser independiente y desempeñar un papel importante en las investigaciones

policiales. Se está realizando una positiva labor de codificación, en particular elaborando un nuevo Código Penal y un nuevo Código de Procedimiento Penal con miras a armonizar la *sharia* con el *common law*.

En cuanto a la abogacía, existe en el país una grave escasez de letrados, en particular en el sistema de justicia penal, lo que compromete gravemente el derecho de defensa. Además, no está garantizada la independencia de los abogados. No existe un colegio de abogados, y el Ministerio de Justicia se ocupa de todas las cuestiones disciplinarias y puede retirar a los abogados la licencia para ejercer su profesión. Es preciso establecer un colegio de abogados autónomo con el fin de introducir la independencia necesaria en el ejercicio de la abogacía. Esa institución debería ocuparse, en particular, de establecer un examen común para el acceso la profesión, de expedir y retirar las licencias, de garantizar la aplicación de normas mínimas para el ejercicio de la abogacía, de decidir sobre las cuestiones disciplinarias, y, en general, de representar en forma independiente los intereses de la profesión.

Es sin duda urgentemente necesario introducir reformas profundas en el sistema judicial de Maldivas para que cumpla los criterios internacionales mínimos de independencia y eficiencia en un sistema de gobernanza democrática. A ese respecto, el Relator Especial encomia la decisión del Gobierno de acometer una amplia reforma constitucional y legislativa tendente a instaurar la separación de poderes y crear una judicatura independiente, así como a celebrar en 2008 las primeras elecciones democráticas en el país. Alienta a todas las personas que trabajan por impulsar esas reformas fundamentales a que continúen sus esfuerzos para alcanzar ese objetivo en los plazos previstos. Considera particularmente importante la aprobación urgente del proyecto de Constitución que está examinando en la actualidad el *Majlis* especial (Asamblea Constituyente), e insta a los principales partidos políticos a que reanuden las conversaciones para que ese texto pueda aprobarse a más tardar el 31 de mayo de 2007, según lo previsto en el programa de reforma del Gobierno.

El Relator Especial espera que todas aquellas personas que en el Gobierno, la judicatura y la sociedad civil trabajan por establecer un sistema judicial independiente, imparcial, eficaz y transparente encuentren en sus conclusiones y recomendaciones elementos de orientación y respaldo a sus esfuerzos. Espera asimismo que la comunidad internacional comprenda la urgente necesidad de proporcionar al Gobierno de Maldivas, en este momento clave de la historia del país, el tipo y el nivel de asistencia sostenible indispensables para alcanzar los objetivos descritos y para el buen éxito de la transición del país a la democracia, y exhorta a la comunidad internacional a que preste esa asistencia.

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, LEANDRO DESPOUY, ON HIS MISSION TO MALDIVES (25 FEBRUARY-1 MARCH 2007)

CONTENTS

I. INTRODUCTION

1. Pursuant to his mandate, the Special Rapporteur on the independence of judges and lawyers visited Maldives from 25 February to 1 March 2007 at the kind invitation of the Government. He had been invited by the Government to assess the situation of the judiciary in the country and assist the authorities in the implementation of a number of constitutional and legal reforms aimed at establishing an independent judiciary and a real separation of powers in the country, pursuant to the Road Map towards a Reform Agenda adopted by the President in March 2006.

2. During his visit in the capital, Malé, the Special Rapporteur held meetings with the President of Maldives, Maumoon Abdul Gayoum, a number of government ministers, judges from courts at various levels, the Attorney-General, prosecutors, lawyers, and representatives of international organizations and of local non-governmental organizations. He travelled to Addu atoll, in the south of the archipelago, where he met with judges of that region as well as civil society representatives. He also visited the Maafushi prison where he interviewed several detainees.

3. Beyond the current political difficulties that have arisen, there exists a consensus to adopt in-depth institutional and structural reforms, especially with regard to the judiciary. This is why, by means of his conclusions and recommendations, the Special Rapporteur aims to support and encourage the prompt realization of this objective. He urges the international community to strongly support this process in a sustained manner.

II. MAIN FINDINGS

A. General political and legal background

4. The Republic of Maldives gained independence on 26 July 1965. Article I of the Constitution provides that it is "a sovereign, independent, democratic republic based on the principles of Islam". The President of the Republic, Maumoon Abdul Gayoum, came to power in 1978. The principle of separation of powers and the independence of the judiciary is not enshrined in the Constitution. Under the Constitution, the President is the most powerful political institution: he is the Head of State, Head of Government and Commander-in-Chief of the Armed Forces and the Police of Maldives. He is, further, the supreme authority for the propagation of the tenets of Islam in Maldives and head of the judiciary. The President also appoints the Cabinet of Ministers. The People's Majlis (Parliament) is made up of 50 members, of which 42 are elected by popular vote and 8 are appointed by the President.

5. The Maldivian legal system is a combination of sharia law and codified common law. However, statutory law is embryonic or absent in many areas. The legal framework still falls short of international standards particularly in areas relating to freedom of expression, freedom of association, freedom of religion, women's rights, workers' rights and criminal justice. Since its independence, Maldives has ratified the Convention on the Rights of the Child in 1991 and its two Optional Protocols in 2002 and 2004; the Convention on the Elimination of All Forms of Discrimination against Women in 1993; the International Convention on the Elimination of All Forms of Racial Discrimination in 1984; and the Convention against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment in 2004 and its Optional Protocol in February 2006. In a welcome step, in September 2006, Maldives also adhered to the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol enabling individuals to submit petitions to the United Nations Human Rights Committee, and also to the International Covenant on Economic, Social and Cultural Rights (ICESCR). These instruments entered into force on 19 December 2006.

6. Since 2003, notably after a shooting incident in the Maafushi prison in which several detainees were killed and wounded, mounting pressure from the civil society and repeated demonstrations, in particular by the emerging opposition party called the Maldivian Democratic Party (MDP), have led the President and his Government to decide to embark upon democratic reforms. To that effect, in December 2003 the President set up a Human Rights Commission and in February 2004 he decided to revise the Constitution in order to establish a separation of powers. In March 2006 the Government adopted a Road Map for the Reform Agenda which includes commitments to strengthening governance and the protection of human rights, enhancing the independence of the judiciary, developing a multiparty system and holding the first multiparty elections in 2008, and enhancing the role and freedom of the media. Concerning the judiciary, proposed reforms include the adoption of a new Constitution which will include the principle of an effective separation of powers, the establishment of a Supreme Court and the tabling before Parliament of a new Penal Code, a number of bills establishing a new criminal procedure as well as a bill regulating the powers and duties of the police.

B. Recent economic and social changes affecting the judiciary

7. Until 15 years ago, Maldivian society did not have major interactions with foreign countries. There was no concept of property, and very limited commercial exchanges. Today, especially due to the massive growth of tourism, property has become very valuable and new and complex issues have arisen in relation to construction. At the same time, the country has experienced dramatic social changes. Assaults and violence have increased considerably, as have money laundering and counterfeiting. Drug trafficking and consumption have become widespread, emerging as the most important social problem of the country. Yet, faced with those new challenges, judges and lawyers have not been provided with the required legal instruments to address them. The only areas in which reforms were introduced relate to family law, in particular marriage and divorce, which used to be settled amicably and are now settled in the courts.

C. The court system

8. The Constitution of Maldives states in its article 39 that the President shall be “the highest authority of administering justice in the Maldives”. He is both the head of the judiciary and the final arbiter of appeals. The Constitution provides for the President to determine the number of courts and their location. Currently, the judicial system is organized in a two-level court system composed of:

(a) First instance courts, known as “Island Courts”, distributed among the 200 inhabited islands grouped into 20 atolls and organized under the Ministry of Justice which is entrusted with the administrative affairs of the judiciary; and the specialized courts, known

as "Malé's Courts", composed of the Civil Court, the Criminal Court, the Family Court and the Juvenile Court, all of them situated on the Malé atoll;

(b) A High Court of Justice that functions as the appeal court. That jurisdiction also functions as a court of first instance for politically sensitive cases which are prosecuted by the Attorney-General's Office. There is no Supreme Court.

9. The Island Courts, presided over by a single judge, deal with civil and criminal matters but do not have jurisdiction to hear cases involving serious criminal offences and civil cases where the amount or the subject matter in dispute exceeds 5 million rufiyaa. Those are dealt with by Malé's Courts, which raises serious issues of the accessibility of the justice system since travelling to the capital is unaffordable for the majority of the population. Even though Island Courts exist in all the inhabited islands, lack of legal expertise and limited jurisdiction often make them ineffective. Also, due to the great distance between the islands of the archipelago, it is very difficult for the State to assign qualified judges in each and every inhabited island, as this generates high overhead costs and a heavy administrative burden.

10. Under the President's proposed constitutional amendments, the Chief Justice, acting with the advice of the Supreme Judicial Council, will have the authority to determine the number of courts to be established and the places where they are to be established.

11. The High Court of Justice handles appeals from the courts of first instance. The fact that it sits only in Malé raises the issue of the accessibility of justice at the appellate level. Cases before that jurisdiction are usually heard by a panel of two judges. Following a High Court ruling, litigants can appeal to the President's Office to overturn the ruling or have it sent back to the High Court for reconsideration. The President has authority to confirm or overturn the High Court's judgements and to order a second hearing. Further to a presidential decree of 1995, the President is assisted in this task by a Judicial Advisory Committee, composed of the Chief Justice and other members who are not judges. As this body is mainly not composed of judges and does not follow proper judicial procedures, it does not provide an independent judicial review, a gross violation of the international standards and principles on the independence of the judiciary. In addition, the Chief Justice may be involved in approving or rejecting his own decisions. Also, in cases involving the State, the President can act simultaneously as a party and a judge.

D. Other relevant institutions

12. On 11 November 2005 the Judicial Services Commission was established to advise the President on the appointment and dismissal of judges. It consists of the Minister of Justice and the Attorney-General, the Chief Justice, a member of the Judicial Advisory Committee to the President, a Justice of the High Court, a judge of the lower courts, two members of the legal profession and a member of the general public. The Special Rapporteur found that this body lacked the appropriate means and authority to function properly. In addition, being only an advisory and not a decision-making body, it can only have minimal impact, especially as it has no power to administer the budget for the functioning of the judiciary, a key to effectively guaranteeing its independence. Reform of the Judicial Services Commission should be a priority.

13. The Human Rights Commission of Maldives (HRCM), with powers to visit jails and detention centres and investigate and identify reports of human rights abuses, was established by presidential decree on 10 December 2003. However, it was reportedly dysfunctional from August 2005 until November 2007, when most of the members of the Commission resigned in protest against a new bill reviewing the status of the Commission adopted on 18 August 2005. This issue was resolved in August 2006, when the relevant act was amended, bringing the HRCM more into line with the Paris Principles. On 31 October 2006, the Government of Maldives and the United Nations signed a three-year project that is expected to help strengthen the capacity of the HRCM to achieve the long-term objectives of strengthening the human rights culture in the country; responding to human rights abuses; furthering economic equity; creating an active civil society that can address human rights issues in the country and, in light of the entry into force of the Optional Protocol to the Convention on Torture in Maldives, strengthening activities relating to detention monitoring. In addition to the HRCM, the creation of an Ombudsman's Office by 1 January 2008 is one of the objectives of the President's Road Map.

14. The Government created a Jail Oversight Committee in 2004, which is entrusted with the national inspection of prisons. Members are appointed by the President and include lawyers, judges and parliamentarians. The Committee has the power to inspect every cell block in the Maafushi prison without prior notice and reports to the President and the Ministry of Home Affairs. It has recently been given jurisdiction over the Dhoonidhoo pretrial detention centre. The Government is also planning to set up an Inspectorate of Prisons that will inspect prisons and provide advice on appropriate prison standards.

15. A Police Integrity Commission has been established to make the police accountable for their acts. However, the Special Rapporteur was informed that this commission has been given no publicity and is in fact not functioning.

E. Main recent reforms and developments affecting the judicial system

1. Reform proposals

16. The extensive reform agenda announced by President Gayoum with respect to the establishment of an independent judiciary and the modernization of the criminal justice system is based on the Road Map for the Reform Agenda of 27 March 2006, the President's 31-point Proposals for Constitutional Amendment of 14 February 2005 and the National Criminal Justice Action Plan of December 2004.

17. In the Road Map, the President makes a commitment to revise the Constitution, to strengthen the judiciary and to reorganize the administration of justice. He sets the following objectives to be completed by 1 August 2007: (i) to establish a Supreme Court; (ii) to table draft legislation on the Judicature before the People's Majlis; (iii) to table draft legislation on the Judicial Services Commission before the People's Majlis; (iv) to reform the criminal justice system through the tabling of a new Penal Code, Sentencing Bill, Criminal Procedure Code, Bill of Evidence, Police Bill, National Security Bill, Detention Procedures Bill and Parole Bill. With the exception of the Bill of Evidence, all bills mentioned under (iv) were tabled in 2006.

18. The reform of the criminal justice system provided for in the Road Map is based upon the National Criminal Justice Action Plan 2004-2008 elaborated by the Attorney-General in

cooperation with UNDP and other stakeholders. It addresses specific areas such as criminal procedure, police powers, use of evidence in court including less reliance on confessions, juvenile justice, strengthening of the penal system, jail management and the judicial system. In particular, it identifies the need to develop trial rules and procedures, the capacity to admit scientific and expert witness evidence, the doctrine of precedent, an independent Judicial Services Commission as well as graded sentencing guidelines. This is in addition to better case management and new legislation including a comprehensive new Penal Code. The Minister of Justice insisted that legislative reforms are essential to bring Maldivian laws into line with international standards. To that effect, foreign consultants have been making a substantial contribution to the drafting of the new texts. In particular, the new Penal Code has been drafted by Professor Robinson of the University of Pennsylvania. The Government hopes that this new code will be seen as an example in the Islamic world of how to harmonize Islamic law and modern law in line with international standards. The same approach is followed for the rest of the legislative reform.

19. The President's 31-point Proposals for Constitutional Amendment set out proposals for the new Constitution, including the clear recognition of the independence of the judiciary and other fundamental issues such as that the appointment and dismissal of judges will be made with the advice of the Judicial Services Commission, or the Parliament for the highest judicial posts.

20. The Special Rapporteur also notes with appreciation that the Ministry of Justice has adopted a Justice Strategic Plan for 2006-2010, which contains concrete cost assessments for a number of goals to be achieved at the short, medium and long term. He hopes these goals, which include the establishment of an independent bar association, a legal aid system and a juvenile justice system, and law courses at the Masters and PhD levels will be implemented promptly.

21. Specific proposals for reform under the Reform Agenda, the National Criminal Justice Action Plan and the President's 31-point Proposals are commented upon under the relevant sections of this report.

2. Political difficulties

22. In general the President's proposed reforms have had broad support among the different institutional actors. However, there are currently some difficulties within the Special Majlis, the special constitutional assembly in charge of the constitutional reform. Discussions within the Majlis are said to be chaotic to the point of stalemate, due to political divergences and to the fact that many members are not trained in parliamentary work. This blockage threatens the achievement of the Government's target, set out in the Reform Agenda, of adopting the new Constitution before 31 May 2007. To do that, the Government needs the agreement of the opposition since some members of the governmental party do not support it. In order to overcome the impasse in the Special Majlis, the Government and the opposition started regular talks in early 2007. However, on 26 March 2007, the Presidential Party suspended the talks, indicating that the MDP was not showing a commitment to expediting the work on the constitutional reform, and announcing that it would not resume talks until the MDP began to demonstrate a good faith commitment to a bipartisan reform process. The Special Rapporteur is seriously concerned about this impasse, which threatens the adoption of the new Constitution; as the centrepiece of the entire reform process, its adoption is an absolute priority.

F. The judiciary

Appointment, tenure and disciplinary measures

23. Security of tenure is not granted under the current Constitution. All judges are appointed by the President. In accordance with article 123 of the Constitution, the President may at his discretion remove a judge of any court from office. Furthermore, article 117 allows the President to remove the Chief Justice or a judge of the High Court. Since November 2005, judges are dismissed and transferred by the President on the advice of the Judicial Services Commission.

24. To ensure greater separation of powers, point 6 of the President's 31-point Proposals for Constitutional Amendment proposes to "divest the presidency of its role as the head of the judiciary". Point 16 states that the President will only appoint and dismiss the Chief Justice, the judges of the newly established Supreme Court and members of the Supreme Judicial Council with the advice of the Majlis. Point 25 also provides that the Chief Justice, with the advice of the Supreme Judicial Council, will appoint and dismiss judges of all courts.

Qualifications and training

25. Judges lack sufficient training before taking office and during their tenure. They are recruited with very limited or no practical legal experience. Two institutes offer training for judges and lawyers: the Faculty of Sharia and Law and the Faculty of Islamic Studies. The first focuses more on common law and the second on sharia law, but they do not provide a proper university level training. As a consequence, there is an acute shortage of legally qualified people, especially in civil, common and international law. A training programme has recently been launched by the Government: 18 students are currently undertaking a four-year course to become qualified judges in Malaysia, with a possibility of finalizing the training in Singapore, the United Kingdom or Australia. They are receiving training in international and common law, and will become judges upon their return. Also, a new programme is being launched whereby foreign professors are brought to Maldives to train judges locally.

26. The urgent need for legal training and education for lawyers, judges and prosecutors is recognized by all actors - the Government, judges, legal professionals and civil society - as being a top priority for which urgent and massive intervention is needed. Such training should consist not only of appropriate university education, but also provide judges and lawyers with the possibility to observe how trials are conducted in foreign countries.

Salaries

27. Salaries of judges are far too low: they earn approximately 60 per cent of the average national income. Furthermore, judges indicated that even within the Government their salaries are lower than those paid to civil servants working for a number of ministries. These low salaries encourage corruption. Also, trained jurists tend to be more attracted by the independent legal profession, which is much more lucrative.

Ethical norms of judicial conduct

28. Corruption of judges has been reported by many victims and plaintiffs, and by judges themselves who refer to their very low salaries, which makes it difficult for them to resist external pressures. Judges have still not been provided with a professional code of conduct or guidance on ethics and are generally unaware of the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, annex) of 2002.

Threats and lack of security affecting judges

29. Many judges indicated that they work in a tense environment, and receive threats, even death threats, notably when dealing with cases involving important criminals or large amounts of money. Many of them underlined the need for more measures to ensure their security.

Judicial immunity

30. Judges lack protection from unwarranted prosecution because of the lack of legislation on judicial immunity.

Women within the judiciary

31. The report "Gender issues in the criminal system of the Maldives", issued at the request of the Attorney-General and the Ministry of Gender on 2 September 2004, recognized that there is not a single female judge in Maldives. Even though there is no prohibition against their nomination and many women are legally trained and practise as lawyers, this situation remained unchanged at the time of the visit.

Right of association

32. No independent professional association of judges exists.

Alternative dispute resolution

33. There is currently no alternative dispute resolution mechanism, such as arbitration. The Attorney-General's Office indicated that it would produce draft legislation on arbitration. Judges also indicated that they would favour the establishment of alternative dispute resolution systems, such as amicable resolution, to help them reduce their heavy workload.

Prevailing mentality among judges and lack of public confidence in the judiciary

34. As a consequence of the extensive powers of the executive over the judiciary, judges are strongly discouraged from issuing judicial decisions that contradict the executive and effectively refrain from ruling against the Government. Many interlocutors underlined that, in addition to reforming the constitutional and legal framework, one of the main challenges in building a truly independent judiciary will be to change judges' profoundly anchored mindset of having to be loyal to the executive. Similarly, the lack of independence of the judiciary that has permeated the system for decades has generated a deeply engrained lack of trust in the judiciary on the part of the population. Building public confidence in the judiciary will be another important challenge.

G. The Attorney-General

Appointment, tenure and disciplinary measures

35. Article 42 of the Constitution provides that the President will appoint and remove the Attorney-General. Article 55 (2) states: "Nothing [in this article] shall restrict the President from directly taking charge of a Ministry or the Attorney-General's Office, as he deems fit, without appointing a Minister or an Attorney-General." The President appoints and dismisses prosecutors at his discretion, with the advice of the Attorney-General. There is no independent body or process for disciplining prosecutors: the Attorney-General is responsible for disciplinary actions. There are no associations of prosecutors responsible for protecting their interests.

Lack of prosecutors

36. Prosecutors are present in only 9 of the 20 atolls provided with Island Courts. One of the objectives of the Attorney-General's Office is thus to train more prosecutors so as to meet the needs. To that effect, it plans to launch a training programme for prosecutors in June 2007 in Malé's Faculty of Sharia.

Independence of prosecution

37. According to the President's 31-point Proposals for Constitutional Amendments, the President will retain his exclusive power to appoint and dismiss the Attorney-General. The independence of this position will therefore not be guaranteed. At present, the Attorney-General is at the same time part of the executive and chief of the prosecution services, which impacts significantly on the latter's independence. However, according to the Minister of Justice and the Attorney-General, the post of an independent Prosecutor-General will be established. A decision to that effect would have been taken by the Special Majlis. The Attorney-General will keep only his function as legal adviser to the Government. Legislation to that effect is being prepared by the Attorney-General's Office, but has not yet been finalized or tabled.

Investigations and the role of the police

38. The police became a civilian force only on 1 September 2004, when it was separated from the military; they have therefore received training for military purposes. Major efforts will need to be undertaken to train the police as a civilian force, especially in the human rights standards applicable to their work. Further, there is still no legislation regulating the powers and responsibilities of the police. A Police Bill and a Criminal Procedure Bill have been drafted and tabled in the Majlis to that effect. However, at present the lack of regulation leads to arbitrary practices in the conduct of investigations, including too-frequent pretrial detention and abusive behaviour by the police. Police brutality in general, and in particular during demonstrations, where even a case of violence against a pregnant woman was reported by a witness, has been frequently referred to as a systemic and very serious problem. People fear to exercise their right to freedom of expression and assembly because of police brutality.

39. Investigations of crimes and offences are mainly the responsibility of the police, while the Attorney-General's Office has an extremely limited role. No rule allows prosecutors from the Office to be present during the investigation. In a few cases prosecutors are allowed to be

present, but they cannot intervene in police investigations. They can only review the conclusions of a police investigation once the case reaches their office. Similarly, they cannot launch their own investigations. The absence of intervention by either prosecutors or judges in police investigations clearly affects respect for the applicable fair trial and procedural rules during the investigations. Yet, neither the Police Bill nor the Criminal Procedure Bill seems to appropriately address this issue. In addition, there exists a longstanding culture of investigation which focuses on obtaining confessions, and the prosecution and the judicial process rely considerably on those confessions. However, the Government indicated that there is a recent shift towards using more modern and elaborated investigative techniques, and that as a consequence the rate of confessions used as evidence has already fallen down to 9 per cent in 2006. An Evidence Bill aimed at introducing forensic, scientific and expert witness evidence is being drafted but has still not been tabled before the Majlis.

H. The legal profession

Shortage of lawyers

40. There is a real shortage of lawyers in the country, in particular in the criminal justice system. The legal profession is nascent, with the first Maldivian lawyer having qualified in 1985. There are an estimated 272 registered lawyers in the whole country. The majority of them work in the private sector, of whom few regularly practise criminal law. About 60 work as legal officers in the Government.

Lack of appropriate training

41. While there is currently no requirement established by law for qualification as a legal practitioner, pre-degree-level of familiarity with sharia law is considered sufficient. Legal education in Maldives is provided by two law institutions which offer diplomas in sharia law only, and do not offer any form of continuing legal education in order to promote knowledge and understanding of legal ethics, rule of law and international human rights standards. No institution offers an education in common law.

Licence and disciplinary matters

42. Any law graduate may be granted a licence to practise as a lawyer from the Ministry of Justice. The Ministry deals with all disciplinary matters and issues and withdraws licences. There is no role for a professional association of lawyers in the current licensing process. As a result, the Ministry of Justice is in fact able to decide who can be part of the legal profession. In this context, lawyers are unable to exercise any effective independence, especially when conducting cases against the State.

Lack of a bar association

43. There is no bar association in Maldives. The Law Society, founded in 1990, acts as a lawyers' association, but without an official status. The Law Society has reportedly not been very active since 2002, except in mid-2004 when it was engaged with the President's Office in the drafting of the Proposed Constitutional Amendments, with the support of UNDP. The Law Society, with about 120 members, has very limited internal or project management capacity.

Access to legal material and legislation

44. Lawyers reported limited legal resources available to them to undertake legal research. Lack of clear written regulations and procedures is a major obstacle to their work. However, copies of existing rules and regulations are now made available on the website of the Attorney-General's Office.

I. Conduct of judicial proceedings

Lack of procedural rules

45. One of the main obstacles to the conduct of fair and transparent judicial proceedings is the lack of codified civil and procedural rules on which judges, but also lawyers and the accused can rely. A draft Criminal Procedure Code has been tabled in Parliament, while a Civil Procedure Code still needs to be drafted. The Government has fortunately indicated that it sees both of these texts as a priority.

Abuse of pretrial detention and lack of habeas corpus

46. While the distinction between arrestable and non-arrestable offences has been introduced only recently, prolonged and arbitrary pretrial detentions are still common. According to the current legislation and practice, a suspect can be held in detention for seven days without any review by any external person or body, or without even being charged. After 7 days, a three-member committee composed of government officials appointed by the President can approve a 15-day extension without disclosing the reasons for the detention either to the accused or to their lawyer. Consequently, suspects can be detained for a period of 22 days without being charged and without having their detention approved or reviewed by a judicial body. This is a breach of the international obligations subscribed to by Maldives, in particular article 9 of ICCPR which requires that an arrested person be brought before a judge "promptly". After this 22-day detention period, a judge will have to authorize the extension of the detention. However, the right to defence cannot be exercised during that hearing. In practice, the judge examines the request for extension without hearing the detainee or his lawyer. Furthermore, there is no requirement for the court to provide the grounds for the extension of the detention in writing, or to give adequate notice of a hearing to the lawyer, who typically learns about the hearing once his client is already before the judge. Under this procedure, judges can decide to authorize a further 30-day extension, without limit. The Special Rapporteur was informed by several sources that judges are told by the police to sign the requests for extension of detention without examining the substance of the case. Since judges fall under the authority of the executive, it is practically impossible for them to refuse. Therefore, the Government imposes pretrial detention for as long as it wishes, typically for months.

47. The Criminal Procedure Bill, if adopted, will introduce significant changes to this procedure, such as the right to habeas corpus: within 24 hours of arrest, a detained person will have to be brought before a judge and will have to be assisted by a lawyer. A main concern is that outside Malé, detainees would still not have access to a lawyer because of the lack of lawyers, in addition to the issue of affordability.

Access to a lawyer and exercise of defence rights

48. Since 2004, the right of detainees to have access to a lawyer at all stages of their detention and trial has been recognized by the Regulations on seeking and obtaining the assistance of a lawyer. This is progress compared to the ambiguous article 16 of the Constitution which provided that a person charged with an offence shall be allowed to obtain the assistance of a lawyer whenever such assistance is required. Yet, a concrete major problem is the shortage of lawyers, as already noted, and the absence of a legal aid system within Maldives, where legal representation is unaffordable for the vast majority of the population.

49. Another obstacle is the lack of lawyers in the country willing to work on criminal cases, mainly because of the absence of procedural rules and the consequent difficulty in building a strong case. Also, the few existing criminal lawyers usually work in very tense circumstances, spending a lot of time dealing with police officers during the investigations. In fact, lawyers are not allowed to communicate with their clients during the investigation: they can be present, but they cannot speak. They can only speak to their clients during the breaks. The same applies to interrogations: lawyers are allowed to be present but cannot intervene. In addition to these procedural difficulties and the frustrations they cause, clients often do not have the means to pay appropriate fees.

50. As a consequence, the majority of the accused before the Maldives' courts are unable to access legal advice, in violation of their right under article 14 of ICCPR. The principle of equal access to the courts is therefore seriously undermined in Maldives. In this context, the Ministry of Justice indicated that a major obstacle to the establishment of a legal aid system is the lack of lawyers.

Confessions as evidence and allegations of torture

51. Without a lawyer attending a criminal investigation, the police are said to be able to obtain false statements through coercion, mistreatment and torture. The police reportedly do not apprise persons of their basic rights and put pressure on accused persons not to seek legal representation. Indeed, in his National Criminal Justice Action Plan the Attorney-General acknowledges that "investigative authorities in the Maldives are untrained in modern methods of investigation. The result is a culture of investigation that focuses on obtaining confessions and a prosecutorial and judicial process that centre around confessions". For his part, the Special Rapporteur gathered several testimonies about cases of mistreatment and torture during pretrial detention, and of convictions based on statements taken under duress. Moreover, former inmates have referred both to psychological and physical torture. It is also reported that courts do not investigate these cases.

Trial proceedings

52. Currently, trial proceedings consist of a series of short hearings, leading to significant delays in adjudication. This creates inequitable situations, especially in light of the fact that many defendants are held in pretrial detention. Interruptions of trials and their postponement by the courts are also commonplace. The accused and the lawyers are informed of the hearings only

shortly before they take place, sometimes the day before or the same day, which violates the right of the accused "to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing" (ICCPR, art. 14).

Right of appeal

53. The right of appeal can only be exercised before the High Court which sits in Malé. The fact that only one court can hear appeal cases creates a problem of timely delivery and, due to its geographical centralization, a problem of affordability. This results in a lack of access to the appeal court and therefore in a denial of the right to appeal. This serious issue is mentioned as a concern in the National Criminal Justice Action Plan. It requires an urgent review of the current appeal system, which has not been done yet.

54. The Special Rapporteur was also informed that of the five judges comprising the High Court, only two hear a case. However, the decision is taken by the five judges in a separate meeting, on a majority vote. This means that judges who did not hear the case can actually take a decision with regard to that case. In addition, the Chief Justice of the High Court never sits in a hearing but has the power to decide a case if the other four judges do not reach a decision by majority vote. Furthermore, judges do not write dissenting opinions.

Sentences and their enforcement

55. Sentences are usually disproportionate, in particular with regard to drug-abuse-related cases, where young drug users are commonly sentenced to more than 20 years' imprisonment or even to life imprisonment. In a welcome development, the National Criminal Justice Action Plan suggests putting in place a graded framework to tailor sentences to the offender and the offence, and alternative forms of punishment. This graded framework is included in the draft new penal code.

56. The Attorney-General's Office mentioned problems with the enforcement of sentences pronounced by judges, which is currently the responsibility of the Department of Penitentiary and Rehabilitation. To resolve that problem, the Ministry of Justice is drafting legislation for the establishment of an agency on the enforcement of judgements. The Special Rapporteur supports this idea.

J. Drug-related offences

57. Trafficking and consumption of drugs is a serious problem in Maldives. In the last few years the phenomenon has reached huge proportions, with practically every family having at least one member affected by this problem. Drugs are easily available on the streets, mainly "brown sugar" and heroin. Although the Special Rapporteur has received no information on specific cases, he is aware of allegations that members of the police forces are involved in drug trafficking and even in offering drugs in exchange for certain "services" such as violent behaviour to provoke violence during demonstrations.

58. According to the National Criminal Justice Action Plan (2004-2008) elaborated by the Attorney-General's Office, in August 2003 about 80 per cent of the prison population were drug offenders with 29.3 per cent serving life sentences for drug-related offences. During his visit,

including to the Maafushi prison, the Special Rapporteur observed that the vast majority of prisoners were young. The criminalization of young drug users and the imposition of very severe sentences is a particularly serious problem. One young offender said that he had been sentenced to 62 years' imprisonment.

59. While rehabilitation programmes and centres are referred to in reform plans and were mentioned by the director of the prison as being forthcoming, the Special Rapporteur observed with great disappointment and frustration that very little has been put in place so far. Only one facility for 150 persons has been created and families are required to share the costs. The reality on the ground is that a vast number of young drug offenders, both female and male, are left to languish in prison without being given any chance to rehabilitate.

60. Prison conditions are not appropriate and include poor access to medical facilities, no recreational or learning activities, discriminatory treatment, mistreatment of detainees and the use of drugs. The Special Rapporteur was told that prison authorities allow drugs to circulate in the Maafushi prison.

61. The National Criminal Justice Action Plan points out that:

> "professionals working in this area suggest that the current situation is a reflection of a criminal justice system that too readily absorbs offenders into the system without providing exit points. Further, the unavailability of alternatives to detention, disproportionate sentences prescribed in the Anti-Narcotics Act and a general lack of correlation between crime culpability and sentences contribute to this issue. It has also been suggested that the prevailing punitive approach in sentencing is not effective in managing current crime patterns leading to high rates of recidivism and failures in re-integration into society".

Despite this analysis, no concrete measures have yet been adopted to make these important proposals reality.

K. Juvenile justice

62. Juvenile delinquency is growing at an alarming rate, mainly due to drug abuse and trafficking. According to the information provided by the Government, the vast majority of current offenders started at the age of 12 to 16 with petty offences, some of them ending up as serious criminals. The current juvenile justice system does not effectively address the problem: it focuses on sanctions such as fines, house arrest, banishment or jail, but does not provide for adequate options and programmes to guide young offenders out of the system, through rehabilitative mechanisms. This results in a system which regenerates criminality instead of diverting young offenders from criminality and offering them rehabilitation and reintegration.

63. The Maldives' juvenile justice system is extremely centralized: since there is only one Juvenile Court, in Malé, children need to come to the capital for a number of specified cases, while other cases can be dealt with by the Island Courts. The Minister of Gender and Family proposed a strategy of decentralization whereby every atoll would have a system of child protection, with trained personnel.

64. Another issue of concern is the low rate of prosecution and punishment of child sexual abuse cases; they mostly remain within the household. Under the currently applicable law, that is to say sharia law, those cases fall into the category of adultery and therefore require corroborating evidence from two witnesses. This is almost impossible to obtain in this kind of case. Furthermore, the testimony of the child is not sufficient for initiating a prosecution process. In addition to this serious problem of evidence, which requires urgent attention, judges are neither trained nor sensitized to juvenile justice issues.

L. Gender-based violence in the judicial system

65. Gender-based violence is underreported within the judicial system. Acknowledging being a victim of such violence is seen as a shameful act. As a consequence women tend to avoid talking about it and reporting it. Three years ago, the Ministry of Gender initiated a campaign on the importance of reporting these acts. Yet, in several cases where women had the courage to report domestic violence, their husbands filed a complaint against them for abandonment. In other cases, women who had been victims of domestic violence were ordered to go back to their homes.

66. It is of great concern that gender awareness-raising programmes do not exist for the police and the judiciary in Maldives. Also, the country does not have a single woman judge at this time.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

67. Maldives was a relatively isolated country until it gained independence in 1965: as opposed to the other Commonwealth countries, it did not inherit a political and legal system that had been modernized by the colonial Powers. Therefore, its traditional institutions and legal system, based on a juxtaposition of sharia and common law, face immense challenges in today's society which is undergoing a period of rapid economic and social change, in particular due to the development of tourism.

68. Under the current constitutional and legal framework, the Maldivian judiciary lacks independence since it is under the control of the President. Also, the country is affected by a dramatic shortage of properly trained judges and lawyers and by a certain level of corruption within the judiciary. The police have very broad investigative powers and use investigation methods that focus on obtaining confession of guilt. Prosecutors and judges have no oversight in police investigations. The geographical structure of the country, with hundreds of atolls, 200 of which are inhabited but poorly equipped to render justice, makes this situation even more complicated. Under these circumstances, the Maldivian judiciary is unable to guarantee a fair trial to defendants.

69. On the other hand, Maldives is a party to the core human rights instruments which are binding on the State and require far-reaching legal and structural changes if the State is to meet its international obligations. Clearly, the current legal framework still falls short of those international commitments, not only with regard to the justice sector but also in

such areas as freedom of expression, freedom of association, freedom of religion and women's rights.

70. Against this background, conscious of the need to modernize its society and impelled by the aspirations of its population, which wants change, the Government recently embarked on very important reforms that aim to establish a democratic system with true separation of powers. The Special Rapporteur fully supports the decision to embark on the envisaged reforms, and in particular the constitutional and legal reforms aimed at allowing the country to have an independent and effective judiciary that conforms to international due process standards.

71. Yet, while there exists, on the part of both the President and the opposition, a level of consensus on the need to introduce drastic reforms, it is of concern that serious difficulties have arisen about the way concretely to adopt those reforms. It is essential that all parties urgently resume discussions to allow the adoption, as planned, of the new Constitution by the end of May 2007. Indeed, this is a fundamental prerequisite for the transition of the country towards democracy and for the adoption of the rest of the planned reforms.

B. Recommendations

72. Welcoming the current process of constitutional and legislative reform, which he considers an essential opportunity for the country to adhere to democratic principles and good governance, the Special Rapporteur makes the following recommendations.

73. The constitutional reform that is currently being discussed in the Special Majlis should be adopted as soon as possible, preferably before 31 May 2007 as planned in the Road Map for the Reform Agenda. With regard to human rights and the administration of justice, the new Constitution should include at a minimum the following:

- **A real separation of powers and a clear recognition of the independence of the judiciary;**
- **Provisions for democratic multiparty elections;**
- **The establishment of a Supreme Court;**
- **The establishment of the post of an independent Prosecutor-General;**
- **A bill of rights that conforms to international human rights treaties ratified by Maldives, as well as relevant international human rights principles;**
- **An independent Judicial Services Commission, with decision-making power for the appointment, dismissal and discipline of judges, and for the financial management of the courts;**
- **An independent human rights commission.**

74. The main political actors in Maldives should urgently resume the negotiations for the adoption of the new Constitution that were suspended on 26 March 2007. A climate of dialogue and tolerance should be promoted by all sides with a view to the prompt adoption of the constitutional reforms that are indispensable if the country is to have one day an independent, effective and impartial judiciary. In this context, the prohibition of peaceful demonstrations and their violent repression, followed by arbitrary arrests and violent abuses, should cease. Police brutality is indeed a major obstacle to the success of the constitutional reform.

75. Legislation on the reform of the criminal justice system, including the new Penal Code, the Sentencing Bill, the Criminal Procedure Code, the Bill of Evidence and the Police Bill, should be promptly adopted. The adoption of a new Penal Code, Sentencing Bill, Criminal Procedure Code and Bill of Evidence is essential for fair trial standards to be guaranteed within the Maldives' judicial system. The adoption of an appropriate Police Bill is also of key importance to regulate the powers and responsibilities of the police, in particular during investigations, and prevent abusive behaviour and excessive use of pretrial detention.

76. The Government and the Parliament of Maldives should ensure that the new constitutional and legal framework is in line with international human rights instruments, as well as with the following basic principles on the independence of the judicial system: the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors and the Bangalore Principles of Judicial Conduct.

77. An independent Judicial Services Commission should be established that is responsible for appointing, promoting and disciplining judges and prosecutors. To that effect, the new Judicial Services Commission Act should be promptly adopted. The Special Rapporteur considers it a priority that this body be independent and fully effective, and that it be provided with the decision-making authority to appoint, dismiss and discipline judges and prosecutors, and to administer the funds for the functioning of the judiciary, in order to effectively guarantee its independence. In this context, the financial autonomy of the judiciary could be guaranteed by establishing a fixed percentage of GDP for the judiciary's budget. Also, judges should be appointed for life, and should only be dismissed for misconduct or incapacity to carry out their duties due to health reasons.

78. A procedure should be established for the appointment of the Chief Justice and the judges of the newly established Supreme Court as well as the members of the Supreme Judicial Council, which guarantees their independence. The independence of these high judicial posts is key to guaranteeing the independence of the entire judiciary. Therefore, if the currently proposed system, whereby the President appoints these high judicial posts with the advice of the Majlis, is maintained, the President should not be permitted to take such decisions without the consent of the Majlis.

79. In light of the serious lack of trained judges and lawyers, and noting that current legal training is very limited and focused almost exclusively on sharia law, resources should be invested in capacity-building activities, which could include sending law students to foreign countries for appropriate training and bringing foreign professors to Maldives to

train them locally. The Special Rapporteur strongly supports the establishment of a university Faculty of Law in Maldives, which would provide comprehensive modern legal training that is up to international standards. To that effect, he recommends that the international donor community, including donor countries and international organizations such as UNDP and others, provide financial support for these capacity-building projects.

80. Effective legislative and governmental measures should be taken to allow women to become judges, in accordance with international human rights treaties ratified by Maldives. That legally binding obligation has been repeatedly pointed out by international human rights bodies such as the Committee on the Elimination of Discrimination against Women. In particular, the Government is urged to implement the recommendations included in paragraphs 25 and 26 of the concluding comments of the Committee of 2 February 2007 (CEDAW/C/MDV/CO/3), which include the adoption of temporary special measures such as quotas for women within the judiciary.

81. The salaries of judges should be raised, not only to attract more jurists into the profession, but also to guarantee their independence vis-à-vis external pressures. Also, a professional code of ethics for judges should be elaborated, based, among others things, on the Bangalore Principles of Judicial Conduct of 2002.

82. Owing to the serious threats some judges are subjected to, more security should be provided by the Government and all cases of threats against judges should be duly investigated and sanctioned. Also, specific norms recognizing the professional immunity of judges should be adopted.

83. Judges are encouraged to establish a judges' association to represent the interests of judges and provide them with an appropriate space to discuss issues linked to the exercise of their profession and the promotion of their independence. The Government should recognize such an association. This association should be able to represent Maldivian judges in international forums such as the International Association of Judges.

84. In order to guarantee the effective right to appeal of defendants, an appeal court should be established on every atoll. Also, pending the adoption of the reforms, the decision-making system in the High Court should be revised urgently in order to guarantee that only judges who have heard a case can take a decision on it.

85. The post of Prosecutor-General should be established and the relevant legislation, currently being prepared, should provide for it to be totally independent from the executive. Separate from the Prosecutor-General, the Attorney-General should retain only his current function as legal adviser to the Government.

86. Judges and prosecutors should be involved in police investigations in order to monitor and guarantee respect for human rights. In this context, more investigative power should be vested in the Attorney-General's Office and, once established in the new Prosecutor General's Office, to allow prosecutors to act in response to possible irregularities in the investigations or to request complementary investigations. Also, a judicial police could be established, which would be responsible for investigating crimes and offences under the direction of the judiciary, as is the case in many countries.

87. Investigative authorities should be trained both in human rights norms and in modern investigative techniques, including forensic, scientific and expert witness evidence, as mentioned in the National Criminal Justice Action Plan. The final version of the Evidence Bill, which should soon be tabled before the Majlis, should enshrine all of these basic requirements.

88. Since the current Police Integrity Commission is not functioning properly and has been the subject of criticism, a new Police Commission with sufficient authority and visibility among the police forces should be established. It should be given the necessary means to function effectively, in particular to investigate cases of police misbehaviour, appropriately discipline those found guilty of misbehaviour and disseminate information about its work.

89. Lawyers are encouraged to establish an independent bar association, which would provide them with the independence required for the exercise of their profession. The Government should officially recognize the bar association. This entity should be responsible, in particular, for creating a common examination to obtain a licence to practise, issuing and withdrawing licences, guaranteeing minimum standards for the exercise of the legal profession, elaborating a code of ethics, deciding disciplinary matters and in general independently representing the interests of the legal profession. The International Bar Association could be invited to provide assistance to Maldives for the establishment of its bar association.

90. A system of legal aid should be established as a matter of priority, to allow persons who cannot afford a lawyer to receive free of charge the assistance of a lawyer assigned by public authorities. International organizations and donors could assist in the establishment of such a system.

91. Urgent action should be taken to halt abuses of pretrial detention, which should be an exception and not the rule. The right to habeas corpus should be urgently implemented. Therefore, the right of a detained person to be brought before a judge, with the assistance of a lawyer, within 24 hours from arrest, should be granted to all detained persons as a matter of priority.

92. While imprisonment as almost the sole form of punishment has proven unsuccessful, alternative forms of sanction should be established. Sentencing should focus in particular on the rehabilitation of offenders, in particular for juvenile and young offenders. Sentences should be made proportionate to the concrete facts prompting them. As suggested in the National Criminal Justice Action Plan, a graded framework to tailor sentences to the offender and the offence should be put in place, as well as alternative forms of punishment. The suggested establishment of an agency on the enforcement of judgements is also to be supported.

93. Noting that drug consumption affects almost every family and that criminalization has proved unsuccessful, the Special Rapporteur recommends the urgent strengthening of both prevention and rehabilitation programmes. In particular, rehabilitation programmes and centres should be created as a matter of priority to give the many detained young drug offenders, both female and male, a chance to rehabilitate. The programmes should depart

from the current punitive approach which has led to high rates of recidivism and failures to reintegrate into society.

94. The current juvenile judicial and protection system should be decentralized, since it is accessible almost only to children living on the Malé atoll. The Special Rapporteur encourages the urgent implementation of the governmental initiative, with the assistance of UNICEF, to set up a juvenile justice system, including the establishment of a Juvenile Justice Unit.

95. New legislation should be introduced to enable prosecution of child sexual abuse cases on the basis of reasonable evidence. Child abuse should not be considered a case of adultery: the victim is a minor who requires special protection, in accordance with the Convention on the Rights of the Child, to which Maldives is a party. Also, appropriate consideration should be given to the testimony of the child.

96. Spousal assault, non-consensual sex (whether inside or outside marriage) and sex with an underage minor should be considered separate and specific criminal offences. Judges and prosecutors must be trained in gender-based violence issues. Also, equal value should be attributed to evidence irrespective of whether it is provided by a man or a woman.

97. The Government should disseminate information about human rights treaties in the entire country, in order for people to be aware of their rights. Human rights education should be part of the school curricula.

98. There are few civil society organizations and they do not have adequate means to carry out their work. The Government should provide support to the work of non-governmental organizations, recognizing that an active civil society is an integral part of a healthy democratic society, and complementary to the work carried out by the Government. In particular, non-governmental organizations working on the promotion and protection of human rights, including children's and women's rights, should be supported.

99. At this key moment in the history of Maldives, the international community, including relevant United Nations agencies engaged in Maldives, should become involved in the reform process and provide adequate support, both substantial and financial, to allow for the reform process to be completed and for the reforms to be implemented. In particular, assistance would be needed in the following areas:

- **Support to capacity-building projects for judges, lawyers and prosecutors, in particular by providing financial support to enable judges to study abroad, foreign professors to be brought in to conduct training, or for other projects aimed at improving the capacity of Maldives to provide locally university training in line with modern international standards to future judges, lawyers and prosecutors;**

- **Support for the authorities of Maldives in the establishment of a legal aid system, including by providing financial support;**

- **Support for the authorities of Maldives in the establishment of a bar association;**

- **Support for the authorities of Maldives in putting in place a vast programme of rehabilitation for people convicted of drug use, who represent more than 80 per cent of sentenced and detained persons in the country. Maldives is facing huge problems in dealing with this issue and needs the assistance of the international community to resolve the problem. In particular, it needs technical expertise for the elaboration and implementation of these programmes, and financial assistance to finance them.**

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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

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

Addendum*

Preliminary note on the mission to the Democratic Republic of the Congo

* The present document, which carries the symbol number of the fourth session of the Human Rights Council, is scheduled for examination by the fifth session of the Council.

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Introduction

1. The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, visited the Democratic Republic of the Congo from 15 to 21 April 2007 at the invitation of the Government. He would like to thank the Government for its cooperation, and the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) for the very valuable assistance that he received.

2. The Special Rapporteur and his team visited Kinshasa, Bukavu in Sud-Kivu, Goma in Nord-Kivu, and Bunia in Ituri. The Special Rapporteur met the Prime Minister, several of his ministers, provincial authorities, judges and prosecutors from various levels of courts, both civilian and military, the heads of several bar associations, lawyers, judges' and lawyers' associations, members of non-governmental organizations (NGOs), members of the various sections of MONUC and the United Nations Development Programme (UNDP), and the principal donors to the justice sector.

I. PRELIMINARY OBSERVATIONS

3. Having emerged from a decade of deadly conflict and a three-year transition period, the Democratic Republic of the Congo has managed, with the support of the international community, to adopt a new constitution and hold its first democratic elections in 2006. Now that it has a democratically elected Government and an appropriate institutional framework, the Republic faces two major challenges: to establish the rule of law and a democracy based on an effective separation of powers, and to face up to the aftermath of past crimes. The judiciary, which has a key role in meeting these challenges, must be truly independent and effective, as required under the Constitution, so that it can play its role as a pillar of democracy and guarantor of the rule of law.

4. The Special Rapporteur's final report, containing his conclusions and recommendations on his visit, will be presented to the Human Rights Council of the United Nations in a few months; this preliminary note offers some conclusions and recommendations. During his visit, the Special Rapporteur noted that the judicial system is in an alarming state, especially in view of the following:

- There are far too few judicial personnel, both in the prosecution service and in the judiciary, and courts in the country. Judges do not have the logistic and physical facilities they need to perform their duties in a dignified and professional manner. They lack appropriate premises such as courtrooms, vehicles in which to reach places of investigation, basic computer equipment, and the financial resources to cover the running costs of the judicial system. Furthermore, they are not adequately paid. Their lack of financial independence has a direct impact on the lack of independence of both civilian and military justice and encourages almost systematic corruption among judges and court officials;

- Interference by the executive authorities and the army remains very common despite the express prohibition in article 151 of the Constitution. The structural and financial weakness of the judicial authorities is exacerbated by institutional shortcomings, such as the lack of any oversight by an independent, functioning higher council of the judiciary, which makes judges more vulnerable to interference;

- Gaining access to justice is very difficult for the majority of the population because of corruption, a lack of financial resources, the geographical remoteness of the courts and transport problems, and a lack of awareness of appeal mechanisms. Judges and lawyers also have difficulty in gaining access to legislative texts and case law;

- In most cases where it is possible to conclude a trial, the courts' decisions are not enforced. The very high rate of non-enforcement is mainly due to an inability to deploy the officers responsible, corruption among these officers, poverty among the beneficiaries of judicial decisions, who are expected to contribute to enforcement costs, and a preference in some communities for friendly settlements in accordance with custom. The number of prison escapes is also high, owing in part to the badly dilapidated state of the prisons, which is extremely worrying. This undermines the work of the judicial system and allows crime to go unpunished;

- Very alarmingly, most human rights violations are committed by the armed forces and the police and fall, under domestic legislation, within the jurisdiction of the military tribunals. International human rights standards require that cases of human rights violations by members of the armed forces, like trials of civilians, should be heard by civilian, not military courts. This is all the more important because the lack of independence particularly affects the military judicial system, which remains dependent on the military hierarchy. Military justice continues to be tarnished by a very high incidence of military and political interference in the form of refusals by senior officers to bring their men before military tribunals, and pressure and obstacles during the trial process;

- Preventive detention is the rule rather than the exception. It is used in connection with far too many offences, and often the sole aim is to extract money in return for the release of the detainee. It is especially worrying that uniformed men, such as soldiers and officers of the National Intelligence Agency (ANR), often carry out arbitrary arrests and detentions - which is beyond their authority - and often for activities that do not constitute a crime. Given the slowness of the judicial system, and in some cases the absence of any trial, suspects can often be held in preventive detention for months or even years without being found guilty by a court of law.

5. In view of these shortcomings, it has to be said that the judicial system is rarely effective and that human rights violations, the most frequent and serious of which are rapes, summary executions, arbitrary detention, and looting and destruction of property, generally go unpunished. Since a democratic State cannot function without a strong and independent judiciary, it is regrettable that the judicial system is still the poor relation of the country's democratic institutions.

6. In this context, the Special Rapporteur welcomes the efforts made by the integrated United Nations Human Rights Office in the Democratic Republic of the Congo and various civil society organizations to combat impunity - supporting judges in their work, for example, and providing them with the means to conduct investigations and conclude trials. These isolated efforts, however, cannot offset the systematic shortcomings of the judicial system.

II. PRELIMINARY RECOMMENDATIONS

7. **In view of these observations, the Special Rapporteur makes the following preliminary recommendations:**

(a) The development of a strong, effective and independent judicial system should be a priority of the Government and of international bodies active in the field of justice and human rights. Without urgent and substantial reinforcement of the judicial system, the rule of law and the consolidation of the democratic reforms in which the Congolese people and the international community have invested so much over recent years will not materialize. Meeting this objective will require, in particular:

(i) The allocation of a considerably higher percentage of the national budget to the judicial system, bearing in mind that the budget of the judicial system usually accounts for between 2 and 6 per cent of national budgets. These resources should make it possible to improve judges' pay, recruit new judges, give them the premises and operational capacity (transport, information technology, etc.) they need to perform their duties, and establish new courts, especially magistrates' courts;

(ii) The development and implementation by the Justice Ministry, in close cooperation with donors, of a plan for rebuilding the judicial system. In this regard, the Special Rapporteur supports the work of the Joint Committee to Monitor the Justice Framework Programme in the Democratic Republic of the Congo, which brings the Justice Ministry together with donors. On the basis of the results of the organizational audit of the Congolese judicial system conducted, by agreement with the Government of the Democratic Republic of the Congo, in 2004 by the European Commission in partnership with Belgian and French development cooperation institutions, the United Kingdom Department for International Development (DFID), UNDP, MONUC and the Office of the United Nations High Commissioner for Human Rights, the Committee intends to draft a plan of action to give effect to the justice framework programme. The Special Rapporteur is convinced that this Committee's work is critical to strengthening the country's judicial system. Having noted delays in the drafting of the plan, however, he encourages Committee members to press on with their work so that the plan can be adopted as soon as possible. The implementation of specific measures to rebuild and support the judicial system should begin in 2007;

(iii) Recovery by the country's authorities of control over its natural resources. The Democratic Republic of the Congo is an extremely rich country, but thus far, exploitation of its natural resources has not benefited its population. On the contrary, unplanned or illegal exploitation continues to be a significant source of conflict and human rights violations, leading to looting and other abuses. Despite this, no one has been held to account for this illicit exploitation. It would be helpful to train specialist judges in this field. Regaining control of natural resources would allow the country to obtain the resources it needs to strengthen its institutions, in particular the judicial system, and to ensure that the population benefits from the country's wealth.

(b) To give effect to the constitutional framework and ensure that judicial independence does not remain a dead letter, a number of laws must be adopted as a matter of urgency:

(i) A law on the organization of the Higher Council of the Judiciary, a key body that will be responsible for appointing, promoting and disciplining judges, thereby safeguarding their independence while at the same time providing adequate supervision of their conduct, and for drawing up the judicial system's budget, which is the key to its independence and effectiveness;

(ii) A law providing for the application of the Rome Statute, which will transfer jurisdiction over international crimes from military tribunals to the civilian judicial system;

(iii) Laws establishing the Court of Cassation, the Constitutional Court and the Conseil d'État.

(c) The training of judges, especially in ethics, professional conduct and international human rights standards, and the training of auxiliary staff should be considerably strengthened. There is no body offering training to judges and judicial auxiliary staff before they assume office. A college for the judiciary and a college for the professional training of judicial auxiliary staff should be established as soon as possible.

(d) In order to guarantee the right to a defence, a right recognized in the Constitution, the State should establish a system for paying duty lawyers, for example, through bar associations, to ensure that poor people can have a high quality defence.

(e) The reconstruction of the judicial system should be based on a strengthened civilian judicial system, which should have sole jurisdiction to judge civilians and cases of human rights violations committed by the armed forces or the police. The jurisdiction of the military tribunals should be gradually limited to offences of a purely military nature.

(f) The use of preventive detention must be strictly limited. This will also prevent prison overcrowding. A maximum period of preventive detention should be established by law, especially for offences for which the prison sentence is under five years.

(g) A system for monitoring the enforcement of judgements should be established, as should a mechanism to ensure that the legal costs of poor people are met by the State.

(h) In order to provide a solid foundation for democracy, the Congolese judiciary and the international community should cooperate in prosecuting grave violations of human rights and humanitarian law committed during the war, drawing on the experience of judicial cooperation in the area of transitional justice that has produced good results in other countries. The establishment of joint benches comprising national and international judges sitting in national courts might be an appropriate solution.

8. **In talks with the Special Rapporteur, the Government recognized that an independent and effective judiciary is the backbone of the rule of law and the country's development. It also recognized that the judicial system is in a critical state, and urgently needs to be strengthened. The Special Rapporteur reiterates that it is vital for the new Government to make the reconstruction and strengthening of the judicial system a priority in its programme for the democratic consolidation of the country, and he encourages the Government in its intended endeavours.**

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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

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

Addendum

Situations in specific countries or territories*

*The present document is being circulated in the languages of submission only as it greatly exceeds the page limitations imposed by the relevant General Assembly resolutions.

CONTENTS

I. **INTRODUCTION**

1. The present report supplements the main report submitted by the Special Rapporteur on the independence of judges and lawyers to the Human Rights Council. It reflects specific situations alleged to be affecting the independence of the judiciary or violating the right to a fair trial in 63 countries. Further, it presents any replies received from the Government of the country concerned in response to specific allegations together with the Special Rapporteur's comments and observations. Readers will thus find in it:

(a) Summaries of the urgent appeals and allegation letters transmitted by the Special Rapporteur to governmental authorities between 1 January 2006 and 15 January 2007, and of press releases issued during the same reporting period. In this connection, the Special Rapporteur wishes to emphasize that the communications presented in the report exclusively reflect allegations he 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;

(b) Summaries of the replies received from several States concerned between 1 January 2006 and 15 January 2007. In certain instances, the Government reply was obtained late and referred to allegations that were presented in the previous report concerning the year 2005 or even earlier. 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 15 January 2007. To the Special Rapporteur's regret, they will therefore be reflected only in next year's report. Finally, due to restrictions on the length of the report, the Special Rapporteur has been obliged to summarize the details of all correspondence sent and received. As a result, requests from Governments to publish their replies in their totality could regrettably not be accommodated;

(c) Observations or specific comments by the Special Rapporteur.

2. The report also includes six tables of statistical data so as to help the Human Rights Council to have an overview of developments in 2006 and the past three years.

3. As may be seen from the tables, action has mainly been taken in the form of urgent action, and this in conjunction with other special rapporteurs. This reflects not only a personal choice of the Special Rapporteur to work in close collaboration with other special rapporteurs and aimed at strengthening the functioning and impact of the special procedures, but also the fact that it is far from uncommon that situations affecting the judiciary occur in contexts in which other democratic institutions are also at risk, or where a wide range of human rights are being violated such as the right to life, the right not to be subjected to torture and ill-treatment, the right to freedom of expression, as well as the specific rights of women, indigenous peoples or minorities.

4. The Special Rapporteur notes that communications have been sent to 63 Member States of all regions of the world. Furthermore, he highlights that the type of allegations covers a wide range of subjects. It should be noted, however, that over 40 per cent of the communication sent concern allegations related to threats against lawyers. In addition, about 11 per cent of communications have been sent with respect to alleged violations of the right to choose one's own lawyer, and similarly, about 11 per cent on reported violations of the freedom of expression of lawyers. A significant percentage (about 10 per cent) concerned alleged violations of the right to have access to the courts and a fair trial.

5. The Special Rapporteur points out that, as compared to 2005, the number of communications sent to Governments has increased by 67 per cent. Given this significant increase, fears are expressed with respect to the increasing percentage of wide-ranging assaults on the independence of judges and lawyers around the world. These facts do not only prove the weakening of the judiciary as an institution, but also reflect direct attacks on judges and lawyers, all of which result in significant violations of the right to due process and to a fair trial. The Special Rapporteur further attributes this increase to the fact that more people are aware of the procedure and the international standards guiding his mandate. However, the significant low percentage of female individuals on behalf of whom the Special Rapporteur was able to receive information and send communications is of serious concern to him. Hence, he is concerned about the lack of reporting on the situation of women and the resulting diminished protection of their human rights.

6. At the same time, the Special Rapporteur wishes to point out that, as compared to previous years, he has enjoyed increased cooperation on the part of Governments. In fact, 34 States of the 63 States referred to in this report have provided him with a substantive reply to his communications. Most of these States have offered detailed substantive information on the allegations received. The Special Rapporteur welcomes and further encourages cooperation from the Governments that have provided replies to his communications. The Special Rapporteur underlines that it is crucial that Governments share their views on the allegations received with him. He highlights his preoccupation in relation to the proportion of specific allegations of serious human rights violations that remain unanswered. The Special Rapporteur invites those States which are lagging behind to avoid situations in which they do not offer any form of substantive reply to allegations transmitted to them. Fearing that such lack of reply may expose these States to various interpretations ranging from administrative negligence to an admission by omission of the allegation relayed to them, he urges them to provide precise and detailed answers at the earliest possible date.

7. The Special Rapporteur trusts that the situation described above demonstrates the relevance of the existence and the concrete impact of this special procedure which, in his view, should definitely be strengthened in the course of the review of mandates by the Human Rights Council. The above also shows the value, need and relevance of technical assistance at the country level and the importance of strengthening international capacity in this area. In this connection, the Special Rapporteur highlights the relevance and urgency of better promoting at the national level United Nations guidelines regarding the judiciary. This should be done in a systematic and coherent manner in the context of legal education, including continued legal education, so as to

improve the capacity of judges, lawyers and prosecutors to perform their functions with independence and to raise their human rights awareness.

II. STATISTICAL DATA

8. The following six figures are aimed at helping the Human Rights Council to have an overview of developments in 2006 and the past three years.

Figure 1. Thematic issues addressed in allegations brought to the Special Rapporteur's attention and transmitted to Governments in 2006

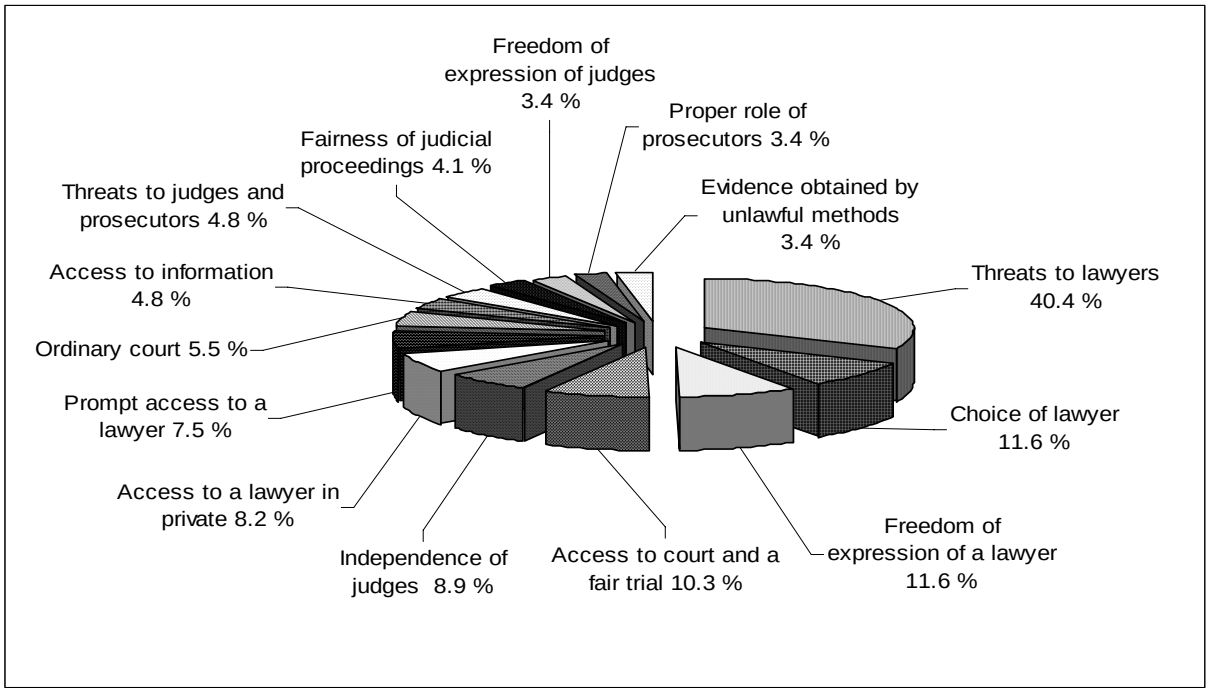


Figure 2. Type of communications sent to Governments by the Special Rapporteur in 2006

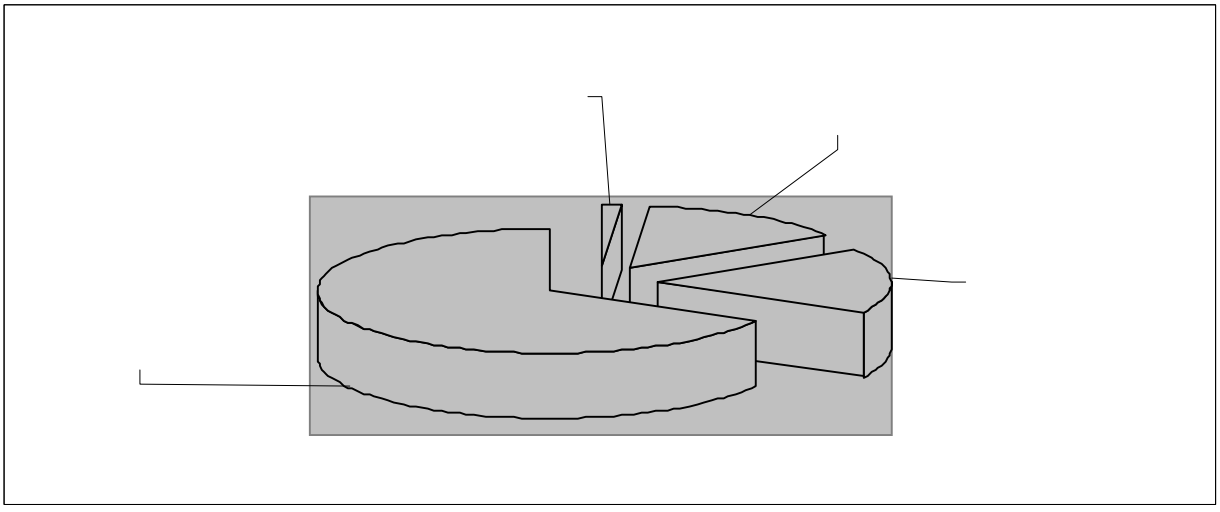


Figure 3. Communications sent by the Special Rapporteur and Government replies received in 2006

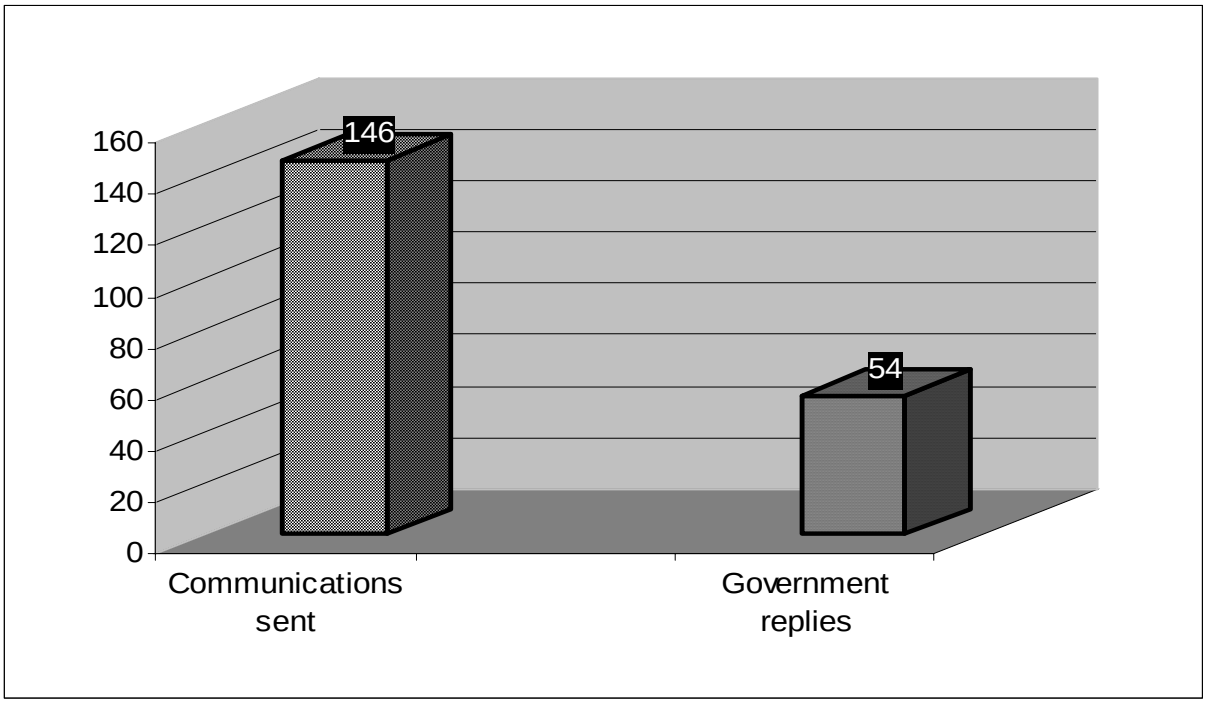


Figure 4. Communications sent by the Special Rapporteur and Government replies received in the past three years

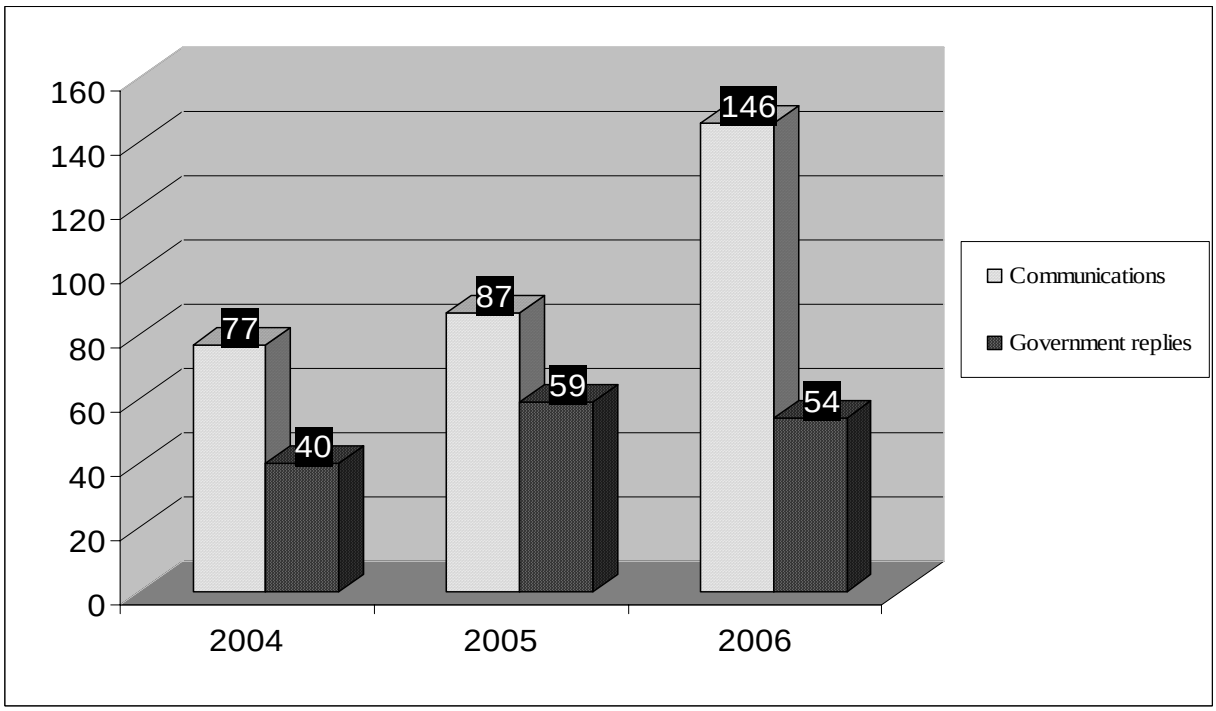


Figure 5. Communications sent by the Special Rapporteur in 2006 by region

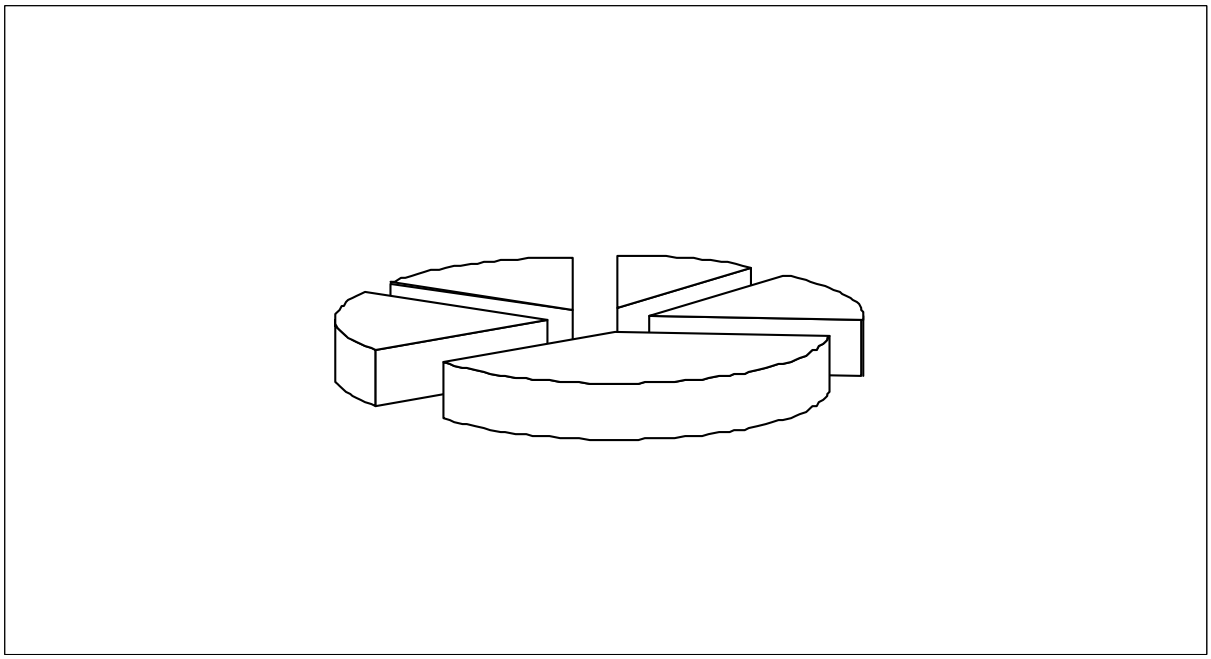
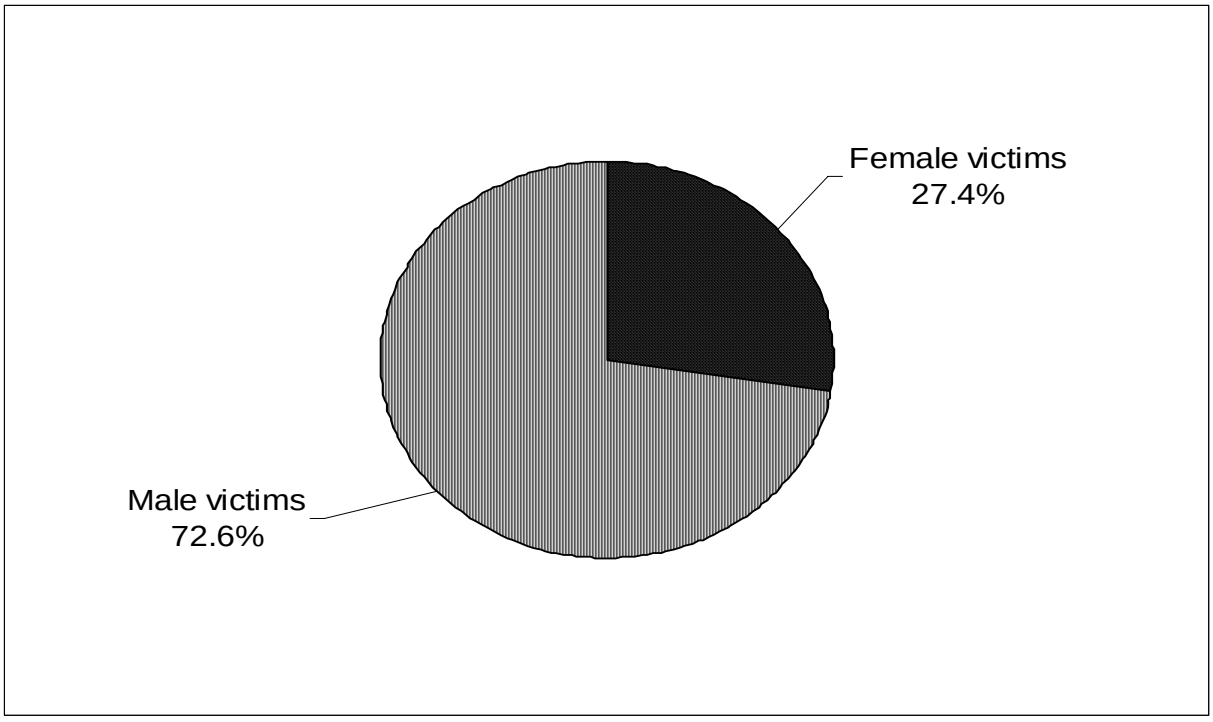


Figure 6. Communications sent by the Special Rapporteur in 2006 by gender



III. SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED

Afghanistan

Communications sent

9. On 20 April 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the trial of Asadullah Sarwari and the imposition of the death penalty against him. Mr. Sarwari, who is now aged 65, is said to have been the head of Afghanistan's intelligence service (AGSA) under the regime of Hafizullah Amin (1978-1979), which carried out mass arrests and summarily executed many of those detained. According to the information received, Mr. Sarwari was arrested in 1992 by a mujahideen force following the withdrawal of the Armed Forces of the Soviet Union from Afghanistan. In 2003 he was handed over to the intelligence service of the Government, the National Security Directorate. In autumn 2005, Mr. Sarwari appealed to President Karzai "for justice". Criminal proceedings against him were initiated and he was charged with several crimes against the internal security of the State, including encouraging an uprising of the Armed Forces, using force to overthrow the presidency and homicide. The trial consisted of three hearings, the first on 26 December 2005, the last on 25 February 2006. Because of the highly charged atmosphere surrounding the trial and the precarious security situation, Mr. Sarwari was unable to find a suitable lawyer to represent him. Most of the evidence adduced at trial related to the arrest and subsequent disappearance of up to 70 members of the Mujeddadi family in June 1979. At the final trial hearing, on 25 February 2006, at Kabul National Security Primary Court, 16 witnesses testified. Some were called by the prosecutor, while others "gave evidence" spontaneously from the public gallery. Members of the Mujeddadi family and household stated that the accused had been present at, and was in charge of the arrests. One witness gave evidence in support of Mr. Sarwari, stating that he had released 120 detainees in 1979. This produced an angry reaction from the public gallery. The presiding judge called the court to order and stated that it was important for the court to hear both sides. Mr. Sarwari was not given the opportunity to cross-examine any of the witnesses.

10. Mr. Sarwari denied all allegations against him. He complained about his illegal arrest and detention for more than 13 years without trial. He admitted to having issued arrest warrants, but challenged the prosecutor to produce any testimony or documentary proof that could prove his involvement in the killing of detainees. The prosecutor conceded the absence of any article in the Penal Code of Afghanistan under which Mr. Sarwari could be convicted as a war criminal, but argued that Mr. Sarwari's official position as the Head of AGSA was sufficient to hold him responsible for the murder and disappearance of innocent Afghans under article 130 of the Constitution. At 1.30 p.m. the judicial panel retired to consider its verdict. Fifteen minutes later the judges returned and pronounced Mr. Sarwari guilty of "killing of countless Afghans" on the basis of his involvement in the arrest of members of the Mujeddadi family and of his senior official position in the Amin regime. He was not found guilty on any specific count contained in the indictment but rather, according to the judge, in accordance with article 130 of the Constitution which

states that "if there is no provision in the Constitution or other laws about a case, the courts shall in pursuance of Hanafi jurisprudence and within the limits set by the Constitution, rule in a way that attains justice in the best manner". On the basis of this guilty verdict, he was sentenced to death. It would appear that the Attorney General has filed an appeal against the judgement (or the sentence), while Mr. Sarwari has not appealed against the judgement and sentence within the 20-day deadline provided by the Interim Criminal Procedure Code.

11. The Special Rapporteurs commended the Government for bringing to justice a person accused of responsibility as a commander for numerous summary executions (although they expressed concern that the Afghan Criminal Code does not proscribe war crimes and crimes against humanity, and therefore does not allow the prosecution to file charges which fully reflect the seriousness of the crimes Mr. Sarwari is accused of – an issue which the problems related to the charges in the present trial would appear to highlight). Indeed, ending the impunity of those responsible for war crimes and crimes against humanity committed during the 25 years of armed conflict in Afghanistan is an important obligation of the Government under international law and the Action Plan on Peace, Justice and Reconciliation. It also constitutes a demand of the Afghani people, as set forth in the Afghan Independent Human Rights Commission's report *A Call for Justice. A National Consultation on Past Human Rights Violations in Afghanistan*. Such efforts to ensure accountability must, however, themselves comply with international human rights law. While capital punishment is not prohibited under international law, it must be regarded as an extreme exception to the fundamental right to life, and is circumscribed by strict limitations imposed by international law binding upon the Government, in particular articles 6 and 14 of the International Covenant on Civil and Political Rights (ICCPR). With specific regard to the case of Mr. Sarwari, attention was drawn to the requirement that "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the [ICCPR] admits of no exception" (*Little v. Jamaica*, communication No. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10).

12. The reports concerning the trial of Mr. Sarwari raise a number of very serious concerns with regard to the right to a fair trial. Regarding the requirement of independence and impartiality of the tribunal (article 14(1) ICCPR), reports indicate that before the decisive hearing of 25 February 2006 representatives of the Mujeddadi family (i.e. victims and prosecution witnesses) and the Head of the Department of Judicial Inspections of the Supreme Court, Mr. Halimi, were sitting in the judges' chambers at the courthouse and meeting with the judge presiding over the trial. Mr. Halimi sat in the front row of the court throughout the hearing, next to prosecution witnesses and close to the prosecutor. At one point he intervened during the trial. When the judges retired to consider their verdict, he also left the court. Moreover, the judicial panel took only 15 minutes of deliberation to find the applicant guilty and sentence him to death. The Special Rapporteurs acknowledge that the presiding judge reportedly gave Mr. Sarwari the opportunity to speak unhindered in his defence and reminded the public that both sides must be given a full hearing. The circumstances referred to above, however, engender the impression of possibly undue influence over the trial judges by the Department of Judicial Inspections of the Supreme

Court and the victims' family and cast a grave shadow over the appearance of independence and impartiality of the tribunal. Regarding the accused's right to be informed of the charges, to be given adequate time and facilities for the preparation of his defence, and to be enabled to examine the witnesses against him and obtain the attendance of witnesses on his behalf (article 14(3) (a), (b) and (e) ICCPR), nothing in the reports received indicates that the accused had prior notice of who would give evidence against him and what exactly the witnesses would give evidence on. Under articles 51 and 53 of the Interim Criminal Procedure Code the prosecution was obliged to submit to the court a list of witnesses it intended to call, which it failed to do. Mr. Sarwari therefore had no opportunity to call evidence in rebuttal, to effectively challenge the prosecution evidence or to properly prepare his defence. The accused was not given the opportunity to cross-examine the witnesses against him, and did not call any witnesses on his behalf. Finally, the accused was convicted on the basis of a provision, article 130 of the Constitution, that was not contained in the Criminal Code in force at the time of the trial, was not mentioned in the indictment and reportedly was not discussed in the course of the trial, which would appear to have seriously undermined his chances of effectively preparing his defence. Articles 57 and 42 of the Interim Criminal Procedure Code as well require prior notice to be given to the defence of changes in the definition of offences alleged.

13. Regarding the accused's right "to defend himself in person or through legal assistance of his own choosing … and to have legal assistance assigned to him, in any case where the interests of justice so require" (article 14(3) (d) ICCPR), Mr. Sarwari did not enjoy any legal assistance. The reports received indicate that this was not his free choice, but due to the circumstance that no lawyer was willing to take up his defence. The Special Rapporteurs also expressed concern that in the indictment, Mr. Sarwari's request for an attorney was viewed as disruptive of the prosecution's investigation and as another basis for his guilt. Regarding the right to obtain review of conviction and sentence by a higher court (article 14(5) ICCPR), the effective exercise of this right requires that the defendant be provided with legal counsel and time to adequately prepare his appeal. While not wishing to prejudge the accuracy of the reports received, in the event that they were accurate, entirely or also only in part, the Special Rapporteurs have no doubt that international law requires the Government to ensure that the death penalty is not carried out. They urged the Government to ensure that the concerns expressed with regard to the trial are fully taken into account at the second instance stage, whether or not Mr. Sarwari himself files an appeal against the judgement. They further urged the Government to ensure that Mr. Sarwari is provided with adequate legal assistance for all remaining procedural stages in his case. In 2003, the Commission on Human Rights in its resolution 2003/77 called on the Afghanistan Transitional Administration to "declare a moratorium on the death penalty in the light of procedural and substantive flaws in the Afghan judicial system." The Commission recognized that the Government is undertaking considerable efforts to improve the criminal justice system under the most challenging circumstances. Nonetheless, the experts consider that the concerns highlighted with regard to the trial of Mr. Sarwari (as well as those set forth in their letter of 31 August 2005 concerning the cases of Sharifullah (surname unknown), Habib al-Rahman, Zalmai (surname unknown), Neyaz Mohammad, Tila Mohammad (known as Telgai), Mohammad Rafiq, and Omar Khan, which unfortunately

has remained unanswered), require the Government to suspend all executions in order to live up to its obligations under international law.

Press release

14. On 8 June 2006, the Special Rapporteur issued the following press release:

"UN SPECIAL RAPPORTEUR ON INDEPENDENCE OF JUDICIARY CONDEMNS PUBLIC EXECUTION FOLLOWING ILLEGAL TRIAL IN AFGHANISTAN

"The following statement was issued today by Leandro Despouy, the Special Rapporteur on the independence of judges and lawyers:

"It has been reliably reported that the Taliban claim to have carried out a public execution of an alleged murderer following a trial by a local Taliban court, in Ququr village in the district headquarters town of Gizab in Daikundi. The UN expert on judicial independence, Leandro Despouy, today condemned these developments in very strong terms. The execution of Badshah Khan reportedly took place early last month in front of a large crowd. There is currently no effective central judicial and government authority in Gizab hence the community's reliance continues on traditional community leaders for resolution of conflicts. It has been reported that in some regions like Gizab the Taliban have succeed on influencing the decisions of these traditional communities' leaders. "The administration of justice is a function that clearly belongs to the State of Afghanistan", the expert stated. "It is entirely unacceptable for a non-state entity, such as the Taliban, to exercise a state function by trying and punishing an alleged criminal". In addition, "the return to the practice of making a public spectacle of the execution harks back to the worst excesses of the old regime", he noted. After years of conflict, the people of Afghanistan need an effective, just, and transparent system of criminal justice that reflects its democratically elected institutions. The Special Rapporteur supports the international community and the Afghan people in their efforts to build a law abiding society."

Communications received

15. None.

Special Rapporteur's comments and observations

16. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Afghanistan to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Algeria

Communications envoyées

17. Le 26 mai 2006, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de Amine Sidhoum Abderramane, avocat algérien et défenseur des droits de l'homme, membre de l'ONG SOS Disparus. Selon les informations reçues, Amine Sidhoum Abderramane aurait reçu des menaces lors de la trente-neuvième session de la Commission africaine des droits de l'homme et des peuples (CADHP), qui s'est tenue à Banjul (Gambie) du 11 au 25 mai 2006. Le 12 mai 2006, à la veille de son intervention au nom de la FIDH sur la situation des droits de l'homme sur le continent et notamment sur les conséquences de l'adoption de la Charte de réconciliation nationale en Algérie. M. Sidhoum aurait été abordé par un représentant de la délégation algérienne qui aurait tenté de le dissuader de s'exprimer devant la Commission. Ce dernier lui aurait « rappelé » que s'il persistait à présenter son intervention, il serait « passible de trois à cinq ans de prison dès [son retour] en Algérie ». Du fait de ces menaces, M. Sidhoum n'aurait pu intervenir oralement le 13 mai 2006. Selon les informations reçues, ces menaces serait liées à l'article 46 de l'ordonnance du 27 février 2006, portant sur la mise en œuvre de la Charte pour la paix et la réconciliation nationale qui prévoit en effet une peine allant de trois à cinq ans d'emprisonnement et une amende de 250 000 à 500 000 dinars algériens (environ 2 830 à 5 660 euros) pour « quiconque qui, par ses déclarations, écrits ou tout autre acte, utilise ou instrumentalise les blessures de la tragédie nationale, pour porter atteinte aux institutions de la République algérienne démocratique et populaire, fragiliser l'État, nuire à l'honorabilité de ses agents qui l'ont dignement servie, ou ternir l'image de l'Algérie sur le plan international ». La Représentante spéciale et les Rapporteurs spéciaux ont exprimé leur profonde préoccupation face à cette allégation qui semblerait indiquer que M. Sidhoum aurait reçu ces menaces afin de l'empêcher d'exercer son activité de défenseur des droits de l'homme et l'aurait effectivement empêché de s'exprimer dans le cadre de CADHP, une enceinte dont le mandat est consacré à la protection des droits de l'homme.

18. Le 8 septembre 2006, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de Amine Sidhoum Abderramane, avocat algérien et défenseur des droits de l'homme, membre de l'ONG SOS Disparu(e)s, qui avait déjà fait l'objet d'une communication envoyée par le Rapporteur spécial sur l'indépendance des juges et des avocats, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme le 26 mai 2006. Selon les informations reçues, le 23 août 2006, M. Sidhoum aurait reçu une convocation du juge d'instruction du tribunal de Sidi M'Hammed à Alger qui le notifiait d'une plainte déposée à son encontre par le Ministre de la justice pour « diffamation » à la suite de ses déclarations publiées dans l'article « Aoufi passe son trentième mois en détention » paru dans le quotidien arabophone *Al Chourouk* le 30 mai 2004. M. Sidhoum aurait été accusé de jeter le

discrédit sur une décision de justice et de porter outrage à un corps constitué de l'État. M. Sidhoum encourrait une peine de trois à six années d'emprisonnement et une amende comprise entre 230 000 et 450 000 DZD. Lors de son entretien avec la journaliste auteure de l'article susmentionné, M. Sidhoum aurait dénoncé la *détention* arbitraire de son client dans la prison de Seradji qui durait depuis 30 mois. Cependant, la journaliste n'aurait pas rapporté de manière fidèle les propos de M. Sidhoum, écrivant que le client de ce dernier « passe son trentième mois à Serkadji suite à une *décision* arbitraire rendue par la Cour suprême ». En effet, au moment où M. Sidhoum a tenu ces propos, aucune décision n'avait encore été rendue par la Cour suprême, qui ne s'est prononcée que le 28 avril 2005, soit un an après la parution de l'article. En outre, d'après les informations reçues, M. Sidhoum aurait été convoqué le 22 août 2006 en tant qu'accusé par le juge d'instruction du tribunal de Bab El Oued pour « introduction d'objets interdits au détenu », suite à la découverte de deux cartes de visite à son nom chez un de ses clients détenus. La convocation aurait été reportée au 9 septembre 2006, à la demande de M. Sidhoum. Des craintes ont été exprimées que les charges retenues contre M. Sidhoum ne visent à empêcher ce dernier de poursuivre ses action en faveur de la défense des droits des familles de disparus au sein de SOS Disparu(e)s et s'inscrivent dans un contexte d'intimidation et de harcèlement auquel sont confrontés les défenseurs algériens, notamment lorsqu'il s'agit de défendre les droits des familles de disparus.

19. Le 5 octobre 2006, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a envoyé un appel urgent relatif à la situation de Hassiba Boumerdassi et Amine Sidhoum Abderramane, avocats algériens et défenseurs des droits de l'homme, membres de l'ONG SOS Disparu(e)s. Amine Sidhoum Abderramane avait déjà fait l'objet d'une communication envoyée par le Rapporteur spécial sur l'indépendance des juges et des avocats, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme le 26 mai 2006 et d'une autre communication envoyée par le Rapporteur spécial sur l'indépendance des juges et des avocats et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme le 8 septembre 2006. Selon les informations reçues, le 10 septembre 2006, Mme Boumerdassi et M. Sidhoum auraient comparu devant le juge d'instruction du tribunal de Bab El Oued en raison des poursuites initiées à leur encontre pour avoir remis à leurs clients retenus en prison des documents relatifs à leur défense. Ainsi, dans le cas de M. Boumerdassi, il s'agirait du dossier du procès verbal du détenu concerné et ce malgré l'autorisation d'un gardien de la prison, et dans celui de M. Sidhoum, de la remise de ses cartes de visite. D'après les informations reçues, Mme Boumerdassi a été accusée d'avoir violé l'article 166 du Code de l'organisation pénitentiaire et de l'insertion sociale des détenus qui dispose qu'il est interdit de remettre, d'essayer de remettre ou de faire parvenir à un détenu dans des conditions illégales, en quelque lieu que ce soit, des sommes d'argent, correspondances, médicaments ou tout autre objet non autorisé. De même, elle aurait été accusée de violer l'article 16 de la loi relative à la sécurité des prisons qui établit qu'il n'est pas permis d'introduire ou de faire sortir de sommes d'argent ou correspondances, sauf si elles sont permises par le règlement intérieur de la prison ou si elles sont autorisées expressément par le directeur de la prison. Mme

Boumerdassi aurait également été poursuivie pour violation de l'article 31 de la loi portant sur le règlement intérieur de prisons qui dispose que le prisonnier qui remet ou envoie dans des conditions illégales ou tente de remettre à un autre prisonnier ou à toute autre personne des sommes d'argent, correspondances, médicaments ou autre chose s'expose à des sanctions pénales. Selon les informations reçues, Mme Boumerdassi et M. Sidhoum devaient se présenter devant le juge d'instruction le 25 septembre 2006. Cependant, leur audience aurait été reportée au début du mois de novembre 2006. Des craintes ont été exprimées que les charges retenues contre MmeBoumerdassi et M. Sidhoum visent à empêcher ces derniers de poursuivre leurs actions en faveur de la défense des droits des familles de disparus au sein de SOS Disparu(e)s et s'inscrivent dans un contexte d'intimidation et de harcèlement auquel sont confrontés les défenseurs algériens des droits de l'homme, notamment lorsqu'il s'agit de défendre les droits des familles de disparus.

Communications reçues

20. Le 9 janvier 2006, le Gouvernement a répondu à l'appel urgent conjoint envoyé par le Rapporteur spécial le 1 mars 2005 indiquant que M Rachid Mesli a fait l'objet d'une information judiciaire devant le juge d'instruction de la troisième chambre d'instruction du tribunal de Sidi M'Hamed (Alger), pour les chefs d'appartenance à une organisation terroriste agissant à l'étranger et apologie du terrorisme. Malgré plusieurs convocations adressées par le juge à M Mesli, celui-ci n'y a jamais répondu, puis a quitté le territoire national. De ce fait, il a été considéré par la justice comme étant en fuite. La même information judiciaire a concerné également et pour les mêmes chefs d'inculpations Karim Khider et Ibrahim Ladada. L'information terminée, le juge d'instruction a transmis le dossier à la chambre d'accusation de la Cour d'Alger qui, par arrêt du 22 avril 2003, a ordonné le renvoi des trois prévenus devant le tribunal criminel d'Alger. Le Gouvernement a aussi indiqué que le 17 mars 2004 un jugement a été rendu par le tribunal qui a acquitté M. Khider et M. Ladada et, statuant par contumace, a condamné M. Mesli, à vingt ans de prison. En outre, le Gouvernement a indiqué que le jugement à l'égard de M. Mesli n'est pas légalement exécutoire conformément aux dispositions de l'article 326 du Code de procédure pénale ; ce jugement et les procédures antérieures seraient anéantis de plein droit dès l'instant où le condamné se présente devant la justice.

21. Le 20 juillet 2006, le Gouvernement a répondu à l'appel urgent envoyé par le Rapporteur spécial le 26 mai 2006, apportant un démenti aux allégations de la communication. Le Gouvernement a indiqué que l'Algérie a inscrit dans sa Constitution un chapitre sur les droits et libertés et un autre sur le pouvoir judiciaire. Il considère que les textes juridiques cités dans la communication, relatifs à la mise en œuvre de la Charte pour la paix et la réconciliation nationale sont conformes aux engagements internationaux contractés et que les affirmations selon lesquelles l'ordonnance rétrécit le champ d'activité des citoyens ne reposent sur aucun fondement juridique recevable. Le respect intégral des droits des citoyens serait préservé aussi bien par l'Ordonnance que par les décrets d'application qui seraient compatibles avec les dispositions des traités auxquels l'Algérie est partie. L'ordonnance du 27 février 2006 n'émettrait aucune objection à l'exercice de la liberté d'expression qui est clairement inscrite à l'article 41 de la Constitution. De même, la liberté d'association resterait ouverte à tous les citoyens jouissant de leurs droits civiques,

comme énoncé par la loi organique relative aux associations à caractère politique du 6 mars 1997. Le Gouvernement a indiqué que les restrictions énoncées dans l'Ordonnance figurent déjà à l'article 42 de la Constitution algérienne ainsi que dans ladite loi organique et concernent uniquement les personnes qui instrumentalisent la religion à des fins criminelles ou celles qui prônent la violence contre la nation et les institutions de l'État. Le Gouvernement a ajouté que bien que le droit d'accès à la justice et le droit d'exercer un recours soient érigés en droit par le Pacte international relatif aux droits civils et politiques, il reste que ces droits accordés aux justiciables doivent de respecter les procédures nationales prévues à cet effet. Le Gouvernement a souligné que le chapitre six de l'Ordonnance portant Charte pour la paix et la réconciliation nationale a été plébiscité par le peuple algérien, seule source de légitimité, lors du référendum du 28 septembre 2005. Cette disposition viserait le traitement légal, social et humain d'une situation fort complexe induite par une décennie de criminalité terroriste à grande échelle. Elle aurait pour but de protéger le droit des citoyennes et des citoyens, qui se sont prononcées à 99 % des voix contre toute attaque ou remise en cause de la part des tiers. Le Gouvernement a déclaré que le choix du peuple devait être respecté. Il a conclu en affirmant que les textes d'application de la Charte pour la paix et la réconciliation nationale étaient en conformité avec la législation internationale s'agissant de la qualité de victime et d'ayants droits et retiennent le principe d'indemnisation en ce qui concerne la question des disparitions.

22. Le 15 novembre 2006, le Gouvernement a répondu à l'appel urgent envoyé par le Rapporteur spécial le 8 septembre 2006. Le Gouvernement a indiqué que l'avocat Amin Sidhoum a fait l'objet d'une convocation du juge d'instruction de Sidi M'Hamed à Alger le 25 août 2006 lui notifiant la plainte déposée à son encontre par le Ministère de la justice pour diffamation, à la suite de ses déclarations publiées par le quotidien *Al Chourouk*, édition du 30 mai 2004, qualifiant d'arbitraire la décision rendue par le tribunal à l'encontre de M Aoufi, client de l'avocat. Le Gouvernement algérien estime que les déclarations de M. Sidhoum jetaient le discrédit sur une décision de justice et portaient outrage à l'institution judiciaire suprême. Le Gouvernement a déclaré que M. Sidhoum avait refusé de se rendre à cette convocation et qu'il est poursuivi en application des articles 144, 146 et 147 du Code pénal algérien, régissant les outrages et violence à fonctionnaires et institutions de l'État (section I du chapitre V relatif aux crimes et délits commis par des particuliers contre l'ordre public). L'affaire aurait été portée devant le juge d'instruction compétent.

Commentaires et observations du Rapporteur spécial

23. Le Rapporteur spécial remercie le Gouvernement algérien pour sa coopération et ses réponses détaillées du 9 janvier, 20 juillet et 15 novembre 2006. Il regrette toutefois de ne pas avoir reçu de réponse du Gouvernement relative à l'appel urgent du 5 octobre 2006. Le Rapporteur spécial a pris note des précisions apportées par le Gouvernement sur les dispositions de l'ordonnance du 27 février 2006 et justifiant la dérogation au droit d'accès à la justice et au droit d'exercer un recours tels que prévus par le Pacte international relatifs aux droits civils et politiques. À la lumière de la réponse apportée par le Gouvernement, le Rapporteur spécial tient à rappeler que les traités ratifiés par le Gouvernement ont une valeur supérieure aux dispositions du droit interne, conformément à l'article 27 de la

Convention de Vienne sur le droit des traités. Par conséquent, tout en prenant dûment en considération le contexte dans lequel s'inscrit l'Ordonnance portant Charte pour la paix et la réconciliation nationale, le Rapporteur tient à rappeler le droit des victimes de violations flagrantes des droits de l'homme et le droit des membres de leur famille de connaître la vérité au sujet des événements qui se sont produits, et notamment de connaître l'identité des auteurs des faits qui ont donné lieu à ces violations. Un tel droit a été reconnu par la Commission des droits de l'homme (résolution 2005/66), le Comité des droits de l'homme (voir CCPR/C/79/Add.63 et CCPR/C/19/D/107/1981) et le Groupe de travail sur les disparitions forcées ou involontaires (voir E/CN.4/1999/62), ainsi que par l'experte indépendante chargée de mettre à jour l'Ensemble de principes pour la lutte contre l'impunité, Diane Orentlicher (E/CN.4/2005/102/Add.1). Comme indiqué dans le rapport annuel du Rapporteur spécial (E/CN.4/2006/52 par. 19) : "Le droit à la réparation peut difficilement se réaliser pleinement sans cette composante vitale que constitue le droit de connaître la vérité" Par conséquent, le Rapporteur estime que malgré l'inclusion du principe d'indemnisation dans l'ordonnance portant Charte pour la paix et la réconciliation nationale, cette ordonnance ne peut être considérée comme conforme aux obligations internationales contractées par l'Algérie.

24. Le Rapporteur remercie le Gouvernement algérien pour sa réponse à l'appel urgent du 8 septembre 2006. Il regrette néanmoins de constater que la réponse est partielle et ne comporte pas d'explication quant à la convocation de M. Sidhoum par le juge d'instruction du tribunal de Bab El Oued pour « introduction d'objets interdits au détenu », suite à la découverte de deux cartes de visite à son nom chez un de ses clients détenus. À cet égard, le Rapporteur spécial regrette également de ne pas avoir reçu de réponse à sa lettre du 5 octobre 2006 portant sur ladite comparution au tribunal de M. Sidhoum ainsi que sur celle de Mme Boumerdassi pour des faits similaires. Le Rapporteur tient à rappeler les Principes de base relatifs au rôle du barreau, adoptés par le huitième Congrès des Nations Unies pour la prévention du crime et le traitement des délinquants qui s'est tenu à La Havane du 27 août au 7 septembre 1990, et en particulier le principe 8, en vertu duquel « toute personne arrêtée ou détenue ou emprisonnée doit pouvoir recevoir la visite d'un avocat, s'entretenir avec lui et le consulter sans retard, en toute discrétion, sans aucune censure ni interception, et disposer du temps et des moyens nécessaires à cet effet. » Le Rapporteur spécial invite le Gouvernement à lui transmettre au plus tôt, et de préférence avant la fin de la quatrième session du Conseil des droits de l'homme, des informations précises et détaillées en réponse à ces allégations.

Argentina

Comunicaciones enviadas

25. El 24 de enero de 2006, el Relator Especial envió una carta de alegación en relación con la crisis institucional que atraviesa el Poder Judicial de la provincia de Misiones. De las informaciones recibidas de manera reiterativa, surgen una serie de irregularidades que se estarían cometiendo en el ámbito del Poder Judicial y que atentarían contra su independencia. Las principales alegaciones denuncian que el 12 de enero de 2006, la Juez del Superior Tribunal de la Provincia de Misiones, Marta Catella, fue suspendida de su

cargo por la Sala Acusadora de la legislatura provincial tras una veloz tramitación de un juicio político en su contra, susceptible de culminar en su destitución. La rapidez con la que se están llevando a cabo las etapas procesales, además de otras irregularidades, hace dudar seriamente del respeto a la garantía del debido proceso. De hecho, la comisión investigadora de la Sala Acusadora habría emitido dictamen acusatorio sin escuchar a la juez y sin haberle dado traslado de la denuncia y de las pruebas en su contra. Entre la declaración de admisibilidad de la denuncia y la acusación sólo transcurrieron 16 días. Entre las irregularidades más notorias del trámite, las alegaciones señalan las siguientes. Por un lado, la admisibilidad del pedido de juicio político se habría declarado en una reunión reservada, en contra de lo dispuesto por la Ley provincial N.º 120 que reglamenta el juicio político. Por otro lado, el dictamen acusatorio se habría elaborado sin que se hubiera dado traslado a la acusada del pedido de destitución, de la resolución que dispone la admisibilidad del pedido, como el resto de actuaciones, a pesar de que constaba una solicitud expresa de Marta Catella en tal sentido. Asimismo, la juez se habría encontrado imposibilitada de ejercer el derecho de recusar a los miembros de la Comisión Investigadora y de la Sala Acusadora ya que no se hizo lugar a su pedido de conocer quienes lo integraban, lo que al mismo tiempo le impidió ejercer el control sobre la parcialidad de los miembros de esta Sala. Finalmente, el 12 de enero la Sala Acusadora decidió aprobar la acusación contra Marta Catella, sin haber notificado previamente a la juez acusada la celebración de la sesión, ni darle traslado del dictamen acusatorio. En definitiva, Marta Catella se encuentra suspendida actualmente, sin goce de haberes, sin haber podido tener acceso a la denuncia ni a la acusación, y sin haber podido ejercer en ningún momento el derecho de defensa.

26. Conforme a declaraciones públicas, la acusación se funda en dos votos emitidos por Marta Catella. El primero, en un recurso de apelación interpuesto por el Intendente de San Vicente (provincia de Misiones), contra la decisión del Concejo Deliberante de destituirlo (Resolución N 492-STJ-05). El segundo voto de Marta Catella que se invoca en la acusación es el recaído en un incidente de nulidad, también presentado por el Intendente de San Vicente en la misma causa, en virtud del cual se declaró la nulidad de diversas actuaciones en el expediente principal, incluida la sentencia (Resolución N.º 576-STJ-05). En virtud de la declaración de nulidad, la cuestión que origina el pedido de juicio político (que contempla la falsedad o no del Acta 08/05 y de la Resolución 07/05 del Concejo Deliberante) se encuentra pendiente de resolución judicial. Las alegaciones señalan este aspecto como de suma gravedad por constituir al Poder Legislativo como una nueva instancia revisora, contrariando el principio republicano de separación de poderes, y vulnerando la independencia judicial de los magistrados que ya se han pronunciado. Pero además, sostener la acusación de Marta Catella por el contenido del voto emitido, podría configurar una suerte de amenaza de destitución a los jueces que actualmente entienden en la causa judicial, ya que correrían el riesgo de que, si votaran en sentido concordante a como lo hizo la magistrada Catella, podrían sufrir las mismas consecuencias, esto es ser denunciados con el propósito de ser destituidos. Las alegaciones también indican que este proceso fue iniciado por el Intendente de San Vicente, del partido de gobierno, pocos días después que la Juez Catella —a cargo del Tribunal Electoral de la Provincia— se pronunciara en forma adversa a las pretensiones del Gobierno provincial. Marta Catella aplicó una cláusula de la Constitución Provincial que reserva un mínimo de un tercio de la

representación legislativa a la minoría —y que no establece un umbral mínimo de votos para acceder a un cargo— en contra de los intereses del oficialismo que aspiraba se le reconociera dos bancas: una en la Cámara de Representantes y otra en el Concejo Deliberante de El Dorado.

27. Este proceso se da en un contexto de persecución política contra jueces independientes en la provincia de Misiones, que incluye el reciente pedido de destitución del juez penal Horacio Alarcón, quien había ordenado el procesamiento por homicidio del hijo de una diputada del partido de gobierno y el juicio político promovido contra el fiscal de Estado Lloyd Jorge Wicström, quien ha denunciado públicamente diversos casos de corrupción administrativa del actual gobierno provincial incluso en medios nacionales. En el caso del Juez Horacio Alarcón, el Presidente del Tribunal de Enjuiciamiento le habría requerido al propio juez en forma irregular que le enviara el expediente en el que se investigaba la muerte de María Elena Bárbaro, cuando faltaban pocos días para que expirara el plazo que tenía Alarcón para resolver la situación procesal de los imputados, además de haberle ordenado que se abstuviera de realizar cualquier tramitación en la causa antes de la entrega del expediente. Las alegaciones insisten en que, con posterioridad, el Presidente del Tribunal de Enjuiciamiento no devolvió el Expediente en tiempo oportuno para que el juez resolviera a término. Las alegaciones reseñan también una serie de resoluciones y acuerdos -que se encuentran publicados en Internet- en los que la alta magistrada no da curso a solicitudes del Gobierno o rechaza sus planteos jurídicos. Por último se señala que el poder político, recientemente, ha modificado normas legales que le confieren al la posibilidad de cambiar la composición actual del Superior Tribunal de Justicia de la Provincia, con el propósito de ejercer mayor control a través de las nuevas designaciones.

28. El 7 de julio de 2006, el Relator Especial envió una carta de alegación respecto de la situación de Marta Catella, quien fue suspendida el 12 de enero de 2006 en su cargo como Jueza del Superior Tribunal de la Provincia de Misiones por la Sala Acusadora de la legislatura provincial. Asimismo, se llamó la atención sobre la situación de Horacio Alarcón, Juez Penal de la provincia de Misiones, y Lloyd Jorge Wicström, Fiscal de Estado en la misma provincia, quienes según la información recibida eran objeto de sendos juicios políticos promovidos por el gobierno provincial. La situación de las personas mencionadas ha sido objeto de una previa comunicación enviada el día 24 de enero de 2006. En dicha comunicación se solicita la aclaración de varios puntos relacionados con las investigaciones y juicios iniciados en contra de dichas personas, así como con relación a la situación general de la independencia del poder judicial en la provincia de Misiones.

Comunicaciones recibidas

29. El 26 de enero de 2006, el Gobierno respondió a la comunicación enviada por el Relator Especial el 13 de octubre de 2005. El Gobierno indica que en la provincia del Neuquén funciona plenamente la división de los poderes, resguardando de esta forma los derechos individuales y evitando la concentración de poder. Por ello, la apreciación referida a "la grave crisis institucional" del Poder Judicial alegando "supuestas injerencias" entre Poderes, en modo alguno puede aventar una respuesta oficial, dado que no existe esa "crisis" mencionada. El Poder Judicial es el instrumento básico para mantener el equilibrio

del sistema. La administración de justicia ha quedado reservada en forma permanente, exclusiva y excluyente a ese Poder, vedando su administración por los otros poderes del Estado, lo cual se traduce fundamentalmente en el ejercicio de funciones por jueces con independencia personal y con libertad de cualquier influencia o presión exterior. El Gobierno agrega que la designación de los magistrados en la provincia del Neuquén también ha respondido inexcusablemente a las prescripciones legales vigentes en dicha materia, y esta provincia, al igual que sus pares, es un Estado autónomo, lo que implica la facultad de darse sus propias normas en lo que hace al funcionamiento de las instituciones. En los casos de referencia puntual que señala el Relator Especial en su nota, cada uno se encuentra dentro de la jurisdicción de sus jueces naturales. Así, en el caso de jury de enjuiciamiento al Fiscal Mendaña, integrado por aquellos designados por la ley para conocer y juzgar, existe un proceso en marcha en el que aun no se ha dictado sentencia, por lo que rige plenamente el principio de inocencia del imputado. La función de la Fiscalía de Estado fue realizar la acusación por subrogancia, atento que el órgano acusador natural es el Ministerio Publico, pero en esta circunstancia el acusado es precisamente parte de dicho ministerio. El mencionado Jury se ha instruido a partir de una acusación que contenía cinco cargos: *a*) su participación en la denominada "experiencia piloto", *b*) por declaraciones publicas injuriantes y descalificantes a los tres poderes constituidos, *c*) por excesiva morosidad en el desempeño de su función, *d*) por realizar actividad privada incompatible con su rol de magistrado prestando asistencia técnica a un país extranjero en desmedro de su dedicación exclusiva, *e*) por apropiación ilícita de dos lotes de propiedad del Municipio de Neuquén, realizando asimismo tres conexiones clandestinas de agua desde la red publica. El primer cargo fue desistido por la Fiscalía de Estado en consonancia con el reciente criterio de la Corte Suprema de Justicia de la Nación adoptado en Acordada 712005 del 24 de febrero de 2005 (es decir: con posterioridad al inicio de jury), y fue solicitada su absolución, lo que así se resolvió. En relación al tercer cargo, también fue desistido, por haberse considerado probado que la mora existente es de todos los ámbitos del Poder Judicial y no atribuible exclusivamente al Dr. Mendaña.

30. Las recusaciones fueron motivo de recurso por parte del enjuiciado y resueltas no solo por el Jurado de Enjuiciamiento, sino que "innovadoramente" se interpuso una acción de amparo contra el funcionamiento del mencionado Jury, amparo que fue debidamente resuelto por todas las instancias de apelación locales, cuya ultima instancia ha debido integrarse con conjueces por la excusación de los miembros acusados de "falta de imparcialidad". Dicho fallo se encuentra firme en lo que hace a la Jurisdicción local, por lo cual el Jurado de Enjuiciamiento ha debido retomar su tramite suspendido por el improcedente "amparo". Conforme información suministrada por la Fiscalía de Estado a requerimiento de este órgano asesor, dicho organismo ya ha producido toda la prueba, y entiende probados todos los cargos que fueron objeto de la acusación, ya se produjeron los alegatos y ello esta siendo actualmente merituado por el Jurado, por lo que la valoración de dicha prueba excede el marco de actuación de ese organismo. Para mayor ilustración, el Gobierno acompañó antecedentes en tal sentido. Por su parte, el pedido de Jurado de Enjuiciamiento al Dr. Tribug fue dejado sin efecto y archivado por la Legislatura Neuquina en uso de facultades que le son propias. El Poder Judicial es un Poder Constituido Independiente, por lo cual goza de todas las prerrogativas necesarias para adecuar su funcionamiento, mientras dicho ejercicio no contraríe principios de raigambre

constitucional. En caso de sospecharse el ejercicio irregular de la función por parte de alguno de sus miembros, existen mecanismos constitucionales para poner remedio a tal situación y compatibilizarla con el interés social de obtener una justicia eficaz. Me refiero especialmente al instituto del juicio político como mecanismo de remoción de los integrantes cuestionados. En relación al caso denominado "cámaras ocultas", también existe un proceso judicial en tramite que se ha de respetar y atenerse a lo que en este supuesto resuelva finalmente la Corte Suprema de Justicia de la Nación. Respecto de las supuestas amenazas a la Defensora de la Niñez y Adolescencia y sus adjuntas, en el caso de haberse denunciado alguna intimidación de este tipo, debe también necesariamente tramitar y dirimirse, mediante un adecuado proceso, ante los órganos públicos competentes que integran el Poder Judicial, como encargados de investigar y evaluar la aplicación o no de sanciones penales, con la finalidad de asegurar la efectividad del derecho y la continuidad del orden jurídico. A tal fin deberá en todo caso solicitarse informe al organismo oficial que registra las denuncias de este tipo, ya que tratándose de una funcionaria publica la involucrada, esta tiene obligación legal de denunciar. Por todo ello y en virtud de los principios expuestos con respecto a la actuación de uno de los Poderes fundamentales del Estado Provincial, a fin de ser respetuoso del accionar del mismo y de evitar cualquier intromisión en tal sentido, el Gobierno indicó que la única alternativa posible era esperar el dictado de las resoluciones judiciales pertinentes en cada uno de los casos denunciados.

31. El 14 de febrero de 2006, el Gobierno respondió a la comunicación enviada por el Relator especial el 13 de octubre de 2005. El Gobierno proporcionó las siguientes respuestas a las preguntas formuladas por el Relator especial:

1) Para responder este requerimiento, se contesta sobre la exactitud de los hechos denunciados, conforme el orden e individualización de los sucesos enunciados en el apartado Resumen de las Alegaciones del cuestionario remitido:

i) Es correcta la alegación referida al reemplazo de la totalidad de los cinco vocales que integran el Tribunal Superior de Justicia (TSJ) de la provincia, producido entre febrero de 2004 y febrero de 2005. En febrero de 2004, pocos días después de que Jorge Sobisch asumiera su tercer periodo —y segundo periodo consecutivo— como gobernador de Neuquén, fueron designados como jueces del Tribunal Superior de Justicia de la Provincia, a propuesta del Poder Ejecutivo y con acuerdo de la Legislatura, Roberto Fernández, Jorge Sommariva y Eduardo Badano. Los tres nuevos vocales se desempeñaban, hasta el momento de su designación, como jueces de Cámara Criminal de Apelaciones y Juicio Oral de la provincia. El 15 de diciembre de 2004 la Legislatura Provincial designó a Ricardo Tomas Kohon vocal del TSJ. El nombrado no era abogado penalista, y ocupaba hasta el momento de su designación la Presidencia del Colegio de Abogados de la ciudad de Neuquén. En forma previa y próxima a su designación, efectuó manifestaciones públicas criticando la "experiencia piloto" implementada en el fuero penal, invocada como causal de remoción en la denuncia que dio inicio al jury contra el fiscal Ricardo Mendaña. El 9 de febrero de 2005 la Legislatura Provincial designó a Eduardo Felipe Cía vocal del Tribunal Superior de Justicia (TSJ). El nombrado se desempeñaba hasta el momento de su

designación como Fiscal en el fuero penal. Los diputados de la oposición no participaron de las sesiones legislativas en que se realizaron las designaciones de Kohon y Cía., en muestra de rechazo al mecanismo utilizado por el gobernador para proponer la tema de candidatos, quien omitió cumplir la ley provincial 685 que en su articulo 81 establece que "en todos los casos en que el Poder Ejecutivo deba realizar os nombramientos" de los vocales, defensor y fiscal del TSJ "recabara previamente por escrito la opinión del Colegio de Abogados de la provincia ..." . Los vocales Sommariva **y** Fernández votaron por el sobreseimiento de Sobisch en la causa de las cámaras ocultas, mientras de desempeñaron como camaristas. Badano lo hizo como vocal, cuando la causa llegó al TSJ;

ii) Es exacto;

iii*)* Es exacto. La modificación al reglamento de la Comisión Asesora para la designación de magistrados y funcionarios con jerarquía superior a Secretario de Cámara se dispuso mediante Acuerdo del TSJ N.º 3763 del 28/4/2004. A resultas de la modificación el TSJ designó numerosos magistrados y funcionarios que, de encontrarse vigente el régimen anterior, no habrían resultado elegibles por no reunir los votos necesarios para integrar la terna de los mas votados. Tal es el caso, entre muchos otros, de la designación en septiembre de 2004 del Fiscal a cargo de la Agencia Fiscal de Delitos contra la Administración Pública —Fiscalía Anticorrupción— Pablo Vignaroli, quien obtuvo de la Comisión Asesora solo dos votos - emitidos por los miembros pertenecientes al TSJ mientras otros tres candidatos obtuvieron mas votos que el nombrado. La elevada cantidad de designaciones efectuadas obedece a la creación de más de 150 cargos en el Poder Judicial mediante la sanción por la Legislatura Provincial de la ley 2475 en septiembre de 2004, conforme el proyecto presentado por el TSJ en agosto del mismo año;

iv) No es exacto. El proyecto para la modificación de la Ley de Protección Integral de la Niñez y Adolescencia fue presentado en agosto de 2004 por el Poder Ejecutivo Provincial, a través de su Ministro de Seguridad Luis Manganaro. Sí es exacto que el contenido del proyecto afectaba gravemente las disposiciones de carácter protectorio de la ley y la actuación de la Defensoría del Niño y Adolescente. El vocal del Tribunal Superior de Justicia, Roberto Fernández, respaldó el proyecto de reforma de la ley 2302. En una declaración publica concomitante a la presentación y debate del proyecto de ley, el funcionario amenazó a la Dra. Nara Oses, Defensora del Niño y Adolescente, con iniciarle un Jury por haber expresado públicamente su oposición a la modificación de la ley. Es exacto que tanto la Defensora Titular Nara Oses como la Defensora Adjunta Edith Galarza sufrieron amenazas anónimas, que provocaron la iniciación de una investigación fiscal actualmente paralizada por falta de pruebas.

v) Es exacto;

vi) Es exacto. En relación a los plazos del proceso, cabe agregar que el jury iniciado por denuncia presentada el 9 de noviembre de 2004 y declarada admisible el 22 de diciembre de 2004, concluyo mediante la sentencia dictada el 19 de diciembre de 2005 -que dispuso la destitución del enjuiciado y su

inhabilitación por cuatro arios para ejercer cargos públicos-. Dable destacar que los jurados abogados fallaron por la absolución atento haberse vencido los plazos legales establecidos en la ley de enjuiciamiento;

2) En el año 2003 los por entonces jueces de la Cámara en lo Criminal Primera de la I Circunscripción del Poder Judicial de Neuquén, Jorge Oscar Sommariva y Roberto Fernández fallaron a favor del sobreseimiento del gobernador Jorge Omar Sobisch en el "caso de la cámara oculta", con la disidencia de la camarista Cecilia Luzuriaga de Valdecantos. En febrero de 2004 los nombrados fueron promovidos como vocales del TSJ. Al declarar la jueza Cecilia Luzuriaga de Valdecantos como testigo en el jury de enjuiciamiento seguido a Ricardo Mendaña, reveló que Sommariva, cuando era Juez de la misma Cámara que la testigo, le comentó su preocupación porque Fernández - miembro por entonces del mismo Cuerpo - habría ido a ver al Gobernador de la Provincia poco antes de fallar en la causa seguida contra el Gobernador (conocida como de "las cámaras ocultas");

3) El fiscal interviniente ante el Juzgado de Instrucción fue el Dr. Pedro Telleriarte, titular de la Agencia Fiscal de Delitos contra la Administración Publica. El Dr. Ricardo Mendaña intervino como Fiscal de Cámara. En tal carácter intervino en audiencias, incidentes y en la audiencia de la apelación sosteniendo el recurso del Fiscal de Primera Instancia. Luego planteo el recurso de casación y la queja ante la casación denegada. Finalmente, actuó como fiscal subrogante, interponiendo el recurso extraordinario;

4) Además de los vocales Sommariva y Fernández, fueron designados para integrar el mismo cuerpo, en febrero de 2004 y febrero de 2005, respectivamente, Eduardo Badano y Eduardo F. Cia, ambos con especialidad en derecho penal. El vocal Eduardo Badano falló, como miembro de dicho Alto Cuerpo, rechazando el recurso extraordinario deducido contra el sobreseimiento del gobernador Sobisch en la causa de las "cámaras ocultas";

5) Sí se ha iniciado Jury de Enjuiciamiento contra el fiscal Ricardo Mendaña. Uno de los cargos contenidos en la denuncia que dio origen a1 proceso le acusa de “Haber violado en forma deliberada, sistemática y manifiesta su deber esencial, y específicamente inherente a la función que a su cargo compete, es decir: velar por el estricto cumplimiento de la Constitución y de las leyes", con fundamento en que el fiscal impulsó desde la función "las bondades del sistema acusatorio expresado en la acordada 3594/02", por la cual el Tribunal Superior de Justicia autorizó una nueva forma de trabajo de las agencias fiscales con el Juzgado de instrucción N.º 2. En cuanto a la participación en la iniciativa, debe señalarse que la Acordada 3594/02 tuvo como antecedente la "propuesta conjunta” efectuada por los Dres. Ricardo Mendaña (en calidad de Fiscal de Cámara) y del Dr. Juan José Gago (titular del Juzgado de instrucción N.º 2). La Acordada 3594/02 del TSJ fue dictada en fecha 30 de mayo de 2002 y suscripta por la totalidad de los por entonces miembros de dicho Tribunal. La modalidad de trabajo establecida por esta experiencia fue aplicada desde mayo de 2002 hasta febrero de 2004 en todos los asuntos tramitados ante el Juzgado de Instrucción No 2 y, a partir de los últimos meses de 2003 hasta febrero de 2004 en los asuntos tramitados ante el Juzgado de instrucción N.º 1. Intervinieron en dichas causas los jueces titulares de los mencionados Juzgados y la totalidad de los funcionarios de los Ministerios Públicos Fiscal y de la Defensa con actuación ante los mencionados y en las instancias ulteriores de trámite de los asuntos (Juzgados Correccionales, Jueces, Fiscales y Defensores de Cámara, Jueces del TSJ y Fiscal y Defensor actuantes ante dicho Cuerpo). A los Dres. Alberto Tribug (Fiscal del TSJ) y Ricardo Mendaña se les iniciaron

sendos procesos de remoción con motivo de su participación en la experiencia piloto. No se adoptó ninguna medida en relación a los restantes funcionarios y magistrados participantes en la experiencia;

6) El 19 de diciembre de 2004 el Dr. Mendaña presentó la reacusación de tres de los integrantes del Jurado, específicamente los tres vocales del Tribunal Superior Jorge Sommariva, Roberto Fernández y Eduardo Badano por falta de imparcialidad, por varios motivos. Uno de ellos es por encontrarse en posición funcional equivalente en relación a una de las causales (la llamada experiencia piloto), pues intervinieron en casos en los que se aplico esa modalidad de trabajo; además, porque tampoco impidieron esa forma de trabajo, que es una de las modalidades reprochadas al acusado y porque efectuaron declaraciones públicas cuestionando la "legalidad" de esa practica en reuniones efectuadas con otros magistrados judiciales y también ante legisladores. Otra de las causales se fundaba en que la mayoría de las declaraciones criticas reprochadas al Fiscal, estaban dirigidas a los propios recusados y habían reconocido sentirse agraviados, de modo que si actuaban como jurados se convertían en jueces y partes. El acusado señaló precisamente que no debe existir un antecedente como este, en donde el denunciante (autor material de la denuncia) en realidad expresa el interés de quienes pretenden juzgarle, que son los afectados por la acción (declaraciones) que se le adjudican. Para cada una de las causales se ofreció prueba. El 22 de diciembre de 2004, el Jurado resolvió que la reacusación tramitara en forma separada, sin suspender el pronunciamiento sobre la admisibilidad de la denuncia. Esta decisión se logró por cuatro votos (incluidos los tres recusados) contra tres. Esto se plasmo en el Acuerdo No 156 - JE del Jurado. En el mismo acto, también por cuatro votos (incluidos los tres recusados) contra tres, se decreto la admisibilidad de la denuncia y la suspensión del funcionario, con la reducción de salarios en un 50%. La Defensa interpuso una acción de amparo a fin de que se declare la ilegalidad manifiesta de esa decisión (admisibilidad de la denuncia y suspensión), por haberse dictado violando el derecho a ser juzgado por "jurados imparciales", violación del derecho de defensa, afectación del derecho al trabajo y al salario. Por este motivo se presento amparo que recayó en el Jugado Laboral N.º 2, que lo declaro inadmisible en casi todas sus partes, rechazando la medida cautelar peticionada (suspensión de los procedimientos) por considerar que "existen otros procesos mas idóneos que el amparo, en tanto estas cuestiones, dada su complejidad, relevancia, trascendencia institucional y extensión a terceros, ameritan la necesidad de un mayor debate jurídico de las mismas". Dijo también la magistrada que, en tanto la decisión cuestionada reviste el carácter de acto administrativo, goza de la presunción de legalidad y legitimidad. Esta resolución se adoptó el 30 de diciembre de 2004. Continuado el proceso de jury y en virtud de la violación de la garantía del juez imparcial y de la defensa en juicio se presenta nuevo amparo por ante juez con competencia en material penal, que es el que luego de las diversas instancias apelatorias se encuentra a la fecha recurrido por ante la Excelentísima Corte Suprema de Justicia de la Nación;

7) El jury de enjuiciamiento contra el Dr. Mendaña fue promovido por el diputado oficialista (Movimiento Popular Neuquino) Óscar Alejandro Gutiérrez, mediante denuncia presentada el 9 de noviembre de 2004. En la misma fecha el nombrado presentó pedido de juicio político contra el Fiscal del TSJ Alberto Tribug. El 19 de noviembre del mismo año, Gutiérrez declaró públicamente que las acusaciones contra Mendaña y Tribug son "una cuestión personal";

9) Pregunta contestada en el inciso *a*, iv);.

10) Resulta competente para investigar los hechos presuntamente constitutivos de delitos el Poder Judicial de la Provincia, debiendo ser iniciada la investigación de oficio o por denuncia por parte del Ministerio Publico Fiscal. En orden a la responsabilidad por hechos presuntamente constitutivos de mal desempeño de la función publica, su investigación corresponde —tratándose de la conducta de magistrados integrantes del TSJ de la Provincia— a la Legislatura Provincial, por el procedimiento de juicio político;

11) No se conoce con exactitud, pero habría un pedido de juicio político respecto al juez Fernández y una causa penal consecuencia de la denuncia del Dr. Inaudi, Diputado provincial. Respecto a las amenazas a las Defensoras del niño, remitimos al inciso 1, iv);

12) No se conoce que se haya impuesto ningún tipo de sanción penal o disciplinaria por los hechos aludidos;

13) Se desconoce;

14) Se desconoce;

15) Se desconoce;

Avalan el contenido del presente informe y contestaciones en distintos puntos, en lo que conocen y les conciernen diversas personas físicas y jurídicas tales como el Sr. Decano de la Facultad de Derecho y Ciencias Sociales de la Universidad Nacional del Comahue, Dr. Juan Manuel Salgado; los Funcionarios Públicos del Poder Judicial Provincial,- Dres. Pedro Telleriarte, Miriam Pazos, Cristina Beute, Gustavo Vitale; el Presidente de la Asociación de Magistrados y Funcionarios del Poder Judicial de la Provincia de Neuquén; el grupo de Abogados Autoconvocados; distintos Diputados Provinciales de diversas fuerzas y partidos políticos; Organismos de Derechos Humanos; las autoridades del Sindicato de Empleados Judiciales de Neuquén; el grupo Convocatoria Neuquina por la Justicia y la Libertad; entre otros. De igual manera en caso de serle de necesidad puede acercársele distinto material documental o jurídico que avala lo aquí expuesto.

Comentarios y observaciones del Relator Especial

32. El Relator especial agradece al Gobierno de Argentina y en particular al Gobierno de la Provincia del Neuquén su grata cooperación y aprecia que el mismo haya tenido a bien enviarle en un plazo corto informaciones sustantivas en respuesta a las alegaciones que les transmitió sobre la provincia de Neuquén. Sin embargo, el Relator Especial lamenta que hasta la fecha el fiscal destituído, Dr. Ricardo Mendaña, no ha contado con una tutela judicial efectiva ni se han sustanciado actuaciones judiciales con respecto a la presunta imparcialidad del jury de enjuiciamiento.

33. En lo concerniente a la situación en la provincia de Misiones, el Relator Especial se preocupa por la ausencia de respuesta por parte del Gobierno a la carta de alegación enviada el 24 de enero y el 7 de julio de 2006 en relación a la crisis institucional del Poder Judicial de la provincia y le pide encarecidamente tenga a bien enviarle a la brevedad posible, y preferentemente antes de la clausura de la cuarta sesión del Consejo de Derechos Humanos, informaciones precisas y detalladas acerca de las alegaciones arriba resumidas.

Australia

Communications sent

34. On 15 August 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on freedom of religion or belief concerning Amer Haddara, Shane Kent, Fadal Sayadi, Abdullah Merhi, Ahmed Raad, Ezzit Raad, Hany Taha, Aimen Joud and, Abdul Nacer Benbrika, held in Barwon Prison since November 2005; Bassam Raad, Majed Raad and Shoue Hammoud, held in Barwon Prison since March 2006; and Izzydeen Attik, arrested and remanded in Sydney in November 2005 and transferred to Barwon Prison before March 2006.

35. According to the information received, the above-mentioned men are all being held at the maximum security Acacia Unit of Barwon Prison in Victoria, a facility originally designed for convicted prisoners only. They have been charged with various offences under the anti-terror provisions of the Criminal Code Act 1995. The charges relate mostly to membership and support of a terrorist organization, but none of the above-mentioned persons has been charged with committing a terrorist act as such. Most of the men were at some point or are currently held in solitary confinement (some for up to 10 weeks), which means that during this period they do not have access to exercise yards or recreational facilities. The others are confined to their cells between 23 and 18 hours, and during the remaining period the possibility for contacts is severely restricted. Family visits are limited and the monthly contact visits are permitted only for children and not spouses, partners or other family members. Some of the detainees were held together with convicted prisoners for some time. Access by the detainees to their legal representatives is restricted and all communications between them are audio- and videotaped. All materials provided to and received by the detainees are scanned by the prison authorities. The diet of the detainees includes pork, which some of them consider offensive to their religious feelings. Some of the detainees' mental health has been affected by the detention conditions and the prolonged isolation.

Communications received

36. On 30 November 2006, the Government of Australia replied to the urgent appeal sent by the Special Rapporteur on 15 August 2006. The Government indicated that Bendrika, Atik, Haddara, Joud, Kent, Merhi, A. Raad, E. Raad, Sayadi and Taha had been arrested and charged in November 2005 and B. Raad and Hammoud in late March 2006. Each alleged offender has been charged with one count of being a member of a terrorist organization. Various additional charges have also been laid against some of them, including charges of intentionally recruiting a person to join a terrorist organization, intentionally making funds available to a terrorist organization, and being connected with the preparation for a terrorist act. It added that on 1 September 2006, 11 of the alleged offenders were committed to stand trial in the Supreme Court of Victoria on the charges under the Criminal Code. On 20 September 2006, the remaining two alleged offenders were committed to the Supreme Court to stand trial. All matters have been listed for a directions hearing in the Supreme Court on 1 December 2006. The Government asserted that they have had their applications for bail reviewed and rejected by judges of the Supreme Court. The Government recognized that they are being held within Barwon

Prison in the Acacia High Security Unit which houses both remand and convicted prisoners. However, the Government stressed that remand and convicted prisoners do not mix, consistent with Guideline 1.11 of the Standard Guidelines for Prisons under the Revised Standard Guidelines for Corrections in Australia 2004 (Standard Guidelines). It considers that this is also consistent with Rule 8 (b)of the Standard Minimum Rules on the Treatment of Prisoners which, while not a binding document, may be persuasive, and article 10 (2) (a) of the International Covenant on Civil and Political Rights. The Government pointed out that Australia has a reservation to article 10 (2) (a) which states that the obligation under article 10 (2) (a) is to be achieved progressively, but stressed that Australia implements article 10 (2) notwithstanding its reservation, by ensuring that remand and convicted prisoners do not mix in Barwon Prison. Furthermore, the Government asserted that it had been informed by the department dealing with correctional services in Victoria that the alleged offenders have never been held in solitary confinement and that rather each prisoner has an individual cell. They spend approximately six hours out of their cells each day, which time they may choose to reduce by returning to their cell earlier. Remand prisoners normally exercise with one other prisoner. All prisoners are rotated as to who they may exercise with, but security concerns are paramount in deciding the mix of people. Victorian legislation provides that the minimum number of hours out of cell is one hour per day, which according to the Government is consistent with Rule 21 of the Standard Minimum Rules and Guidelines 2.47 of the Standard Guidelines. The Government further stated that remand prisoners are permitted one non-contact visit per week of one hour's duration and one contact visit per month with any children under the age of 16 years. Remand prisoners have telephone access and are permitted to make 25 personal phone calls per week. The Government asserted that the prisoners who were the subject of the communication of the Special Rapporteur have reasonable access to their lawyers and facilities for preparing their defence consistent with both international standards and Australian guidelines. In this respect, the Government referred to the decision of His Honour Justice Eames who in his ruling dismissing the application for bail of Mr. Haddara in the Supreme Court of Victoria, allegedly noting that whilst "the preparation of the alleged offender's legal defense was difficult to his lawyer because of the location and restrictive conditions of detention in the Acacia Unit at Barwon Prison", he "was not persuaded that the applicant has been unreasonably denied access to lawyer. Indeed, the evidence is that he has made frequent contact with his lawyer". The Government asserted that in other bail applications by Mr. Attik, Mr. Haddara, Mr. Taha and Mr. Merhi, His Honour's finding was that these alleged offenders have reasonable access to their lawyer in accordance with article 14 (3) (b) of the Covenant.

37. It indicated that the Act and the Corrections Regulations 1998(Vic) regulate communications between remand prisoners and their lawyers. Under section 44 of the Act, all visitors to the prisoner, including lawyers, must submit to a formal search to detect the presence of drugs, weapons or metal articles. Papers brought into prison are also scanned for illicit drugs. Any person who refuses to submit to a search may be refused entry to the prison. Under section 47 (1) (m) of the Act, prisoners have the right to send confidential letters to and receive confidential letters from their legal representatives without prison staff opening their letters. However, this right is subject to sections 47A and 47B. Section 47 A states that if there is a reasonable suspicion that a letter contains an unauthorized

article or substance that poses an immediate danger to any person, it may be disposed of, consistent with Principle 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly resolution 43/173, which allows restrictions on communications with legal advisers if necessary to protect the security or good of the detention facility. Section 47B provides that certain confidential letters may be inspected if they appear suspicious. A suspicious letter may be held while the prisoner and lawyer are informed of the suspicion, and the letter may only be opened, but not read or censored, in the presence of the prisoner and the lawyer or his or her representative. The Government considers that this maintains the lawyer/client confidentiality required under Principle 8 of the Basic Principles on the Role of Lawyers. The Government added that the alleged offenders have a computer with a DVD/CD-Rom drive in their cells to access the electronic brief evidence against them. They are allegedly able to make applications for any special arrangements they may require to assist them in the preparation of their defence, consistent with article 14 (3) (b) of the Covenant and with Guidelines 1.15., 1.17, and 2.4 of the Standard Guidelines. It further stated that the detainees do not have limits on the number of visits from professionals, except by the conflicting demands of other prisoners to have access to the contact rooms available for professional visits, in accordance with article 14 (3) (b) of the Covenant. It pointed out that there is a system of booking the contact room to guarantee access. Lawyers may visit their clients in the Acacia Unit between 8.45 a.m. and 3.30 p.m. Visits are video monitored for security purposes, but there is no audio sound or recording. Remand prisoners may make an unlimited number of legal professional calls, and are able to make these legal professional calls between 8.30 a.m. and 3 p.m. each day, consistence with Principle 8 of the Basic Principles on the Role of Lawyers, Rule 93 of the Standard Minimum Rules and Guideline 1.17 of the Standard Guidelines. Finally, the Government declared that it has also thoroughly investigated all allegations of mistreatment by the alleged offenders and according to its findings the alleged offenders are being treated with humanity and respect for their inherent dignity of the human person.

Special Rapporteur's comments and observations

38. The Special Rapporteur thanks the Government of Australia for its cooperation and values its efforts in providing substantive and detailed information in response to the above allegations. He further wishes to ask the Government to provide information about the hearing in the Supreme Court on 1 December 2006.

Azerbaijan

Communications sent

39. On 7 April 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Ruslan Bessonov, aged 17 , Maksim Genashilkin, 16, and Dmitri Pavlov, 16, from the village of Eni Genushli, near Baku, who are currently being held at the third pre-trial detention facility in Shuvlani, on the outskirts of Baku, or in the Ranaman district police administration building in Baku. According to the information received, on

14 March 2005, the three were detained and taken to the 33rd police precinct in Surakhan, where for two days they were subjected to severe beatings and other forms of torture by police officials and officials from the office of the public prosecutor (inter alia, Senior Investigator Mageriam Azizbekov and Suakhanskii district prosecutor Mr. Ilkhdrimzade). All three were denied access to a lawyer and to their parents during their initial detention. Compelled by severe beatings, kicking and threats, the boys were forced to sign confessions and accusations against one another of participation in the murder of Vusal Zeinalov on 15 February 2005, which they all deny. Ruslan Bessonov faced additional beatings in June 2005 while he was in the third pre-trial detention facility (SIZO) on the outskirts of Baku. The three sustained bruises on their legs, feet, back and torso and suffer from pain in their heads and stomachs. All of them suffer from psychological trauma. As a result of the torture in March 2005, Ruslan suffered contusions on his head that produced large bumps. None received adequate medical treatment. Currently, the boys are being held at the third pre-trial detention facility in Shuvlani in cells with four or five other boys and one adult. Ventilation and light in the cell are poor, the quality of the drinking water is bad and the nutrition insufficient. They are allowed 5-10 minutes of exercise per day and do not have access to education. At times, they are taken to the Ranaman district police administration building in Baku, where they are held in isolation for up to 10 days, get only one meal per day and are not allowed to exercise at all. They have been held in pre-trial detention for more than a year, pending the investigation that has now been ongoing for more than 13 months. Officials have refused to investigate the allegations of torture.

Communications received

40. On 17 July 2006, the Government of Azerbaijan replied to the urgent appeal sent by the Special Rapporteur on 7 April 2006. The Government indicated that criminal proceedings have been instituted against Ruslan Bessonov, Maksim Genashilkin, and Dmitri Pavlov on charges of the premeditated murder of Vusal Zeynalov. It indicated that the investigation was conducted by the Surakhany District and Baky City Prosecutor's Office, and that the criminal case was transferred for cognizance to the Court on Grave Crimes of the Republic of Azerbaijan on 13 April 2006. Concerning the allegations of torture, the Government ascertained that the three defendants had medical examinations and that the results of this investigation and forensic medical examination showed that neither violence nor torture was committed. In connection with allegation of torture committed against Ruslan Bessonov, the Government stated that as a result of investigation, it was ascertained that Maharram Azizbayov Ruslan Bessonov, inspector of the Surakhany District Prosecutor's Office, had met with R. Bessonov in the investigative isolator on 23 June 2005 and submitted to him a copy of the indictment against him. During this meeting, he allegedly asked R. Bessonov to give true testimonies at the court hearing, and he did not commit any violence or torture against him. The Government pointed out that an investigation was carried out at the request of lawyer T. Aliyev, who filed an application to the Head of the Department on 15 July 2005 for the implementation of court rulings of the Ministry of Justice asking for an examination of the facts regarding violence in the course of the investigation used against Ruslan Bessonov. The investigation showed that R.Bessonov did not apply either to the governing board of the investigative isolator or the medical centre on 23 June 2005, or during subsequent days. The Government further argued that

during the investigation, E. Namazov and O. Yusifov, supervisors of investigative isolator No. 3, indicated that Ruslan Bessonov, after meeting with inspector Maharram Azizbayov on the way to the cell, said nothing about any violence, torture or menace used against him, and they did not observe any injuries on his body. A medical examination of R. Bessonov was conducted on the basis of T. Aliyev's application, and no pathological signs were discovered on his body or internal organs. As regards violence against R.Bessonov committed by inspectors carrying out the investigation and police officers of Surakhany District Police Department No. 33 on 14 March 2005, the Government pointed out that this fact was not confirmed and neither R. Bessonov nor other defendants or their lawyers had applied on that issue to the investigative agencies. The Government has ensured that the Prosecutor's Office of the Republic of Azerbaijan has put the trial of this criminal case under special supervision and that it would ensure full, comprehensive and objective court proceedings against the defendants.

Special Rapporteur's comments and observations

41. The Special Rapporteur thanks the Government of Azerbaijan for its cooperation and its detailed responses to his communication. The Special Rapporteur notes with satisfaction that officials have investigated the allegation of torture and that the forensic medical examination showed that neither violence nor torture were committed. While noting with satisfaction that court control of the detention was made available, the Special Rapporteur remains deeply concerned about the very long period of pre-trial detention, which amounts to more than a year, pending the investigation that has now been ongoing for more than 13 months. The Special Rapporteur would like to recall general comment No. 8 of the Human Rights Committee, in which the Committee underlines that "pre-trial detention should be an exception and as short as possible".

Bahrain

Communications sent

42. On 13 June 2006, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on violence against women, its causes and consequences concerning Z.A, S.F, S.L, S.I.H and S.A.A. According to information received, Z.A was regularly beaten by her husband, whom she married in 1992. In 2004, the couple's Filipina domestic worker alleged that the husband had repeatedly raped her and she had become pregnant as a result. The Jinai Court eventually convicted the husband for adultery, holding that use of force could not be proven, and sentenced him to one month of imprisonment. When Z.A filed for divorce in the Sharia High Court (Jaffaria Department), presiding judge Naser Al-Asfur reportedly only granted a divorce after she renounced any rights to alimony and signed over property to her husband. An appeal is pending in the Court of Appeal. S.F was married in 1994 at the age of 17 and had three children (now aged 8, 10 and 12) with her husband. From 1999, the husband attempted to force her to have sexual relations with other men for money. She repeatedly reported this matter to the authorities, but the police refused to open a case against her husband, who is a police officer himself. In 2000, S.F successfully filed for divorce in the Sharia High Court (Sunni Department) and was

granted custody of her children. In 2003, a friend of the husband allegedly invited her to his house under a pretext. After she had entered the house, the husband allegedly arranged for police to arrest her on charges of adultery. She spent 20 days in pre-trial detention before the charges were dropped. During her detention, the husband successfully asked for a provisional court order assigning custody of the children to him. The case is still pending in court and the children reside with the husband. S.L married her husband in 1996, at the age of 15 years, and has a 2-year-old daughter with him. She filed for divorce in the Sharia High Court (Jaffaria Department) in 2003, because the husband allegedly drank, used marijuana and beat her during her pregnancy. Presiding judge Naser Al-Asfur reportedly told her that she has to renounce her rights to custody or alimony and sign over property to her husband before he could grant a divorce. A court clerk named Maky allegedly tried to force her to have sexual relations with him under the guise of a temporary marriage of convenience (*Mutaa*). In exchange he offered to intervene with the judge on her behalf.

43. S.I.H, a Bahraini national of Egyptian origin, married her husband in 1993 and had two children, aged 13 and 11, with him. When the husband began to drink and failed to support the family, in addition to beating her, she filed for divorce in the Sharia High Court (Jaffaria Department). Presiding judge Hamit Al-Asfur reportedly tried to pressure her to renounce her right to custody of her children before granting a divorce. Initially she was allowed to see her children once a week, but this right was rescinded in 2004. The divorce case is still pending in court. S.A.A married her husband in 2000 and has a daughter, aged 5, with him. She filed for divorce in Sharia High Court (Jaffaria Department), with Judge Zakaria Al-Sadadi presiding. Custody of the daughter was temporarily assigned to S.A.A, but her husband was granted the right to take his daughter with him twice a week. It is alleged that the husband sexually abused his daughter on some of these occasions. Following one incident, the head of the Child Protection Committee in Bahrain reportedly issued a report that supported the allegations. Notwithstanding this report, the authorities reportedly took five full days to refer her daughter for examination by a medical doctor at the Criminal Directorate, who at that point only found some scaring on the daughter's thighs. Despite the allegations, the Sharia High Court extended the husband's visiting rights to six hours a week. S.A.A's appeal against this decision was reportedly rejected on 9 May 2006. Reportedly, Bahrain does not have a codified family law that stipulates clear and equitable norms on divorce or child custody. As a result, judges can decide cases according to their personal interpretation of Sharia and their interpretation reportedly often favours men. Concern is expressed that a considerable number of women in Bahrain could be trapped in violent relationships, because they fear having to renounce child custody rights or property rights in order to be granted a divorce.

Communications received

44. The Government of Bahrain replied to the allegation letter sent by the Special Rapporteur on 13 June 2006 with a letter dated 21 August 2006. The Government stated that Bahrain gives great importance to human rights and in particular to the rights of women. It pointed out that this importance is reflected in the Constitution which provides for rights and obligations enabling women to enjoy all the rights of the society. In particular, it provides for equality before the law and respect of human dignity, in its article

18, and guarantees the equal right to fair trial and free legal assistance. The Government added that the legislation clearly guarantees women's civil and political rights as well as economic, social and cultural rights. It further stated that Bahrain has ratified several international conventions for the protection of human rights, notably the Convention on the Elimination of All Forms of Discrimination against Women in 2002, which has been incorporated in the internal legislation, and has created a specialized agency promoting women's rights, the Supreme Council of Women in 2001. Regarding the allegations of human rights violations, the Government stated that it has transmitted a copy of the letter of the Special Rapporteurs to the Ministry of Justice and to the Public Prosecutor and to the Supreme Council of Women, who are studying the cases. However, the facts related in the letter of allegations were not precise and did not fully describe the reality. Concerning Ms. S.F, it pointed out that she had asked for the restitution of child custody rights and her case was to be heard on appeal on 5 September 2006. In this respect, the Government considered that the recommendations of the Special Rapporteur came too early, highlighting that the case was not closed. Concerning S.L., the Government stated that the final ruling was issued in July 2006 and that the couple had come to an agreement. Concerning S.I.H., the Government asserted that the ruling was issued on 18 January 2006 and that none of the parties has appealed the decision. Finally, as far as S.A.A. is concerned, it indicated that no complaints have been filed with the police and that because of delays on the part of the parties concerned, the Sharia Court could only set the date for the trial on 6 September 2006. The Government concluded by stating that these cases are based upon laws that do not discriminate against women. It stressed that the independence of the judiciary was guaranteed in Bahrain.

Special Rapporteur's comments and observations

45. The Special Rapporteur thanks the Government of Bahrain for its cooperation and values its efforts to provide in a timely manner substantive information in response to the above allegations. The Special Rapporteur wishes to take this opportunity to ask the Government to provide answers to the following questions. He would appreciate receiving information about the result of the appeal of S.F.j and the decision that has been issed in the case of S.A.A. Furthermore, he would like the Government to give some details on the agreement between S.L. and her husband. With regard to S.I.H., while taking note of the comments made by the Government regarding the court ruling, the Special Rapporteur regrets that the Government does not provide specific details on the results of any inquiries that may have been carried out in relation to this case to assure him that the presiding judge, Hamit Al-Asfur, did not try to pressure her to renounce her right to the custody of her children before granting a divorce. The Special Rapporteur regrets that the Government has not provided any answer concerning the case of Z.A. and urges it to do so at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Bangladesh

Communications sent

46. On 15 December 2006, the Special Rapporteur sent an allegation letter regarding interference by the executive branch in the judiciary. In his communication he noted that:

(a) Despite the fact that section 22 of the Constitution provides that the State shall ensure the separation of the judiciary from the executive branch of the State, it is reported that the judiciary in Bangladesh is subject to interference from the executive branch. Judges of subordinate courts and tribunals, who deal with the bulk of the cases in the judiciary in Bangladesh, both civil and criminal, are answerable to government ministries. In particular, the Courts of Metropolitan Sessions judges and the Courts of Metropolitan Magistrates, both criminal courts, are administratively attached to the Ministry of Law and the Ministry of Home Affairs, respectively. Furthermore, all magistrates throughout the country and in the four metropolitan cities, where they work in Chief Metropolitan Magistrate's Courts, are allegedly answerable to the local district deputy commissioner. It has been reported that those judges discharge dual functions, judicial and executive, being also responsible for duties under a range of ministries, including home affairs, finance, establishment and law, justice and parliamentary affairs. They are allegedly appointed from the administrative services by the public service commission. The Ministry of Law, Justice and Parliamentary Affairs oversees the recruitment, posting and promotion of judges;

(b) The lack of independence of the judiciary in Bangladesh stems from some constitutional provisions. Articles 95, 96, 115, and 116 enable the executive to interfere in the appointment and tenure of judges. Article 96 provides that the President may, by order, remove a judge from office. Article 115 provides that appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him. Finally, according to article 116, control, including the power of posting, promotion and grant of leave and discipline of persons employed in the judicial service and magistrates exercising judicial functions, shall be vested in the President and shall be exercised by him in consultation with the Supreme Court. It is of concern that a large number of judges have reportedly been appointed without effective consultation with the Chief Justice, and that 19 judges at the High Court Division of the Supreme Court were reportedly appointed only three days before the annual vacation in August 2005. It is alleged that the 19 judges were appointed without properly assessing the qualifications, experience and suitability of the candidates. It has also been reported that some of the appointees lack seniority and the necessary experience;

(c) He had been informed that since 1991, the major political parties, including the Bangladesh Nationalist Party (BNP), promised in public meetings that they would separate the judiciary from the executive. This was even included in the BNP electoral programme. The separation of the judiciary was one of the main election pledges made by the BNP-led four-party alliance during the last general election, held in 2001. However, after winning the election and despite having a two-thirds majority in the Parliament, which enables a political party to make amendments to the Constitution, the BNP did not proceed to the separation of the judiciary from the executive. The Special Rapporteur recalled that the separation of the judiciary from the executive is spelled out in point XVII of the human rights pledges made by the Government of Bangladesh to the United Nations

on 13 April 2006 in support of its candidatcy for membership in the Human Rights Council;

(d) In a judgement by the Appellate Division of the Supreme Court on 2 December 1999, in the case *The State* v. *Mr. Mazdar Hossain*, the Supreme Court gave a 12-point order to the Government asking it to separate the judiciary, and to establish a judicial service commission to appoint judges and deal with promotions, transfers, leave, pensions, etc. It has been reported that the Government requested an extension for the implementation of the decision and that the Supreme Court has accepted at least 23 other extensions to delay the enforcement of this order. However, it is reported that on 5 January 2006, the Supreme Court rejected a further request for an extension and called for the separation of the judiciary to be implemented. A contempt of court case has been opened against the Government over its failure to implement the 1999 order. Nevertheless, it has been reported that the Government has not yet implemented the decision.

47. On 31 May 2006, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General 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 Atiur Rahman, a lawyer, his wife, S.S.S., and his legal assistant, Nawsher Ahmed. According to the information received, on 12 March 2006, Ms. S.S.S was taken into custody and beaten by the police in Dhaka. She was pregnant at the time, but has since lost her child. She filed a complaint together with her husband against the police officers. Since then, she and her husband have received threats. In particular, on 24 May 2006, Mr. Rahman was stopped by a group of armed and unidentified persons. The attackers held a pistol to his chest, questioned him about his identity and threatened to shoot him. That same morning, while Mr. Rahman's legal assistant, Mr. Ahmed, went to collect documents from the record office regarding Ms. S.S.S.'s court case, three persons confronted him and inquired if he worked for Atiur Rahman and where they could find him. The men followed him for the rest of the day, trying to prevent him from obtaining the documents he required from the record office. On 23 May 2006, an unidentified person called Mr. Rahman and warned him against pursuing legal proceedings against the police. The caller said that if he did not do this, he and his family would pay the ultimate price.

48. On 2 June 2006, the Special Rapporteur sent an allegation letter to the Government concerning Shah Ams Kibria, a member of the National Parliament. According to the information brought to his attention, on 27 January 2005, as Mr. Kibria was leaving a meeting in his constituency in north-eastern Bangladesh, grenades exploded, instantly killing three persons and injuring many others. Mr. Kibria was severely injured and died on his way to hospital. In contrast with statements by the Speaker of Parliament that the authorities would have provided a helicopter to take him to Dhaka for medical treatment had they known of the attack. The Special Rapporteur has been informed that despite appeals to the Government to send a helicopter, no such assistance was provided. It is also reported that two cases, a murder case under the Penal Code of Bangladesh and an explosives case under the Explosive Substance Act, were filed. In both cases, the police investigation has reportedly been closed. An appeal for further investigation, in particular

into the origin of the grenades, was dismissed and the case was reportedly sent to the competent tribunal for trial. In the murder case, on 19 March 2005, 10 persons were charged. Eight were arrested, while two absconded. The Special Rapporteur has been told that the investigation, which has not been actively pursued since April 2005, is incomplete, in particular since it has failed to identify the source of the explosives used in the attack, to track the funding for the attack and to ascertain how those who threw the grenades received the necessary training. Moreover, two suspects possibly able to provide information are still on the run. Moreover, it is alleged that on 23 March 2006, four of the suspects (Shahed Ali, Joynal Abedin Momen, Zamri Ali and Tajul Islam) confessed to a magistrate but applied to a higher court for the retraction of their statements, alleging that they had been extracted under torture. Information according to which a High Court judge ruled that their confessions had been obtained under torture, and were therefore invalid, has not been confirmed to date. It is also reported that the main defendant, Abdul Quayum, has also alleged that he was framed, tortured, and denied food and medical care, and that on 16 April 2005, when the police report was being heard by the magistrate, the police refused his request to make a voluntary confession before the magistrate in the absence of any police officers. The Special Rapporteur was also told that this may be owing to fear that he may incriminate certain powerful individuals. On 30 April 2005, the lawyer for the family of Mr. Kibria (the informant) submitted an application for further investigation, which was dismissed on 10 May 2005. An appeal against this decision was subsequently lodged before the High Court Division of the Supreme Court of Bangladesh, and further proceedings were later temporarily stayed. On 21 November 2005, the High Court dismissed the appeal, arguing that the proper course of action was to file an application for further investigation with the trial court, which was competent to rule on such an order. An appeal lodged against this ruling before the Appellate Division of the Supreme Court was likewise dismissed, and the case is pending before the Speedy Trial Court. In the appeal against the High Court's decision, the appellant reportedly pointed out that such courts were unlikely to order further investigation since they are bound by law to complete proceedings within a maximum of 135 working days.

49. The Special Rapporteur is particularly concerned at the allegation that high-profile politicians may be implicated in the assassination. In this regard, he has been informed that the lack of investigation in the case of Mr. Kibria is in stark contrast to the determined efforts by the police to investigate the spate of suicide bombings committed in August 2005, which included an examination of telephone records to trace the militants' network and of the sources of the explosives, detonators and other triggering devices. He was told that Mr. Kibria's family has asked that an international inquiry be carried out into the attack, and that the Speaker of the Bangladesh Parliament stated that personnel from the United States Federal Bureau of Investigation (FBI) and Interpol had visited the site of the attack, but he was unaware whether they had filed any reports. The Special Rapporteur was also told that, while Mr. Kibria's family reportedly complained that they never received any official condolence letters, the Speaker of Parliament has a copy of a resolution adopted by the National Parliament the day after Mr. Kibria's death and that newspaper clippings reported that the President of Bangladesh and the Prime Minister had expressed shock at the killing of Mr. Kibria and sent messages of condolence. According to the newspaper clippings, the Prime Minister said that it was a duty "to find out the perpetrators and ensure

harsh legal punishment" and that she had directed all concerned agencies "to invest all their strength to identify the heinous criminals at any cost and take proper action against them". An incomplete newspaper clipping reporting the reaction of the Secretary-General of the Parliament to Mr. Kibria's murder is entitled "International probe, if needed, says Mannan Bhuiyan". A discussion in the National Parliament about Mr. Kibria's murder is said to have been blocked by the parliamentary authorities, which reportedly prompted the current boycott of the Parliament by the opposition. Press reports mention that at a recent meeting of the parliamentary Standing Committee on Home Affairs, members of the Parliament asked that the report of the Judicial Inquiry Commission on the August 2004 attack on Sheik Hasina and documents relating to Mr. Kibria's murder be put on the Committee's agenda. The request was reportedly refused by the Chairman, as a result of which Mohammed Nasim, a former Home Minister, walked out in protest. The invalidation of the confessions of four of the accused has been also brought to the Special Rapporteur's attention, raising serious doubts as to the conduct of the investigation and warranting in itself a reopening of the investigation. He also underlined the importance of ascertaining whether the allegations by the main accused person, Mr. Quayum, that he had been coerced and subjected to ill-treatment were being investigated, and also the importance of ascertaining the grounds on which Mr. Quayim has been prevented from making a confession before the magistrate as he himself had requested. The Special Rapporteur pointed out that the authorities have a duty to carry out a thorough and independent investigation into Mr. Kibria's murder, as they did in the case of the August 2005 suicide bombings, and noted that the Prime Minister and other officials have called for such investigations, indicating the possibility that international experts would be involved. As long as all leads shedding light on Mr. Kibria's murder have not been investigated, the investigation cannot be deemed to be complete. The Special Rapporteur finally insisted that the murder of a parliamentarian is a threat to all members of the Parliament concerned and to the institution of Parliament as such, and in the final analysis to the people whom it represents, and that Parliament should therefore avail itself of its oversight function to ensure that the competent authorities comply with their duty to carry out full and effective investigations to identify and prosecute those responsible and thus to prevent any repetition of such crimes.

50. On 21 July 2006, the Special Rapporteur sent a joint allegation letter to the Government of Bangladesh jointly with 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 S.S.S. According to information received, on 12 March 2006, several opposition political parties held a demonstration, which moved in the direction of the Election Commission office. On the way, at Mirpur Road, between Manik Mian Avenue and Road 27 in Dhanmondi Residential Area, the police erected a barricade to block the protesters. S.S.S. was in this vicinity at the time as she was going to collect her son from a nearby school. At approximately 12.30 p.m., a group of demonstrators belonging to an opposition political party passed the school. The police fired tear gas and water canons at the demonstrators and beat them with sticks, canes and iron rods. S.S.S., who had been waiting in front of the school, took shelter inside a private hospital opposite the school. Police forcibly removed her from the clinic and placed her with the arrested demonstrators. S.S.S. told the police that she was pregnant and a diabetic. The Deputy

Commissioner of Police (West Zone), Kohinoor Mian, reportedly accused her of lying. The Deputy Commissioner of Police (South Zone), Mazaharul Haque, and Deputy Commissioner Mian allegedly ordered their subordinates to break S.S.S.'s hands and legs. Male police officers placed their hands on Santa's lower abdomen to check whether she was pregnant. They tied a rope around her abdomen and forcefully pulled on both ends of the rope. Thereafter they forced her into a prison van. Inside the van, policemen walked on her body and kicked her genitalia as well as her lower abdomen. After S.S.S. fainted she was thrown out on the street. S.S.S. suffered severe injuries to her thighs, lower abdomen, back, waist, hip and other areas of her body. She also suffered two fractures, one in her right elbow and the other in the little finger of her right hand. She lodged a complaint against the alleged perpetrators at Mohammadpur police station but the police refused to record the case. On 14 March 2006, she filed a case (CR case No. 312/06) with the Chief Metropolitan Magistrate's Court in Dhaka against Deputy Commissioner Mazharul Haque, Deputy Commissioner Kohinur Mian, police constable Ruhul Amin and a number of other police officers under the Penal Code. On 19 March, S.S.S. filed a second case (No. 23/06) against the alleged perpetrators under sections 10/30 of the Women and Child Repression Prevention (Special Provision) (Amended) Act 2003. According to the latest information received, neither case has led to a conviction of any of the alleged perpetrators. Over recent months, unknown perpetrators have on several occasions threatened S.S.S. and her husband, Atiur Rahman, who is also her lawyer, with death if they continue to pursue criminal action against the alleged perpetrators.

Communications received

51. On 8 December 2006 the Government replied to the allegation letter sent by the Special Rapporteur on the 2 June 2006 concerning Shah Ams Kibria. The Government reported that thorough investigations were conducted by the concerned authorities of Bangladesh on the allegation of improper investigation of the murder of Mr. Kibria, former Finance Minister and Member of Parliament. On 27 January 2005, Mr. Kibria attended a public meeting at Baeddyer Bazaar, Government Primary School premises in Hobiganj. At the end of the meeting, as he was leaving the meeting place, unknown persons detonated a grenade, causing injury to Mr. Kibria along with 67 others. Three people died on the spot and Mr. Kibria was sent to the BIRDEM Hospital in Dhaka where the duty doctor pronounced him dead. The incident was a crime resulting in deaths, perpetrated by local criminals. The Government immediately responded to the incident, taking all possible legal steps. A team, lead by the officer in charge of Hobiganj Police Station, performed an investigation of the place of occurrence consisting of interviews and forensics investigation. The scene was also visited by Deputy Inspector General of Police Sylhet Range and members of the Rapid Action Battalion during the night of the incident. The Public Prosecutor at Hobiganj sentenced (1) AKM Abdul Quiyum, (2) Joynal Abedin Jalal, (3) Md. Zamir Ali, (4) Joynal Abedin Momin alias Md. Momin Ali, (5) Tajul Islam, (6) Md. Sahed Ali alias Shoudu Miah, (7) Md. Selim Ahmmad, (8) Md. Ayet Ali, (9) Md. Mohibur Rahman and (10) Md. Kajal Miah as the prima facie charges were proved against them. Of the accused Nos. 9 and 10 have absconded, while the remaining eight are in jail. Four of them have confessed their involvement in the murder along with six others. The charges in

relation to the Explosive Substances Act were submitted by the officer in charge of Hobiganj Police Station on 19 April 2005 against the above eight arrested persons and the two absconding accused persons. Both cases are under trial before the Speedy Trial Tribunal, Sylhet. The accused Shahed Ali, Tazul Islam, Zamir Ali and Zainal Abedin filed a written petition to the High Court stating that their confessions were involuntary and that they had been forced to confess. The High Court asked the trial court to allow them to submit a request to the latter for a retraction of the statements, but this was denied. Earlier, the complainant, Advocate Abdul Majid Khan, filed an objection petition with the lower court stating that the investigation was not proper and asking for a reinvestigation. But the court rejected his request, so the complainant submitted this request to the High Court, which told Mr. Khan to forward the petition to the trial court. He filed an appeal to the Appellation Division of the Supreme Court. On 17 July 2006, the Appellation Division ordered a stay of all proceedings in both cases for three months.

52. On 7 June 2006, the Government replied to the Special Rapporteurs, stating that the contents of the communications of 21 May 2006 and 2 June 2006 had been duly noted and forwarded to the authorities concerned in Bangladesh for necessary further action as deemed appropriated.

Special Rapporteur's comments and observations

53. The Special Rapporteur thanks the Government of Bangladesh for its response of 8 December 2006. The Special Rapporteur is, however, concerned at the absence of reply to its communications of 31 May and 21 July and urges the Government to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, a detailed substantive answer to the above allegations. He also hopes to receive soon a response to his allegation letter of 15 December 2006, which raises important questions concerning structural problems affecting the independence of the judiciary in Bangladesh.

Belarus

Communications sent

54. On 29 March 2006, the Special Rapporteur sent an urgent appeal to the Government of Belarus, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Following their communication of 24 March 2006, the experts received new information according to which hundreds opposition supporters continue to be detained in Minsk after having been arrested by police during the protest actions that took place on 24 and 25 March 2006. Presidential candidate Alexander Kozulin and members of his family were arrested during the forcible dispersal of a peaceful rally on Freedom Day, protesting the outcomes of the recent presidential election but also commemorating the anniversary of the 1918 Declaration of Independence of the Republic of Belarus. Mr. Kouzolin has reportedly been charged with hooliganism. His

whereabouts were unknown until 26 March 2006, when he was located in a detention centre outside Minsk. It was also reported that Russian journalist Pavel Sheremet was beaten and arrested during the clashes. Other detained persons are the following: Palevikova, Valyantsina; Maszkiewicz, Mariusz; Charnyshova, Hanna, who has been diagnosed with a traumatic brain injury; Klimenko, Inna; Kudzyanava; Zhalyezka, Katsya; Laurenovich, Yana; Dzyadzich, Ina; Chekhouskaya, Nastya; Shchelo, Zoya; Vitkouskaya, Tanya; Klimatko, Ina; Zhyzneuskaya, Ina; Ivanova, Ina; Burak, Ina; Sergiyenka, Aksana; Matskoits', Syargei; Mazur, Ales; Arlou, Viktar; Babich, Nadzeya; Znak, Maksim; Kunich, Z'mitser; Gryshkevich, Viktar; Subach, Mikhail; Delyua, Fredery ; Lyava, Artsyom; Adamovich, Alyaksei; Kharlamchu, Pavel; Rudovich, Aksana; Narel', Natal'ya; Chyzhyk, Mikhas'; Skarabagaty, Lyeanid; Skarabagaty, Atsyom; Adonich, Pyotr; Kastenka, Dar'ya; Chamerka, Aleg; Donich, Viktar; Cheyko, Dzyanis; Ulasenka, Tatsyana; Yagorau, Yura; Darafeyeva, Anastasiya; Sidarovich, Ala; Konash, Alyaksandr; Konash, Alyaksei; Kletsauka, Katsyaryna; Kupchanka, Vera; Mashkevich, Mariyush; Syargyeu, Pavel;- Snitko, Tatsyana; Chyeshova, Yuliya; Krasyachkou, Vital'; Zavesnetski, Yaugen; Gazizaj, Tsimur; Sechko, Natalya; Radyna, Alyona; Kazlou, Yaugen; Muradava, Anna; Sidarovich, Andrei; Zalatar, Alyaksandr; Smok, Vadzym; Sasnouski, Anton; Sauchankava, Valeriya; Kavaleuskaya, Nadzeya; Zyalinskaya, Darya; Murauyova, Iryna; Sychukova, Nadzeya; Shedko, Yaugen; Vashkevich, Dzyanis; Kazlouski, Yaugen; Glezin, Eduard; Gabryelchyk, Ina; Arlou, Bagdan; Gajduk, Yuliyan; Zhykh, Z'mitser; Finkevich, Paval; Garachka, Z'mitser; Kudzyanava, Yaugeniya; S'veryn, Tatsyana; Yagorau, Yury: Kireyeu, Viktar; Shumovich, Yury; Pisarchyk, Syargei; Ksyandzou, Kiryl; Naskou, Mikhaili; Dzivina, Maryya; Karbinski, Vital'; Dzemchonak, Natal'ya; Chekhouskaya, Anastasiya; Rugain, Alyaksandr; Baranau, Andrei; Vensko, Dz'mitry; Gizun, Ales'; Pachobut, Stas; Marchyk, Syarzhuk; Snytkina, Vol'ga; Kuushynava, Alyaksandr; Daragautsau, Alyaksandr; Buinitski, Dzyanis; Latsinski, Syargei; Sheiko, Dzyanis; Zen'ko, Vadim; Benedyktau, Ivan; Inazemtsau, Danila; Subach, Misha; Dashkevich, Z'mitser; Svidzerski, S'tsyapan; Netkachou, Yaugen; Baranchuk, Tatsyana; Vanya, Tatsyana; Grudz'ko Tatsyana ; Laryna, Tatsyana; Lukin Pavel; Yukhnovchi, Dzyanis; Yankovich, Katsyaryna; Kudzyanava, Yaugeniya; Bagandanau, Stanislau; Ragachu, S'mitser; Shmygau, Viktar; Sin'kevich, Pavel; Shandovich, Tatsyana; Zoryn, Uladzimir; Zaleski, Mikita; Shalaika, Ruslan; Sinkevich, Alyaksandr and Sinkevich, Nadzyeya. Among those arrested is Poland's former ambassador to Belarus, Mariusz Masz.

55. These persons are being held in remand prisons in Minsk; in a special detention centre in Akrestsin Street; in the prison located in Valadarski Street; and in a detention centre located in Zhodzina. Injured people are detained in hospitals in Minsk. It was alleged that Syarhei Atroshchnka (Sergei Otroshchenko), who had been taken to Minsk Hospital Number 4 in grave condition after being injured during the march, was taken from the hospital to an undisclosed location. His whereabouts are unknown. Over 150 persons have reportedly already been speedily tried without access to a defence lawyer and more people are expected to be taken to the courts in the coming days. Grave concerns are expressed regarding the violation of their right to a fair trial. Family members of the detained cannot get information on the whereabouts of their relatives. Concern has been expressed that these persons may be subjected to ill-treatment.

Communications received

56. On 10 January 2006 the Government replied to the joint urgent appeal sent by the Special Rapporteur on 16 November 2005 regarding the lawyer and human rights activist Mrs. Vera Stremkovskaya. With a view to preventing delays and disruptions in the conduct of investigations into the criminal case, the Republican Bar Association recommended that the director of the Minsk City Bar Association should, as a temporary arrangement, cease to grant lawyers ordinary and special leave from 28 October 2005 for a period of one month (until the lawyers finished the task of studying the materials of the criminal case regarding the members of the S.P. Morozov criminal organization, which required a large number of lawyers). In this connection the acting Chairman of the Board of the Minsk City Bar Association took the appropriate decision on 28 October 2005 to stop the granting of leave. On 31 October 2005 the Board of the Minsk City Bar Association received an application from V.V. Stremkovskaya, a lawyer of the Pervomaysky district legal consultancy office, to be granted leave for family reasons from 2 to 5 November 2005. The Chairman of the Board of the Minsk City Bar Association refused V.V. Stremkovskaya leave, making reference to the above-mentioned Bar Association decision of 28 October 2005. Lawyer V.V. Stremkovskaya did not submit an application for leave to participate in an international conference. During her work in the Minsk City Bar Association V.V. Stremkovskaya repeatedly made applications to be granted short-term leave for family reasons and not once had she requested leave for the purpose of "participation in international conferences", as stated in the communication of the Special Rapporteurs. In addition, the Government informed the Special Rapporteurs that lawyers of the Republic of Belarus take an active part in international conferences at the invitation of various international organizations. The Minsk City Bar Association did not receive an invitation for V.V. Stremkovskaya to participate in the international conference on the "Role of defence lawyers in guaranteeing a fair trial" (3-4 November 2005, Tbilisi). It should be mentioned that three lawyers from Belarus did participate in that international conference in Tbilisi, namely: A.G. Larin, Chairman of the Board of the Mogilev Bar Association, L.I. Vinokurtseva, a lawyer of the legal consultation office in the town of Bobruisk, Mogilev oblast, and P.V. Sopelko, a lawyer of legal consultation office No. 2 in the Sovetsky district of Minsk.

Special Rapporteur's comments and observation

57. The Special Rapporteur thanks the Governemnt for its reply of 10 January 2006. He is however concerned about the absence of an official reply to his communication of 29 March 2006, and urges the Government of Belarus to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, detailed substantive answers to the above allegations.

Brazil

Communications sent

58. On 7 April 2006, the Special Rapporteur sent an urgent appeal jointly with the Special Representative of the Secretary-General on the situation of human rights defenders concerning Maria Aparecida Denadai, a lawyer in the State of Espirito Santo. Maria Aparecida Denadai was previously the subject of an urgent appeal sent by the Special Representative on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions on 14 June 2002. Maria Aparecida Denadai has been receiving persistent death threats in recent months and has also been the subject of intimidation as a result of the investigation surrounding the killing of her brother, lawyer Marcelo Denadai, in 2002 while he was preparing to reveal evidence of political corruption. Another five witnesses in the case have also been killed. In January 2006, the Federal Police began to provide Ms. Aparecida Denadai and her family with protection after her case was submitted to the Inter-American Commission on Human Rights. According to new information received, it is reported that on 24 February 2006, the protection provided by the Federal Police was withdrawn without explanation. Concern is expressed that the threats against Maria Aparecida Denadai are connected with her activities in defence of human rights, in particular her investigation into the death of her brother. Serious concerns are expressed for her safety in view of the withdrawal of protection measures.

59. On 28 August 2006, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on trafficking in persons, especially women and children concerning Brazilian workers who are trafficked and subjected to forced labour in the Amazon region. According to the information received, there are an estimated 25,000-40,000 forced labourers working under exploitative and often slavery-like conditions in Brazil. Allegedly, Maranhão, Piauí and Tocantins are the three Brazilian states that supply the largest number of forced labourers, whilst Pará is reportedly the state with the greatest demand for forced labour, followed by Mato Grosso, Tocantins and Maranhão. It is reported that the main activities employing forced labour are ranching, deforestation, agriculture, logging and charcoal production. Reportedly, the vast majority of workers in forced labour in Brazil find themselves in situations of debt bondage. Workers are often given an advance in their home towns and persuaded to go work temporarily in the Amazon region. Once they arrive at the farms they are told that they will have to pay for their transport, food and lodging and also have to pay back any advances they have been given. They are reportedly charged a very high rate of interest and often have to buy everything they need at grossly inflated prices from the estate shop. It is also reported that workers are often watched by armed guards, making it impossible for them to escape from the farms. Threats of violence against them and their families are frequent. Labour rights and safety regulations are reportedly routinely ignored. Allegedly, workers risk their physical and psychological health, with many suffering from tropical diseases and work-related injuries resulting from operating unsafe machinery. The severity of their situation often leads to alcohol and drug abuse. Many workers, once released, find it extremely difficult to reintegrate into their home region and re-establish a normal family life. According to the information received, greater attention to the problem of forced labour and slavery-like conditions in Brazil has been accompanied by a rise in the use of violence and intimidation against those working to stop such human rights violations, especially in the States of Pará and Tocantins. In 2004, members of the Comissão Pastoral da Terra from the Araguaina office in Tocantins State had to leave the area after receiving repeated death threats. Reportedly, state officials have

also been targeted. In October 2003, Labour Court Judge Dr. Jorge Antônio Ramos Vieira had to leave Parauapebas after receiving repeated threats. On 11 February 2004, his deputy was killed in a supicious collision with a lorry while travelling from Maraba to Parauapebas. In Tocantins State, the federal prosecutor, Dr. Mario Lúcio de Avelar, had to leave the town of Palmas after receiving threats. On 28 January 2004, three officials from the Labour Ministry and their driver were murdered while carrying out investigations of farms situated in Minas Gerais.

60. On 27 November 2006, the Special Rapporteur sent a letter to the Government requesting information on the actions taken to follow up on the recommendations listed in the report on his mission to Brazil (E/CN.4/2005/60/Add.3 and Corr.1), as well as other more general information on the progress made in the country in relation to matters pertaining to his mandate.

Communications received

61. On 25 January 2006 the Government replied to the joint allegation letter sent by the Special Rapporteur on 4 March 2005 regarding the murder of Sister Dorothy Stang, an environmentalist, human rights defender and member of the Pastoral Land Commission (Comissão Pastoral da Terra). The Government reported that on 10 December 2005, the Justice of the State of Pará sentenced the two perpetrators of the murder of Sister Stang. Rayfran de Neves Sales, alias Fogoió, to 27 years of imprisonment and Clodoaldo Carlos Batista, alias Eduardo, to 17 years of imprisonment. The two farmers who allegedly gave the order to kill Sister Stang, Vitalmiro Bastos and Regivaldo Galvão, and the one who is suspected of having acted as intermediary, Amair Frejoli da Cunha, alias Tato, will face trial next year. The Brazilian Government hailed the trial of the killers of Sister Stang as an important, but initial step towards ending impunity in the State of Pará.

Special Rapporteur's comments and observations

62. The Special Rapporteur thanks the Government for its reply of 25 January 2006 and notes with satisfaction that the perpetrators of the murder of Sister Dorothy Stang have been tried and convicted, and that the persons who ordered the murder will be tried. He would appreciate receiving further information on those trials. The Special Rapporteur regrets, however, that he has not received any official reply to the communications he sent in 2006, including on the follow-up to his report on his visit to the country. He urges the Government of Brazil to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, a detailed substantive answer to the above communications.

63. With regard to lawyer Maria Aparecida Denadai, the Special Rapporteur had the pleasure to receive information from a non-governmental source indicating that on 21 June 2006, after persistent complaints, she finally received adequate protection from the Federal Police, and was no longer in immediate danger.

Cambodia

Communications sent

64. On 27 November 2006, the Special Rapporteur sent, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, an allegation letter concerning a number of lawyers who intended to participate in an international law training course. According to the information received, Ky Tech, President of the Cambodian Bar Association, has threatened lawyers who cooperate in the organization of or participate in a five-day training course on international criminal law, organized by the Defence Office of the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the International Bar Association (IBA). The training was scheduled to be held from 27 November to 1 December 2006. It is alleged that the President of the Cambodian Bar Association has stated that this training is not in compliance with Cambodian law and that in order to avoid problems with politics and interference with the independence of the Bar Association, lawyers should not participate in this training. The President of the Cambodian Bar Association has described those lawyers who cooperate in the organization of the training as "extremists" and warned that measures will be taken against those who conspire to violate the law. It is also reported that the President of the Bar Association has stated that the Bar Association has full and exclusive authority to approve all training of Cambodian lawyers within the Kingdom of Cambodia. However, it is reported that the Bar Association Law states that the Bar has exclusive control of the specific professional training undertaken by those seeking to be called to the Bar and continuing education for those who fail to meet the standard. This control would therefore be limited to the specific training relating to the qualifications to become a member of the Bar and practise, while training such as that organized by the ECCC and IBA would not appear to fall into the framework of this law. Concerns have been expressed that the alleged statements made by the President of the Cambodian Bar Association may deter, intimidate and prevent lawyers from participating in this legitimate training exercise in international criminal law.

Communications received

65. None.

Special Rapporteur's comments and observations

66. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Cambodia to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Central African Republic

Communications envoyées

67. Le 1er février 2006, le Rapporteur spécial, conjointement avec la Représentante

spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, a envoyé un appel urgent sur la situation des défenseurs des droits de l'homme consécutive aux troubles du 3 au 6 janvier 2006 à Bangui. Selon les informations reçues, dans la nuit du 2 au 3 janvier 2006, le domicile de M. Nicolas Tiangaye, ancien président de la Ligue centrafricaine des droits de l'homme (LCDH), ancien bâtonnier de l'ordre des avocats du barreau de Centrafrique et ancien président du Conseil national de transition, aurait été mis à sac et pillé. Le 3 janvier 2006, lors d'une rencontre tenue par un groupe de partisans du président de la République, un militaire connu pour être l'auteur d'assassinats et de nombreuses violations des droits de l'homme (et dont le nom est connu de la Représentante spéciale et des Rapporteurs spéciaux) aurait déclaré vouloir « régler son compte » à M. Nganatouwa Goungaye Wanfiyo, avocat et président de la LCDH. Ce dernier serait depuis rentré dans la clandestinité. Par ailleurs, des menaces auraient également été proférées contre plusieurs autres défenseurs. En particulier, le 4 janvier 2006, M. Adolphe Ngouyombo, président du Mouvement pour les droits de l'homme et l'action humanitaire (MDDH), aurait été menacé par téléphone. Le même jour, M. Maka Gbossokotto, journaliste, rédacteur en chef du quotidien *Le Citoyen,* et président de l'Union des journalistes centrafricains (UJCA), aurait été directement menacé par téléphone pour son article dénonçant les abus des militaires, à la suite des troubles. M. Emile Ndjapou, magistrat et président de la section du Contentieux du Conseil d'État, aurait lui aussi été menacé après avoir participé, le 10 janvier 2006, à une réunion organisée par l'ECOSEFAD, une association œuvrant pour la promotion des libertés fondamentales pour ses critiques envers l'armée. Le soir même, en son absence, des individus dans un véhicule militaire auraient tenté de pénétrer dans son domicile.

Communications reçues

68. Aucune.

Commentaires et observations du Rapporteur spécial

69. Le Rapporteur spécial regrette de devoir constater qu'en un an il n'a reçu du Gouvernement de la République centrafricaine aucune réponse aux allégations ci-dessus et il invite le Gouvernement à lui transmettre au plus tôt, et de préférence avant la fin de la quatrième session du Conseil des droits de l'homme, des informations précises et détaillées en réponse à ces allégations.

Chad

Communications envoyées

70. Le 17 mai 2006, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de travail sur la détention arbitraire et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, a envoyé un appel urgent concernant M. Tchanguiz Vatankhah, rédacteur en chef de la station communautaire Radio Brakoss basée à Moïssala, et président de l'Union des radios privées du Tchad (URPT).

Selon les allégations reçues, Tchanguiz Vatankhah aurait entamé une grève de la faim en détention pour réclamer le droit d'avoir accès à son avocat. Il aurait été arrêté le 28 avril 2006, après avoir signé un communiqué au nom de l'URPT demandant le report de l'élection présidentielle du 3 mai, et transféré au commissariat central de N'Djamena. Depuis son arrestation, il n'aurait pas pu avoir accès à son avocat.

Communications reçues

71. Aucune.

Commentaires et observations du Rapporteur spécial

72. Le Rapporteur spécial regrette l'absence de réponse officielle et invite Gouvernement du Tchad à lui faire parvenir au plus tôt, et de préférence avant la fin de la quatrième session du Conseil des droits de l'homme, des informations précises et détaillées en réponse aux allégations rapportées.

Chile

Comunicaciones enviadas

73. El 11 de mayo de 2006, el Relator Especial envió un llamamiento urgente junto con el Relator Especial sobre el derecho a la alimentación, la Representante Especial del Secretario-General para los defensores de los derechos humanos, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, el Relator Especial sobre formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia y el Experto Independiente sobre la protección de los derechos humanos y las libertades fundamentales en la lucha contra el terrorismo, respecto a la situación de Patricia Troncoso, Patricio Marileo Saravia, Jaime Marileo Saravia y Juan Carlos Huenulao Lienmil, líderes y simpatizantes mapuches condenados a más de 10 años de prisión bajo la acusación de "incendio terrorista". La situación de las personas mencionadas había sido objeto de una comunicación personal enviada por el Relator Especial sobre la situación de los derechos humanos y libertades fundamentales de los indígenas a la Presidenta Sra. Michelle de Bachelet, el día 21 de abril de 2006. Asimismo, con anterioridad el Relator Especial sobre la situación de los derechos humanos y libertades fundamentales de los indígenas había enviado comunicaciones a su Gobierno expresando su preocupación por la aplicación de la ley antiterrorista a presos mapuches, por hechos relacionados con la lucha social por la tierra, así como con los legítimos reclamos indígenas. Según la información recibida, y referida en la comunicación anteriormente citada, en agosto de 2004 Patricia Troncoso, Patricio Marileo Saravia, Jaime Marileo Saravia y Juan Carlos Huenulao Lienmil habrían sido condenados a penas de diez años y un día de prisión después de haber sido acusados del delito de "incendio terrorista", bajo la Ley Antiterrorista 18.314, por un incendio causado en el predio conocido como Poluco Podenco. De acuerdo con la información recibida, el juicio habría presentado irregularidades y las declaraciones de los testigos habrían presentado contradicciones.

Actualmente, los señores Patricia Troncoso, Patricio Marileo Saravia, Jaime Marileo Saravia y Juan Carlos Huenulao Lienmil se encontrarían en la ciudad del Angol y desde el 13 de marzo de 2006 mantendrían la huelga de hambre en protesta por las fuertes condenas recibidas y por la aplicación de la ley antiterrorista (que se utiliza con frecuencia en relación con las reclamaciones agrarias y las reclamaciones para pedir un nivel de vida adecuado de los mapuches), habiéndose deteriorado gravemente su estado de salud tras más de 55 días de huelga de hambre. Se nota con mucha preocupación que los jueces habrían aplicado la ley de manera discriminatoria; mientras que por los delitos contra la propiedad se aplican generalmente multas o penas de prisión muy cortas, en el caso de los mapuches los jueces calificarían estos mismos delitos como actos de terrorismo y aplicarían penas de prisión muy severas, de por lo menos diez años. Se expresan graves temores de que el uso de la ley Antiterrorista en el caso anteriormente mencionado pueda estar relacionado con sus actividades en defensa de los derechos humanos, en particular por sus actividades en defensa de la comunidad Mapuche. Además, se expresan graves temores de que la situación de extrema fragilidad de las personas anteriormente mencionadas pueda acarrear daños irreversibles para su salud física y psíquica y pueda poner en peligro sus vidas.

Comunicaciones recibidas

74. Mediante comunicación del 23 de mayo del 2006, el Gobierno de Chile proporcionó información con respecto al llamamiento enviado el 11 de mayo. Indicó que los hechos por los que fueron condenados los Sres. Juan Patricio Marileo Saravia, Juan Huenulao Lienmil y Florencio Jaime Marileo Saravia y la Sra. Patricia Troncoso Robles, se encontraban previamente tipificados como delitos en la ley penal y en la ley antiterrorista, al igual que sus penas (pena estipulada para el delito de incendio). Indicó que se trata del incendio de los fundos Poluco y Pidenco, ubicados en la Provincia de Malleco, Comuna de Ercilla (IX Region), propiedad de la empresa forestal MININCO S.A., que ocasionó un daño cercano a los US$600.000 dólares. El Gobierno declaró que se cumplieron los principios del debido proceso. Afirmó que los inculpados, de acuerdo con lo dispuesto en el Art. 19, No 3 de la Constitución Política, contaron con defensa jurídica desde el inicio mismo de la causa, la que fue proporcionada por la Defensoría Penal Pública. Alegó que hicieron uso de los recursos que proporciona la ley para impugnar las resoluciones judiciales: recurso de nulidad, de amparo y revisión. En lo que se refiere a la invocación de la ley antiterrorista, el Gobierno indicó que en el caso concreto del delito de incendio, la pena que establece el Código Penal es tan grave como la de la Ley Antiterrorista. Señaló sin embargo que la Presidenta de la Republica, Sra. Michelle Bachelet, se ha comprometido a que el ejecutivo, en hechos futuros que se encuentren tipificados como delitos por la Ley Antiterrorista y que puedan ser juzgados por la ley común, cuando en estos se vean involucrados indígenas en procesos de reivindicaciones de tierras, no invocará la aplicación de dicha ley, al hacer la denuncia o querella que corresponda ante la justicia. El Gobierno informó también que un proyecto de ley fue presentado por los Senadores Alejandro Navarro y Jaime Naranjo con el objeto de modificar el Decreto Ley No 321 sobre libertad condicional. El proyecto establece la posibilidad de otorgar la libertad condicional a los condenados a penas privativas de libertad por delitos contemplados en la Ley. 18.3 14 (Ley Antiterrorista), y condenados por delitos sancionados en otros cuerpos legales, en causas relacionadas con

reivindicaciones violentas de derechos consagrados en la Ley 19.253 (Ley Indígena), siempre que los hechos punibles hayan ocurrido entre el 1 de enero de 1997 y el 1 de enero de 2006, y los condenados suscriban en forma previa una declaración inequívoca y favorable al no uso de la violencia en la reivindicación de derechos establecidos en la ley 19.253 y en el derecho internacional de los pueblos indígenas. Asimismo, el Gobierno señaló que el 15 de mayo de 2006, el Ministro del Interior comunicó que el gobierno había puesto "suma urgencia" a la tramitación del Proyecto de Ley para modificar el Decreto Ley 32 1. El Gobierno indicó que con motivo de la presentación de este proyecto de ley y la suma urgencia que le otorgó el gobierno, con fecha 14 de mayo actual, los afectados depusieron temporalmente la huelga de hambre, a la espera de los resultados de la tramitación del proyecto de ley señalado precedentemente.

75. El Gobierno insistió en que más allá del caso específico de estas personas, se debe contextualizar que esta situación no responde a una persecución política hacia el movimiento indígena o mapuche. Señaló que en la actualidad existen nueve personas de ascendencia indígena condenadas por la Ley Antiterrorista, que la aplicación de esta ley fue sólo invocada frente a situaciones de extrema gravedad, tal como fue, la ofensiva de los sectores minoritarios ligados a la reivindicación de derechos territoriales indígenas, iniciada a partir del año 1999, y destinada a ejecutar acciones contra empresas forestales y agricultores en algunas provincias de las regiones VI11 y IX. Igualmente, el Gobierno insistió en el hecho de que las acciones judiciales iniciadas estuvieron encaminadas a castigar a los autores de delitos y no al pueblo mapuche y a sus reivindicaciones sociales. Afirmó que el Estado de Chile ha reconocido como legítima la demanda de los pueblos indígenas, y que dicha demanda ha sido permanentemente asumida por los Gobiernos democráticos y encauzada por mecanismos y canales institucionales. En este sentido, indicó que la protección al derecho a la tierra se encuentra consagrada por la Ley Indígena No 19.253 desde 1993, lo que ha permitido traspasar a la fecha aproximadamente 400.000 hectáreas de tierra a más de 500 comunidades a lo largo de todo el país. Sin embargo, el Gobierno afirmó que no podía bajo circunstancia alguna, revisar, modificar o anular el fallo judicial, citando el artículo 73 de la Constitución, según el cual el Presidente de la República ni el Congreso pueden, en caso alguno, ejercer las funciones judiciales, avocarse a causas pendientes, revisar los fundamentos o contenidos de sus resoluciones, o hacer revivir procesos fenecidos.

Comentarios y observaciones del Relator Especial

76. El Relator especial agradece al Gobierno de Chile su grata cooperación y la brevedad con la cual ha proporcionado estas informaciones sustantivas. Nota con gran satisfacción el compromiso de la Presidenta de la República, la Sra. Michelle Bachelet, así como el proyecto de ley presentado por los Senadores Alejandro Navarro y Jaime Naranjo, el cual tiene como objeto modificar el Decreto Ley No 321 sobre libertad condicional, que a su vez modificaría la Ley sobre Conductas Terroristas y podría permitir la libertad condicional a los presos mencionados en el llamamiento urgente. El Relator solicita al Gobierno que por favor le envíe informaciones sobre el progreso en la adopción de dicho proyecto.

China

Communications sent

77. On 6 March 2006, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders concerning Gao Zhisheng, lawyer and director of the Shengzi Law Office in Beijing, and Yang Maodong, also known as Guo Feixiong, lawyer in the Shengzi Law Office in Beijing. Gao Zhisheng was the subject of previous communications sent by the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers on 25 November 2005, and by the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the question of torture and the Special Rapporteur on the independence of judges and lawyers on 21 December 2005. According to the allegations received, at around 10.30 p.m. on 17 January 2006, Gao Zhisheng was driving in Beijing when a car travelling in front of him stopped suddenly, and he narrowly avoided colliding with it. According to Gao Zhisheng, the car in front had its licence plates covered with newspaper. As he got out of his car, the car in front of him started moving towards him, forcing him to jump out of its path in order to save himself from being run over. A military vehicle had been following behind his car, also with covered licence plates, leading Gao Zhisheng to believe that the incident was instigated by the authorities. Both vehicles left the scene immediately after the incident. Gao Zhisheng has been working on a number of high-profile cases, including a land dispute case in Taishi village. Yang Maodong has been providing legal assistance to villagers in Taishi, Guandong Province, in a local corruption case. It is reported that on 4 February 2006 he was detained in Linbe Police Station in Guangzhou for 12 hours after visiting Taishi village with another lawyer, Tang Jingling. On their release, they were reportedly beaten by a group of unidentified men. It is alleged that on 8 February, Yang Maodong issued an open letter addressed to the authorities protesting the excessive use of force in government crackdowns on recent demonstrations, forced evictions, violence against human rights lawyers and tightening of media censorship. He began a hunger strike, with the support of Gao Zhisheng, to pressure the authorities to engage a dialogue with villagers in order to avoid escalation of rural land disputes and to guarantee local democracy. It is alleged that Yang Maodong was immediately arrested without being informed of the charges. It is reported that Yang Maodong was released on 9 February. Nevertheless, it would appear that since then he and his family have been under permanent surveillance. It is alleged that between 9 and 13 February, 20 policemen were on guard in front of his house. It would appear that seven of them are still there. It is alleged that the policemen follow Yang Maodong, his wife and their children every time they go out.

78. On 7 April 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Chen Guangcheng, a blind self-educated lawyer. Chen Guangcheng was already the subject of a communication sent on 31 October 2005 by the Special

Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders, and of a communication sent on 19 September 2005 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, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders. The experts are also in receipt of the Government's reply dated 12 December 2005, which states that Chen Guangchen is suspected of having violated article 111 of the Chinese Criminal Code by contacting illegal overseas organizations and receiving funding from them. He is, therefore, according to the Government's reply, under Public Security Bureau investigation, and the various forms of deprivation of his freedom alleged cannot be considered arbitrary. While the experts welcome the Government's observations, they do not alleviate concerns with respect to this case, particularly in the light of more recent reports with regard to Chen Guangchen's access to legal counsel. As already stated in previous communications, it is alleged that on 6 September 2005 Chen Guancheng was arrested in Beijing by police from Shandong Province, in order to prevent him from getting advice from lawyers on the accusations against him related to his campaign against the use of forced sterilization and abortion in the city of Linyi. It is reported that the local police took him back to Linyi and placed him under house arrest the following day, and that since then his house has been surrounded by up to 50 men and many cars, his telephone land line and mobile phone have been cut off and his computer seized. It is reported that on 4 October 2005, law lecturer Xu Zhiyong and lawyers Li Fangping and Li Subin attempted to visit him and tried to negotiate with local officials to have his house arrest lifted, but they were stopped on their way to the house. However, Mr. Chen reportedly managed to leave his house and speak with them briefly, but was then forcibly taken back. The lawyers tried to go to Mr. Chen's house, but they were stopped and reportedly beaten up and taken to a police station where they were interrogated. They were told that the case now involved "State secrets" and were escorted back to Beijing. On 10 October 2005, Chen Guangcheng's cousin, Chen Guangli, and another villager also surnamed Chen, who had been giving interviews about Chen Guangcheng's situation to foreign reporters, were reportedly detained. It is alleged that on 24 October, two other Beijing scholars and friends of Chen Guangcheng went to visit him. As Mr. Chen ran out to greet them, he was stopped and beaten by more than 20 men stationed outside. Lawyer Teng Biao reportedly filed a lawsuit on Mr. Chen's behalf regarding this incident before the People's Court of Yinan Country. However, the court has reportedly so far ignored the suit.

79. According to information received since the Government's reply, on 2 February 2006 a neighbour of Chen Guangcheng's, Chen Hua, walked past Chen Guangcheng's house and protested his detention to the policemen standing guard in front. As a result, he was beaten. It is reported that on 4 February 2006, Chen Hua was arrested and has not been allowed to contact his lawyer. Moreover, it is reported that on 11 March 2006, Chen Guangcheng's neighbour and cousin, Chen Guangyu, was beaten by four hooded men who were waiting for him near his home. It is reported that when Chen Guangcheng discovered this, he left his house with another villager, Chen Guangjun, for the Yinan Local Government office to

request an investigation into the beating. It is alleged that when they were a few metres from the house, the three men were arrested by officers of the Yinan Public Security Bureau and taken to the local police station. It is reported that their families were notified that they would be detained for 24 hours in order to investigate their participation in an offence called “blocking traffic”. However, it is alleged that they are still detained. Finally, it is reported that Chen Guangcheng has not been allowed to contact his lawyer or his family since his detention on 11 March 2006. Finally, it is alleged that law lecturer Xu Zhiyong and lawyers Li Fangping and Li Subin, who were asked for legal advice by Chen Guangcheng in cases related to forced sterilization and abortion policies in Linyi, are as a result now under significant pressure from the authorities and their employers.

80. On 22 June 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concerning Zhao Yan, news assistant at the Beijing bureau of *The New York Times* and former reporter for *China Reform* magazine. Zhao Yan was the subject of a communication sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture, to which the Government has replied. According to new information received, he was tried behind closed doors at Beijing People's Intermediate Court No.2 on 16 June 2006. It is reported that the trial lasted for only a few hours without witnesses being questioned and only a few documents being read. Zhao Yan’s sister and foreign journalists were not allowed to attend the trial. The court has not given its verdict. He is facing charges of involvement in illegally divulging State secrets abroad, according to the Government's reply. The charges are reportedly linked with the publication of an article in *The New York Times* on 7 September 2004 revealing Jiang Zemin's plan to retire from the position of Chairman of the Central Military Commission and the transfer of leadership to President Hu Jintao. This article preceded the official announcement of Mr. Jiang's retirement.

81. On 14 July 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders concerning Chen Guangcheng, a lawyer and human rights defender in Linyi, Shandong Province, and Guo Qizhen, a volunteer in the Tianwang Disappeared Persons Service Centre in Cangzhou City, Hebei Province. The Tianwang Disappeared Persons Service Centre assists relatives of missing persons to publicize their stories on the Internet in order to find their relatives. Mr. Chen was already the subject of several previous communications (see above). According to the information received, on 12 May 2006 Mr. Guo was placed under house arrest by local security forces while he was participating in a hunger strike to protest alleged human rights violations committed by the Chinese authorities. On 6 June 2006 Mr. Guo was reportedly charged with “inciting subversion of State power” and is currently being held in the Cangzhou City No. 2 Detention Centre in Cangzhou City. On 10 June 2006, Chen Guangcheng was charged with “deliberate destruction of property” and “organizing a mob to disrupt traffic”, allegedly after he had spent 89 days in incommunicado detention in the Yinan County Detention Centre, where he remains. It is reported that he was arrested on 11 March 2006 but that his family was not

informed of his whereabouts until 11 June 2006. It is still unknown whether Mr. Chen has finally been allowed to see his lawyer. Concerns are expressed that the charges against Chen Guangcheng, and Guo Qizhen are arbitrary and may be related to their activities in defence of human rights.

82. On 20 July 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding Zheng Enchong, a lawyer who has defended the rights of persons who have been displaced and adversely affected by development in Shanghai, and Ms. Jiang Meili, his wife. Mr. Zheng and Ms. Jiang were the subject of an urgent appeal sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders dated 16 March 2004; Ms Jiang was also the subject of an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 17 March 2005. According to the information received, on 12 July 2006 at approximately 6.30 p.m. Public Security police entered Zheng Enchong's home in Shanghai. It is reported that the police officers summoned Jiang Meili to report to the police station on suspicion of “impeding the officials of State organs in the execution of their duties” under section 82 of China's Criminal Procedure Law. It is further reported that Mr. Zheng's house was searched and that a computer and documents relating to his work were seized, and that a search warrant was only presented after the search. Police officers returned to Mr. Zheng’s home at 10 p.m. on the same day and told him to accompany the police officers to the police station, also on suspicion of “impeding officials of State organs in the execution of their duties”. It is reported that Jiang Meili was permitted to return home but that Zheng Enchong remains in custody. Zheng Enchong had been released on 5 June 2006 after serving a three-year prison sentence for “illegally providing State secrets overseas”. Concerns are expressed that the above events may be connected with Mr. Zheng’s activities in defence of human rights, in particular his activities as attorney for persons who have been displaced and adversely affected by development in Shanghai. Further concern is expressed that the charges against him may represent an attempt to prevent him from continuing his legitimate work as a lawyer.

83. On 10 August 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression regarding Zhao Yan, news assistant at the Beijing bureau of *The New York Times* and former reporter for *China Reform* magazine. The situation of Mr. Zhao was already the subject of two urgent appeals: one sent on 1 October 2004 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture, and a second one sent on 22 June 2006 by 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 (see above). The Government’s response to that communication was received on 14 July 2006. According to the information received, Mr. Zhao was arrested in Shangai on 17 September 2004. He was charged on 21 September 2004 with "providing State secrets to foreigners", allegations which could lead to a charge of treason, a crime

punishable by execution. His arrest is reportedly linked with the publication of an article in *The New York Times* on 7 September 2004 revealing Jiang Zemin's plan to retire which preceded the official announcement, which was made on 19 September 2004. Mr. Zhao was tried behind closed doors at Beijing People's Intermediate Court No. 2 on 16 June 2006. It is reported that the trial lasted for only a few hours without witnesses being questioned and only a few documents being read. Zhao Yan's sister and foreign journalists were not allowed to attend the trial. No verdict has been announced within the official six-week time limit, which expired on 25 July 2006.

84. On 22 August 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders concerning Gao Zhisheng, aged 42, a human rights lawyer in Beijing. Gao Zhisheng was already the subject of two previous communications, one sent by the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers dated 25 November 2005 and one by the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture dated 21 December 2005. According to information received, on 15 August 2006, Gao Zhisheng was residing with his sister in the city of Yingshe, Shadong Province. At noon, 10 to 12 plain-clothes officers of the Beijing Public Security Bureau entered the house and detained him "for questioning related to his suspected involvement in criminal activities". It is reported that Mr. Gao had been under strict surveillance by the secret police for several months prior to this incident. The day before he was detained, the telephone of the house where he was residing was disconnected, as were the phones of many of his relatives, who also received warnings from the police. Mr. Gao's whereabouts remain unknown..

85. On 30 November 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Gao Zhisheng, a lawyer and Director of the Shengzhi Law Office in Beijing, his wife G.H., their children, aged 13 and 2, and his 70-year-old mother-in-law. Gao Zhisheng has represented victims of human rights violations; clients who sought to hold the State accountable for corruption and neglect including forced evictions; and clients involved in cases related to freedom of speech and the press. He has been the subject of three previous communications, the first sent by the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers dated 25 November 2005; a second communication was subsequently sent by the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture on 21 December 2005 and the most recent communication, dated 22 August 2006, was sent by the Special Rapporteur on the question of torture, the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the

Secretary-General on the situation of human rights defenders (see above). According to new information received, on 24 November 2006 G.H. was beaten by members of the State Security police who had been following her movements and keeping her under surveillance. It is reported that G.H., her 13–year-old daughter and her mother have been constantly followed by police for approximately three months. The incident reportedly took place on a street in Beijing (Jingsong Road, near the Lidu Hotel on bus route 408), after G.H. told three police officers (two male, one female) to stop following her and her children. As a result of the beating by the two male police officers, G.H. is reported to have loose teeth, a bleeding mouth and gums, a fingernail on one hand completely torn off and her leather clothing ripped to pieces. It is further reported that the daughter has also been harassed by the State Security Police who accompany her at all times, including while she is in school. It is reported that they follow her to her classroom, in the school corridors and even to the bathroom, which makes her educational environment difficult. Furthermore, on 21 November, it is reported that Beijing police showed their badges and attempted to pick up the 2-year-old son, but his kindergarten teacher refused to comply. It has also been reported that G.H.'s mother is also followed by police when she leaves the house. On 12 October 2006, Gao Zhisheng was formally charged with "inciting to subvert the State". It is reported that on 6 October 2006, G.H.'s birthday, she was allowed to see her husband at the Beijing No. 2 Detention Centre where they were watched and interrupted by police officers throughout the visit, which lasted for approximately 20 minutes. However, sources indicate that Mr. Gao has still not had access to his lawyer, Mo Shaoping, despite the recent discovery of his current whereabouts, as the authorities have reportedly stated that his case concerns "State secrets". Prior to 6 October 2006 Mr. Gao had allegedly been held incommunicado since 15 August 2006 when he was arrested without a warrant at his sister's house in Dongying City in Shandong Province by more than 20 plain-clothes police officers from the Beijing Public Security Bureau. According to reports, the official Xinhua News Agency released a statement on 18 August 2006 that Mr. Gao had been arrested "on suspicion of breaking the law"; however, no details of the alleged crime were provided. Concern is expressed for the physical and psychological integrity of Gao Zhisheng as it is feared that he may be subjected to torture or ill-treatment while in detention. Concern is expressed that the charges against him may be fabricated and may represent an attempt to prevent him and deter others from carrying out legitimate legal work in defence of human rights. Further concerns are also expressed for the safety of his family, particularly his wife and his children, as it is feared that they may be subject to further acts of intimidation, harassment or violence because of Mr. Gao's human rights work.

86. On 1 December 2006, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders concerning the enactment of tightened regulations regarding the legal profession, procedural obstacles to its exercise and an increase in the harassment of lawyers. It is alleged that the Criminal Code and the Criminal Procedure Code have been misused by authorities to undermine lawyers' defence work, especially in sensitive political or social unrest cases. Article 306 of the Criminal Code, article 96 of the Criminal Procedure Law and article 45 of the Law of the People's Republic of China on Lawyers reportedly allow prosecutors to arrest lawyers on grounds of perjury or false testimony.

Under these provisions, lawyers can be accused of destroying or fabricating evidence and of forcing or inciting a witness to change testimony. These acts are punishable by imprisonment for up to seven years and by the revocation of the lawyer's licence. It is reported that at least 100 lawyers have been accused of violating the article on the fabrication of evidence. These articles are reportedly used by authorities to silence defence lawyers. It is also reported that article 96 of the Criminal Procedure Law, which applies to State secret cases, compels defendants who wish to be provided and meet with a legal counsel to request the approval of the investigative organ, which in general is the public security authority. Moreover, both the Law on the Protection of State Secrets and a notice issued by the Ministry of Public Security and the National Administration for the Protection of State Secrets in 1995 entitled "Regulation on State secrets and the scope of each level of classification in public security work" contain a definition of "State secrets" that is excessively broad. Moreover, several restrictive regulations on the legal profession have been issued by national and local authorities. On 20 March 2006, the All China Lawyers Association (ACLA) issued a "Guiding opinion on lawyers handling collective cases", which allegedly aims to ensure that sensitive cases do not threaten social stability. According to this text, lawyers taking on collective cases (cases involving more than 10 people) and "major sensitive cases" are required to immediately report to and accept the supervision and guidance of judicial administrative organs. Collective cases are reportedly linked to land requisitioning, levying of taxes, building demolitions, forced evictions, migrants' enclaves, enterprise transformation, environmental pollution and rural labourers. According to the guidelines, only "politically qualified" lawyers are allowed to deal with these kinds of cases and before accepting them, they need the approval of at least three law firm partners. In addition, the guidelines allegedly warn lawyers not to encourage their clients to participate, or participate themselves in petitions to government offices and not to contact foreign media. Lawyers who violate the guidelines face sanctions.It is also alleged that more restrictive regulations have been issued by local public authorities. These regulations are generally called "Opinions on strengthening the guidance of lawyers handling major and collective cases" and reportedly limit lawyers' freedom of expression because they are not allowed to talk to the media about their views on collective and sensitive cases. It is also reported that several procedural obstacles are preventing lawyers from performing their duties, in particular conducting investigations and gathering evidence. Lawyers are compelled, inter alia, to request authorization from the investigative organ to meet their clients in prison and they reportedly have many restrictions on photocopying and recording case materials necessary for the defence work. In addition, in order to carry out their work lawyers reportedly often need to pay to officials and judges "file retrieval fees", "services fees" and fees for referrals from judges. Furthermore, it has been reported that ACLA is not independent, since its Secretary-General is also the deputy director of the division in charge of lawyers and notaries public in the Ministry of Justice, and that its three deputy secretaries worked for the Ministry of Justice just before they became ACLA members. Finally, it is alleged that lawyers are being harassed and in some cases attacked by authorities because of their professional activities as legal representatives. Lawyers have no system of immunity linked to their professional activity. They are assimilated to their clients and like the suspects they defend, they are often held in prolonged pre-trial detention and have difficulty meeting with their own lawyers. When released, they and their families are subjected to intimidation by the authorities. One of the

consequences of this situation is said to be that some defendants have been unable to find a lawyer willing to take their case because of its sensitive nature.

87. In this context, the experts brought to the attention of the Government the following cases of lawyers who have allegedly been victims of intimidation and harassment. According to the information received:

- Yang Maodong, a lawyer in charge of human rights cases, also known as Guo Feixiong, who was the subject of a previous communication by the Special Representative of the Secretary-General on human rights defenders and the Special Rapporteur on the independence of judges and lawyers dated 6 March 2006, was detained on 2 August 2006 after four days of "disappearance" following a protest outside the Xinhuamen Gate to the central government residential compound in Beijing. On 9 August 2006, he was reportedly beaten by the transit police and then taken to Shaoguan, Guangdong Province, where he was detained overnight. On 10 August 2006, he was allegedly forcibly sent back home to Guangzhou, after being accused by the police of holding a fake train ticket;

- On 18 August 2006, the police announced that Gao Zhisheng, a well-known human rights lawyer, was arrested "for suspected involvement in criminal activities". Gao Zhisheng was already the subject of three communications previously transmitted by special procedures dated 25 November 2005, 21 December 2005 and 22 August 2006 (see above). Dozens of persons have signed a petition asking for his release. Several of them have been reportedly put under house arrest, and his wife and two children allegedly are under permanent surveillance and have been harassed by numerous female police officers based in front of their home.;

- On August 19 2006, the trial of Chen Guangcheng, a well-known human rights lawyer in Linyi, Shandong Province, who has been instrumental in highlighting human rights violations committed in the course of the implementation of the one child per couple policy, reportedly took place without the presence of his legal team, because all of them have been either detained by the police or denied access to the court. On 24 August 2006, he was sentenced to four years and three months in prison. Moreover, two other lawyers associated with Mr. Chen's case, Yan Zaixin and Zhang Jiankang, have reportedly been harassed and forcibly returned to their home. Chen Guangcheng was already the subject of several communication sent by the Special Rapporteur on the independence of judges and lawyers and other mandate holders on 14 July 2006, 7 April 2006, 31 October 2005 and 19 September 2005 (see above); On 27 June 2006, Li Jinsong resigned as Chen Guancheng's chief counsel after reportedly being attacked by 20 men who overturned his car while he was inside. On 19 August 2006, Mr. Li and another defence lawyer working on Chen Guacheng's case, Zhang Lihui, were allegedly denied access to the trial. They were said to have been surrounded by police after dinner the night before the trial, allegedly detained without charge and then released. Xu Zhiyong, who replaced Li Jinsong in defending Chen Guancheng, was allegedly beaten and taken into police custody by unidentified men on 18 August 2006, the day before Mr. Chen's trial began. He was released 22 hours later, after the trial had already finished;

- Zheng Enchong, a lawyer who deals with human rights cases, served three years in prison for "leaking State secrets abroad" after he contacted an overseas human rights

group about illegal forced evictions in Shanghai. Released in June 2006, he has since reportedly been under virtual house arrest and is alleged to be constantly monitored and harassed by the police. Mr. Zheng was the subject of two urgent appeals sent by special procedures mandate holders on 16 March 2004 and 20 July 2006 (see above);

- Li Baiguang was detained on 14 December 2004, allegedly because he provided legal representation to approximately 100,000 peasants seeking damages for forced land evictions. It is reported that since his release he has been detained and physically attacked several times;

- Ma Guanjun, who represented a rape suspect in 2003, was detained and accused of "obstructing justice". It is alleged that at the trial he produced seven witnesses who testified in favour of his client, but that during the recess, local police officers questioned the witnesses and that the witnesses changed their testimony. According to the information received, at the retrial, the witnesses testified that the suspect could not have committed the rape, but following police interrogation they once again recanted their testimony. Afterwards, Ma Guanjun was convicted of violating article 306 of the Criminal Code. He served 210 days in prison until a lawyers association launched an investigation into his case which led to his release in March 2004.

88. On the 21 December 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on violence against women, its causes and consequences, the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture regarding Chen Guangcheng, a 34-year-old blind self-taught human rights lawyer in Linyi, Shandong Province, and his wife, Y.W., his lawyers, Li Jinsong and Li Fangping, a member of his defence team, Dr. Teng Biao, and witnesses at his trial, Chen Gengjiang, Chen Guangdong, Chen Guangyu and Chen Guanghe. Chen Guangcheng has a long history of campaigning for the rights of farmers and the disabled. He assisted villagers in solving drinking water pollution problems when he was attending Najing Chinese Medicine University in 2000. He created and ran the "Rights Defence Project for the Disabled" under the auspices of the Chinese Legal Studies Association between 2000 and 2001. Since 1996, he has provided free legal advice to farmers and the disabled in rural areas. In 2004, he ran a "Citizen Awareness and Law for the Disabled Project". In April 2005, Chen Guangcheng and Y.W. began to investigate villagers' claims that Linyi city authorities were using excessive violence in implementing government birth quotas. The first report was published by them on 10 June 2005 through the Citizens Rights Defence Network (*gongmin weiquan wang*) and they brought lawsuits against officials involved. Chen Guangcheng has been the subject of four previous communications to the Government, on 1 December 2006, 7 April 2006, 31 October 2005 and 19 September 2005 (see above). According to new information received, on 27 November 2006, Chen Guangcheng's retrial before the Yinan County People's Court lasted approximately 10 hours. It is reported that on 1 December 2006, he was sentenced to four years and three months' imprisonment for "gathering crowds to disrupt traffic" and "intentional destruction of property". According to reports, Y.W. was under de facto house arrest from 12 August 2005 until 25 November 2006. Since then, she

has been continuously followed by local security personnel and persons in civilian clothes believed to have been hired by the police. On 28 November 2006, at around midday, she was arrested by members of the Yinan County Public Security Bureau and detained for questioning. Their 1-year-old child was also taken but was sent home later that day. Approximately eight hours later, Y.W. was dragged out of a police car and left in a barely conscious state on the side of the road near her village. She was taken to the Mengyin County Menglianggu Hospital where she was treated for extreme trauma; she was accompanied by up to 20 policemen as an order of "residential surveillance" had been issued while she was in detention. She is also suspected of committing the offences of "gathering crowds to disrupt traffic" and "intentional destruction of property". It is reported that the local authorities have intimidated witnesses and allegedly withheld evidence in order to prejudice Chen Guangcheng's retrial, and it is further reported that four other key witnesses in the trial have been subjected to police harassment and torture in order to give false testimony against Chen Guangcheng. According to reports, Chen Gengjiang was detained on 26 November 2006 and held until after the hearing had taken place. He was allegedly forced to sign papers in which he agreed not to participate in the case. On the same day, Chen Guangdong and Chen Guangyu reportedly disappeared after they agreed to testify on behalf of the defence. Later the same evening**,** Chen Guanghe was allegedly abducted by undercover police officers as he was on his way to meet with Li Fanping regarding the trial at which he was scheduled to testify the following day. He was reportedly formally arrested on 28 November but his family was not informed of his arrest or his whereabouts until 3 December 2006. It is alleged that Chen Guanghe was detained and tortured before the first trial by members of the Yinan police in order to procure a false confession and to testify against Chen Guangcheng. He was convicted on the basis of the false confession but granted a suspended sentence. It is feared that his recent detention may be related to the fact that that he has submitted written testimony stating that his prior evidence had been coerced through torture. Members of Chen Guangcheng's defence team have also allegedly been harassed, including lawyers Li Jinsong, Li Fangping and Dr. Teng Biao. The lawyers were apparently prevented from interviewing witnesses and obtaining further evidence for the retrial. On 27 November 2006, as the trial was taking place, Dr. Teng was reportedly detained for five hours during which he was allegedly pushed to the ground by six or seven policemen who held him down while they searched him. They also apparently searched his bags and computer and confiscated his mobile phone.

89. Previously it had been reported that on 12 August 2005, Chen Guangcheng and his wife were put under de facto house arrest. On 25 August 2005, Chen Guangcheng evaded the police surrounding his village and went to Shanghai and Nanjing, then Beijing to seek help from lawyers. On 6 September 2005 he was detained at the house of a friend in Bejijing by six men who said they were Public Security Bureau (PSB) officers. He was held overnight in a hotel and the head of the Linyi PSB and the Deputy Mayor of Linyi came to see him in the morning. The Linyi PSB head told Chen Guangcheng he was suspected of violating crticle 111 of the Criminal Code (illegally providing intelligence to foreign countries), for which the maximum sentence is life imprisonment. However, no one produced an arrest warrant justifying his detention and the Linyi PSB men took Chen Guangcheng back home. He was placed under house arrest without any order to that effect. On 9 September 2005 his

telephone land line and mobile phone were cut off and his computer was seized. On 23 September 2005, PSB officials searched his house without producing a search warrant.

90. On 4 October 2005, Beijing law lecturer Xu Zhiyong and lawyers Li Fangping and Li Subin attempted to visit Chen Guangcheng but they were stopped on their way to his house. Chen Guangcheng reportedly managed to leave his house and spoke with them briefly, but was then forcibly returned and beaten by men surrounding the house. The lawyers tried to approach Chen Guangcheng's house but were physically prevented from doing so. Xu Zhiyong and Li Fangping were also beaten. The three lawyers were then taken to Shuanghou township police station where they were interrogated until the following morning. They were advised that Chen Guangcheng's case involved "State secrets" and were escorted back to Beijing. On 24 October 2005, two other friends of Chen Guangcheng from Beijing went to visit him. As Chen Guangcheng went to greet them, he was stopped and beaten by around 20 men surrounding his house. They beat him with fists and sticks, knocked him down several times and kicked him. Chen Guangcheng was not permitted to seek medical attention. There were a number of eyewitnesses, who were escorted away. Chen Guangcheng's wife, Y.W., was also prevented from leaving the house. It is also reported that she was beaten when she left the house to greet visitors on 27 December 2005. On 30 October 2005, Chen Guangcheng's lawyer filed a lawsuit on his behalf at the People's Court of Yinan County against two Shuanghou township officials. The two are alleged to have headed the group of more than 20 men who were watching Chen Guangcheng and Y.W.'s house. It is reported that to date the court has ignored Chen Guangcheng's suit. With respect to the "blocking traffic" incident for which Chen Guangcheng was eventually charged, it is reported that on 11 March 2006, Chen Guangcheng marched with other villagers to protest the beating of a villager. Several dozen police blocked their way and surrounded them on national highway 205, thereby disrupting traffic. Chen Guangcheng was taken by Yinan County police from his house to the Yinyan Detention Centre without an arrest warrant. There he was held incommunicado for 89 days until 10 June 2006. Chen Guangcheng's lawyers collected written testimonies from village witnesses, who were also detained and then released on bail. These villagers were reportedly forced to confess or provide incriminating false information against Chen Guangcheng. They have stated that police used various torture methods at the detention centre in order to extract confessions, such as tying them to chairs with chains, depriving them of sleep for up to 15 days and withholding food and water. On 10 June 2006, Chen Guangcheng was formally detained on suspicion of "gathering crowds to disrupt traffic" and "intentional destruction of property". On 21 June 2006, the Yinan PSB issued arrest warrant No. 193 (2006) for Chen Guangcheng. On the same day, Chen Guangcheng's lawyers were allowed to visit him for the first time in three months. However, when they asked where he had been detained during that time, the prison guards interrupted their discussion, preventing Chen Guangcheng from answering the question. His family has not been allowed to visit. His wife has remained under house arrest. On 22 June 2006, one of Chen Guangcheng's lawyers, Li Jinsong, was taken into police custody for questioning. On 24 June 2006, Li Jinsong and another laywer, Li Subin, tried to visit Y.W. but were stopped outside the house and beaten by men enforcing the house arrest of Y.W. On 27 June 2006, they again attempted to see Y.W. but were harassed by persons in the village, while the police refused to intervene. Around 20 men turned over their car (while Li

Jonsong was still inside) and smashed their cameras. Li Jonsong was then taken to the police station for questioning. He resigned as chief counsel for Mr. Chen's case. On 18 August 2006, the day before Chen Guangcheng's trial, his lawyers were detained by police. Xu Zhiyong, who replaced Li Jinsong, was allegedly beaten and taken into police custody and not released until 22 hours later, after Chen Guangcheng's trial had ended. Similarly, it is alleged that Li Jinsong and another lawyer, Zhang Lilhui, were detained by police the night before the trial, then released after the trial without charge. On 24 August 2006, the Yinan County People's Court convicted Chen Guangcheng under article 291 of the Criminal Code for "gathering crowds to disrupt traffic" and "intentional destruction of property". Article 291 provides that "[w]here people are gathered to disturb order at railway stations or bus terminals, ferry landings, civil airports, marketplaces, parks, theatres and cinemas, exhibition halls, sports grounds or other public places, or to block traffic or disrupt the movement of traffic, or to resist or obstruct public security officials from carrying out their duties according to law, if the resulting situation is serious, the ringleaders shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or surveillance." Chen Guangcheng was sentenced to four years and three months' imprisonment. However, the Linyi City Intermediate People's Court, when reviewing the appeal by Chen Guangcheng's lawyers, overturned this verdict on 30 October 2006 on the basis of insufficient evidence. Instead of declaring Chen Guangcheng innocent and releasing him, the Intermediate Court referred the case back to the lower court for re-trial. Chen Guangcheng has continued to be held in detention at the Yinan County Detention Centre. Grave concerns are expressed that the charges against Chen Guangcheng and his wife Y.W. are fabricated and are solely related to their legitimate activities in defence of human rights, in particular their defending villagers' rights. Serious concern is expressed that Chen Guangcheng did not receive a fair trial as his lawyers were obstructed in all aspects of their work, from collecting evidence from witnesses to meeting with their client. Concern is also expressed that his lawyers were subjected to physical abuse and detention to prevent them from representing their client at trial. Similar concerns are now expressed for the fate of Y.W. Further concern is expressed for the physical and psychological integrity of any witnesses for the defence as it is feared that they have been subjected to acts of torture or brutality by the Yinin County PSB.

91. On 5 January 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders, regarding Li Jinsong and Li Fangping, the lawyers of Chen Guangcheng. Li Jinsong and Li Fangping had been the subject of three previous communications to the Government, dated 21 December 2006, 7 April 2006 and 1 December 2006. According to new information received, on the night of 26 to 27 December 2006, Li Fangping and Li Jinsong were travelling on a bus from Beijing to Linyi. On the highway in Linyi, at around 4.30 a.m. on 27 December 2006, the bus was stopped by unmarked cars. Unidentified men pulled Li Jinsong off the bus and attacked him. When Li Fangping got off the bus to try to stop the attack, the men attacked him as well. Li Fangping was hit on the head and received emergency care. Initial diagnosis shows that he suffers from a 3-cm-long wound on his head, but the x-ray does not show any fracture of the skull. Li Jinsong has swollen bruises on his left eye and left arm. The attack occurred when the lawyers were on their way to a meeting with Chen Guangcheng at the Yinan County Detention Centre, where Chen

Guangcheng was being detained. On 8 December 2006, Li Jinsong filed Chen Guangcheng's appeal against the decision rendered by the Yinan County People's Court with the Linyi Municipal Court. Li Jinsong also visited Chen Guangcheng at the Yinan Detention Centre that day. In addition, on 6 December 2006, Li Jinsong and Li Fangping filed administrative and civil lawsuits against the Linyi Municipal PSB, including its chief, Liu Jie, and other government bodies. These lawsuits were also submitted to the Linyi Court on 8 December 2006. Li Fangping and Li Jinsong were informed by a judge at the Linyi Municipal Court handling Cheng Guangcheng's appeal of Mr.Chen's request for a meeting with his lawyers on 27 December 2006 at the Yinan County Detention Centere. It is unclear whether Mr. Chen had actually requested such a meeting. Concern is expressed that the attack against Li Jinsong and Li Fangping may be directly related to their legitimate work acting on behalf of Chen Guangcheng's appeal. Further concern is expressed that this attack may intimidate or deter current or future lawyers from representing clients in cases dealing with human rights issues.

92. On 12 January 2007, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the secret trial and execution of Chen Tao, a Sichuan farmer found guilty of killing a policeman during a demonstration. Chen Tao and three other protesters were arrested in 2004 after mass protests against a hydropower plant project in Sichuan Province. The protesters had clashed with police, and a riot-control policeman was killed. The four men were tried behind closed doors in June 2006, Mr. Chen on the charge of “deliberately killing” the policeman. Their lawyers were not informed of the trial (in fact, they learned of the trial and the sentences pronounced on 4 December 2006, when the lawyer of a co-defendant received the sentence sheet), nor were the families notified. Mr. Chen was sentenced to death, the other three defendants to prison terms. On 20 November 2006, Mr. Chen’s father, Chen Yongzhong, received a court notice asking him to claim the ashes of his son and to pay 50 yuan for the bullet used to execute him. Chen Yongzhong declined, arguing that he could not be sure whether the ashes were actually his son’s. In his report on transparency in the use of the death penalty submitted by the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Human Rights Council (E/CN.4/2006/53/Add.3, para. 30), he recalled the case of Dong Wei, a farmer from Shaanxi Province, to illustrate the risks that post-conviction opacity poses to respect for human rights. In that case, the Shaanxi Province High People’s Court rejected Mr. Dong’s appeal against a death sentence in a closed session and issued an order for him to be executed seven days later, without informing his lawyer. The lawyer only found out two days before the execution was scheduled because he happened to visit the High Court to ask about the progress of the appeal. The lawyer then travelled to Beijing at his own expense to appeal the case at the Supreme People’s Court, where he convinced a judge to review the case. The judge agreed with the lawyer that Mr. Dong’s case needed further review, and the execution was stopped, reportedly just four minutes before it was scheduled to take place. Unfortunately, such last-minute review of the death sentence appears to have been successfully foreclosed in the case of Chen Tao.

Communications received

93. On 18 April 2006, the Government replied to the joint allegation letter sent by the Special Rapporteur on 25 November 2005 regarding Gao Zhisheng, a prominent human rights lawyer and director of a Shengzhi law firm in Beijing. In October 2005, the Beijing city judicial office, in its work to develop activities for the year for the normalization of law firms, investigated and prosecuted several law firms which were found, in the course of the office's inquiries, to be operating illegally and without registration. The Shengzhi law firm, after moving to new office premises, failed to register its new address, in breach of article 21 of the Chinese Lawyers Act, which constitutes unlawful conduct punishable under article 9, paragraph 2, of the procedure adopted by the Ministry of Justice for disciplinary action against unlawful conduct by lawyers and law firms (hereinunder referred to as "the procedure"). This law firm continued to act in non-compliance with the standardized procedures for the filing and use of legal documentation and, pursuant to articles 21 and 47 of the Lawyers Act and article 9 of the procedure, on 30 November 2005 the Beijing city judicial office, acting in accordance with the law, decided to impose a penalty of one year's suspension of all activities against this firm. In accordance with the investigation conducted by the Chinese security authorities, there is no evidence of Mr. Gao having been attacked by intelligence officers while driving his vehicle. They asserted that the report was sheer provocation by Mr. Gao. Article 3, paragraph 4, of the Lawyers Act stipulates: "Lawyers practising their profession in compliance with the law shall receive legal protection." The Chinese Government said that it sets great store by the exercise by lawyers of their function of ensuring equal justice for society and upholding basic human rights and, in accordance with the law, guarantees the practice of their profession by lawyers. Since the period of the reform and opening up of China, the legal profession has developed rapidly. At the same time as exercising their profession in accordance with the law, lawyers must accept regulation and oversight by the Government. Article 3, paragraph 3, of the Lawyers Act provides: "In practising their profession, lawyers are obliged to undergo scrutiny by the State, society and their clients." Article 4 provides: "The judicial administration department of the State Council shall, in accordance with the present Act, exercise oversight over and provide guidance to lawyers, law firms and law consultations." Article 21 stipulates: "Law firms that change their name, move to new offices, amend their statutes or make changes to their partnership structure … are obliged to report such changes to the office of original registration." Article 47 stipulates: "Law firms acting in breach of the stipulations of the present Act shall be instructed by people's judicial administration departments at the provincial, autonomous region and centrally administered municipality level to take corrective measures, their illegal gains shall be confiscated and they may also be fined an amount of between one and five times the amount of the gain from their unlawful activity; if the circumstances of their offence are serious, they shall be ordered to suspend their practice for the purposes of internal rectification or their business licence may be revoked." The procedure adopted by the Ministry of Justice for disciplinary action against unlawful conduct by lawyers and law firms stipulates, in article 9, paragraph 2: "Law firms engaging in the practices listed below shall be disciplined by the people's judicial administration departments at the provincial, autonomous region and centrally administered municipality level with a warning, by confiscation of their illegal gains, and by an instruction to suspend their practice for the purposes of internal rectification for a period of between three months and one year: … 2. Changes to the company name, to the company statutes, to the designation

of persons in charge of the company, to the partners, to the company's offices, to the partnership agreement, etc., which have not been registered within the stipulated time …." The Government noted that the present case is a typical instance where the Chinese judicial administration authorities, during the conduct of a routine investigation into the activities of a law firm, have found a law firm operating in breach of the prescribed procedure and have taken disciplinary action. The Chinese judicial administration authorities have handled the case strictly in accordance with both the facts and the law and the case has no connection with this law firm's legal representation services. All law firms must strictly respect the law and no law firm may claim, on the grounds of the special nature of a given case, to exercise special rights which exceed the provisions of the Constitution and the law.

94. On 17 May 2006, the Government replied to the joint allegation letter sent by the Special Rapporteur on 6 March 2006 together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding Gao Zhisheng and Yang Maodong, also known as Guo Feixiong. The Government stated that in October 2005, the Beijing city judicial office, as part of the year-long programme of activities to standardize the work of law firms, investigated and prosecuted several law firms which were found, in the course of the offices' inquiries, to be operating illegally and without registration. Among these the Shengzhi law firm, after moving to new office premises, failed to register its new address, in breach of article 21 of the Chinese Lawyers Act, which constitutes unlawful conduct punishable under article 9, paragraph 2, of the procedure adopted by the Ministry of Justice for disciplinary action against unlawful conduct by lawyers and law firms (hereinunder referred to as "the procedure"). This law firm was acting in non-compliance with the standardized procedures for the filing and use of legal documentation and articles 21 and 47 of the Lawyers Act and article 9 of the procedure. On 30 November 2005, the Beijing city judicial office, acting in accordance with the law, decided to impose a penalty of one year's suspension of all activities on this firm. No incident involving a deliberate collision occurred at the time and in the place indicated in the relevant report on the matter, nor has Gao Zhisheng himself ever made any report to this effect to the Beijing police authorities. Furthermore, the Government reported that on 13 September 2005, Yang Maodong was taken into police custody by the Guangdong public security authorities on suspicion of the offence of gathering a crowd with the intention of disturbing the peace. On 4 October 2005, his remand in detention was approved by the procuratorial authorities. On 27 December, the Guangdong procurator's office decided not to proceed with his prosecution and he was released. The allegations that he was placed under "permanent surveillance" or beaten by the public security authorities are unfounded. Article 3, paragraph 4, of the Lawyers Act stipulates: "Lawyers practising their profession in compliance with the law shall receive legal protection". The Chinese Government sets great store by the exercise by lawyers of their function of ensuring equal justice for society and upholding basic human rights and, in accordance with the law, guarantees the practice of their profession by lawyers. At the same time as exercising their profession in accordance with the law, lawyers must accept regulation and oversight by the Government as provided in article 3, paragraph 3, article 4, article 21 and article 47 of the Lawyers Act. The procedure adopted by the Ministry of Justice for disciplinary action against unlawful conduct by lawyers and law firms is stipulated in article 9, paragraph 2. The Government stated that the present case is a typical instance where the Chinese

judicial administration authorities, during the conduct of a routine investigation into the activities of a law firm, have found a law firm operating in breach of the prescribed procedure and have taken disciplinary action. The Chinese judicial administration authorities have handled the case strictly in accordance with both the facts and the law, and the case has no connection with this law firm's legal representation services. All law firms must strictly respect the law and no law firm may claim, on the grounds of the special nature of a given case, to exercise special rights which exceed the provisions of the Constitution and the law. Finally, the Government stated that no coercive measures have been applied against Hu Jia by the Beijing city public security authorities.

95. On 14 June 2006, the Government of China replied to the urgent appeal sent by the Special Rapporteur on 7 April 2006. The Government replied that on 11 March 2006, Chen Guangcheng and his family members Chen Guangjun, Chen Guangyu and others assembled a crowd of villagers and obstructed traffic, causing a major traffic jam on national highway 205. On 12 March, Chen Guangjun and Chen Guangyu were taken into criminal detention, in accordance with the law, on suspicion of having committed an offence under article 291 of the Chinese Criminal Code on the gathering of crowds for the purpose of disrupting the movement of traffic. Chen Guangcheng was held for questioning by the local public security authorities, in accordance with the law, on suspicion of involvement in the offence at the scene of the crime, and was released at 9 p.m. on 12 March. Article 291 of the Chinese Criminal Code stipulates: "Where people are gathered to disturb order at railway stations or bus terminals, ferry landings, civil airports, marketplaces, parks, theatres and cinemas, exhibition halls, sports grounds or other public places, or to block traffic or disrupt the movement of traffic, or to resist or obstruct public security officials from carrying out their duties according to law, if the resulting situation is serious, the ringleaders shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or surveillance." The Government stated that in dealing with Mr. Chen and his associates, the public security authorities acted in compliance with the law in remanding them in custody or holding them for questioning. Throughout this period their lawful rights were fully protected. The Government asserted that there was no substance to the allegation that Chen Guangcheng was subjected to beatings and placed under house arrest.

96. On 3 October 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 14 July 2006 together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Chen Guangcheng and Guo Qizhen. The Government stated that Guo Qizhen was sentenced in 1995, in accordance with the law, to one year's fixed-term imprisonment, suspended for one year, for the offence of assault and battery. Since 2000, Mr. Guo has been using the Internet to foment subversion of the political power of the State. On 12 May 2006, he was taken into police custody, in accordance with the law, for breach of the provisions of articles 105, paragraph 2, and 106 of the Criminal Code and on suspicion of having committed the offence of fomenting subversion of the political power of the State. On 6 June, his remand in detention was approved by the procuratorial authorities and his case is currently under consideration. In

this context, the Government provided the Special Rapporteur with an excerpt of the relevant article.

97. Concerning Chen Guangcheng, the Government reported that in the evening of 5 February 2006, he stormed into the offices of the local village committee and started smashing the glass in the doors and windows. The reason for this was that he objected to the work of poverty alleviation officials sent to his village. Shortly afterwards Mr. Chen incited Chen Guanghe and other villagers to smash a motor vehicle belonging to the local authorities and three police cars, and to roll these cars over into the roadside ditch, then to assault and beat up staff of the Yinan County police station. In the evening of 11 March, Chen Guangcheng's cousin Chen Guangyu, who had been drinking, claimed to have been beaten up and barged into the offices of the local village committee where he started smashing things. Taking this as his pretext, Chen Guangcheng gathered together Chen Guangyu, Chen Guangjun, Yuan Weijing and others and from 6 p.m. that same evening, on the Yinghou village section of State highway No. 205, they obstructed the movement of traffic, barring the passage of more than 290 motor vehicles, including ambulances, and blocking a major road artery for three hours. On 10 June 2006, the public security authorities, acting in accordance with the law, took Mr. Chen into police custody and launched an investigation into his actions. On 21 June, his remand in detention was approved by the procuratorial authorities and, on 26 June, the matter was referred to the procuratorial authorities for review and prosecution. On 4 July, the Yinan County procurator's office referred his case to the Yinan County People's Court for prosecution for the the offences of wilfully causing damage to property and assembling a crowd for the purpose of disrupting traffic. On 24 August, the Yinan County People's Court instituted proceedings in this case. The court found that Chen Guangchen, as a means of giving vent to personal grievances, had caused and incited others to cause wilful damage to property, the amount of which was considerable, and that his conduct had infringed public and private ownership rights and constituted the offence of wilful damage to property; it found further that Mr. Chen, on account of his cousin having been beaten up after drinking, had gathered together a crowd with a view to blocking traffic, causing a three-hour stoppage of traffic on the Yinghou village section of State highway No. 205 in Shuanghou township, that the circumstances of his offence had been particularly serious; that he had been responsible for organizing, planning and carrying out the actions in question and had therefore been the principal culprit; and that his conduct had therefore constituted the offence of gathering a crowd for the purpose of disrupting traffic. As the offender in this case is blind, leniency could be applied. That same day, the Yinan County People's Court decided as the court of first instance to sentence Mr. Chen to seven months' fixed-term imprisonment for the offence of wilfully causing damage to property and to four years' fixed-term imprisonment for the offence of gathering a crowd to disrupt trafficl and ordered him to serve a sentence of four years and three months' fixed-term imprisonment. In this context, the Government provided the Special Rapporteur with an excerpt of article 275 of the Chinese Criminal Code. The Government concluded that during the legal proceedings in this case, the court fully upheld the defendant's rights in litigation and in the courtroom his two defence lawyers were able to provide full defence services.

98. On 3 October 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 10 August 2006 regarding Zhao Yan. The Government reported that Zhao Yan is an ethnic Han male born on 14 March 1962 and a technical college graduate. Prior to his arrest he worked in the Beijing bureau of *The New York Times*. On 17 September 2004 he was placed in criminal detention and on 20 October 2004 he was arrested. The Beijing No. 2 People's Procuratorate charged Zhao Yan with the crime of illegally divulging State secrets to a foreign entity and the crime of fraud; a crime case was opened in the Beijing No. 2 Intermediate People's Court. At a hearing in the Beijing No. 2 Intermediate People's Court it was found that in the autumn of 2001, after learning that Feng Shanchen, a 43-year-old male who had been sentenced to 1 ½ years' labour re-education by the labour rehabilitation committee in Songyuan, Jilin Province, had not served his term, Zhao Yan secretly obtained Mr. Feng's permission to use his status as a reporter for the *Baixing Xinbao* newspaper to go to Quian Gorlos County in Jilin Province to conduct an investigation. During this time Mr. Zhao falsely claimed that he could use his connections in the Legal Affairs Bureau of the State Council to get Mr. Feng's sentence overturned, and he fraudulently obtained the sum of 20,000 yuan from Mr. Feng for that purpose; afterwards, however, he did not give Mr. Feng any help with this matter. The Beijing No. 2 Intermediate People's Court held that Zhao Yan, motivated by illegal gain, fabricated a story and fraudulently obtained a relatively large sum from another person and that his actions constituted the crime of fraud. On 25 August 2006 the Beijing No. 2 Intermediate People's Court reached a verdict, which was issued in an open session: for the crime of fraud Mr. Zhao was sentenced to three years' imprisonment, fined 2,000 yuan and ordered to continue to repay the illegally obtained 20,000 yuan. The court found that the prosecution had failed to produce sufficient evidence to substantiate the charge of illegally divulging State secrets to a foreign entity and therefore issued no ruling on that charge. During the trial the court fully respected Mr. Zhao's procedural rights; not only did Zhao Yan exercise his right to a defence, but two defence lawyers expressed his views fully.

99. On 3 October of 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 20 July 2006 together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding Zheng Enchong and Jiang Meili, his wife. The Government stated that Mr. Zheng was sentenced to three years' imprisonment and one year's deprivation of political rights because he committed a crime. In accordance with the relevant provisions of the Lawyers Law, Mr. Zheng was disbarred. In June 2006, after he had served his sentence in full and had been released, Mr. Zheng on numerous occasions blatantly violated the regulations governing his period of deprivation of political rights. On 12 July, the Shanghai public security authorities, acting pursuant to the Public Security Management Punishment Law of the Peoples' Republic of China and the Regulations Governing Procedures for the Handling of Criminal Cases by Public Security Organs, issued a summons to Zheng Enchong and conducted a search of his residence. At the same time, Jiang Meili was also issued a summons on suspicion of hindering an official in the discharge of his duties; the couple were released on the same day. At the time the summons was issued the Shanghai public security authorities handled the case in strict compliance with the law, protecting the legitimate rights and interests of Mr. Zheng and Ms. Jiang. The two signed their summonses, search warrants and the list of confiscated articles separately. Because they were suspected of engaging in illegal

activities, they were issued summonses and their residence was searched, both of which are routine activities for public security organs. The allegation in the letter that the Shanghai police produced a search warrant only after searching Mr. Zheng's house is not consistent with the facts.

100. The Government replied to the urgent appeal sent by the Special Rapporteur on 22 June 2006 by a letter dated 14 July 2006 which was regretfully not translated in time to be included in the present document.

Special Rapporteur's comments and observations

101. The Special Rapporteur thanks the Government for its cooperation and the substantive information it provided in answer to his requests. He deeply regrets and apologizes for the fact that one of the Government's replies has not yet been translated: this has made it impossible for him to make appropriate follow-up.

102. The Special Rapporteur, however, notes with concern the important number of communications that had to be addressed to the Government of China in 2006, which confirms the trend already noted in 2005. He reiterates his concern in relation to the lack of guarantees for lawyers to perform their professional duties without risking prosecution, including of a criminal nature. He is also particularly concerned about the new legislation that was adopted which instead of providing more guarantees to lawyers, puts them even more in danger and does not afford them the basic conditions for performing their duties in an independent way. He fears that human rights victims have more and more difficulties in finding a legal counsel to defend their rights. In this context, he urges the Government to adopt as soon as possible appropriate measures to guarantee that lawyers can perform their duties safely and independently, without being prosecuted. He also urges the Government to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, detailed substantive answers to the allegations contained in his letters of 22 August 2006 and 30 November 2006, which have not been replied to.

Colombia

Comunicaciones enviadas

103. El 31 de mayo de 2006, el Relator Especial, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente a propósito de la información traída a su atención sobre la situación de la organización de abogados Corporación Colectivo de Abogados José Alvear Restrepo y la Organización Nacional Indígena de Colombia (ONIC), las cuales ya habían sido objeto de dos llamados urgentes enviados por la Representante Especial del Secretario General sobre la situación los Defensores de Derechos Humanos y por el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, el 18 y el 24 de mayo de 2006 respectivamente. Según la

información recibida, el día 8 de marzo de 2006, la Corporación Colectivo de Abogados José Alvear Restrepo recibió un correo electrónico con amenazas, proveniente de una dirección que incluye las palabras “Colombia libre”, nombre con el que se identifican los excombatientes de las Autodefensas Unidas de Colombia (AUC), en su página web. Dicho correo electrónico habría sido copiado a las organizaciones arriba enumeradas. El correo electrónico afirmaría que las organizaciones en cuestión fomentan y protegen el terrorismo. Igualmente, los autores del mensaje sostendrían que desaprueban la presencia en el país de las organizaciones arriba enumeradas, así como de cualquier organización similar a las Fuerzas Armadas Revolucionarias de Colombia (FARC), el Ejército de Liberación Nacional (ELN) o que reflejen un pensamiento de tendencia de izquierda, al igual que cualquier “chavismo socialismo o comunismo disfrazado”. El mensaje invita a las organizaciones mencionadas a unirse a los autores del mismo en la “cruzada contra el terrorismo” o en caso contrario, a atenerse a las consecuencias, las cuales serían que cada uno de sus miembros sufriría el “peso” de la “presencia” de los autores del mensaje, quienes además afirmarían contar con el respaldo de las fuerzas armadas estatales. De otro lado, el correo electrónico en cuestión sugeriría que las AUC continúan operando bajo nuevas formas de agrupación, a pesar del proceso de desmovilización que se está adelantando actualmente con el Gobierno. Finalmente, el mensaje terminaría con las siguientes palabras: “Todas las partes a las que hoy escribimos copia de este aviso si no se alinean a esta realidad es mejor que se larguen con sus ideas humanitarias a otra parte…Este es el primer aviso”. Se expresaron graves temores por la seguridad de las organizaciones mencionadas, en especial debido a que las amenazas recibidas por éstas están relacionadas con sus actividades en defensa de los derechos humanos.

104. El 28 de agosto de 2006, el Relator Especial envió una carta de alegación respecto de varios temas que conciernen a su mandato. Según la información puesta en su conocimiento, se estarían presentando varias irregularidades en el ámbito del Poder Judicial, las cuales atentarían contra la independencia del mismo. Así, se le informó de que la Fiscalía General de la Nación, a pesar de ser una institución integrante de la rama judicial con aproximadamente 25.000 funcionarios, no cuenta con una carrera judicial que proporcione a sus funcionarios la estabilidad laboral necesaria para la independencia de sus decisiones. Además, según las informaciones recibidas, existe una decisión del Consejo de Estado del año 2004 en la que se otorga a la Fiscalía un plazo de dos años para instaurar la carrera judicial; al igual que otra decisión de la Corte Constitucional (Sentencia T-131 de 2005) que obliga a la Fiscalía a implementar la carrera judicial a más tardar en julio de 2006. El Relator Especial reconoció los esfuerzos realizados por la Comisión Nacional de Administración de la carrera fiscal que ya habría adoptado los reglamentos de la carrera, analizado la proyección presupuestaria y establecido el cronograma para su implementación. Sin embargo, instó al Gobierno para que la carrera judicial sea instaurada en la Fiscalía General de la Nación en el más corto plazo, con el fin de evitar que la independencia de las decisiones de sus funcionarios se vea afectada, lo que ya habría ocurrido en el pasado, de acuerdo con varias denuncias allegadas al conocimiento del Relator Especial. En lo referente a la justicia penal militar, se informó al Relator Especial de que ésta estaría asumiendo sistemáticamente investigaciones referentes a violaciones a derechos humanos y al derecho internacional humanitario, atribuidas a miembros de la fuerza pública. Asimismo, varios fiscales a cargo de investigaciones de ejecuciones

extrajudiciales se habrían abstenido de reclamar la competencia o incluso la habrían cedido frente a la justicia penal militar. Un ejemplo de ello lo constituye la inicial atribución de competencia en el caso conocido como “Jamundí”, el cual involucra la muerte de 10 policías y un civil a manos de fuerzas del Ejército. Según la información recibida, el Juez ordinario a cargo del caso decidió en un principio enviarlo a la justicia penal militar, argumentando la participación de miembros de la fuerza pública en el mismo, pero después lo remitió al Consejo Superior de la Judicatura para que éste determinara a qué jurisdicción debería ser atribuida la competencia, afortunadamente dicho tribunal decidió remitir el caso a la justicia ordinaria. El Relator Especial recordó al Gobierno que las obligaciones internacionales del Estado colombiano lo compelen a dar cumplimiento al principio internacional según el cual las graves violaciones de derechos humanos deben ser investigadas y juzgadas por la justicia ordinaria, obligación claramente enunciada el Principio N.º 3 de administración de justicia por los tribunales militares, contenido en el informe sobre esta cuestión presentado por el Sr. Emmanuel Decaux a la Subcomisión de Promoción y Protección de los Derechos Humanos en su 56.º período de sesiones (E/CN.4/Sub.2/2004/7). Dicho Principio dispone: “En cualquier circunstancia, la competencia de las jurisdicciones militares debería suprimirse en favor de las jurisdicciones ordinarias para juzgar a los autores de violaciones graves de los derechos humanos, como las ejecuciones extrajudiciales, las desapariciones forzadas y la tortura, y procesar y juzgar a los autores de esos delitos”. Igualmente, el Relator Especial recibió información sobre manipulaciones de evidencias en las escenas del crimen de ejecuciones extrajudiciales en las cuales habrían participado miembros de las Fuerzas Armadas, con el fin de presentar a las víctimas como muertos en combate. El Relator Especial instó al Gobierno para que se investigaran estas denuncias y en caso de comprobarse su veracidad se juzgara y sancionara a los responsables. De otra parte, según la información recibida, aún funcionarían Fiscalías en instalaciones militares, tales como Batallones y Brigadas y varios de los fiscales serían oficiales de reserva, hechos que siembran dudas sobre la independencia e imparcialidad de las decisiones de los fiscales en cuestión. El Relator Especial exhortó al Gobierno a que tome las medidas necesarias para que se ponga fin a estas prácticas violatorias de la independencia del poder judicial. Finalmente, el Relator Especial reiteró su profunda preocupación respecto de las amenazas de que han venido siendo objeto en los últimos meses varias organizaciones de abogados defensores de derechos humanos, organizaciones sindicales e indígenas, de parte de grupos paramilitares. Dicha preocupación fue expresada con anterioridad al Gobierno en la comunicación enviada conjuntamente con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, el día 31 de mayo de 2006. En este punto el Relator Especial señaló que resulta preocupante la situación de inseguridad de varios funcionarios judiciales, generalmente encargados de investigar graves violaciones de derechos humanos. A este respecto, expresó su preocupación por el hecho de que no existe un programa especial de protección para los funcionarios judiciales en situaciones de riesgo, a pesar de que tan sólo durante el año 2005 y en lo que va corrido del 2006, 16 funcionarios judiciales habrían sido asesinados, 63 habrían sido amenazados, dos habrían sido secuestrados y dos estarían exiliados. En este contexto de amenazas e inseguridad de funcionarios judiciales y abogados instó al Gobierno a que adopte con urgencia programas especiales de protección.

105. El 19 de octubre del 2006, el Relator Especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente en relación con actos intimidantes en contra de José Humberto Torres Díaz, abogado de la organización no gubernamental Fundación Comité de Solidaridad con los Presos Políticos (FCSPP). El abogado denunció el asesinato del defensor de derechos humanos Alfredo Correa de Andréis que ocurrió el 17 de septiembre de 2004. Según las denuncias, el asesinato fue llevado a cabo por paramilitares con el apoyo de la policía y de las fuerzas de seguridad. De acuerdo con la información recibida, recientemente, desconocidos armados estarían vigilando la casa del Sr. José Humberto Torres Díaz. Según los informes, los guardias de seguridad del abogado habrían establecido que los vehículos de los desconocidos pertenecen al Servicio de Inteligencia de la Policía Nacional (SIPOL). El 13 de septiembre de 2006, la FCSPP habría contactado a las autoridades gubernamentales en relación con un documento descubierto por la oficina de la Fiscalía General de la Nación que contendría el nombre y la dirección del Sr. José Humberto Torres Díaz. Según las informaciones recibidas, en marzo de 2006 el documento habría sido encontrado en la casa de un líder regional de las AUC. El autor del documento habría acusado al abogado de ser miembro del ELN y además habría elaborado una lista de personas que habrían sido victimas de asesinatos debido a alegaciones similares. De igual manera se nos informa que anteriormente, individuos que habían sido acusados de afiliación a un grupo subversivo, habrían sido objeto de graves violaciones de derechos humanos. El Relator Especial expresó su preocupación por los hostigamientos y las amenazas en contra del Sr. José Humberto Torres Díaz porque se teme que estos incidentes pueden estar relacionados con sus actividades en defensa de los derechos humanos, y en particular sus denuncias en contra de la impunidad en relación con casos de graves violaciones de los derechos humanos contra personas civiles.

106. El 24 de noviembre del 2006, el Relator Especial envió una carta de alegación sobre la situación del abogado Adalberto Carvajal Salcedo. Según las informaciones recibidas, el abogado Adalberto Carvajal Salcedo, de 72 años de edad, es un reconocido abogado laboralista, profesor y defensor de los intereses de los educadores en Colombia, miembro fundador de la Asociación de Abogados Laboralistas de Trabajadores. En el ejercicio de su profesión de abogado y en representación de 47 docentes de la Universidad del Magdalena habría realizado una conciliación con dicha Universidad, relacionada con el monto de numerosas prestaciones laborales adeudadas a los docentes por parte de la institución. El acuerdo se habría realizado con el Rector de la Universidad, el Sr. Carlos Eduardo Caicedo Omar. Según la información recibida, dicho acuerdo fue avalado con posterioridad por el Tribunal Administrativo del Departamento del Magdalena, en cumplimiento de la legislación relevante. Dicha conciliación habría puesto fin a un proceso judicial que estaba siendo adelantado con el fin de reclamar el pago de las prestaciones laborales adeudadas por la Universidad a sus docentes. De acuerdo con la información recibida, la Contraloría Departamental del Magdalena inició una investigación en contra del Sr. Caicedo Omar, por diversos contratos y actos realizados durante su gestión. Entre dichos actos se encontraría la conciliación que realizó con el abogado Carvajal Salcedo. Se informa de que paralelamente se habría iniciado una investigación penal en contra del Sr. Caicedo Omar, cuyo resultado sería la acusación por parte de la Fiscalía de ser autor del

delito de Peculado por apropiación. Asimismo, se informa que la Fiscalía acusó al abogado Carvajal de ser el "determinador" del delito, es decir que incitó al Rector de la Universidad a cometer el delito de peculado por apropiación. La Fiscalía habría argumentado que el abogado Carvajal, al actuar como representante de los docentes y realizar la conciliación sobre las prestaciones laborales, estaba actuando como determinador del delito. El 16 de marzo de 2005 el Fiscal a cargo del caso decidió precluir la investigación contra ambos acusados, por atipicidad de la conducta. El Fiscal habría considerado que el abogado Carvajal había actuado de acuerdo con las leyes vigentes sobre conciliación administrativa y en ejercicio legítimo de su profesión. Dicha decisión fue recurrida por el Contralor del Departamento del Magdalena. El 18 de agosto de 2006 la Fiscalía revocó su decisión anterior y ordenó la detención preventiva de ambos sindicados. El abogado Carvajal es sindicado de ser el determinador del delito de Peculado por apropiación. Según las informaciones recibidas, el defensor del abogado solicitó que se suspendiera la medida de detención preventiva por razones de la edad y que se tomara en cuenta el reconocimiento público del acusado. La decisión fue negativa, argumentando que éste había cometido una falta "gravísima" y que se temía que evadiera la justicia. El abogado Carvajal podría ser condenado a una pena que oscila entre 6 y 26 años de prisión. El Relator Especial manifestó su preocupación por el hecho de que el abogado Adalberto Carvajal Salcedo podría estar siendo investigado penalmente por el ejercicio legítimo de su profesión de abogado.

Comunicaciones recibidas

107. Mediante comunicación del 8 de diciembre de 2006, el Gobierno de Colombia proporcionó información con respecto al llamamiento enviado el 19 de octubre de 2006. Indicó que la Comisión Interamericana de Derechos Humanos otorgó medidas cautelares de protección a favor de los miembros del FCSPP, las cuales incluían al Sr. Jorge Humberto Torres Díaz. Asimismo, el Gobierno señaló que requirió varias autoridades, con el fin de responder a las comunicaciones enviadas por dicho organismo y por el Relator Especial. Indicó que respecto a la supuesta vigilancia del domicilio del Sr. Torres Díaz, por parte de presuntos miembros del SIPOL, había solicitado a las autoridades competentes que suministrasen la información que permitiera esclarecer los hechos ocurridos, así como las medidas adoptadas al respecto. Igualmente, señaló que el Ministerio del Interior y de Justicia solicitó a la Policía Nacional realizar rondas de seguridad en torno a la vivienda del Sr. Torres Díaz, así como en torno a su casa de descanso, ubicada en la jurisdicción del Municipio de Baranoa. De otra parte, dicho Ministerio solicitó a la Policía Nacional que estudiase la posibilidad de que se asigne al Sr. Torres Díaz una unidad permanente para prestar seguridad por las noches a su vivienda. El Gobierno indicó que adicionalmente, solicitó al Departamento Administrativo de Seguridad (DAS) que asigne un arma de apoyo y un escolta adicional que complementen el esquema de seguridad del que dispone actualmente el Sr. Torres Díaz. Sin embargo, el Gobierno señaló que el Sr. Torres Díaz se reservó el derecho de admisión de la asignación del escolta adicional, pese a que se trataba de una persona que fue presentada por él mismo para conformarlo. En consecuencia, el esquema de protección del Sr. Torres Díaz está compuesto por dos unidades de escolta con su respectivo armamento, un arma de apoyo y un vehículo blindado. El Gobierno también informó de que se está coordinando con el arquitecto encargado de las obras de blindaje,

una visita a la casa de descanso del Sr. Torres Díaz, con el fin de determinar los elementos de seguridad que sean compatibles con la estructura del inmueble para proceder a su instalación. Finalmente, el Gobierno informó de que el caso del Sr. Torres Díaz fue tratado en el Comité de Reglamentación y Evaluación de Riesgos (CRER) y que tanto el Ministerio del Interior y de Justicia, como la Policía Nacional asumieron compromisos, los cuales serán seguidos por la Procuraduría.

108. Mediante comunicación del 20 diciembre de 2006, el Gobierno de Colombia proporcionó información con respecto al llamamiento urgente enviado conjuntamente con el Relator Especial sobre formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia el 21 de noviembre de 2005. El 10 de noviembre en Bogotá el juzgado Primero Penal del Circuito Especializado de Antioquia condenó a 14 años y tres meses de prisión a Álvaro Padilla Medina, por su coautoría en el homicidio del dirigente comunal Orlando Valencia. El material probatorio recaudado por un fiscal de la Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario llevó a Álvaro Padilla a aceptar en diligencia de sentencia anticipada los cargos por los que fue sentenciado. Los hechos materia de investigación ocurrieron el 15 de octubre de 2005 en Belén de Bajirá (Antioquia), donde Álvaro Valencia, representante de la comunidad de Caracolí, fue subido a la fuerza en una moto por dos hombres, integrantes de los grupos de autodefensa. El cuerpo baleado de Álvaro Valencia fue encontrado nueve días después en un paraje de la vereda Boca de Sábalo, jurisdicción del municipio de Chigorodó (Antioquia). Para la época de su asesinato el líder comunitario estaba al frente del proceso de defensa de las tierras de las negritudes. Otras cinco personas se encuentran vinculadas al proceso por este mismo hecho.

Comentarios y observaciones del Relator Especial

109. El Relator Especial agradece al Gobierno de Colombia su grata cooperación y aprecia que el mismo haya tenido a bien enviarle en un plazo razonable informaciones sustantivas en respuesta a las alegaciones que les transmitió. El Relator Especial nota con satisfacción las medidas que fueron adoptadas por el Gobierno para asegurar la protección del Sr. Torres Díaz. Sin embargo, el Relator Especial está preocupado por no haber recibido respuesta alguna del Gobierno de Colombia respecto de las comunicaciones enviadas los días 31 de mayo, 28 de agosto y 24 de noviembre de 2006 y le pide encarecidamente tenga a bien enviarle a la brevedad posible, y preferentemente antes de la clausura del cuarto período de sesionse del Consejo de Derechos Humanos, informaciones precisas y detalladas acerca de las alegaciones arriba resumidas.

Cuba

Comunicaciones enviadas

110. El 10 de agosto del 2006, el Relator Especial envió una carta de alegación conjuntamente con el Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión en relación a la situación de los periodistas detenidos Óscar Mario González Pérez y Roberto Jesús Guerra Pérez ambos inculpados, con arreglo

a la Ley N.º88, de atentado a la independencia territorial y a la economía de Cuba. La detención de Óscar Mario González Pérez fue ya objeto de dos llamamientos urgentes enviados por el Relator Especial el 26 de julio de 2005 y el 3 de agosto de 2005. El Relator Especial es consciente de las informaciones recibidas por parte del Gobierno el 9 de agosto de 2005 y el 23 de agosto de 2005 con respecto a ambos llamamientos anteriormente mencionados. No obstante, y de de acuerdo a la información recientemente recibida, los expertos señalan que el Sr. González Pérez continuaría tras casi un año de detención sin recibir el juicio pertinente ni noticia del mismo. Cofundador de la agencia independiente Grupo de Trabajo Decoro, habría sido detenido el 22 de Julio de 2005 junto con otros opositores en la víspera de una manifestación de la disidencia. El Sr. González Pérez se encontraría actualmente internado en la cárcel "1580", en San Miguel de Padrón (La Habana). La detención le habría causado un grave empeoramiento de salud agravado por la ausencia de medicamentos, a lo que se añadiría como factor de riesgo la avanzada edad del detenido, de 62 años. Por otro lado, Roberto Jesús Guerra Pérez, miembro del centro de información de la asociación patriótica La Corriente Matutina y colaborador de los sitios Nueva Prensa Cubana y Payolibre, habría sido detenido el 13 de julio de 2005 bajo acusación de desorden público junto con su esposa y otro militante. Supuestamente detenido en las celdas de la Policía Nacional Revolucionaria (PNR), habría efectuado varias huelgas de hambre que le llevaron al hospital militar a causa de un posible empeoramiento de su estado de salud. Sin embargo, el Sr. Guerra Pérez no habría recibido ni una alimentación correcta ni una asistencia médica adecuada, y habría permanecido hasta hoy detenido sin previsión de juicio alguno. Se expresa preocupación acerca de la integridad física y psicológica del Sr. Guerra Pérez y del Sr. González Pérez, así como por la posibilidad de que sus detenciones estén relacionadas con las actividades periodísticas llevadas a cabo por ambos.

Comunicaciones recibidas

111. No se han recibido comunicaciones del Gobierno.

Comentarios y observaciones del Relator Especial

112. El Relator Especial se preocupa por la ausencia de respuesta por parte del Gobierno y pide encarecidamente al Gobierno tenga a bien enviarle a la brevedad posible, y preferentemente antes de la clausura del cuarto período de sesiones del Consejo de Derechos Humanos, informaciones precisas y detalladas acerca de las alegaciones arriba resumidas.

113. El Relator Especial tuvo el placer de recibir informaciones de fuentes no gubernamentales según las cuales Óscar Mario González Pérez fue liberado el 20 de noviembre de 2006. Sin embargo el Relator Especial no recibió informacion alguna en relación a Roberto Jesús Guerra Pérez.

Czech Republic

Communications sent

114. On 21 December 2006, the Special Rapporteur sent an allegation letter, regarding the dismissal of Judge Brozova as President of the Supreme Court. According to the information received, the President of the Republic dismissed Judge Brozova in accordance with Act N. 6/2002 Coll., section 106, which states that the head of a court may be recalled from his/her office by the person who appointed him/her, if he/she has seriously violated or repeatedly violates State administration duties stipulated by law or fails to perform his/her duties properly. Judge Brozova was appointed by the President on 20 March 2002. One of the reasons invoked by the Deputy Prime Minister and the Minister of Justice in their request to the President for the dismissal of Judge Brozova was that she did not fulfil her duty to unify the decisions of the Supreme Court. It is alleged that Judge Brozova was dismissed because she was taking her decisions independently from the remainder of the Supreme Court's judges. In this context, the Special Rapporteur received reports about the existence within the judiciary of strong pressure to achieve unconditional uniformity of judicial decisions. It is reported that it is not possible for Supreme Court judges to propose a dissenting opinion vis-à-vis an individual judicial decision; this is only possible vis-à-vis the decision of a Division (Criminal Division, Civil Division and Commercial Division), which is a collegium of judges. On 7 February 2006, Judge Brozova filed a complaint before the Constitutional Court against her dismissal. It appears that on 9 February 2006, the Constitutional Court, without anticipating the final result of the proceedings, decided to suspend the enforceability of the dismissal decision, highlighting the importance of the matter since it relates to the constitutional principle of separation of powers. On 12 September 2006 the Constitutional Court ruled that in dismissing Judge Brozova, the President had violated the independence of the judiciary. According to the information received, the President in turn accused the judiciary of wanting to usurp political power. For the President to dismiss the President of the Supreme Court form office constitutes a serious attack on the fundamental principles of the separation of powers and the independence of the judiciary. Articles 81 and 82 of the Constitution of the Czech Republic reflect these principles, which are fundamental to any democratic system. It is of fundamental importance that those provisions, which are in line with international norms and principles on the independence of the judiciary, be respected. Article 1 (2) and 10 of the Czech Republic Constitution compel the State to observe its obligations under international law. International norms and principles include article 14 of the International Covenant on Civil and Political Rights, as well as the Basic Principles on the Independence of the Judiciary.

Communications received

115. None.

Special Rapporteur's comments and observations

116. The Special Rapporteur hopes to receive a reply to his allegation letter of 21 December 2006 by 21 February 2007, as mentioned in his letter.

Democratic Republic of the Congo

Communications envoyées

117. Le 4 octobre 2006, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression a envoyé un appel urgent concernant la situation de M. Raphaël Majaliwa Mulindwa, auditeur militaire à Bukavu au Sud-Kivu. Selon les informations reçues, le 31 juillet 2005, Pascal Kabungulu, défenseur des droits de l'homme, a été assassiné à Bukavu. M. Majaliwa Mulindwa ayant en charge l'instruction dudit dossier, ses enquêtes ont abouti à l'établissement de la responsabilité de certaines autorités politiques dans cet assassinat. Depuis lors, M. Majaliwa Mulindwa aurait été menacé de mort et aurait été victime de plusieurs tentatives d'assassinat. Il a été déchargé de l'enquête et remplacé par un autre auditeur. Il a également été interpellé par le Ministre de la défense, M. Onusumba.

118. Le replacement de M. Majaliwa Mulindwa par un autre magistrat ainsi que les attaques qu'il subit entravent le cours de la justice et interfèrent très sérieusement avec l'indépendance de celle-ci. Dans ce contexte, de sérieuses craintes sont exprimées pour la sécurité de M. Majaliwa MulindwaDe sérieuses craintes ont été exprimées que les faits rapportés constituent une forme de représailles contre M. Majaliwa Mulindwa en raison de son instruction du dossier du défunt défenseur des droits de l'homme Pascal Kabungulu.

119. Le 27 octobre 2006, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur la violence contre les femmes, ses causes et ses conséquences, a envoyé un appel urgent concernant l'extraction forcée de la prison de Beni de M. André Muladji, chef d'agence de la Banque commerciale du Congo, poursuivi pour viol. Selon les informations reçues, lors de l'arrestation, le 9 octobre 2006, de M. André Muladji par le Procureur de la République pour des accusations de viol sur une mineure de 14 ans, des interventions et des menaces auraient été formulées à l'encontre du Procureur de la République en vue de l'inciter à revenir sur sa décision. Il n'aurait toutefois pas cédé à ces actes d'intimidation et aurait confirmé sa décision de maintenir M. André Muladji en détention à la prison de Beni. Au cinquième jour de détention par le parquet, le Procureur aurait demandé que le conseil de chambre se réunisse, le samedi 14 octobre 2006, afin de décider de la prolongation de la détention provisoire. C'est alors que le Président du tribunal de paix (siégeant en l'absence d'un tribunal de grande instance à Beni) aurait décidé d'émettre un avis favorable à la demande de mise en liberté provisoire présentée en faveur du mis en cause avec une caution de deux mille cinq cents (2 500) dollars des États-Unis. Le Procureur, considérant que cette décision est abusive, aurait introduit un appel qui serait suspensif de la décision du Président du tribunal de paix. Le même jour, les proches du mis en cause auraient alors eu recours au maire adjoint de la ville de Beni, M. Jules Mungwana, pour faire libérer l'intéressé. Le samedi 14 octobre 2006 vers 17 heures 30, le maire adjoint, le Chef de poste principal de l'Agence nationale de renseignements (ANR), le Lieutenant-Colonel John Tshibangu, commandant de la 89^{e} brigade, et d'autres membres du Comité urbain de sécurité de la ville de Beni seraient arrivés à la prison de Beni, ils auraient extrait de force M. André Muladji et l'aurait remis en liberté, en violation flagrante de la décision de justice applicable. Le maire adjoint aurait justifié son acte en indiquant que le Comité

urbain de sécurité de la ville de Beni aurait tenu une réunion extraordinaire le même jour pour des raisons d'ordre public. Les amis, sympathisants de parti politique et originaires de la même province (Kasai Occidental) du mis en cause auraient menacé de troubler l'ordre public en manifestant jusqu'à la prison pour en sortir l'intéressé. Afin d'éviter des troubles de l'ordre public, le maire adjoint aurait donc décidé d'aller libérer M. André Muladji. Les Rapporteurs spéciaux expriment de vives craintes face à ces allégations d'interférence du pouvoir exécutif local dans le domaine de compétence du pouvoir judiciaire, qui constituent une grave entrave à l'administration de la justice, à la lutte contre l'impunité, à l'élimination de la violence contre les femmes ainsi qu'à l'état de droit. L'intéressé ayant été arrêté et détenu en prison pour une inculpation de viol sur une décision de justice, seule une décision de justice, et non pas une décision administrative, aurait pu ordonner sa libération.

120. Le 8 décembre 2006, le Rapporteur spécial, conjointement avec la Présidente-Rapporteur du Groupe de travail sur la détention arbitraire, a envoyé un appel concernant la situation de Marie Thérèse Nlandu Mpolo-Nene, avocate au barreau de Kinshasa, et six de ses proches collaborateurs, parmi lesquels M. Bienvenu Makumbu, Pasteur José Inonga, M. Gauthier Lusiladio et M. Alpha, les deux autres personnes demeurant pour l'instant non identifiées. Selon les informations reçues, Marie Thérèse Nlandu Mpolo-Nene aurait été arrêtée le 21 novembre 2006 par les agents des services spéciaux de la police à Kinshasa alors qu'elle s'était rendue au siège des services spéciaux de la police, situé dans l'immeuble Kin-Mazière, pour apporter de la nourriture à six de ses collaborateurs, qui avaient tous été arrêtés le 20 novembre 2006 vers 15 heures par la police d'intervention rapide (PIR), alors qu'ils accompagnaient Mme Nlandu Mpolo-Nene qui rendait visite à une connaissance. Pendant qu'ils l'attendaient dans la voiture, les six hommes auraient été encerclés par quatre jeeps de la PIR avant d'être forcés de les suivre vers une destination inconnue. Le 21 novembre 2006, Mme Nlandu Mpolo-Nene, qui s'était rendue au siège des services spéciaux de la police suite à une audience à la Cour suprême de justice, aurait reconnu la voiture de ses collaborateurs sur le parking de l'immeuble. Après avoir reçu confirmation de leur détention dans les locaux des services spéciaux de la police, Mme Nlandu Mpolo-Nene serait revenue dans l'après-midi pour leur apporter de la nourriture et aurait alors été arrêtée sur place vers 16 heures, en compagnie de son garde du corps qui aurait été brutalisé. Ils auraient ensuite été placés en détention dans les mêmes locaux. À la suite de son arrestation, Mme Nlandu Mpolo-Nene aurait été interrogée par un officier des Services spéciaux, puis par le Procureur militaire de Kinshasa/Gomé. Le lendemain, le 22 novembre, elle aurait été interrogée à nouveau par le Procureur militaire qui lui aurait remis un mandat d'arrêt provisoire, l'accusant de « mouvement insurrectionnel » et de « possession illégale d'armes de guerre ». Elle aurait ensuite été placée en détention provisoire à la prison de Makala. Le premier chef d'inculpation, « mouvement insurrectionnel », serait fondé sur une déclaration que Mme Nlandu Mpolo-Nene aurait faite à l'extérieur de la Cour suprême le 20 novembre invitant la population à se rendre à une audience le lendemain. Le chef d'inculpation pour « possession illégale d'armes de guerre » serait lié à la découverte de trois grenades dans la voiture que conduisaient les collaborateurs de Mme Nlandu Mpolo-Nene le jour de leur arrestation. Par ailleurs, Mme Nlandu Mpolo-Nene ferait l'objet d'une campagne de dénigrement. Le soir même de son arrestation, elle aurait été présentée sur la chaîne TV

Digital Congo comme une terroriste qui s'apprêtait à faire exploser la Cour suprême de justice avec une grenade qui aurait été trouvée en sa possession. Le 1er décembre, l'avocat de Maître Nlandu Mpolo-Nene aurait déposé une demande de libération sous caution auprès du Procureur militaire qui doit se prononcer sur le statut de la détention de Mme Nlandu Mpolo-Nene. À ce jour, il ne se serait pas encore prononcé sur cette demande. À cet égard, il a été reporté que le Code militaire dispose que le mandat d'arrêt est valable pendant quinze jours et que dans le cas où le Procureur militaire n'accorde pas la libération sous caution, le magistrat militaire qui mène l'enquête est autorisé à maintenir la personne soupçonnée en détention pendant trente jours supplémentaires. La détention pourrait ensuite être prolongée pour une durée supplémentaire allant jusqu'à douze mois. Concernant la situation des six autres personnes détenues, d'après les informations reçues, ces personnes n'ont pas été informées des raisons de leur arrestation au moment de leur détention. Ce n'est que le lendemain de leur conduite à Kin Mazière qu'un officier leur aurait montré une petite boîte en alléguant que cette boîte contenait trois grenades et avait été retrouvée dans leur véhicule. Toutefois, l'officier ne leur aurait pas montré le contenu de la boîte. Ces personnes ne seraient pas représentées par un avocat. En outre, d'après des sources fiables qui ont rendu visite aux détenus, ces six hommes auraient eu des blessures fraiches sur les coudes et la poitrine, ce qui confirmerait leur affirmation selon laquelle ils auraient fait l'objet de traitements inhumains et dégradants durant leur arrestation et détention à Kin Mazière.

Communications reçues

121. Aucune.

Commentaires et observations du Rapporteur spécial

122. Le Rapporteur spécial regrette de devoir constater qu'en un an il n'a reçu du Gouvernement de la République démocratique du Congo aucune réponse aux allégations ci-dessus. Il n'a de même reçu aucune réponse aux allégations envoyées en 2005. Il invite donc instamment le Gouvernement à lui transmettre au plus tôt, et de préférence avant la fin de la quatrième session du Conseil des droits de l'homme, des informations précises et détaillées en réponse à ces allégations.

Ecuador

Comunicaciones enviadas

123. El 19 de junio del 2006, el Relator Especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y el Relator Especial sobre los efectos nocivos para el goce de los derechos humanos del traslado y vertimiento ilícitos de productos y desechos tóxicos y peligrosos, envió un llamamiento urgente sobre la situación de los abogados Pablo Fajardo Mendoza, Émel Chávez Parra, Alejandro Ponce Villacís, Carmen Allauca, Luis Yanza y Julio Marcelo Prieto Méndez, así como de su jefe de prensa Guadalupe de Heredia. Según la

información recibida, las personas arriba mencionadas habrían sido objeto de varias amenazas y ataques, debido supuestamente, a la actividad que desarrollan como abogados de las comunidades indígenas en los procesos en curso contra la filial en el Ecuador de la compañía Chevron Texaco. El 22 de diciembre de 2005, la Comisión Interamericana de Derechos Humanos (CIDH) emitió medidas cautelares respecto a la situación de cuatro de los cinco abogados mencionados con la excepción de Carmen Allauca. Se alega que las medidas de protección ordenadas por dicho organismo no han sido, hasta la fecha, ejecutadas. Asimismo, según se informa, se habría solicitado a la CIDH, el 28 de abril de 2006, que las medidas cautelares también fueran aplicadas a Guadalupe de Heredia quien habría sido objeto de varios ataques últimamente. El 21 de abril de 2006, una de sus amigas habría sido atacada por dos hombres que supuestamente la habrían golpeado en la cabeza y le habrían robado su cuaderno para tomar notas y el bolso cuando se dirigía a visitar a Guadalupe de Heredia a su domicilio. Se alega que dicho ataque iba dirigido a Guadalupe de Heredia, puesto que fue realizado en la entrada de su domicilio. Igualmente, se afirma que el 29 de abril de 2006, un camión sin placas intentó sacar de la vía el vehículo conducido por Guadalupe de Heredia, quien iba acompañada de su hija. Dicho ataque habría sido denunciado ante la Oficina del Fiscal el 12 de mayo de 2006. De otra parte, el 19 de mayo de 2006, la oficina de Julio Marcelo Prieto Méndez habría sido objeto de una intrusión ilegal. Según se informa, no hubo ningún robo a pesar de la existencia de varios equipos de oficina de un alto valor económico. Sin embargo, se alega que los archivos del Sr. Prieto Méndez habrían sido revisados. El Sr. Prieto Méndez presentó una queja ante la Oficina del Fiscal General en la ciudad de Quito, 28 de mayo de 2006, pero se desconoce si las autoridades han iniciado alguna investigación. Durante la reciente visita al Ecuador del Relator Especial sobre la situación de los derechos humanos y libertades fundamentales de los indígenas, llevada a cabo del 25 de abril al 5 de mayo de 2006, el Relator Especial discutió con el Presidente de la República las preocupaciones respecto a los ataques y amenazas contra los indígenas y sus representantes legales en casos de legítima protesta contra los impactos de las actividades extractivas en el país.

124. El 27 de noviembre de 2006, el Relator Especial envió una carta al Gobierno pidiendo informaciones sobre las acciones emprendidas para el seguimiento de las recomendaciones enumeradas en el informe de misión en Ecuador (E/CN.4/2006/52/Add.2), y otras informaciones sobre los progresos realizados en las cuestiones relacionadas al mandato.

Comunicaciones recibidas

125. Mediante comunicaciones de fechas 4 de julio y 18 de septiembre de 2006, el Gobierno del Ecuador proporcionó información con respecto al llamamiento urgente enviado el 19 de junio del 2006. El Gobierno indicó que la Procuraduría General del Estado estaba al tanto de las medidas cautelares tomadas por la CIDH el 22 de diciembre del 2005, pero insistió en el que de conformidad con el artículo 25(4) del Reglamento de la CIDH , el otorgamiento de medidas cautelares no prejuzga el fondo de la cuestión. Informó de que con fecha de 21 abril de 2006, el Gobierno puso en conocimiento de la CIDH el estado de ejecución de las medidas cautelares, y en particular el hecho de que la Dirección Nacional de Inteligencia de la Policía nacional había tomado contacto con los peticionarios el 5 de

enero de 2006 a fin de diseñar un mecanismo consensuado de seguridad para garantizar su vida e integridad física, en los términos dispuestos por la CIDH. El Gobierno declaró que los peticionarios han transmitido las siguientes denuncias. El señor Alejandro Ponce Villacís presentó una denuncia por supuesto robo cometido en sus oficinas el 7 de noviembre del 2005 ante la Unidad de Delito contra la propiedad de la Fiscalía Distrital de Pichincha. Al respeto, la Policía Judicial de Pichincha, mediante Parte Informativo 2006-605-PJP, de 23 de enero de 2006, informó de que la puerta de la oficina contaba con su respectiva seguridad y no presentaba ningún tipo de forzamiento. La Fiscalía informó que el caso se encuentra archivado. Asimismo, el señor Ponce Villacís presentó una denuncia por amenazas e intimidación, ante la Unidad de Delitos contra las personas, el día de 6 de enero de 2006, cuya etapa de indagación previa fue abierta el 18 de enero. Por su parte, la señora María Guadalupe de Heredia presentó una denuncia el 12 de mayo de 2006 por el presunto delito de intimidación. En ese mismo sentido procedieron los señores Ermel Chávez, Alejandro Ponce Villacís, Pablo Fajardo y Luis Yanza. El señor Ermel Chávez también presentó una denuncia por supuestos actos de intimidación y amenazas de muerte, ante la Fiscalía N.º1 del Cantón Lago Agrio, en la que tampoco ha reconocido su firma y rúbrica, en contra de lo dispuesto por el Artículo 46 del Código de Procedimiento Penal. El Gobierno alegó que no existe registro de que la señora Carmen Allauca haya presentado denuncia alguna y afirmó que ninguno de los querellantes ha solicitado examen médico alguno. Los casos se encuentran en fase de indagación previa y, conforme a lo dispuesto por el Artículo 215 del Código de Procedimiento Penal del Ecuador, se mantienen con carácter reservado para el público en general y han recibido el debido proceso conforme las normas legales vigentes en el país y las garantías que otorga la legislación ecuatoriana par este tipo de procedimientos. No existe aún procedimiento en firme en ninguna de las causas, no se han determinado culpables y por los tanto no se han establecido eventuales responsabilidades en los hechos imputados. No cabe en consecuencia y de acuerdo con las garantías constitucionales del debido proceso y de presunción de inocencia adoptar sanciones de ningún tipo. Por las mismas razones, ni las supuestas víctimas ni sus familiares han recibido compensación o indemnización alguna.

126. Mediante comunicación del 11 de enero de 2007, el Gobierno del Ecuador proporcionó información con respecto a la carta enviada el 27 de noviembre de 2006 en relación con las acciones emprendidas para el seguimiento de las recomendaciones enumeradas en el informe de misión en Ecuador. El Gobierno de Ecuador informó lo siguiente:

***a*) Equidad de Género en la integración de la Corte Suprema de Justicia:** Sobre el tema de la equidad de genero, la Corte Suprema de Justicia comparte el deseo de la Relatoría de que un 20 % de mujeres, integren la Corte; lastimosamente las mujeres no presentan sino pocas candidaturas, o aún están ausentes en las convocatorias a los concursos, esta situación escapa al control de la función judicial e imposibilita tal integración; igual problema existe en cuanto se refiere a la integración de los Tribunales con la participación de afroecuatorianos e indígenas;

***b*) Nueva Ley Orgánica de la Función Judicial:** La Corte Suprema de Justicia, desde hace varios años, remitió al Congreso Nacional un proyecto de Ley Orgánica de la Función Judicial, la actual Corte esta pendiente del seguimiento del destino de este proyecto, manteniendo contacto con el Congreso Nacional para lograr la aprobación de un

texto normativo en las mejores condiciones. En ese proyecto de Ley, se fortalecerá la carrera judicial y lo que tiene que ver con la Unidad Jurisdiccional, la Defensoría Publica y la cooptación de los magistrados de la Función Judicial. Además, la Corte Suprema de Justicia se encuentra empeñada en preparar e impulsar diversos proyectos legales que mejoren la administración de justicia, se trata de un conjunto de propuestas de reforma al Código de Procedimiento Penal, y otras leyes importantes que permitan lograr un sistema oral, ágil, eficaz y oportuno en el tramite de los procesos en todas las materias y no solo en lo penal;

***c*) El establecimiento de una eficaz defensoría publica:** La Comisión creada para la aplicación de la Reforma Procesal Penal, la misma que esta integrada por el Presidente de la Corte Suprema de Justicia, la Ministra Fiscal General, el Director de la Policía Judicial, el Subsecretario Jurídico de la Presidencia de la Republica, el Ministro de Gobierno y la Fundación Esquel, impulsó el proyecto de Ley de Defensa Publica y lo presentó al Congreso Nacional. Dicho proyecto de ley establecía una institución autónoma, denominada Defensoría Publica, con presupuesto propio, que cuente con defensores de planta, es decir abogados contratados por el Estado y abogados de organizaciones de la sociedad civil, con absoluta independencia de cualquier otro órgano o función estatal, con el fin de que brinden un servicio efectivo de defensa para todas las personas que no están en capacidad de contratar los servicios de un abogado, con atención especial a los grupos vulnerables, para evitar que persona alguna quede estado de indefensión. Hace pocas semanas el Congreso Nacional aprobó dicha Ley; sin embargo por no contar con la fuente financiamiento en el Prepuesto General del Estado, el Presidente de la Republica objetó totalmente esa Ley y, de acuerdo con lo dispuesto en la Constitución Política ecuatoriana, es necesario esperar un año para insistir en el tema;

***d*) Concreción del principio de unidad jurisdiccional:** El Consejo Nacional de la Judicatura ha presentado ante el Congreso Nacional un proyecto de ley que aun no se ha tramitado, mediante el cual se pretende viabilizar el cumplimiento de la disposición 26.ª de la Constitución que señala: “Todos los magistrados y jueces que dependan de la Función Ejecutiva pasaran a la Función Judicial y, mientras las leyes no dispongan algo distinto, se someterán a sus propias leyes orgánicas”. Esta disposición incluye a jueces militares y de policía. Por su parte el Ministerio de Defensa, ha presentado el proyecto de Ley Orgánica de las Fuerzas Armadas, ante el Congreso Nacional, en concordancia con la Unidad Jurisdiccional, la Comisión de lo Civil y lo Penal del Congreso Nacional se encuentra analizando dicho proyecto y se espera que su informe sea favorable;

***e*) Integración del Consejo Nacional de la Judicatura:** El consejo Nacional de la Judicatura se encuentra ya debidamente integrado y cumpliendo sus funciones especificas, de acuerdo con la Constitución y la Ley;

***f*) Iniciativas de cooperación internacional en el ámbito de la Justicia**
La Corte Suprema desde que quedó integrada, ha impulsado y ha retomado los proyectos de Cooperación Internacional para la Administración de Justicia, los cuales han sido canalizados por intermedio de la Unidad de Coordinación para la Reforma de la Administración de Justicia en el Ecuador (Projusticia);

***g*) Integración del Tribunal Constitucional profesionalizado e independiente:** El 22 de febrero de 2006, se llevó a cabo la elección de los nuevos vocales del Tribunal Constitucional de las ternas enviadas por los colegios electorales, mediante un proceso transparente que generó confianza en la sociedad por la participación de destacados juristas

de la sociedad. El 24 de febrero de 2006, se posesionaron los nuevos vocales, dando paso a las reuniones preparativas para designar a las autoridades nominadoras de este organismo. El 6 de marzo de 2006 fue designado en calidad de Presidente del Tribunal Constitucional el Dr. Santiago Velásquez Coello; y, como Vicepresidente, el Dr. Tarquino Orellana Serrano. Cabe destacar que estas personalidades fueron acreditadas de las dos ternas que envió la Corte Suprema de Justicia, que realizó un concurso de meritos y oposición, con el aval de la sociedad. Los vocales elegidos y posesionados se organizaron internamente, quedando conformadas las respectivas salas. Esta organización responde a una distribución equitativa, conociendo todas ellas, por sorteo, las diferentes acciones y recursos constitucionales sometidos a su análisis y resolución. El Tribunal Constitucional, tal como lo indica la Ley, actúa con autonomía e independencia. Además, sus vocales han procurado establecer una agenda de trabajo, en la que se destacan como puntos principales: la independencia judicial, realización de procesos integrales para todo el sector, actualización de normativa, actividades y acciones de lucha contra la corrupción, capacitación y rendición de cuentas a la sociedad ecuatoriana. Por su parte, la Corte Suprema de Justicia, aun después de haber participado en la conformación del Tribunal Constitucional, con el envío de los candidatos que le corresponden, considera que para resolver los problemas de la real independencia y profesionalización que el Tribunal Constitucional debe reunir, se requieren reformas legales y constitucionales que aun no se han dado. Sin embargo, se informa que, una vez que el nuevo Presidente de la Republica asuma la jefatura del Estado, el 15 de enero de 2007, se podrán evaluar los pasos que a futuro se proyecten para la posible convocatoria a una Asamblea Constituyente que eventualmente asumirá el proyecto de una nueva Constitución ecuatoriana en la que se regularán dichos aspectos;

***h*) Conformación de un Tribunal Supremo Electoral imparcial:** El Presidente electo, que se posesionará en el cargo el 15 de enero de 2007, planteó durante su campaña electoral, una reforma política profunda, para lo cual ha informado que convocará a una consulta popular, con el fin de establecer una Asamblea Constituyente, con plenos poderes. La reforma política pretende lograr la independencia y corresponsabilidad de las funciones del Estado y la reestructuración de los organismos de control. Entre las principales reformas esta la despartidización del Tribunal Supremo Electoral, del Tribunal Constitucional y de todos los organismos de control. Además, se pretende reformar la Ley de Elecciones para obligar a los partidos a democratizar sus estructuras y regular la revocatoria del mandato para todas las dignidades de elección popular, entre otras reformas. Se busca una correcta administración de justicia, garantizar la seguridad y los derechos de las personas. Sin embargo, las reformas señaladas aún no se ha concretado, inclusive el estatuto para la Asamblea Constituyente está todavía en la etapa de discusión entre varios movimientos sociales y el buró político del Presidente electo;

***i*) Nombramiento del Ministro Fiscal General:** En cuanto al nombramiento del nuevo Ministro fiscal General del Estado, de acuerdo con la Constitución y la Ley, el Consejo Nacional de la Judicatura se encuentra actualmente en el trámite del concurso correspondiente, convocado públicamente y en forma transparente, lo que culminará con la conformación de la terna que se remitirá al congreso Nacional para la designación del caso.

Comentarios y observaciones del Relator Especial

127. El Relator Especial agradece al Gobierno del Ecuador su grata cooperación y

aprecia que el mismo haya tenido a bien enviarle informaciones sustantivas en respuesta a las alegaciones que les transmitió el 4 de julio de 2006. El Relator Especial quisiera recibir en la brevedad posible informaciones recientes sobre los resultados de las investigaciones emprendidas respecto a estos casos de amenazas. En efecto, nota con preocupación el hecho de que los actos de intimidación persiguen. Fue recientemente informado del que un grupo de personas trató de entrar en el domicilio de Guadalupe de Heredia durante la noche del 23 de octubre después que ella atendió una conferencia sobre los derechos humanos. Ella informó la Policía de los hechos el 25 de octubre.

128. El Relator Especial nota con satisfacción la información recibida en relación con el informe de su visita al Ecuador, y felicita el Gobierno por el seguimiento que ha dado a varias de sus recomendaciones y por las reformas que continúan a llevarse a cabo para lograr un sistema que garantize la independencia y efectividad del poder judicial en el pais.

Egypt

Communications sent

129. On 22 February 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression regarding four judges, Ahmed Mekki, Mahmoud Mekki, Mahmoud al Khudayri and Hisham Bastaweessee, who are all Vice-Presidents of the Court of Cassation. According to information received, the High Council of the Judiciary lifted the immunity of the four judges for publicly criticizing fraudulent acts which are alleged to have occurred during the parliamentary elections in 2005, as well as criticizing a proposed bill on the administration of justice. This followed the issuance of statements by the Judges Clubs in Cairo and Alexandria, referring to numerous complaints they had received from judges and stating that the complaints should be examined by the Prosecutor-General. The Judges Clubs also requested the Prosecutor-General to look into the incidents involving judges during the elections, and possibly to provide compensation for the judges involved. Ahmed Mekki, Mahmoud Mekki, Mahmoud al Khudayri and Hisham Bastaweessee are being interrogated by the State Security Court, which was established under the emergency law. It is reported that the State Security Court has not taken time to investigate claims by the judges and a number of civil society organizations that fraudulent acts took place during the elections, but it has been very quick to commence an investigation against the judges for making statements that fraudulent acts had occurred. The Special Rapporteurs and the Special Representative are concerned that the lifting of the judicial immunity of the judges and their interrogation by the State Security Court is a violation of their right to freedom of expression as well as an attempt to pressure them, which would amount to an interference with the independence of the judiciary.

130. On 24 March 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Nagi Dirbala, Ahmad Saber and Assem Abdel Gabbar, three Deputy Heads of the Court of Cassation. According to the information received, the

High Council of the Judiciary lifted the immunity of Nagi Dirbala and Ahmad Saber to enable their interrogation in connection with statements they had made criticizing fraudulent acts that had allegedly occurred during the parliamentary elections in 2005, and their comments related to the reform of the administration of justice. Concern is expressed that these events may fall into the reported pattern of harassment against members of the judiciary who express critical views of the Government. Ahmed Mekki, Mahmoud Mekki, Mahmoud al Khudayri and Hisham Bastaweessee have already been the subject of an appeal by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers, sent on 22 February 2006 (see above). The Special Rapporteurs reiterate the concern expressed in that urgent appeal that the lifting of the judicial immunity of this large number of judges of the Court of Cassation and their interrogation by the State Security Court represents a violation of their right to freedom of expression and may represent an attempt to pressure them that would amount to an interference with the independence of the judiciary.

131. On 5 May 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding the members of Egypt's Judges Club and demonstrators who gathered to support the assembly of the Judges Club, as well as Ahmed Mekki, Mahmoud Maki, Hisham Bastawissi, Mahmoud al Khudayri, Nagi Derbala, Ahmad Saber and Assem Abdel Gabbar, all Deputy Heads of the Court of Cassation. According to the information received, the Minister of Justice decided to transfer Judges Maki and Bastawissi to the Disciplinary Council. It is alleged that this decision is an infringement of the independence of the judiciary and a breach of the provisions of the Judiciary Authority Law relating to the investigation of judges, and is intended to punish the two judges for their allegations of widespread electoral fraud during the parliamentary elections of 2005 and for their activism in favour of judicial reform, including their calls for amendment of the Judicial Authority Law to guarantee the impartiality and the financial and administrative independence of the judiciary. In particular, it is alleged that currently the Judicial Authority Law provides the Minister of Justice with the powers to determine the composition of the Supreme Judicial Council, to appoint the Head of the Court of Cassation and to decide on the budget. Such control of the Supreme Judicial Council allows the Minister to influence that body's decisions on the appointment, promotion, transfer and discipline of all judges. Also, the Disciplinary Council is headed by the Head of the Court of Cassation (appointed by the Minister of Justice) and possesses the power to dismiss judges. On 19 April 2006, to protest against this decision, the Judges Club launched a sit-in at its headquarters in Cairo. On 24 April, hundreds of police arrived in front of the Judges Club where a group of peaceful protesters had gathered in support of the judges' sit-in. Police tore down banners listing the Judges Club's demands and verbally and physically attacked some of the protesters. When Judge Hamza took out his mobile phone in an attempt to photograph the events, several police officers and two State Security Intelligence (SSI) officers verbally insulted and physically assaulted him and forced him into a police vehicle along with 14 other protesters. It is reported that SSI officers, officers

from Kasr al Nil station and officers from Shurtat Al-Marafik participated in the attack on the protesters. All three forces operate under the Ministry of the Interior. In addition, it is alleged that these events took place in the presence of high-ranking Ministry officers. Judge Hamza, his brother and a university professor were released later that day upon the intervention of the President of the Judges Club. Upon his release, Judge Hamza was taken to the hospital for treatment. According to a medical report from the Shahir Hospital of Masr Al-Gedina, he suffered several injuries including twisted ligaments in his wrist, a bloody nose and a number of scratches and bruises on his face, chin and feet. He remains hospitalized. This attack is particularly grave considering that Judge Hamza had undergone open-heart surgery. The 12 other people arrested on 24 April 2006 are in custody following an order by the Prosecutor- General to detain them for 15 days pending the results of the interrogations in accordance with article 206 of the Criminal Procedures Law. They are charged with making false claims, resisting authorities and assembling and blocking public roads. The next day, the Prosecutor-General issued a statement accusing the protesters of attacking the police sent to remove banners. Concern is expressed that the Prosecutor-General issued this statement before the completion of the investigations, in violation of his obligation of impartiality and confidentiality. According to the information received, two similar incidents occurred on 26 and 27 of April 2006, when hundreds of police again intervened during the peaceful sit-in at the Judges Club and the peaceful protests in support of the Judges Club demands held outside its premises. On 26 April, charges were brought against 16 protesters and on 27 April, against 12. The accusations included assembly, insulting the President of the Republic, purposefully delaying public transportation, slander of public officials, destroying public property and possession of publications. It is also reported that the State Security General Prosecution issued arrest warrants for 13 additional protesters, charging them with organizing demonstrations and possessing publications aimed at disrupting public order. Reports indicate that thus far two of them have been arrested. Concern is expressed that these events fall into the reported pattern of harassment of members of the judiciary and their supporters who express critical views against the Government. Concern is heightened by the fact that the transfer of Mahmoud Maki and Hisham Bastawissi to the Disciplinary Council follows the lifting of the immunity, in order to initiate an investigation, of five other deputies to the Head of the Court of Cassation, Ahmed Mekki, Mahmoud al Khudayri, Nagi Derbala, Ahmad Saber and Assem Abdel Gabbar, for expressing their opinions regarding the parliamentary elections in 2005 and the reform of the administration of justice. Those judges have already been the subject of two appeals by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers, sent on 22 February and 24 March 2006 (see above). The Special Rapporteurs express their serious concerns that these incidents, as well as the lifting of the judicial immunity of this large number of judges of the Court of Cassation and the investigation into their activities constitute an attempt to prevent the judges and the demonstrators supporting their cause from exercising their right to freedom of expression and freedom of association, in particular with regard to their claims relating to a democratic system and the financial and administrative independence of the judiciary. They also express their concern at the fact that the Government refuses to involve the Judges Club in the drafting of the proposed amendments to the Judicial Authority Law, a

law that directly affects their profession and in relation to which the judges' comments should be taken into serious consideration.

132. On 12 July 2006, the Special Rapporteur sent an allegation to the Government of Egypt about the Judicial Authority Law which was approved by the Egyptian Parliament on 26 June 2006. He indicated that the law in question fails to address a number of concerns referred to in his previous communications to the Government dated 22 February, 23 April and 5 May 2006 as well as a press release of 14 June 2006. The Special Rapporteur expressed his serious apprehension about the negative impact that this law may have on the independence of the judiciary in Egypt. He drew the attention of the Government to some of his specific concerns regarding this reform:

- The law does not set out clear criteria for the selection and appointment of judges. The law should clearly spell out such criteria, which should include appropriate legal training and qualifications in law, integrity and ability. The law should clearly state that women have the right to occupy these positions in full equality with men, and prohibit any discrimination against a person on the grounds of gender, race, colour, religion, political or other opinion, national or social origin, property, birth or status;

- The law fails to recognize the right of judges to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence;

- The law does not set out objective criteria for the assignment of cases to judges but allows heads of court to assign specific judges to cases;

- The law prevents judges from being represented by a lawyer to defend them before a disciplinary court, in breach of the constitutional and internationally recognized right of all citizens to be represented by a lawyer at all stages of legal proceeding brought against them. Also, the law does not provide judges with an effective right to challenge a disciplinary decision before a higher court, since it limits such second-degree review to an error in law and does not allow for a review on the substance of the litigated issue. Therefore, the disciplinary procedure against judges is seriously flawed and does not comply with minimum fair trial guarantees;

- The law retains the system whereby judges are seconded to perform non-judicial work within the executive branch, and extends the period of secondment from three to six years. Such secondment, and its particularly long duration, is not compatible with the fundamental principles of the separation of powers and the independence of the judiciary: it endangers the independence of judges by requiring them to serve the executive for particularly long periods of time. Moreover, for certain high-ranking posts close to the Minister, no maximum secondment period is set. It is also of utmost concern that no objective criteria are set for decisions on secondment; such decisions can therefore be used to put pressure on judges, to threaten or reward them, and therefore seriously infringes their independence;

- Finally, the law does not clearly address the separation between the prosecution and the executive branch, and does not set clear criteria for the selection of the Chief Prosecutor.

Special Rapporteur's comments and observations

133. The Special Rapporteur is concerned that instead of reducing the tension, which has already led to a number of demonstrations by judges and civil society in recent months, the law will only further aggravate the crisis. One reason may be that the above concerns and the views of the Judges Clubs were not taken into consideration in preparing the draft. The Special Rapporteur therefore urges the Government to consider refraining from promulgating the proposed law and to relaunch the legislative process by sending the law back to the Parliament for reconsideration, allowing for deliberation through further dialogue and consultation with all sectors concerned, in particular the Judges Clubs and experts in constitutional law. Such a process would allow Egypt to be equipped with a judicial law that is consistent with international norms and principles on judicial independence and to preserve the reputation, credibility and independence of Egypt's judiciary.

Communications received

134. On 11 May 2006, the Government replied to the joint urgent appeal of 5 May 2006, indicating that Judge Mahmud Sadiq Birham, Head of the Cairo Court of Appeal, filed a complaint with the Department of Public Prosecutions stating that during the National Assembly elections he had chaired the general committee for the Nabruh District in the Governorate of Daqhaliyah during both rounds of the election and that the committee had performed its duties to the best of its ability, as confirmed even by the candidates who failed to win a seat. However, he had been astonished by an item published in the *Sawt al-Ummah* newspaper on 12 December 2005, attributed to journalist Huda Abu Bakr and entitled "Blacklist of judges accused of rigging the elections". The article gave his initials (M.S.B.) and the name of the election committee which he had chaired. He had furthermore been surprised by a front-page story published in the *Afaq Arabiyah* newspaper on 22 December 2005 listing the full names, including his own, of judges who were said to have rigged the elections. He asked for a criminal action to be brought against all those who had defamed him. Investigations revealed that the press statements accusing Judge Birham and other judges of rigging the elections had come from Judge Mahmoud Maki and Judge Hisham Bastawissi. It also emerged that the two men had not provided any proof of the allegations against the judge; this constitutes unlawful damage to the victim's reputation. All these elements constitute the offence of defamation, which is a crime under the Criminal Code. The two men were therefore sent before a disciplinary tribunal in accordance with article 99 of the Judicial Authority Act. The disciplinary hearing was conducted in accordance with the terms and guarantees contained in the Act. On 18 May 2006, the judicial disciplinary tribunal, chaired by the Chief Justice of the Court of Cassation, acquitted Judge Maki because the premise of his remarks, namely that an investigation was needed to verify the charges, had been deleted from the press report. Moreover, he had not said anything to indicate that he believed the report to be true. On the

other hand, Judge Bastawissi was found guilty and was censured by the disciplinary board. Censure is a disciplinary penalty that does not prevent a judge from carrying out his work. It was imposed on the judge because he had accused the complainant of rigging the elections without providing any evidence to support the charge.

135. The investigation of the two judges was based on a complaint brought by the victim for defamation. This is an offence under the Egyptian Criminal Code. The Department of Public Prosecutions, which is part of the judiciary, launched the investigation on the basis of the victim's complaint and referred both judges to the competent disciplinary tribunal for a judicial hearing in accordance with the Judicial Authority Act. This is consistent with the international human rights treaties to which Egypt is a party. The investigation was not launched because of a complaint about the views of the two judges on the parliamentary elections or judicial reform. Moreover, the draft law on amending the Judicial Authority Act was publicized as soon as it was given Cabinet approval. A delegation from the Judges Club met with the speaker of the Advisory Council and the speaker of the National Assembly to present the Club's views on the draft. There is no truth to the complaint by the two Special Rapporteurs that judges Nagi Derbala, Ahmed Saber, Ahmed Mekki and Mahmoud al-Khudayri were investigated for expressing their views about the parliamentary elections and judicial reform. The disciplinary case was only brought against Judge Hisham Bastawissi and Judge Mahmoud Maki. All domestic laws and international treaties stipulate that the right to freedom of expression must be exercised in a manner that is lawful and does not damage the reputation of others without substantiating evidence (paragraph 2 of article 302 of the Code of Criminal Procedure, based on the European Convention on Human Rights).

136. On 24 July 2006, the Government replied to Special Rapporteur's allegation letter of 12 July 2006 indicating that it is not within the mandate of the Special Rapporteur on the independence of judges and lawyers to comment on laws approved by the Egyptian Parliament, or to attempt to intervene with the executive branch of Government with a view to a veto of these laws. Further, the Government declared that the legislative authority of Egypt enjoys full independence from the executive branch, in conformity with the provisions of the Egyptian Constitution, which stipulate full separation between the different branches of Government.

Special Rapporteur's comments and observations

137. The Special Rapporteur thanks the Government of Egypt for its cooperation and the detailed information provided to the allegations relayed to it on 5 May and 12 July 2006. He regrets however that his communications of 22 February 2006 and 24 March 2006 have remained unanswered and urges the Government to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, detailed substantive answers to the allegations relayed in these communications.

138. Concerning the joint urgent appeal of 5 May 2006, the Special Rapporteur notes with appreciation that Judge Mahmoud Maki has been acquitted, while noting with deep concern the grounds for his acquittal and the fact that Judge Hisham Bastawissi was

censured by the disciplinary board for his comments on the organization of the elections. In this regard, the Special Rapporteur would like to remind the Government that judges enjoy freedom of expression. The Special Rapporteur is reassured by the assertions of the Government that the disciplinary penalty against Judge Bastawissi will not prevent him from carrying out his work. However, he would be grateful to the Government for providing information on the practical implications of this censure.

139. The Special Rapporteur regrets not having received information about any investigation into the assaults against Judge Mahmoud Abdel Latif Hamza by the security forces as requested in his letter to the Government and he encourages the Government to do so. He would also like to receive the details about the investigations which have led the Government to conclude that there was no truth to the complaint by the two Special Rapporteurs that judges Nagi Derbala, Ahmed Saber, Ahmed Mekki and Mahmoud al-Khudayri were being investigated. The Special Rapporteur will continue to follow up on these cases and strongly encourages the Government to pursue its investigation into these allegations.

140. Concerning the communication from the Government of 24 July 2006, the Special Rapporteur would like to underline that in accordance with Commission on Human Rights resolution 1994/41, his mandate extends to all attacks on the independence of the judiciary. In this respect, the Special Rapporteur, while reiterating his concerns about the Judicial Authority Law, invites the Government to engage in a constructive dialogue with the Special Rapporteur to ensure that the Judicial Authority Law is in full compliance with the international standards relating to the administration of justice.

Press releases issued by the Special Rapporteur

141. On 14 June 2006, the Special Rapporteur issued the following press release:

> “HUMAN RIGHTS EXPERTS CONCERNED OVER ATTACKS ON EGYPTIAN JUDICIARY
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> ”The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, today expressed grave concern over recent attacks against the judiciary in Egypt and the severe repression of demonstrations organized by civil society in support of the judiciary. The experts also expressed their serious concern with regard to the Egyptian Government's decision to transfer two Deputy Heads of the Court of Cassation, Judges Mahmoud Mekki and Hisham al- Bastawissi, to the Disciplinary Council. They note that on 19 May 2006, the Disciplinary Committee cleared Judge Mekki of all charges but found Judge al-Batawissi guilty of disparaging the Supreme Judicial Council and talking to the press about political affairs, thereby exposing him to be dismissed from the judiciary if he commits another offense and preventing him from accessing future promotions. Concern is also expressed that

the Disciplinary Council is headed by the Head of the Court of Cassation (appointed by the Minister of Justice) and possesses the power to dismiss judges. The independent experts are gravely worried that this decision represents a means to punish Judge al-Batawissi for exercising his right to freedom of expression with regards to the allegations of widespread electoral fraud during the parliamentary elections of 2005 and deter other judges from further action in favor of judicial reform. In particular, the independent experts are disturbed by the fact that this decision may aim at deterring the other judges whose immunity has also been lifted from continuing their calls for amending the Judicial Authority Law to guarantee the impartiality and the financial and administrative independence of the judiciary. The experts note the concerns expressed by a number of Egyptian judges at provisions included in the proposed Judicial Authority Law which reportedly may undermine the independence of the judiciary by providing the Minister of Justice power to determine the composition of the Supreme Judicial Council, to appoint the Head of the Court of Cassation and to decide the budget. Such control of the Supreme Judicial Council allows the Minister to influence that body's decisions on the appointment, promotion, transfer and discipline of all judges. The experts note that Judicial Authority Law will be submitted to the Parliament this week and call on the Government to ensure that the judges' proposals are taken into consideration and sufficient time is given to members of Parliament to appropriately consider their views. The experts also expressed alarm regarding the excessive use of force displayed against judges, human rights defenders, journalists and civil society in general during their peaceful protests in support of the independence of the judiciary and the two investigated judges. In particular, the experts were informed that on 18 May 2006, during a peaceful demonstration law enforcement agents arrested and struck dozens of protesters and over 240 members of the ‘Muslim Brotherhood’ and the ‘Kifaya’, in Cairo and Alexandria and deprived several journalists of their cameras and beat them. In previous peaceful demonstrations, a judge was severely injured by police officers on 25 May 2006. Following another peaceful demonstration in support of the independence of the judiciary, severe beatings by security agents were reported, in particular political activist Karim al-Sha`ir was repeatedly beaten before and during his custody and Mohamed al-Sharqawi was beaten and tortured during custody. The disciplinary decision of the Government, the proposed Judicial Authority Law and the violent attacks on peaceful demonstrators constitute interference with the independence of the judiciary and a violation of the freedom of opinion and expression and right to protest guaranteed by relevant international human rights instruments, in particular the International Covenant on Civil and Political Rights, the 1998 Declaration on Human Rights Defenders and the Basic Principles on the Independence of the Judiciary, which guarantee these rights to judges, human rights defenders and journalists. The independent experts reiterate the concern they already expressed to the Government on different occasions in the past few months, but in relation to which they have received no response. They reaffirm that judges are, like other citizens, entitled to freedom of opinion and expression, belief, association and assembly, and that they are free to exercise these rights in particular in order to represent their interests, to promote their professional training and to protect their

judicial independence. They urge the Government to take all appropriate measures to guarantee both these freedoms and the independence of the judiciary, which is a fundamental safeguard for justice and for the protection of the human rights of all people in Egypt".

142. On 14 July 2006, the Special Rapporteur issued the following press release:

"HUMAN RIGHTS EXPERT CONCERNED OVER LAW ON THE JUDICIARY IN EGYPT

"The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, today expressed serious concern over a law regulating the judiciary in Egypt, which was approved by the Egyptian Parliament on 26 June 2006. Promulgation of the law depends now on the will of President Hosni Mubarak. In a letter dated 12 July 2006 addressed to President Mubarak, the Special Rapporteur expressed his concerns regarding the negative impact of the judicial authority law on the independence of the judiciary in Egypt, and urged him to refrain from promulgating the law and to send the law back to the Parliament for reconsideration. He underlined that, contrary to the process of adoption of the current text, it is essential that discussion on a new law take place in consultation with all sectors concerned, in particular the Judges' Clubs and experts in constitutional law, whose point of view should be duly taken into account. Concerning the text of the law, the Special Rapporteur expressed particular concern over the fact that it does not set out clear criteria for the selection and appointment of judges and of the Chief Prosecutor, that it fails to recognize the right of judges to form and join associations of judges to represent their interests and protect their judicial independence, and that it does not set out objective criteria for the assignment of cases to judges, which would allow heads of courts to assign specific judges to cases against the right of every citizen to their natural judge. The law also fails to clearly address the separation between the prosecution and the executive power. Moreover, the Special Rapporteur is seriously concerned by the fact that the law does not provide judges with basic fair trial guarantees in the framework of disciplinary procedures. The law prevents judges to be represented by a lawyer to defend themselves before a disciplinary court, and does not provide them with an effective right to challenge a disciplinary decision before a higher court, in breach of the constitutional and internationally recognized right of every person to have a judicial decision reviewed by a higher tribunal and to be represented by a lawyer of one's own choice before a court."

Ethiopia

Communications sent

143. On 9 January 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative

of the Secretary-General on the situation of human rights defenders regarding the situation of Tilahun Ayalew, Anteneh Getnet and Meqcha Mengistu, prominent members of the Ethiopian Teachers' Association (ETA), Ethiopia's main teachers' trade union. Mr. Getnet was previously the subject of an urgent appeal sent 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, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 28 September 2006. That communication, in which the experts brought to the Government's attention allegations that Mr. Getnet was abducted and beaten by members of the security forces in May 2006 and again abducted and taken to an undisclosed location on 23 September 2006, has unfortunately remained without a reply from the Government. According to the information recently received, Tilahun Ayalew was arrested on 14 December 2006 and Anteneh Getnet on 29 December 2006. Both have since been held incommunicado by police at the headquarters of the Central Investigation Bureau (Maikelawi) in Addis Ababa. Mr. Ayalew and Mr. Getnet appeared before a judge, but they were reportedly neither charged, nor given access to legal counsel or their relatives. Since 15 December 2006 Meqcha Mengistu has reportedly been detained by the police at a secret location after being under police surveillance for several days. His exact whereabouts are not known and the authorities deny all knowledge of his whereabouts. In view of their incommunicado detention, concern is expressed as to the physical integrity of Tilahun Ayalew, Anteneh Getnet and Meqcha Mengistu. Further concern is expressed that their arrest and detention may be related to their legitimate activities in defence of human rights, in particular the promotion of labour rights of teachers.

144. On 5 May 2006, the Special Rapporteur sent a joint urgent appeal to the Government, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, concerning Mesfin Woldermarian, former Chair of the Ethiopian Human Rights Council, Netsanet Demissie, an environmental rights lawyer and founder of the Organization for Social Justice in Ethiopia, Daniel Bekele, a policy, research and advocacy manager of the non-governmental organization ActionAid, and Kassahun Kebede, Chair of the Addis Ababa branch of ETA. Mr. Bekele was the subject of an urgent appeal sent jointly by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 25 October 2005, and of an urgent appeal sent 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 Special Representative of the Secretary-General on the situation of human rights defenders on 18 November 2005. Mr. Demissie was mentioned in the urgent appeal sent on 18 November 2005. According to the information received, Mesfin Woldermarian, Netsanet Demissie, Daniel Bekele and Kassahun Kebede are currently in prison facing charges of treason. Their trial is due to begin in May and if convicted they may face the death penalty. All of the above-mentioned people were arrested because of their participation in pro-democracy demonstrations in 2005. Grave concern is expressed that the charges against Mr. Woldermarian, Mr. Demissie, Mr. Bekele and Mr. Kebede are connected with their activities in defence of human rights, in particular because of their participation in peaceful protests.

145. On 8 September 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders concerning the trial of 76 prisoners, among whom are four human rights defenders: Prof. Meslin Wolde Mariam, founder of the Ethiopian Human Rights Council (EHRCO), Daniel Bekele from ActionAid, Netsanet Demissie from the Organization for Social Justice in Ethiopia and Kassahun Kebede from the Ethiopian Teachers Association. There are also several leaders of the opposition coalition, the Coalition for Unity and Democracy (CUD), including Berhanu Nega, the elected mayor of Addis Ababa and deputy chairman of the opposition party; 14 editors and reporters of independent and privately owned newspapers, including Sarkalem Fasil; academics, lawyers and former judges, including Anteneh Mulugeta, a former judge; Birtukan Midela, also a former judge; and Yakob Hailemariam, a former prosecutor at the International Criminal Tribunal for Rwanda and a former United Nations Special Envoy in the Cameroon-Nigeria border dispute. Prof. Wolde Mariam was the subject two previous joint urgent appeals sent on 3 November 2005 and 5 May 2006. Mr. Bekele was the subject of three joint urgent appeals sent on 5 May 2006, 18 November 2005 and 25 October 2005. Mr. Nega was the subject of a joint urgent appeal sent 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, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 3 November 2005, and of an appeal sent by Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 5 January 2006. Ms. Fasil was the subject of an urgent appeal sent 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 Special Representative of the Secretary-General on the situation of human rights defenders on 8 August 2006. According to the information received, the trial of the 76 prisoners started on 2 May 2006 following their arrest in Addis Ababa between 1 and 4 November 2005 by the Federal Police and military forces because of their participation in a peaceful demonstration on 15 May 2005 to contest the results of elections. The accused are reportedly charged with "conspiracy, genocide and treason". They have been held in Kaliti jail where 60 prisoners were reportedly killed by the police on 2 November 2005. Conditions of detention are reportedly very poor: the cells are overcrowded, and some detainees were refused health care. Serious concerns have been expressed that the 76 accused may not get a fair trial because of their activities in defence of human rights. It has further been reported that the defendants faced difficulties in their access to a lawyer. Moreover, Behane Mogese, a member of the Ethiopian Bar Association who is acting as a defence lawyer for senior opposition leaders from CUD, was allegedly arrested by security forces at his home on 19 February 2006. He allegedly appeared in court on 6 March 2006, when he was remanded in custody for 14 days without charge. On 21 March 2006, he was again brought before the court and remanded in custody for 10 more days, as the investigating officers claimed that they had not completed their investigation. The experts have learned that in Ethiopia, police and security officers are required to be present during the meeting of defence lawyers and their clients, and that exchanging communications and documents is prohibited. Finally, the experts are deeply concerned about the fact that the right of the

accused to a fair trial allegedly has not been respected by the courts, which is aggravated by the fact that charges against them could lead to the death penalty.

Communications received

146. On 7 June 2006, the Government of Ethiopia replied to the urgent appeal sent by the Special Rapporteur on 5 May 2006, stressing that the Government remains fully committed to the scrupulous respect of all international conventions and is always ready to engage in a constructive dialogue for the fullest realization of the provisions contained therein. The Government acknowledged that the leadership of the main opposition party CUD, journalists and others have been arrested and are facing criminal prosecution before a court of law for crimes of high treason, outrages against the Constitution and the constitutional order, obstruction of the exercise of constitutional powers, armed uprising or civil war, impairment of the defensive power of the State and attempted genocide. However, it stressed that the accused have not been detained because of their participation in pro-democracy demonstrations in 2005, as stated in the allegation, but because of their active participation in the street violence that occurred following the May 2005 demonstrations, which led to numerous fatalities among law enforcement officers and civilians as well as to serious destruction of public property. The Government considered that these actions were instigated by CUD for the sole purpose of seizing power illegally and dismantling the constitutional order through street violence. The Government stated that the trial process of the accused began in early January 2006, and is carried out in an open, fair and transparent manner in the presence of international observers and with the right of the accused to due process of law fully guaranteed.

Special Rapporteur's comments and observations

147. The Special Rapporteur thanks the Government of Ethiopia for its cooperation and appreciates its efforts in sending a substantive reply to his communication of 5 May 2006. The Special Rapporteur notes with appreciation the declaration made by the Government on the importance given to the respect of human rights and its willingness to engage in a constructive dialogue with the Special Rapporteur. However, regarding the trial process of the accused, the Special Rapporteur would like to reiterate the concerns that he expressed in his joint urgent appeal of 8 September 2006, for which he has not received any official answer. He thus urges the Goverment to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, detailed substantive answers to the above-mentioned urgent appeal, as well as the one of 9 January 2006. He would especially appreciate receiving details of any measures taken with a view to guaranteeing the accused's right to fair trial.

Gambia

Communications sent

148. On 7 June 2006, the Special Rapporteur sent a joint 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 and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, concerning Lamin Fatty, reporter with *The Independent*, and several persons detained for the alleged coup attempt of 21 March 2006, including Vincent Jatta, Mariam Denton, Ngorr Secka, Foday Barry, Kemo Balajo and Buba Saho. According to the information received, 16 persons have been arrested and are detained in connection with the alleged attempted coup. They have been charged with treason and conspiracy, which carry the death penalty. Their trial was adjourned first to 26 May and then to 2 June. At least eight other persons are detained without charge, some of them incommunicado. They include: former chief of staff Lieutenant-Colonel Vincent Jatta, senior lawyer Mariam Denton, former National Intelligence Agency (NIA) Acting Deputy Director General Ngorr Secka, NIA Director of Operations Foday Barry, former NIA senior officer Kemo Balajo, and NIA official Buba Saho. While Mariam Denton's lawyers had previously not been able to meet with her, they have now been authorized to do so. However, it is alleged that other lawyers have been denied access to their clients, or could not meet with them in private. Moreover, on 14 May, reporter Lamin Fatty was charged with publishing false information in relation to an article he wrote which suggested that a high-ranking official was among those arrested for the alleged coup attempt in March. Despite the apology published by his newspaper, Lamin Fatty continues to face those charges. He has not yet appeared in court.

Communications received

149. None.

Special Rapporteur's comments and observations

150. The Special Rapporteur regrets the absence of an official reply and urges the Government of the Gambia to provide substantive answers to the above allegations at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council. However, non-governmental sources have informed the Special Rapporteur of the release of lawyer Mariam Denton, without charge, on 25 July, as well as the release on bail of Lamin Fatty, on 12 June 2006. The Special Rapporteur welcomes these releases, but was distressed to learn that Lamin Fatty was detained for 63 days at NIA headquarters without access to a lawyer and without being brought to court. He also remains concerned that Lamin Fatty is still charged under section 181 of the Criminal Code, which makes the publication of "false information" a criminal and punishable offence and under which he faces a minimum of six months in jail without the option of a fine if convicted. The Special Rapporteur has learned that his trial began in June before the Kanifing Magistrate's Court in Serrekunda, but has been adjourned five times because of the absence of the prosecution. The defence counsel, Lamin Camara, applied for the case to be struck down and his client discharged because of "too much delay" by the prosecution, but the magistrate denied the application on the grounds that the prosecution still needed to be given time. It has been reported that following the appointment of the trial magistrate, Kebba Sanyang, as Gambia's Attorney-General and Secretary of State for Justice, the hearing was to start anew on 4 December 2006. The Special Rapporteur was also informed

that 22 people are still detained in relation to the alleged coup. On 18 July, four of the six defence lawyers representing the defendants charged with treason reportedly withdrew from the trial with the consent of their clients, owing to their concerns that the trial may not be fair. These defendants are now potentially without legal representation, and may find it difficult to engage new lawyers due to the high-profile, politically sensitive nature of the case. The Special Rapporteur therefore urges the Government to provide details of these cases and to ensure that all 22 detainees, in particular those charged with crimes that carry the death penalty, have adequate legal representation at all stages of the proceedings against them. The Special Rapporteur also urges the authorities to give all the detainees regular access to their families, lawyers and any medical attention they may require.

Georgia

Communications sent

151. On 10 October 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding alleged threats made against Ms. Lela Bekauri, a member of the Georgian Young Lawyers' Association (GYLA), an organization founded in 1994 which consists of almost 600 members of the legal profession and provides free legal aid, promotes human rights and encourages the growth of civil society in Georgia. According to the information received, on 21 September 2006, Ms. Bekauri attended a conference entitled "Deficiencies during pre-election troubles in Georgian regions" in which she criticized the pre-election campaign tactics of Ms. Lela Aptsiauri, who had distributed electricity vouchers in order to influence voters. On her return home after the conference, Ms. Bekauri received an anonymous threatening telephone call. GYLA immediately called for an official investigation into the incident, but has not received a reply from the relevant authorities. Concern is expressed that the threats made against Ms. Bekauri may be an attempt to prevent her from carrying out her activities in defence of human rights and her legal work.

Communications received

152. On 30 November 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 10 October 2006, asserting that no complaint has been lodged by or on behalf of Ms. Lela Bekarui to the law enforcement agencies of Georgia and it was only through the letter sent by the Special Rapporteur that the Prosecution Service of Georgia received information with respect to the alleged threats made against her. The Government reported that on 24 October 2006, the Investigative Division of Rustavi City Unit of the Ministry of Internal Affairs of Georgia opened criminal case No. 012060892. The investigation was started under article 151 of the Criminal Code of Georgia into the fact of alleged threats made against Ms. Lela Bekauri. In course of the investigation, relevant investigative activities have been carried out, namely, Ms. Bekauri was questioned and given the status of victim in accordance with the criminal legislation of Georgia. One of the Ms Bekauri's colleagues, Lasha Parastahsvili, was questioned as a witness with respect to the case. In order to identify the author of the alleged telephone

threat, the investigation obtained a subpoena from the Rustavi City Court to get the information from the mobile phone company concerning the calls received on Ms. Bekauri's cell phone. The Government indicated that the investigation is still under way and assured the Special Rapporteur that all necessary measures were and shall be in future taken to secure the interest of justice as well as human rights of the injured person in this case.

Special Rapporteur's comments and observations

153. The Special Rapporteur thanks the Government of Georgia for its cooperation and the substantive information it provided in response to the above allegations. He notes with great appreciation that Ms. Lela Bekauri was questioned and given the status of victim and would appreciate receiving additional information concerning the further developments in the investigation and the measures which are being carried out to ensure Ms. Bekauri's protection.

Germany

Communications sent

154. On 13 July 2006, the Special Rapporteur sent an allegation letter expressing concern about an alleged violation of the independence of the judiciary in Germany in relation to a criminal complaint filed on 29 November 2004 against 10 high-ranking civil and military officials of the United States of America, including Secretary of Defense Donald Rumsfeld. According to the information received, the criminal complaint was filed with the German Federal Prosecutor's office at the Karlsruhe Court by the Berlin attorney Wolfgang Kaleck of the Republican Attorneys' Association, the New York-based Center for Constitutional Rights, the International Federation for Human Rights and Lawyers Against the War, on behalf of first four and later 17 Iraqi plaintiffs who allege they were the victims of very serious crimes amounting to torture, including severe beatings, sleep and food deprivation, hooding and sexual abuse, when they were detained in Iraq by the United States military. The complaint was filed under the German Code of Crimes against International Law (hereinafter "the German Code"). The charges include violations of the German Code which outlaws killing, torture, cruel and inhumane treatment, sexual coercion and forcible transfers. The German Code reportedly makes criminally responsible those who carry out such acts as well as those who induce, condone or order the acts. It also makes commanders liable, whether civilian or military, who fail to prevent their subordinates from committing such acts. The German Code reportedly grants German courts what is called universal jurisdiction for the above-described crimes, in light of article 1, part 1, section 1 of the Code, which states: "This Act shall apply to all criminal offences against international law designated under this Act, to serious criminal offences designated therein even when the offence was committed abroad and bears no relation to Germany." This is said to mean that those who commit serious crimes under this Act can be prosecuted, wherever found. Therefore, the German Code reportedly places a prosecuting duty on the German prosecutor for all such crimes, irrespective of the location of the person, the crime, or the nationality of the persons involved. According to the

information received, mainly originating from non-governmental organizations and the press, following the filing of the complaint, strong pressure was exercised by the United States of America on Germany to obtain the dismissal of the complaint. Such pressures included open threats to the effect that the bilateral relations between the two countries could be at risk if the complaint was not dismissed. In addition, the Pentagon was said to have openly threatened the German prosecution by indicating that Donald Rumsfeld would not attend the Munich Security Conference in February 2005 if the complaint was not dismissed. On 10 February 2005, two days before the Conference, the German prosecutor issued a decision to dismiss the case, thereby allowing Secretary Rumsfeld to attend. The Special Rapporteur expressed deep concern that a decision by the prosecutor on a case involving such serious crimes has been taken in a context of strong political pressure exerted by the country of citizenship of the defendants. He noted that it was difficult to believe that whereas the prosecutor had been seized of the matter for little more than two months, the decision to dismiss the complaint came just two days before the Munich Conference, just in time to allow the Secretary of Defense to attend. In addition, the Special Rapporteur expressed concerned about the weakness of the legal justification of the dismissal. The prosecutor justified the dismissal by alleging that by virtue of the principle of subsidiarity, the German system should only prosecute under universal jurisdiction when the State first called upon to adjudicate (in this case the State of citizenship of the defendants), or an international court, is unwilling or unable to prosecute, and that in this case there are no indications that the authorities of the United States of America are refraining or would refrain from prosecuting the violations described in the complaint. According to the prosecutor, the prosecution of the violations is therefore left to the judicial authorities of the United States of America, and he therefore dismissed the case. In relation to this analysis, to the Special Rapporteur emphasized that the criminal procedures against low-ranking figures for crimes committed in Abu Ghraib and other detention facilities have shown the unwillingness of the military criminal justice system to look into the involvement of those higher up the chain of command. Moreover, in the United States of America's military criminal justice system, the main defendant, Donald Rumsfeld, sits as the ultimate convening authority; therefore, the basic requirements for an independent trial cannot be fulfilled. Also, the Congress of the United States of America, vested by the Constitution with oversight authority, failed to seriously investigate the abuses and none of the various commissions appointed by the military and the Bush administration has been willing to investigate higher up the chain of command to consider what criminal responsibility lies with the military and political leadership. Finally, there are no international or Iraqi courts that can carry out investigations and prosecutions since the United States of America has not joined the International Criminal Court, thereby foreclosing the option of pursuing a prosecution in international courts, and Iraq has no authority to prosecute since the United States of America gave immunity to all its personnel in Iraq from Iraqi prosecution. In the light of the elements mentioned above, which suggest that the prosecutorial authority would have failed to act in an impartial, independent and objective manner, the Special Rapporteur expressed his deep concern regarding the violation of the principle of the independence of the judiciary as enshrined in recognized international norms and standards, including article 14 of the International Covenant on Civil and Political Rights and the Basic Principles on the Independence of the Judiciary, in particular principle 1, which states "The independence of the judiciary shall

be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary, and principle 4, which states "There shall not be any inappropriate or unwarranted interference with the judicial process". In addition, guideline 4 of the Guidelines on the Role of Prosecutors stipulates that "States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability".

155. Moreover, the elements mentioned above, added to the unusually short length of the decision to dismiss and the lack of reference to the extensive arguments and documents submitted by the plaintiffs, suggest that the prosecutor has failed to comply with his obligations of independence, impartiality and objectivity, in particular as set out under guideline 13 which states: "In the performance of their duties, prosecutors shall: (a) carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination; (b) protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect". The Special Rapporteur pointed out that such duties are even more compelling when the crimes to be prosecuted are committed by public officials and still more so when they relate to grave violation of human rights, as set out in guideline 15, which states: "Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences".

Communications received

156. On 22 August 2006 the Government of Germany replied to the allegation letter sent by the Special Rapporteur on 13 July 2006. The Government stated that on 29 November 2004, Berlin attorney Wolfgang Kaleck filed a criminal complaint on behalf of the United States Center for Constitutional Rights and 17 Iraqi nationals against Secretary of Defense Donald Rumsfeld and others relating to alleged offences under the German Code of Crimes against International Law (CCAIL). The way in which this complaint was dealt with by the Public Prosecutor General of the Federal Court of Justice, the public prosecutor responsible for prosecuting crimes under the CCAIL, was in accordance with German law. Contrary to the assumption made by the Special Rapporteur, the Public Prosecutor General of the Federal Court of Justice was not in fact issued with any instructions by the Federal Ministry of Justice, nor was any other influence exerted on him by the Federal Government to persuade him not to launch investigations into the occurrences at Abu Ghraib. The Public Prosecutor General of the Federal Court of Justice based his decision of 10 February 2005 not to follow up on the complaint on section 153f of the German Code of Criminal Procedure (*Strafprozessordnung* – StPO), which relates to the principle of universal jurisdiction found in the CCAIL, and which states that under certain conditions the prosecutor has discretion to refrain from starting an investigation. The Public Prosecutor General published the full reasons for this step in a press release. The complainants' appeal against the non-instigation of an investigation was rejected by the Higher Regional Court

in Stuttgart on 13 September 2005. Irrespective of the fact that in this particular case the Public Prosecutor General's decision not to launch an investigation had not been taken pursuant to instructions or under undue influence, it should be noted that the fact that public prosecutors in Germany are as a matter of principle subject to instructions is in line with the relevant United Nations instruments and guidelines.

157. With respect to universal jurisdiction under the CCAIL and the principle of subsidiarity, the Government stated that while universal jurisdiction applies to offences under the CCAIL, which means that no link of any kind to Germany is required for prosecutions under that Act, it does not legitimate prosecutions unconditionally and without further ado. The aim of the CCAIL is to put an end to impunity. This must, however, be done against the backdrop of non-interference in the affairs of other States. This conclusion is also to be drawn from article 17 of the Rome Statute of the International Criminal Court, in the light of which the CCAIL is to be read. The German legislator did not make allowances for subsidiarity in the CCAIL itself; no exceptions to universal jurisdiction were made. Rather, universal jurisdiction was made the general rule and the principle of subsidiarity, enshrined in the Rome Statute, was taken account of by means of a procedural rule inserted into the StPO as section 153f at the time of adoption of the CCAIL. The Rome Statute is used as an interpretive aid for the application of the German CCAIL. The duty to prosecute crimes under the CCAIL is thus not absolute if other jurisdictions are called upon to act. In the first instance, the country where the offences were committed or the State of citizenship of the defendants or victims, or a competent international court, should act. The jurisdiction of unrelated third-party States is to be viewed as a fallback jurisdiction designed to avoid impunity, but it should not unreasonably sideline the primary forums.

158. The decision taken by the Public Prosecutor General of the Federal Court of Justice within his discretion on the basis of these conditions was also found by the Higher Regional Court in Stuttgart to be subject to no fault on points of law (decision of 13 September 2005). The Stuttgart Higher Regional Court examined whether the conditions set out in section 153f were fulfilled and affirmed that they were, and also considered whether the Public Prosecutor General had properly exercised the discretion given to him for this purpose or whether he had overstepped the line and acted arbitrarily. The Higher Regional Court in Stuttgart held that the Public Prosecutor General’s decision which was the subject of the complaint was not arbitrary, nor was it outside his discretion.

159. The position of Public Prosecutor’s Offices in Germany is in conformity with the requirements of United Nations instruments and guidelines. The Public Prosecutor’s Office in Germany is an organ of the criminal justice system, equal in rank to the courts. It is charged with investigating crimes and presenting cases in court. The Public Prosecutor’s Office puts the criminal courts in a position to exercise their judicial powers, and is thus part of the judicial system, without having judicial powers of its own. Insofar as it is mandatory for the Public Prosecutor’s Office to prosecute certain offences, and it has a monopoly on bringing prosecutions, it acts as a "guardian of the law". Its duty to prosecute ensures that the law is applied uniformly and fairly and prevents arbitrariness. Public prosecutors are not independent, as are the judiciary, but are bound by the instructions of

their superiors (and ultimately the Minister of Justice) and are thus to that extent part of the executive. The Public Prosecutor's Office is accountable to parliament through the Minister of Justice, who is also under the same duty to ensure that prosecutions are brought. This system of accountability is supported by the general instructions that prosecutors must abide by, as well as by reporting duties and instructions in specific cases. These controls are in conformity with the relevant United Nations instruments and guidelines. Also, neither the European Convention on Human Rights nor article 14 of the International Covenant on Civil and Political Rights stipulates that prosecutors must be independent and cannot be given orders by their superiors. As regards the Guidelines on the Role of Prosecutors, it should be clearly stated that the inclusion of the list of means of exerting undue pressure does not mean that prosecuting agencies must in all situations be entirely independent and subject to no instructions from superiors whatsoever.

Special Rapporteur's comments and observations

160. The Special Rapporteur thanks the Government for its cooperation and for the information it provided in its reply of 22 August 2006. He notes with concern that the alleged perpetrators of the violations referred to in his allegation letter of 13 July 2006 have still not been prosecuted in the United States of America, and that on the contrary new legislation has been adopted in that country which practically impedes the prosecution of public officials suspected of being responsible for those acts. In light of this development, he notes that a new complaint has been submitted to the German prosecutor by the plaintiffs. In this context, the Special Rapporteur hopes that this compliant will be considered with the required independence, in accordance with applicable international norms and standards.

Greece

Communications sent

161. On 2 June 2006, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders concerning Theo Alexandridis, legal counsel with the Greek Helsinki Monitor (GHM), and other staff members of GHM. GHM is an organization that monitors and reports on human rights violations in Greece, including violations against the Roma community. According to the information received, on 19 April 2005 the Greek Minister of Health and the Secretary-General of Social Solidarity publicly accused non-governmental organizations of "existing only on paper" and of "publishing negative reports on the basis of unreliable, exaggerated and misleading information on the victims of the smuggling of human beings in Greece, in order to obtain an increase in funding from the Greek Ministry of Foreign Affairs". It is reported that GHM was specifically named in these accusations. It is further reported that GHM lodged a complaint against the Minister of Health and the Secretary-General of Social Solidarity. On 13 October 2005 Mr. Alexandridis was arrested and detained in the Psair neighbourhood of Aspropyrgos, near Athens. It is reported that Mr. Alexandridis had gone to the police station to lodge a complaint against parents of non-Roma children who had allegedly committed violent acts against demonstrators protesting

the expulsion of Roma children from a school in the area. After he had filed the complaint, Mr. Alexandridis was told that he was under arrest and was detained for four hours before being released without charge. Moreover, the President of the Parents Association allegedly lodged a complaint against Mr. Alexandridis for "libel" and "defamation". It is reported that on 20 January 2006 the Head of the Appeals Prosecutor's Office, during a radio interview, stated that all Roma are criminals and announced that "perpetrators, instigators and accomplices" of Roma people who had helped them in a case concerning the alleged forced expulsion of Roma families in the Makrigianni area of the city of Patras would be "called on to take the stand", specifically naming representatives of GHM. The Head of the Appeals Prosecutor's Office also reportedly stated that he had opened an inquiry into the involvement of GHM in petitioning the First Instance Prosecutor to open a criminal investigation into alleged illegal evictions and attacks against Roma people in Makrigianni. Concern is expressed that the above-mentioned events are connected with the legitimate activities of Mr. Alexandridis and GHM in defence of human rights, in particular because of their involvement in defending the legal rights of the Roma community in Greece.

Communications received

162. None.

Special Rapporteur's comments and observations

163. The Special Rapporteur regrets the absence of an official reply and urges the Government of Greece to provide substantive detailed information at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Guatemala

Comunicaciones enviadas

164. El 7 de septiembre de 2006, el Relator especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente en relación con el Sr. Maynor Roberto Berganza Bethancourt, abogado de derechos humanos, Vicepresidente de la Junta Directiva de la Asociación Defensa Legal Indígena, y representante del grupo Redes de Dirigentes Estudiantiles Sobrevivientes del 89. Maynor Roberto Berganza Betancourt ha estado investigando el desaparecimiento y ejecución de dirigentes estudiantes en el año 1989. De acuerdo con la información recibida, el 12 de agosto de 2006 Sr. Maynor Roberto Berganza Betancourt habría recibido un mensaje en su celular que decía "hueco", del numero 57018643. El 22 de agosto de 2006 cuando se encontraba en una reunión, el Sr. Maynor Roberto Berganza Betancourt habría recibido una llamada amenazante, procedente del numero 57851516. Según se informa, un individuo desconocido le habría dicho "dejémonos de rodeos, pertenezco a una banda del crimen organizado y nos contrataron para matarlo" y el Sr. Maynor Roberto Berganza Betancourt habría cortado la llamada. El individuo le habría vuelto a llamar unos minutos después y le habría dicho "así como nos bajamos al

gobernador así te vamos a bajar a voz… Ahorita te vamos a ir a sacar de donde estás, porque te tenemos controlado". Se expresan temores que las supuestas amenazas en contra del Sr. Maynor Roberto Berganza Bethancourt puedan estar relacionados con su trabajo en defensa de los derechos humanos.

Comunicaciones recibidas

165. No se ha recibido ninguna comunicación del Gobierno.

Comentarios y observaciones del Relator Especial

166. El Relator Especial se preocupa por la ausencia de respuesta oficial y pide encarecidamente al Gobierno de Guatemala tenga a bien enviarle a la brevedad posible, y preferentemente antes de la clausura del cuarto período de sesiones del Consejo de Derechos Humanos, informaciones precisas y detalladas acerca de las alegaciones arriba resumidas.

Honduras

Comunicaciones enviadas

167. El 13 de octubre del 2006, el Relator especial, junto con la Representante Especial del Secretario-General para los defensores de los derechos humano, envió un llamamiento urgente en relación con las amenazas y los hostigamientos en contra el personal de la Asociación para una Sociedad más Justa (ASJ) incluyendo la Señora Dina Meetabel Meza Elvir, periodista y coordinadora de proyectos de la ASJ, y sus miembros, el Señor Dionisio Díaz García, abogado y representante legal de los guardias representados por la ASJ, la Señora Rosa Morazán y el Señor Robert Marín. La ASJ es una organización no gubernamental en Tegucigalpa que representa y trabaja por las víctimas de violaciones de los derechos humanos; en particular, los derechos económicos y sociales. De acuerdo con la información recibida, el 19 de septiembre el propietario de una empresa de seguridad privada Delta Security y su empresa filial Seguridad Técnica de Honduras (SETECH), con algunos de sus empleados, habrían llegado a la oficina de la ASJ en vehículos sin placas y con vidrios polarizados. El motivo supuesto de la visita habría sido el de "negociar" los términos de un caso en el cual la ASJ representa a 12 guardias, víctimas de un despido ilegal ocurrido en agosto de 2006. Según los informes, el propietario habría amenazado a la Sra. Dina Meetabel Meza Elvir diciéndole que tomaría las medidas necesarias para obligar a la asociación a cesar sus actividades. Los informes también indican que un guardia le habría amenazado con que promovería una querella criminal de difamación contra la periodista debido a un comunicado de prensa en el que denunció una campaña para desacreditar la ASJ que habría sido iniciada por la empresa SETECH. Al mismo tiempo se señala que los guardias de la empresa de seguridad habrían tomado fotografías de los empleados y las instalaciones. Recientemente, el 28 de septiembre de 2006, la campaña de descrédito habría seguido con la publicación en Internet de alegaciones en contra la ASJ, declarando que la asociación había difamado a la empresa SETECH cuando afirmó que no pagaba la seguridad social a sus empleados. La publicación contendría

fotografías de los empleados de la ASJ, específicamente del Sr. Robert Marín y de las Sras Dina Meetabel Meza Elvir y Rosa Morazán. De otra parte, según las informaciones recibidas, anteriormente algunos miembros de la ASJ también habrían sido seguidos por desconocidos en vehículos no identificados, incluyendo la Sra. Dina Meetabel Meza Elvir y el Sr. Dionisio Díaz García, representante legal de los empleados despedidos antes mencionados. Además se señala que dichos vehículos habrían rondado las oficinas de la ASJ desde el 29 de agosto de 2006. Se expresa preocupación por los hostigamientos y las amenazas en contra del personal de la ASJ porque se teme que estos incidentes pueden estar relacionados con sus actividades en defensa de los derechos humanos, y en particular su trabajo en la defensa de los derechos económicos y sociales.

168. El 22 de diciembre del 2006, el Relator Especial envió una carta de alegación en relación al asesinato del abogado Dionisio Díaz García, abogado de la ASJ. El Sr. Díaz García había sido objeto de dos llamamientos urgentes conjuntos dirigidos al Gobierno de Honduras, el primero del Relator Especial sobre la independencia de magistrados y abogados y de la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, con fecha de 13 de octubre de 2006 y el otro de la Presidenta del Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio del derecho de los pueblos a la libre determinación y de la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, con fecha de 5 de diciembre de 2006. De acuerdo con la información recibida, el día 4 de diciembre de 2006, hacia las 10 de la mañana, cuando el Sr. Dionisio Díaz García se dirigía en un automóvil a la Corte Suprema, un hombre que viajaba de pasajero en una motocicleta le disparó, causándole la muerte. Según la información recibida, el Sr. Díaz García había sido objeto de varias amenazas, por ejemplo, el 27 de Noviembre uno de sus colegas habría recibido un mensaje de texto en inglés que decía: "¡ ¡La vida de Dionisio García podría estar en peligro! ¡Cuídate y vigila a alguien cercano a tus enemigos!" Asimismo, se informa que la ASJ, así como otras organizaciones no gubernamentales habían denunciado las amenazas y el acoso que sufrían los miembros de la ASJ ante las autoridades y que sin embargo éstas no habrían tomado ninguna acción para protegerlos. Así, se indica que los días 27 y 28 de septiembre de 2006 los miembros de la ASJ denunciaron las amenazas ante el Presidente Zelaya y ante el Ministerio Público respectivamente. Igualmente, durante los meses de octubre y noviembre los miembros de la ASJ habrían denunciado las amenazas ante la oficina especial del Ministerio Público para los derechos humanos y ante el Comisionado Nacional de los Derechos Humanos.

Comunicaciones recibidas

169. No se ha recibido ninguna comunicación del Gobierno.

Comentarios y observaciones del Relator Especial

170. El Relator Especial se preocupa por la ausencia de respuesta oficial y pide encarecidamente al Gobierno de Honduras tenga a bien enviarle a la brevedad posible, y preferentemente antes de la clausura del cuarto período de sesiones del Consejo de

Derechos Humanos, informaciones precisas y detalladas acerca de las alegaciones arriba resumidas.

India

Communications sent

171. On 1 May 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders concerning Parvez Imroz, a lawyer and member of the Council of the Asian Federation Against Involuntary Disappearances (AFAD), President of the Jammu and Kashmir Coalition of Civil Society (JKCCS) and Patron of the Association of Parents of Disappeared Persons (APDP). AFAD is a federation of NGOs that work against enforced or involuntary disappearances, JKCCS is a coalition of NGOs that work on human rights and democracy in Kashmir and APDP is an NGO that works against enforced or involuntary disappearances in Jammu and Kashmir and is a member of AFAD and JKCCS. Mr. Imroz was already the subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders on 11 May 2005 and an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture on 5 October 2004, to which the Government replied by letter dated 15 February 2005. According to the information received, in November 2004 Mr. Imroz sent an application for a passport to the passport authority of Jammu and Kashmir. He has received no formal response or rejection from the authorities, despite having sent a number of reminders. Without a passport Mr. Imroz has been unable to attend a number of international conferences, workshops and consultations connected with his activities as a human rights defender. Concern is expressed that the refusal by the authorities to issue Parvez Imroz with a passport may be connected with his activities in defence of human rights, in particular his work on involuntary and enforced disappearances in Kashmir, and may represent an attempt to prevent him from being able to meet and communicate with other international human rights defenders.

172. On 14 September 2006, the Special Rapporteur sent another joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding Parvez Imroz. Still without a passport, Mr. Imroz will not be able to go to France on 13 October 2006 to receive the Ludovic Trarieux international human rights prize, which was awarded to him jointly by the Bordeaux Bar, the Brussels Bar, the Paris Bar and the Human Rights Institute of the European Bar. The prize, created in 1984, is awarded every year to a lawyer for activities defending human rights. According to the award's rules, the prizewinner must attend the award ceremony, which takes place in Bordeaux at the National School of the Magistracy. Concern is expressed that the refusal by the authorities to issue a passport to Mr. Imroz may be connected with his activities as a lawyer and human rights defender, in particular his work related to involuntary and enforced disappearances in Kashmir, and may represent an attempt to prevent him from being able to meet and communicate with other international human rights defenders.

Communications received

173. None.

Special Rapporteur's comments and observations

174. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of India to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Indonesia

Communications sent

175. On 3 March 2006, the Special Rapporteur sent an allegation letter regarding the trial relating to the attack on 29 November 2005 on three hamlets, Karama, Bonto Badong and Ujung Moncong, in Bandri Manurung village, Jeneponto Regency, Sulawesi, by members of the military forces, in which 82 houses were destroyed and civilians were injured. On 16 January 2006, three soldiers, Private Siradjuddin, Private Jusmianto and Chief Private Alimuddin, who were allegedly involved in the attack were sentenced to 2 ½ months' imprisonment by Military Court 316, Makassar, South Sulawesi. They were convicted under article 160 of the Criminal Code of Indonesia for inciting people to commit unlawful acts in public and under article 406 (1) of the Criminal Code for inciting people to destruction. It is reported that despite the perpetrators' direct involvement in the destruction of the houses and attacks against civilians, they were only charged with incitement to unlawful acts, which resulted in a lenient sentence. The three convicted soldiers are still believed to be serving in the military. Second Private Kopoda Syarifuddin, who reportedly stabbed a civilian with a sword and severely injured him during the same incident, was sentenced to six months' imprisonment by the military court. It is alleged that civilians were not able to access the military court because the hearings were conducted behind closed doors. Finally, there was no decision by the court regarding compensation to the victims of the attack. The military has reportedly rebuilt a small number of the destroyed houses and paid some money to the villagers.

176. On 21 March 2006, the Special Rapporteur sent a urgent appeal jointly 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 regarding Selpius Bobii, a 27-year-old student at the Catholic Theological College "Fajar Timur", Jayapura, Papua, as well as 57 detainees. According to the allegations received, on 16 March 2006, they were arrested and detained in Jayapura Police Station and are denied access to lawyers. Students were protesting in Abepura to demand the closure of mining operations in Timika, West Papua, and the withdrawal of the Indonesian Army and police, which provide security for the mining company. The protesters blocked the main road of Jayapura so as to attract the attention of the

Government and the mining company. The police instructed them to clear the roads, deploying water cannon and armoured vehicles. It is reported that Special Mobile Police Brigade officers used tear gas and fired on the crowd of unarmed demonstrators. In response, the protesters threw stones, bottles and pieces of wood at the police. In the violence that ensued, it was reported that four policemen were killed and about nine were wounded. Moreover, the following individuals were among those treated in the Dian Harapan Catholic Hospital, Waena, Jayapura: Etinus Kulla, a university student; Obatius Wanimbo, a university student, treated for severe gunshot wounds; Ishak Ulmami, university student, treated for gunshot; John Giyai, a university student, treated for a gunshot wound; Hermanus Maiseny, a high school student, in critical condition with a gunshot wound; Glen Mahulete, aged 5, severely wounded; Killion Somou, a university student, severely wounded; Djie Makanuay, a university student, severely wounded; Yuvenus Tekege, a university student, severely wounded; Saud Marpaung, a local photographer, wounded; and Cahyo, a journalist with a national daily. Amandus, Erick, Abraham Bemey, Markus Ningdana, Alex Candra Wajangkon, Michael L., Philips S. Kamar, Widi Kogoya, Melky Komboy, Alex Wayangkau and Imanuel Ronsumbre were treated in the Dok II State Hospital, Jayapura. Since 22 February 2006, there have been a series of protests organized by civil society groups demanding the closure of mining operations.

Communications received

177. On 3 May 2006, the Government replied to the joint urgent appeal of 21 March 2006 acknowledging that on 16 March 2006, the forces of order clashed with protestors who were organizing a demonstration in Abepura to launch their opposition to several issues, including demanding the closure of the United States-owned Freeport McMoran copper and gold mines and operations. The clash occurred when police tried to persuade the demonstrators blocking access to the main road to disperse and the demonstrators, ignoring the police, instead threw stones and other objects, mortally wounded four policemen and an Air Force officer. About 29 were injured and rushed to Abepura hospital in Papua. Faced with the spectre of spreading violence, the police, in accordance with the existing law, arrested 76 demonstrators, among whom it identified only 17 as suspects. One of them was Selpius Bobil, the head of the West Papua Referendum Front, who was taken for questioning about his role as instigator in the final outcome of events. However, only 12, and not 57 individuals as alleged in the letter, were also arrested by the police at the Jayapura Police Headquarters as the ongoing investigation into the cause of death and injury resulting from the clashed continue. The Government assured the Special Rapporteur that as set forth in the national legislation, each suspect was granted the right to be visited by family members and religious figures and the right to be accompanied by lawyers at all levels of the investigation who, contrary to allegations, had authority to act on their behalf. These were lawyers from the Coalition of Non-Governmental Organizations and included Pieter Eli, SH; Paskalis Letson SH; L. Anum Siregar, SH; Adolf Waramori, SH; Iwan K.Niode, SH; Rahman Ramili, SH; Robert Korwa, SH; Yohannes Harry Maturbongs, SH; Sihar L.Tobling, SH; Cornelia Silva, SH; Jemy Noya, SH; and Yusman Conoras, SH. Indonesia's National Commission of Human Rights has monitored the investigation process and has directly visited suspects in Police

Headquarters. The cases will be brought before the court in due time and the accused will have the right to argue their case and to launch an appeal against the ruling if necessary.

Special Rapporteur's comments and observations

178. The Special Rapporteur thanks the Government of Indonesia for its cooperation and the information provided to his joint urgent appeal of 21 March 2006. However, he regrets that the allegation letter of 3 March 2006 has remained so far unanswered and urges the Government of Indonesia to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, detailed substantive answers to the allegations relayed in that communication. Concerning the joint urgent appeal of 21 March 2006, the Special Rapporteur would be most interested in receiving the findings of the National Human Rights Commission after its visits to the detainees at Police Headquarters. He notes with appreciation that the suspects have been accompanied by lawyers at all levels of the investigation. The Special Rapporteur would also like to receive details about the measures taken by the Government to ensure that no limit is placed on communication between the lawyers and their clients. Taking note of the committment of the Government to bring the detainees before a court in due time, he would like to know if the trial has started.

Iran (Islamic Republic of)

Communications sent

179. On 1 March 2006, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the independent expert on minority issues**,** the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the question of torture concerning 173 members of the Nematollah Sufi Muslim community. According to the information received, on 13 February 2006, they were arrested for their participation in a peaceful protest, which was reportedly violently suppressed by the security forces and members of the Hojatieh and Fatemiyon pro-Government groups. The demonstration was held to protest an order by the security forces to evacuate the community's place of worship, known as Hosseiniye. The 173 individuals are reportedly being interrogated at Fajr Prison in Qom and there are concerns that they are being tortured in order to force them to sign pre-prepared false confessions, stating that the protest had political motivations and was linked to anti-Government groups. The relatives of the detainees have been unable to obtain official information about their whereabouts and the detainees have not had access to lawyers. According to the information received, lawyer Bahman Nazari, was arrested when he approached officials in an attempt to represent the detainees. The protest began on 9 February 2006. On 13 February 2006, there were hundreds of protesters present in and around the Hosseiniye. At about 3 p.m. the security forces set a deadline for the protesters to evacuate the Hosseiniye. Members of the Fatemiyon and Hojatieh groups also reportedly surrounded the place of worship, shouting slogans such as "Death to Sufis" and "Sufism is a British plot", and distributed leaflets

alleging that Sufis are enemies of Islam. The security forces moved in at about 4 p.m. and stormed the building, using tear gas and explosives. They beat many of the protesters. The next day the Hosseiniye was demolished by bulldozers. Approximately 1,200 protesters were arrested and taken away on buses to unknown locations. The detainees were interrogated and, according to the information received, many were subjected to torture or ill-treatment. Most of them were subsequently released. However, 173 are still being held. Those who were released were required to sign a paper as a condition of their release agreeing not to attend any Sufi gatherings in Qom. Some were reportedly required to sign documents renouncing Sufism. Arrest warrants have reportedly been issued for the main Sufi preacher in Qom, Seyed Ahmadi Shariati, and the four lawyers who had previously been acting on behalf of the group, Eslami, Omid Behrouzi, Gholamreza Harsimi and Farshid Yadollahi. The incident occurred amid concerns about an increasing demonization of the Sufi Muslim group. In September 2005, a religious jurist in Qom, Ayatollah Hossein Nouri-Hamedani, called for a crackdown on Sufi groups in Qom.

180. On 31 March 2006, the Special Rapporteur sent a joint 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 and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Abdolfattah Soltani, an Iranian defence lawyer and a founding member of the Defenders of Human Rights Centre who was arrested on 30 July 2005. Mr. Soltani was the subject of an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 4 August 2005 and an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 14 December 2005. According to the information received, Mr. Soltani has still not been informed of the charges brought against him, in violation of article 14, paragraph 3, of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a party. It is alleged that on 3 December 2005, Saïd Mortazavi, General Prosecutor of Tehran, decided to replace the investigating judge who had just announced to Mr. Soltani's lawyers that he would recommend his release on bail. The newly appointed judge decided, on the same day, that Mr. Soltani should remain in custody for a further period of three months. Such replacement raises concerns with regard to the independence of the judiciary in this case. Mr. Soltani was released on 6 March 2006 after posting bail of €100,000 - an unusually high amount, which was paid by a solidarity movement. It is reported that Mr. Soltani will be tried on 5 April 2006 before the Islamic Revolutionary Court of Tehran. However, his lawyers have not been granted access to the criminal prosecution file. During his detention in solitary confinement in Evin Prison in Tehran, Mr. Soltani could only meet one of his lawyers in January 2006, more than six months after his arrest. These would be serious violations of the fair trial guarantees. It is also alleged that Mr. Soltani's prosecution is motivated by his role as a defence lawyer in a case where Mr. Soltani questioned the role of the prosecutor in the death in Evin Prison of Ms. Zahra Kazemi,

which would constitute a clear violation of articles 16, 18 and 20 of the Basic Principles on the Role of Lawyers. Lastly, it was reported that Mr. Soltani received an official letter from the judiciary rejecting his election as a member of the board of the Tehran Bar Association, on the grounds that his candidacy was not valid since he was in prison during the election. It is recalled that Mr. Soltani has not been deprived of his civil and political rights and is to be presumed innocent until proved guilty. The above-mentioned letter is considered to be an inappropriate intervention by the judiciary in the election process of the Tehran Bar Association, which would constitute interference with the independence of lawyers, as well as an act of judicial harassment against Mr. Soltani.

181. On 31 March 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on violence against women, its causes and consequences regarding Fatemeh Haghighat-Pajouh, who was sentenced to death in 1997 for the murder of her husband, a drug addict who had tried to rape her 15-year-old daughter. Fatemeh Haghighat-Pajouh was already the subject of an urgent appeal by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequencesw on 11 February 2005 and by the Special Rapporteur on extrajudicial, summary or arbitrary executions on 12 October 2004. Those communications drew the attention of the Government to the fact that that Ms. Haghighat-Pajouh reportedly did not have access to adequate legal assistance in the course of her trial. The experts appreciate the responses of the Government (dated 21 October 2004 and 27 May 2005) and welcome the review of her case by the local judicial authority and the likelihood of a clemency order from the Head of the Judiciary. However, they have recently been informed that her stay of execution has been rescinded by the Supreme Court and that her execution is reportedly scheduled to take place on or before 1 April 2006.

182. On 22 May 2006, the Special Rapporteur sent a joint 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 contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding 52 members of the Nematollahi Sufi Muslim community and their two lawyers, Farshad Yadollahi and Omid Behroozi. They are among 173 members of the Nematollah Sufi Muslim community who were arrested on 13 February 2006 for their participation in a peaceful protest against an order by the security forces to evacuate the community's place of worship, known as Hosseiniye, and were the subject of the communication sent by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on freedom of religion or belief, the independent expert on minority issues, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture on 1 March 2006 (see above), to which no response has been received. According to new information, on 3 May 2006, 52 members of the Nematollahi

Sufi Muslim community and their lawyers Farshad Yadollahi and Omid Behroozi were convicted on charges of "disobeying the orders of government officials" and "disturbing public order". For the former charge, 25 individuals were reportedly fined 10 million rials (equivalent to more than US$ 1,000) and the rest were fined 5 million rials. For the latter charge, they were sentenced to one year's imprisonment and 74 lashes. After their release, they would be obliged to report to security officials every month for two years. It is further reported that Farshad Yadollahi and Omid Behroozi were barred from practising their profession for five years. All of them were released on bail, and were given 20 days to appeal the judgement.

183. On 20 June 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Saleh Kamrani, a lawyer, residing at 23 Zanbagh 17, Azimiyeh neighbourhood, Besat Square, Karaj. According to the information received, on 14 June 2006 at between 4 and 5 p.m, Mr. Kamrani disappeared on his way home from his office located at Unit 6-25 Rasht Valley, South Karghar St., Tehran. On the same day, relatives of Mr. Kamrani contacted the police (Emergency Police, Kalantary and Niruye Entezami), the Intelligence Services (Etelaat), hospitals and the highway patrol, but no news of Mr. Kamrani was received. On 17 or 18 June, however, relatives discovered that Mr. Kamrani is detained at Evin Prison, where he is held without charges and without access to his family. Mr. Kamrani did not have access to his lawyer on the first days of his detention, and it is unknown whether this access has now been granted. The experts are concerned that the arrest of Saleh Kamrani could be in reprisal for his activity as a lawyer defending Iranian Azeri Turks allegedly detained in connection with their political or cultural activities. Moreover, in view of his detention incommunicado, they are concerned that he might be at risk of torture or other forms of ill-treatment. The concerns for his physical integrity are heightened by reports that he needs medication for a heart condition.

184. On 10 July 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention regarding Saleh Kamrani. Mr. Kamrani has already been the subject of a joint communication by the Special Rapporteur on the independence of judges and lawyers, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the situation of human rights defenders on 20 June 2006 (see above). According to the information received, Mr. Kamrani has been in detention since 14 June 2006. He is being held in Branch 14 of the Interrogation Centre of the Revolutionary Court of Tehran. He was due to be set free on 3 July 2006 upon posting bail. However, once his wife had collected the money for the bail, which the court increased from 100 million to 500 million rials, the court added another prerequisite for his release: the judge in charge of the case had to be in attendance, which could not take place until 4 July 2006. Mr. Kamrani was not however released on 4 July, and his wife was told to come back on 6 July. On 6 July, the judge once again disregarded his own decision and issued a new decision to continue the detention of Mr. Kamrani for further interrogation, and without setting a time for his release on bail. Since Mr. Kamrani has been arrested and detained, his wife has been allowed to visit him only once. During this same period Mr.

Kamrani's lawyer was refused permission to visit him, has still had no access to the files concerning the arrest and detention of his client, and was not notified of any formal charges against his client, on the grounds that Mr. Kamrani would be released soon and therefore needed no lawyer. Ms. Kamrani was informed that her husband would be held for "taking steps for the overthrow of the system by way of publicity against the system".

185. On 8 August 2006, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders concerning Abdolfattah Soltani, an Iranian lawyer and a founding member of the Defenders of Human Rights Centre who was arrested on 30 July 2005. Mr. Soltani was the subject of an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 31 March 2006 (see above) and 4 August 2005 and an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 14 December 2005. According to the information received, Abdolfattah Soltani was notified on 16 July 2006 that the Revolutionary Court of Tehran condemned him to a five-year prison term and to the loss of his civic rights for non-respect of the confidentiality of the preliminary investigation in a politically sensitive case in which he was the defendant's lawyer. Mr. Soltani appealed this decision. The experts are seriously concerned that Mr. Soltani's prosecution is motivated by his plea in a case related to the death of an Iranian-Canadian photographer, Ms. Zahra Kazemi, in Evin Prison, wherein Mr. Soltani questioned the fairness of the judicial proceedings and the lack of proper investigations, including the role of the Tehran Prosecutor, in her death. They are also particularly concerned by the fact that the procedure which led to the ruling against Mr. Soltani comprised serious violations of fair trial guarantees. As indicated in the previous letters, for more than six months after his arrest, Mr. Soltani was detained in solitary confinement in Evin Prison and was denied access to a lawyer. He could only meet one of his lawyers in January 2006. Moreover, it has been reported that his lawyer was not granted access to the criminal prosecution file. Furthermore, Mr. Soltani was allegedly subjected to acts of judicial harassment. On 3 December 2005, his preliminary detention was extended by three months, despite the fact that the investigating judge had recommended that he be released on bail. Indeed, it is reported that the Tehran Prosecutor, who had issued the arrest warrant against Mr. Soltani, subsequently replaced the investigating judge, leading to the extended detention.

186. On 11 August 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding the ban of the non-governmental organization Defenders of Human Rights Centre (DHRC). DHRC, co-founded in 2002 by Ms. Shirin Ebadi, Iranian lawyer and winner of the Nobel Peace Prize in 2003, aims to provide legal counsel

to dissidents, journalists and students facing prosecution for exercising fundamental freedoms, such as peacefully protesting against or criticizing government policies. Ms. Ebadi was the subject of three urgent appeals sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on the situation of human rights defenders, successively on 8 December 2003, 13 January 2005 and 4 August 2005. Mr. Soltani, an Iranian lawyer and a founding member of DHRC, was the also the subject of previous urgent appeals (see above).

187. According to the information received, on 3 August 2006, the Iranian Ministry of the Interior declared the activities of DHRC illegal, and that those who continued its activities would be prosecuted. Since its creation, DHRC has been repeatedly denied legal registration, its requests for registration having been systematically blocked by the Iranian authorities without any reasons being provided. On 16 July 2006, the Revolutionnary Court sentenced Mr. Soltani to five years of prison for disclosing confidential information and opposing the State. He appealed the Court's ruling and is still awaiting the decision. Moreover, Ms. Ebadi was summoned in 2005 by the Revolutionary Public Prosecutor's office, without official reasons, and threatened with arrest and prosecution. Grave concerns are expressed that the ban of DHRC may form part of a sustained campaign of harassment and intimidation against members of DRHC for their legitmate human rights activities. Further concern is expressed at the wider effect that declaring the organization illegal may have for other human rights defenders in the Islamic Republic of Iran.

188. On 16 August 2006, the Special Rapporteur sent a joint urgent appeal together with the the Chairperson-Rapporteur of the Working Group on arbitrary detention, the Special Rapporteur on the right to freedom of opinion and expression, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the question of torture concerning the alleged imprisonment of Ahmad Batebi, a student activist, during an approved period of leave from prison. Ahmad Batebi was originally detained in 1999 for his participation in a student demonstration following the closure of the newspaper *Salam*. He had been convicted on charges of "endangering national security" and sentenced to death by the Islamic Revolutionary Courts. The sentence was later commuted to 15 years of imprisonment. The situation of Ahmad Batebi has been subject of two communications sent to the Government on 6 October 2000 by the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran and on 20 November 2003 by the Special Rapporteur on the question of torture and the Special Representative on the situation of human rights defenders. Reportedly, due to his poor health and after serving six years of his sentence, Ahmad Batebi was granted approved leave by doctors appointed by the judiciary. According to the information received, on 27 July 2006, unknown armed persons conducted a search of his home, arrested Ahmad Batebi and drove him to an undisclosed location, believed to be Evin Prison in Teheran. He is reportedly being denied access to his family and lawyer. Serious concerns have been expressed that Mr. Batebi's

new arrest was motivated by his activities as a human rights defender and may form part of a campaign of intimidation and harassment against human rights defenders in the Islamic Republic of Iran.

189. On 21 September 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on human rights defenders concerning the arrest and trial of Reza Abbasi, a member of the Association for the Defence of Azerbaijani Political Prisoners (ASMAK) and an activist for democracy and human rights through his involvement with the Alumni Association of Iran (Sazman-e Danesh Amukhtegan-e Iran-e Eslamiè [Advar-e Tahkim-e Vahdat]). Mr. Abbasi was the subject of a joint urgent appeal 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 Special Rapporteur on the question of torture on 4 May 2004. According to the information received, Mr. Abbasi was arrested on 27 June 2006 for refusing to present himself to a facility run by the Ministry of Information in accordance with a verbal summons. He was reportedly taken to the Central Prison in Zenjan where he is allegedly detained on charges of "propaganda against the system" and "insulting the Leader (of the Islamic Republic of Iran)". According to sources, the Ministry of Information has continued to persecute Mr. Abbasi's family, including his elderly parents. On 5 September 2006, it is reported that Mr. Abbasi was presented before a closed session of Branch One of the Revolutionary Court in Zenjan, in the absence of his legal representative. It is further reported that a second closed session of the court took place on 11 September in the presence of his lawyer where he was asked about his involvement in ASMEK and student organizations. A verdict is expected shortly. Concern is expressed that the arrest of Reza Abbasi is linked to his activities in defence of the human rights of Azeri Turks and, in particular, it is feared the arrest may be part of a campaign by security forces to prevent persons from the Azeri Turk community from attending the annual gathering at Babek Castle in honour of the ninth century figure Babek Khorramdin. Further concern is expressed for his physical and psychological integrity while in detention and that he may face an unfair trial.

190. On 13 November 2006, the Special Rapporteur sent a joint 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. In the urgent appeal, the expert referred to the fact that on 31 August 2006, the Special Rapporteur on extrajudicial, summary or arbitrary executions wrote to the Government, drawing attention to information he had received regarding the reported trial on charges carrying the death penalty of 22 Ahwazi Arab activists arrested by the Government in June 2006: Ali Motirijejad, Abdullh Solymani, Mlik Banitamimt, Abolamir Farjaolh Chaabi, Mohammad Chaabpour, Khalaf Khozairi, Alireza Asakereh, Majed Albog Hbaish, Ghasem Salamat, Abdolreza Sanawati, Said Hamydan, Ms. Fahimeh Esmaili Badawi, Toameh Chaab, Nasser Farajolah Kia, Majid Mazaal, Jalil Moghadam, Mehdi Saad Nasab, Ms. Hoda Hedayati Rezaie (Hawashemi), Sharif Asei Nawaseri, Jalil Boraihi, Mohammad Sawari and Abdolreza Salman Delfi. At the time, he expressed his concern about reports indicating that they were being tried in secret and that the competent

prosecutor-general had announced that he was seeking the death penalty for all the accused. That communication unfortunately remains unanswered by the Government. The experts subsequently received additional information according to which on 9 November 2006 the Head of the Judiciary in Khuzestan Province, Abbas Jaafari Dowlatabadi, announced that the Supreme Court has confirmed the death sentence of 10 of the defendants mentioned above, namely Ali Motirijejad, Abdullh Solymani, Mlik Banitamimt, Abolamir Farjaolh Chaabi, Mohammad Chaabpour, Khalaf Khozairi, Alireza Asakereh, Majed Albog Hbaish, Ghasem Salama and Abdolreza Sanawati. Iranian media have reportedly announced that the confessions of the 10 men will be broadcast on Khuzestan TV on 13 November 2006, and that their executions will be held in public, probably on 14 or 15 November 2006. The experts have received further information which corroborates their concerns expressed in the letter of 31 August 2006. Allegedly, all 10 men were tortured into making false confessions. Their lawyers were not allowed to see them prior to their trial and they were given access to the prosecution case only hours before the start of the trial. The trial was held in secret. The lawyers for the defendants, Khalil Saeedi, Mansur Atashneh, Dr. Abdulhasan Haidari, Jawad Tariri, Faisal Saeedi and Taheri Nasab, were arrested for having complained about violations of the relevant laws in the course of the trial and charged with threatening national security.

191. On 4 December 2006, the Special Rapporteur sent a joint urgent appeal to the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right to freedom of opinion and expression, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the question of torture regarding Mansour Ossanlu, Head of the Union of Workers of the Tehran and Suburbs Bus Company, currently detained at Evin Prison. Mr. Ossanlu's case was already the subject of an urgent appeal to the Government by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Representative of the Secretary General on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 16 January 2006. According to the information received, Mr. Ossanlu was arrested at his home by police on 22 December 2005 and eventually released on bail amounting to 1.5 billion rials on 9 August 2006. Mr. Ossanlu was awaiting trial on charges, the exact nature of which are not known, but which may include "propaganda against the the Islamic Republic" through leaflets and interviews with foreign anti-Government radio stations, and "acting to disturb internal State security by establishing links with hostile opposition groups and foreign countries". Although he received a court summons to attend Branch 4 of the Special Court for Government Employees only on 20 November 2006, he had already been rearrested the day before, outside his home, by plain-clothes members of the security forces and detained incommunicado at Evin Prison, section 209. His family has been able to visit him once, and his wife was also able to speak to him when she attended the court session on 20 November 2006. He is suffering from a serious eye complaint, but is not receiving medical treatment in prison. On 26 November 2006, Mr. Ossanlu appeared at Branch 14 of the Revolutionary Court for initial investigations by the prosecutor. No specific charges have been brought. Mr. Ossanlu's lawyer could not attend the court session because Mr. Ossanlu did not have access to him. Concern is expressed that his rearrest and detention may be a further attempt to deter him from peacefully

exercising his legitimate right to freedom of association, including the right to form and join trade unions and the right to freedom of opinion and expression, and may also represent an attempt by the authorities to prevent him from carrying out his peaceful activities in defence of human rights, in particular labour rights. Further concern is expressed as to his state of health and his physical integrity in view of the reported lack of proper medical treatment for his eye complaint and also in view of his incommunicado detention.

192. On 7 December 2006, the Special Rapporteur sent an allegation letter regarding Saleh Kamrani, lawyer and member of the Central Association of Lawyers, resident in Karaj. Mr. Kamrani has already been the subject of a joint communication by the Special Rapporteur on the independence of judges and lawyers and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention on 10 July 2006 (see above), and by the Special Rapporteur on the independence of judges and lawyers, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the situation of human rights defenders on 20 June 2006 (see above). According to the information received, on 31 October 2006, the Islamic Revolutionary Court of Tehran found Mr. Kamrani guilty of public activities against the system of the Islamic Republic of Iran, and sentenced him to one year of imprisonment. The sentence is suspended for five years if he does not commit an offence during this period. Mr. Kamrani can file an appeal with the Appeal Court of Tehran Province. It is reported that Mr. Kamrani has been accused of assuming the legal representation of individuals who are in opposition to the system, and of individuals who are undermining national security by claiming their ethnic identity, such as Iranian Azeri Turks. In this context, the Special Rapportuer stresses that a lawyer cannot be identified with the cause of his clients and cannot be prosecuted for practising his legitimate activities as a legal representative of his clients. In addition, he recalls the concerns, as expressed in previous communications, in relation to the arrest and conduct of the trial of Mr. Kamrani. In particular, Mr Kamrani was apparently not arrested on charges brought against him, but abducted and detained for several days without access to his family or his lawyer. Mr. Kamrani's lawyer was refused access to the files concerning the arrest and detention of his client, which delayed the preparation of his defence. In addition, it is reported that interrogations were conducted without the presence of Mr. Kamrani's lawyer, and that the court proceedings were conducted in camera. In light of the foregoing, serious concerns are expressed that Mr. Kamrani's trial was not conducted in accordance with international fair trial standards, and that the sentence against him is thus unfair and represents a reprisal for his activity as a lawyer defending Iranian Azeris Turks allegedly detained in connection with their political or cultural activities.

Press releases issued by the Special Rapporteur

193. On 10 January 2007, the Special Rapporteur issued the following press release:

> "IRAN MUST STOP EXECUTIONS OF AHWAZI ARABS SENTENCED TO DEATH FOLLOWING A SECRET, GROSSLY UNFAIR TRIAL, RAPPORTEURS SAY

“Philip Alston, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Leandro Despouy, the Special Rapporteur on the independence of judges and lawyers, and Manfred Nowak, the Special Rapporteur on torture, issued the following statement today. They are independent experts appointed by the United Nations Human Rights Council.

”The UN Human Rights Council's experts on extrajudicial executions, independence of judges and lawyers and torture today urged the Iranian Government to ‘stop the imminent execution of seven men belonging to the Ahwazi Arab minority and grant them a fair and public hearing’. Philip Alston, Leandro Despouy and Manfred Nowak, the UN independent experts, called the attention of the international community to the case of ten men who were sentenced to death after a secret trial before a court in the Western Iranian province of Khuzestan. Their lawyers were not allowed to see the defendants prior to their trial, and were given access to the prosecution case only hours before the start of the trial. The lawyers were also intimidated by charges of ‘threatening national security’ being brought against them. The convictions were reportedly based on confessions extorted under torture. ‘The only element of the cases of these men not shrouded in secrecy was the broadcast on public television of their so-called confessions’, Mr. Nowak said. The three experts indicated that in August and November 2006 they had sent two letters to the Government of Iran, bringing the allegations of unfair trial and torture to their attention and seeking clarification from the Government. No reply to these letters was ever received. Instead, three of the ten men were executed in mid-December with no regard for the strong concerns expressed on behalf of the UN Human Rights Council. On Monday, January 8th, 2007, the authorities in Ahwaz, the capital of Khuzestan province, informed the families of the remaining seven men that they would be executed within the next few days. ‘We are fully aware that these men are accused of serious crimes, including having tried to overthrow the Government after having received military training by US and UK forces’, the UN experts said. ‘However, this cannot justify their conviction and execution after trials that made a mockery of due process requirements.’

“Background

”The three men executed in mid-December (named Malek Banitamim, Abdullah Solymani and Ali Matorizadeh) and the seven reportedly at imminent risk of execution are part of a larger group of Ahwazi Arab activists arrested in June 2006 on charges of having received training in Iraq by officials of the United States of America, the United Kingdom and Israel, and of having returned to Iran with the intent to destabilize the country, to sabotage oil installations and to overthrow the Government. In the course of the year 2006, the Special Rapporteur on summary executions has raised his concerns regarding unfair trials on capital charges also with regard to ten other Ahwazi Arabs, as well as other Iranians accused of violently opposing the Government. The Government of Iran systematically refuses to provide information and engage in a dialogue on these matters with the independent experts, violating its obligations under the procedures of the Human

Rights Council. Iran is a party to the International Covenant on Civil and Political Rights and has a legal obligation to respect its provisions. While the Covenant allows it to retain the death penalty, it prescribes that capital punishment can only be imposed after a trial satisfying the strictest fair trial guarantees. These include the right to a fair and public hearing, the right not to be compelled to confess guilt, and the right to 'adequate time and facilities for the preparation of ones defence' with the assistance of a lawyer of ones own choosing. In their correspondence with the Government of Iran, the UN independent experts also expressed their concerns about the charges of 'mohareb', which according to the reports published in the Iranian media triggered the application of the death penalty in these cases. 'Mohareb' can be translated as 'being at war with God' and is a charge typically waged by the Iranian prosecutors against political dissidents, critics of the Government and persons accused of espionage. This charge carries with it the risk of being too vague to satisfy the very strict standards of legality set by international human rights law for the imposition and execution of the death penalty. The names of the seven men at imminent risk of execution are reported as Ghasem Salami, Mohammad Lazem Kaabpour, Abdolamir Farjolah Kaab, Alireza Asakereh, Majad Albughbish, Abdolreza Sanawati, and Khalaf Dohrab Khanafereh."

Communications received

194. On 3 April 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 31 March 2006, indicating that Abdolfattah Soltani had been arrested on charges of disseminating classified intelligence and thus threatening State security. The Government added that he had been offered bail by the court and thus was free on bail.

195. On 19 July 2006, the Government replied to the joint urgent appeal sent on 20 June 2006 and 10 July 2006 concerning Saleh Kamrani. The Government stated that according to information received from the judiciary of the Islamic Republic of Iran, Mr. Kamrani had been detained and charged with "measures against internal security of the State" and referred to the relevant court. The court ruled that he could be released on bail but Mr, Kamrani could not afford to pay it and remained in custody.

196. On 8 September 2006, the Government replied to the joint urgent appeal sent on 11 August 2006, indicating that the Defenders of Human Rights Centre had been registered and requested the necessary licence for its activities from the relevant authorities in Iran. According to the Government, its request has not yet been approved due to shortcomings in both the form and content of its statute. Except for preparing its statute, the Centre cannot undertake any activities before approval is obtained from the Ad Hoc Commission, a body composed of two representatives of the judiciary, two members of parliament and one representative of the Government, and which is empowered by article 10 of the "Bill on establishment and activities of parties and associations" to grant licences to establish parties.

Special Rapporteur's comments and observations

197. The Special Rapporteur thanks the Government of the Islamic Republic of Iran for its cooperation and the information provided in response to his communications of 31 March 2006, 20 June 2006, 10 July 2006 and 11 August 2006. However, he cannot but note with concern that in the course of 2006 no fewer than 13 communications had to be addressed to the Government. The Special Rapporteur is concerned at the frequency and gravity of the allegations he has received throughout the year regarding situations in Iran and can only reiterate his serious concern about the generally deteriorating situation of lawyers working for the defence of human rights, and in particular for the defence of ethnic minorities in the country. He regrets that his communications of 1 March 2006, 31 March 2006, 22 May 2006, 8 August 2006, 16 August 2006, 21 September 2006, 13 November 2006, 4 December 2006 and 7 December 2006 have so far remained unanswered and urges the Government of the Islamic Republic of Iran to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, detailed substantive answers to the allegations relayed in these nine communications.

198. As regards the Government's reply of 31 March 2006 concerning Abdolfattah Soltani, the Special Rapporteur takes note of the information provided by the Government but regrets that the Government only partially addressed the concerns of the Special Rapporteur. In particular, he would have appreciated receiving details about the basis upon which the General Prosecutor of Tehran decided to replace the investigating judge, resulting in Mr. Soltani's remaining in custody for a further three months. Furthermore, the Special Rapporteur would have liked the Government to provide information about the measures taken to ensure that Mr. Soltani was 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, as provided by principle 8 of the Basic Principles on the Role of Lawyers. In addition, the Special Rapporteur would have appreciated information about measures that have been taken to redress the violation of Mr. Soltani's right to presumption of innocence represented by the official letter from the judiciary rejecting his election as a member of the Board of theTehran Bar Association, on the grounds that his candidacy was not valid since he was in prison during the election. The Special Rapporteur urges the Government to provide at the earliest possible date a reply to all of these concerns, without which the Special Rapporteur would be compelled to conclude that Mr. Soltani was not given a fair trial. The Special Rapporteur was also concerned to learn from non-governmental sources that on 16 July 2006, Mr. Soltani was notified that the Revolutionary Court of Tehran had sentenced him to a five-year prison term and to the loss of his civic rights. The Special Rapporteur learned that Mr. Soltani appealed this decision, and would be grateful to the Government not only to provide information on the result of the appeal but also to take all the measures necessary to ensure Mr. Soltani's right to freedom of expression, as guaranteed by principle 23 of the Basic Principles on the Role of Lawyers.

199. Concerning the case of Saleh Kamrani, the Special Rapporteur thanks the Government for its reply of 19 July 2006, though he regrets that the answer was incomplete. The Special Rapporteur also notes that his communication of 7 December 2006 has remained unanswered. In this respect, he would request the Government to provide

information about the developments in this case and reiterates his call to the Government to take into account his concerns about the conduct of the trial and the grounds for Mr. Kamrani's conviction when considering his appeal before the Appeal Court of Tehran Province.

200. Regarding the reply of the Government to his joint urgent appeal of 11 August 2006, the Special Rapporteur requests the Government to provide him with details on the "shortcomings in form and content" of the DHRC statute that prevent the Ad Hoc Commission from granting the requested necessary licence.

Iraq

Communications sent

201. On 16 February 2006, the Special Rapporteur sent an urgent appeal regarding the trial of Saddam Hussein and his seven co-defendants which is scheduled to resume on 28 February 2006. According to the information received, on 2 February, none of the eight defendants appeared in the courtroom, all of them choosing to boycott the proceedings and watch the trial from elsewhere in the building. The non-appearance of the defendants was reportedly in response to the decision of Acting Chief Judge Raouf Abdul Rahman (appointed on 23 January) to remove from the courtroom one of the accused on 29 January, for de facto contempt of court as a result of a verbal outburst. In protest, all the privately hired defence counsel resigned, alleging that the acting Chief Judge was not impartial. They were immediately replaced by six court-appointed lawyers and the trial continued. The non-appearance of the accused in court is provided for under the Statute of the Iraqi Special Tribunal and its Rules of Procedure and Evidence, as is the appointment of duty counsel in the absence of representation. After a nine-day delay, the trial continued on 13-14 February with the eight defendants back in the courtroom alongside their appointed counsel while their private defence team continued to boycott the proceedings. There is concern regarding the independence and impartiality of this trial, including reports that the the former Chief Judge, Rizgar Amin, had voluntarily resigned as a result of a number of factors, including public criticism from senior Iraqi government officials who questioned his handling of the trial. Further, it is reported that judicial independence has been compromised and thus the integrity of the trial is under serious threat, including allegations by the private defence team of bias on the part of Acting Chief Judge Rahman, who is from the Kurdish town of Halabja where the chemical gas attack took place in 1988 under the authority of Saddam Hussein's forces.

202. On 30 November 2006, the Special Rapporteur sent an allegation letter regarding Dhia Al-Sady, member of the General Council and newly elected President of the Iraqi Bar Association; Mouzahim al-Jabouri, member of the General Council; and Sami al-Khitib, member of the General Council and Chairman of the Human Rights Committee of the Bar Association. According to the information received, on 16 November 2006, the General Council of the Iraqi Bar Association organized nationwide elections for a new president to replace the outgoing President, Kemal Hamdounand, and to elect the 10 members of the General Council. Dhia Al-Sady was elected as the new President with 1,615 votes, against

702 votes for Eswadal Menshawiwho. However, following the announcement of the results of the election, it is reported that the de-Baathification committee ruled that Dhia Al-Sady, Mouzahim al- Jabouri and Sami al-Khitib had been convicted and had no right to remain on the Bar Council. The committee's ruling has been rejected as illegal by Dhia Al-Sady, Mouzahim al- Jabouri and Sami al-Khitib, as well as by Kemal Hamdounand, the outgoing President, Malik Douhan, former Minister of Justice, the Democratic Association of Iraqi Jurists and other civil society organizations in Iraq. Serious concerns are expressed that this ruling is an attempt to eliminate independent lawyers from higher positions of the Iraqi Bar Association and replace them with politically affiliated jurists, within the context of a broader attempt to eliminate independent lawyers and judges from the legal arena in Iraq, which severely affects the independence of the judiciary and the rule of law in the country.

Press releases

203. On 22 June 2006, the Special Rapporteur issued the following press release:

> "UN HUMAN RIGHTS EXPERT CONDEMNS ASSASSINATION OF IRAQI LAWYER
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> "The Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy, today strongly condemns the assassination of a legal member of the defense team of Saddam Hussein and called on the Iraqi Government to launch an independent investigation into the killing.
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> "The victim, Mr. Khamis al-Obeidi, was shot to death Wednesday after he was abducted from his Baghdad home. Mr. Despouy said he was particularly concerned at allegations that the police forces might have been involved. This is the third killing of a member of Saddam Hussein's defense team since the trial started in October last year. In this context, the Special Rapporteur wishes to recall that the Iraqi High Tribunal has certain deficiencies and that its legitimacy has been rightfully criticized. He is concerned by the fact that its jurisdiction is limited since it cannot judge those responsible for war crimes committed by foreign armed forces neither during the first Gulf war (1990) not after 1 May 2003. Also, the Tribunal was set up in the context of an armed occupation which is mainly considered to be illegal. Moreover, it should be noted that the Tribunal violates a number of international human rights standards on the right to be tried by an independent and impartial tribunal and on the right to defense. In this regard, there have been numerous reports of external pressures on the judges of the Iraqi High Tribunal, which may have contributed to the removal and resignation of some of them. Also, the right to an appropriate and independent defense is undermined in particular by the extremely serious attacks against defense lawyers. Finally, he is concerned that the Tribunal is empowered to impose the death penalty and that the prosecution called for the death penalty for Saddam Hussein, his half-brother Barzan al-Tikriti and former senior regime member Taha Yassin Ramadan, in the context of proceedings where fair trial standards are not guaranteed. The Special Rapporteur

wishes to reiterate his support for the establishment of an international tribunal to ensure that the entire spectrum of barbaric crimes committed in Iraq are prosecuted in a comprehensive, independent and impartial manner, in full respect of the right to truth of all victims and of the international community at large. In this context, the prompt execution of Saddam Hussein would entail a loss of precious evidence. Both for Iraq and internationally, a sentence for Saddam Hussein reached at the end of proceedings that meet international human rights standards would have tremendous symbolic impact in the context of the fight against impunity and would exemplify that it is possible to impart justice which is not the verdict of the winners against the loosers. The Special Rapporteur is convinced that, in the current circumstances, the Iraqi High Tribunal hardly is in a position to achieve its stated objectives of justice."

204. On 6 November 2006, the Special Rapporteur issued the following press release:

"EXPERT ON JUDICIARY EXPRESSES CONCERN ABOUT SADDAM HUSSEIN TRIAL AND VERDICT AND CALLS FOR INTERNATIONAL TRIBUNAL

"Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, issued the following statement today:

"A day after the Iraqi High Tribunal ended its first trial of Saddam Hussein and sentenced him to death by hanging, the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, reiterates his strong objections regarding the conduct of the trial and expresses his concern about the consequences this judgment may have over the situation in Iraq and in the region. The following are among the main objections of the Special Rapporteur:

· The restricted personal jurisdiction of the tribunal, which enables it only to try Iraqis.

· Its limited temporal jurisdiction. The competence of the tribunal does include neither the war crimes committed by foreign troops during the first Gulf war (1990), nor the war crimes committed after 1 May 2003, date of the beginning of the occupation.

· Its doubtful legitimacy and credibility. The tribunal has been established during an occupation considered by many as illegal, is composed of judges who have been selected during this occupation, including non Iraqi citizens, and has been mainly financed by the United States.

· The fact that the Statute of 10 December 2003 contains advanced provisions of international criminal law which are to be applied in combination with an outdated Iraqi legislation, which allows the death penalty.

· The negative impact of the violence and the insecurity prevailing in the course of the trial and in the country. Since its beginning one of the judges, five candidate judges, three defense lawyers and an employee of the tribunal have been killed. Moreover, another employee of the tribunal has been seriously injured.

· Finally, and most importantly, the lack of observance of a legal framework that conforms to international human rights principles and standards, in particular the right to be tried by an independent and impartial tribunal which upholds the right to a defense.

"The Special Rapporteur welcomes the determination of the Iraqi Government to sanction the main authors of the atrocities committed during three decades in the country and its will to see the trial take place in Iraq. At the same time, he deems it essential that this will be expressed through a trial conducted by an independent tribunal, legitimately established, acting in absolute transparency and providing all guarantees for a fair trial, in accordance with international human rights standards. If those conditions are not fulfilled, the verdict of the Iraqi High Tribunal, far from contributing to the institutional credibility of Iraq and the rule of law, risks being seen as the expression of the verdict of the winners over the losers. The Special Rapporteur urges the Iraqi authorities not to carry out the death sentences imposed, as their application would represent a serious legal setback for the country and would be in open contradiction to the growing international tendency to abolish the death penalty, as demonstrated by the increasing number of ratifications of the Second Optional Protocol to the International Covenant of Civil and Political Rights. It is clear that the verdict and its possible application will contribute deepen the armed violence and the political and religious polarization in Iraq, bringing with it the almost certain risk that the crisis will spread to the entire region. The trial of Saddam Hussein has a particular significance not only for the thousands of victims in Iraq but also for its symbolism in the fight against impunity throughout the world. In this context, the Special Rapporteur reiterates its proposal for the establishment of an independent, impartial and international tribunal with all the necessary guarantees to enable it to receive the support of the United Nations, and which will take advantage of the rich experience acquired by other international tribunals. Since the present verdict is subject to appeal, it opens the possibility to consider the establishment of such an international tribunal which can guarantee a fair trial, either by reopening the present trial or by dealing with the appellate stage. This should be done with urgency, to attenuate the negative impact this verdict already started to produce in Iraq and the proliferation of violence in the region. Another reason for the establishment of such a tribunal is that the current trial is only a stage in a larger judicial process, since it only examines seven charges, which include genocide and crime against humanity, amongst the numerous ones attributed to Saddam Hussein and his close collaborators."

205. On 28 December 2006, the Special Rapporteur issued the following press release:

"UNITED NATIONS HUMAN RIGHTS INDEPENDENT EXPERT REITERATES CONCERNS ABOUT SADDAM HUSSEIN TRIAL AND DEATH SENTENCE

"The Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy, issued the following statement today:

> "Following the recent dismissal of the appeal by Mr. Saddam Hussein Al-Tikriti against the judgment and sentence of the Iraqi High Tribunal, the Special Rapporteur on the independence of judges and lawyers deems it necessary to reiterate his concerns expressed earlier. The decision of the Appeals Chamber of the Iraqi High Tribunal apparently does not address the grave shortcomings of the trial, which involved several co-defendants. The Special Rapporteur's concerns were identified in his press statements of 22 June 2006 and of 6 November 2006. The shortcomings of the trial, as stated by the expert, are related to the lack of observance of international human rights standards and principles, in particular the right to be tried by an independent and impartial tribunal and the right to adequate defense, as stipulated inter alia in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Special Rapporteur urges the Iraqi Government not to carry out the death sentence imposed upon Mr. Saddam Hussein and his co-defendants following what appears to have been a procedurally flawed legal process."

Communications received

206. On 26 April 2006, the Government replied to the urgent appeal sent by the Special Rapporteur on 16 February 2006 regarding the trial of Saddam Hussein and his seven co-defendants. The Government of Iraq assured the Special Rapporteur that there are no grounds for concern as regards the independence of the court, inasmuch as the Iraqi judiciary is well known for its justice, impartiality and fearless readiness to speak the truth. The removal of one of the defendants from the courtroom for disruptive behaviour was a lawful measure under article 158 of the Code of Criminal Procedure (law No. 23 of 1971) and principle 52 (ii) of the schedule entitled "Principles of Procedure" appended to the Courts Act (law No. 10 of 2005). There is no connection between this and the resignation of counsel for the defence, which was a voluntary decision on their part. Under Iraqi law, the court has the right to appoint counsel for the defendant in the absence of his own counsel (article 144 of the Code of Criminal Procedure and article 30 of the schedule entitled "Principles of Procedure" appended to the Courts Act). No complaints were made about the court-appointed counsel. The defence counsel who had left the courtroom returned voluntarily to exercise their lawful right to represent their clients. The independence of the court at the place where the hearing is being held is not open to question. The Iraqi judiciary is fully independent.

207. On 3 May 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 11 November 2005 together with the Special Representative of the Secretary-General on the situation of human rights defenders with regard to the incident involving victim Adel Mohammed Abbas and the injured Thamer Mahmud Hadi [illegible] al-Quza`i, living in the Green Zone. The Government reported that the two men were shot by unidentified men in the Adl district of Baghdad. The Government further indicates that the victim's daughter, Ibtisam Adel Mohammed Abass al-Zubaydi, who was born in 1975 and is a university professor, has said that she does not suspect anyone at present and has asked for her complaint to be brought against the culprits as soon as they are identified. Thamer Mahmud Abbas has made a statement on the incident, claiming that he was

heading for his car when he was shot at by unidentified armed men. He was wounded, while his colleague, named above, was killed. The crime scene was examined but no evidence was found. The victim's body was sent to a pathologist for examination and the wounded man obtained a medical report. Investigators went to the crime scene to collect information about the incident, but this proved fruitless because the shop owners and local citizens refused to cooperate with the investigation.

Special Rapporteur's comments and observations

208. The Special Rapporteur thanks the Government for its cooperation and for the information it provided in its reply of 26 April 2006. The Special Rapporteur is, however, concerned at the absence of an official reply to his communication of 30 November 2006 and urges the Government of Iraq to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, a detailed substantive answer to the above allegations.

209. With regard to the Iraqi High Tribunal, the Special Rapporteur remains concerned about the death sentences imposed upon Saddam Hussein and some of his co-defendants linked to his regime. He reiterates that international law allows the imposition of capital punishment only within rigorous legal constraints, including respect of fair trial standards, as he has mentioned on innumerous occasions. However, these standards are not guaranteed by the Iraqi High Tribunal. In light of the gravity of the shortcomings of the trial of Saddam Hussein and his co-defendants, the Special Rapporteur strongly calls upon the Iraqi authorities to suspend without delay any further executions until it is ensured that a fair trial is provided to those accused under its jurisdiction, in full respect of all due process guarantees required by international human rights law.

Israel

Communications sent

210. On 19 May 2006, the Special Rapporteur sent a joint 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 and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Ziyad Muhammad Shehadeh Hmeidan, human rights defender and fieldworker for Al-Haq, a Palestinian NGO and affiliate organization of the International Commission of Jurists which conducts research and advocacy work on human rights. Mr. Hmeidan has already been the subject of an urgent appeal sent 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 Special Representative of the Secretary-General on the situation of human rights defenders on 14 March 2006, an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 29 November 2005, an urgent appeal sent by the Special Rapporteur on the

independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 1 July 2005 and an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 7 June 2005. The experts note the replies to their communications of 7 June 2005 and 1 July 2005, but note that there has been no reply to the communications of 29 November 2005 or 14 March 2006. According to the Government, administrative detention orders are limited to six months and any extension requires re-evaluation of the relevant intelligence. Mr Hmeidan has been in administrative detention since 23 May 2005 and continues to be held at Kedziot Prison. To date neither he nor his lawyer has been informed of the reasons for his arrest, despite the Government's explanation that Mr. Hmeidan was "arrested on suspicion of involvement in terrorist activities." The Special Representative of the Secretary-General on the situation of human rights defenders visited Mr. Hmeidan in prison during her official mission to Israel and the Occupied Palestinian Territory in October 2005.

211. According to the new information received, on 10 May 2006 a military judge decided to uphold the third extension of Mr. Hmeidan's administrative detention order, which is now said to expire on 12 July 2006. In previous communications to the Government the experts have expressed their grave concern regarding the arbitrary nature of the administrative detention of Mr. Hmeidan. In particular, they continue to be extremely concerned at the fact that he is being denied the exercise of his right to defence and to a fair trial, since he has been detained without any formal charges being brought against him since 23 May 2005. Furthermore his detention is reported to be based on secret evidence that has never been disclosed to either him or his lawyer, which undermines reliance on judicial review as a safeguard against arbitrary administrative detention. The 10 May 2006 military order represents the third extension of his original administrative detention issued on 30 May 2005 which was originally for 18 days. It is reported that each extension of the detention orders is decided almost at the last minute, which causes severe anxiety and anguish to detainees and their families, amounting to psyschological torture. The experts are gravely concerned that Mr. Hmeidan's detention may be subject to indefinite renewal, and reiterate thei concern that his detention is connected with his work in defence of human rights and represents an attempt by the Israeli authorities to interfere with his ability to conduct his legitimate activities in defence of human rights.

212. On 2 June 2006, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders concerning Ms. Kate Maynard, a British human rights lawyer who works with Hickman & Rose , a London-based firm of solicitors. According to the information received, on 24 May 2006 Ms. Maynard was detained on arrival at Ben Gurion airport by Israeli security personnel, having travelled from the United Kingdom to speak at an international conference organized by Avocats Sans Frontières in al Ram, near Jerusalem.

It is reported that prior to her departure from Heathrow airport, she was questioned by Israeli officials. It is alleged that during her detention at Ben Gurion airport, Ms. Maynard was questioned about her involvement in collecting evidence against high-ranking Israeli military personnel and obtaining an arrest warrant for a senior Israeli military official in 2005. It is further alleged that after she had been questioned, Ms. Maynard was denied entry into Israel and detained overnight pending deportation on 25 May 2006. Following these events, Ms. Maynard instructed an Israeli lawyer to apply to the Tel Aviv district court to prevent her deportation and obtain her release from custody. On 25 May 2006 the judge of the Tel Aviv district court ordered the authorities to lift the deportation order and directed that Ms. Maynard be admitted to the country for a limited period of time. It is reported that the Israeli immigration authorities declined to follow this ruling. It is further reported that Ms. Maynard left Israel in the morning of 26 May 2006, as she had already missed her allotted time to speak at the conference. Concern is expressed that the above events are connected with the activities of Kate Maynard in defence of human rights and may represent an attempt on the part of the authorities to prevent her from carrying out her legitimate work.

213. On 6 June 2006, the Special Rapporteur sent a joint 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 and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Hassan Mustafa Hassan Zaga, a researcher who works with the NGOs the Public Committee Against Torture in Israel (PCATI) and Ansar Al-Sajeen (Prisoners Friends' Association). PCATI investigates complaints of torture or other ill-treatment and infringements of human rights by Israeli authorities and Ansar Al-Sajeen provides legal aid to Palestinian detainees and prisoners. Mr. Zaga was previously the subject of an urgent appeal sent jointly 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 Special Representative of the Secretary-General on the situation of human rights defenders on 20 January 2006. The experts regret that no reply to this communication has been received to date. According to the new information received, on 22 May 2006, the decision to extend Mr. Zaga's administrative detention order by four months was upheld by the Ketziot Military Court. The reason given by the General Security Service is that Hassan Mustafa Hassan Zaka "endangers the security of the region"; however, Mr. Zaga has not been given the opportunity to refute the charges brought against him and he is still being held in Ketziot Detention Centre. Concern is expressed that the decision to extend Mr. Zaga's administrative detention may be connected with his activities in defence of human rights. In the previous communication concern was expressed regarding the arbitrary nature of Mr. Zaga's administrative detention. As his detention is reported to be based on evidence that was not disclosed to him, further concern is expressed that this undermines reliance on judicial review as a safeguard against arbitrary administrative detention.

214. On 17 October 2006, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders concerning the closing down of the offices of Ansar Al-Sajeen in Israel and the

West Bank and the search of the house of Munir Mansour, its Chairperson. Ansar Al-Sajeen is registered under Israeli law, and is one of the largest providers of legal representation to Palestinian detainees before Israeli military courts. It pays legal visits to Palestinian prisoners incarcerated in Israel and advocates for their rights. It also works with prisoners' families in need and has facilitated Palestinian family visits. According to the information received, on 8 September 2006, in the early morning, the offices of Ansar Al-Sajeen in Tirah, Majd El-Kurum and throughout the West Bank were raided and closed down by the police and the Shin Bet following the issuance by the Israeli Defence Minister of an administrative order, in accordance with article 84-2B of the Defence (Emergency) Regulations (1945), declaring Ansar Al-Sajeen illegal. The police reportedly confiscated the organization's assets, including 14,000 shekels earmarked for prisoners and their families, hundreds of legal files and documents, telephones, photocopying machines and computers. It is reported that the closure occurred soon after the association launched a campaign to include the cases of 1,948 Palestinian prisoners, citizens of Israel, in the current talks on the exchange of prisoners. Mr. Mansour's house was searched on the same day by the same officials. Mr. Mansour was reportedly questioned for 1 ½ hours and his mobile telephone was confiscated. Concerns are expressed that the closing down of the offices of Ansar Al-Sajeen in Israel and in the West Bank as well as the search of the house of its Chairperson may be in retaliation for the legitimate activities of the organization in defence of the rights of Palestinian prisoners detained in Israel.

215. On 25 October 2006, the Special Rapporteur sent a joint 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 and the Special Representative of the Secretary-General on the situation of human rights defenders concerning the detention of Ahmad Abu Haniya, a Palestinian human rights activist and Youth Project Coordinator with the Alternative Information Centre, a joint Palestinian-Israeli organization based in Jerusalem which promotes human rights and advocates social change in the region. According to the information received, on 22 May 2005 Mr. Haniya was arrested at an Israeli military checkpoint on his way to work. He was subsequently detained under an administrative detention order and has been accused of membership of the Palestinian Front for the Liberation of Palestine and also membership of a group called Al-Islamia. He is reported to be detained at Ketziot Detention Centre in the Negev. The administrative detention order against him has been renewed twice since he was first detained. Under the terms of an administrative detention order, the authorities are neither required to file charges against the detainee nor to bring the case to trial. The order is usually for a determined period of time but is often renewed before it expires and it can be renewed indefinitely. Neither the defendant nor his legal representative is entitled to view the "classified" evidence against the defendant. The current order is due to expire on 15 November 2006 but it is feared that it may be renewed. Concern is expressed that Ahmad Abu Haniya may be detained in order to prevent him from carrying out peaceful activities in defence of human rights.

216. On 1 December 2006, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders concerning Ziyad Muhammad Shehadeh Hmeidan. Mr. Hmeidan has already

been the subject of an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 19 May 2006 (see above), an urgent appeal sent 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 Special Representative of the Secretary-General on the situation of human rights defenders on 14 March 2006, an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 29 November 2005, an urgent appeal sent by the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 1 July 2005 and an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 7 June 2005. The experts note the replies to the communications of 7 June 2005, 1 July 2005 and 29 November 2005 but regret that there has been no reply to the communications of 14 March 2006 and 19 May 2006.

217. According to the new information received, on 14 November 2006, Mr. Hmeidan was informed that a new administrative detention order would be issued which would extend his current detention for a further four months. The new order reportedly came into effect on 19 November 2006, the date scheduled for his release, and is now due to expire on 18 March 2007. It is also reported that a review hearing was held on 20 November 2006 at which the administrative detention order was upheld on the basis of the same "secret evidence" which was used to detain him in May 2005 "on suspicion of involvement in terrorist activities". In previous communications the experts have expressed grave concern regarding the arbitrary nature of Mr. Hmeidan's administrative detention. In particular, they continue to be extremely concerned at the fact that he is being denied the exercise of his right to defence and to a fair trial, since he has been detained without any formal charges being brought against him since 23 May 2005. Furthermore, his detention is reported to be based on secret evidence that has never been disclosed to either him or his lawyer, which undermines reliance on judicial review as a safeguard against arbitrary administrative detention. The 19 November 2006 military order represents the fourth extension of his original administrative detention issued on 30 May 2005, which was originally for 18 days. It is reported that each extension of the detention order is issued almost at the last minute, which causes severe anxiety and anguish to detainees and their families, amounting to psychological torture. The experts are gravely concerned that Mr Hmeidan's order may be subject to indefinite renewal. They reiterate their concerns that his detention is connected with his work in defence of human rights and represents an attempt by the Israeli authorities to interfere with his ability to conduct his legitimate

activities in defence of human rights.

Communications received

218. On 30 October, 4 December and 14 December 2006, the Government acknowledged receipt of the joint allegation letter sent by the Special Rapporteur respectively on 17 October, 25 October and 1 December 2006, assuring the Special Rapporteur that his request had been transferred to the appropriate authorities in Israel and that it would forward any relevant information that it received on these matters.

Special Rapporteur's comments and observations

219. The Special Rapporteur is concerned at the fact that no substantive reply to the three allegation letters mentioned above, and no reply to the other three communications have been received. He urges the Government to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, a detailed substantive reply.

Kazakhstan

Communications sent

220. On 27 November 2006, the Special Rapporteur sent a letter to the Government requesting information on the actions taken to follow up on the recommendations listed in the report of his mission to Kazakhstan (E/CN.4/2005/60/Add.2), as well as other more general information on the progress made in the country in matters pertaining to his mandate.

Communications received

221. By letter of 31 January 2006, the Government informed the Special Rapporteur about the results of an international seminar held in November 2005 organized by the Supreme Court, together with the Human Rights Commission attached to the Office of the President of Kazakhstan, the United Nations Development Programme and the Embassy of the United Kingdom of Great Britain and Northern Ireland in Kazakhstan, with the participation of representatives of the administration of the President of Kazakhstan, the Parliament, the Constitutional Council, the Office of the Procurator-General, the Bar, NGOs, embassies and international organizations. While the participants in the seminar noted the importance and timeliness of the questions raised by the Special Rapporteur in his report, they did not support the view that "the judiciary … remains … highly dependent upon … the executive". It was pointed out that Kazakhstan's judiciary has now acquired real powers and operates on an equal footing with the legislative and executive branches of Government. The establishment in September 2000 of the Judicial Administration Committee of the Supreme Court as the body authorized to provide organizational and

logistical support for the work of the courts has made possible the complete exclusion of the executive's influence on the judicial system. As regards the procedure for electing and appointing judges, the participants in the seminar maintained that it was completely democratic and transparent since the appointment of judges by presidential decree constitutes the very last stage in the selection procedure and is the culmination of public participation in the appointment of judges. The participants also pointed to disciplinary and qualification boards and judicial ethics commissions which consider the liability of judges for violations committed in the administration of justice and complaints against judges who commit violations of ethical behaviour, respectively. Furthermore, Kazakhstan is taking steps to solve a number of problems involving the further harmonization of the judicial system with international principles and standards. This process has been facilitated by Kazakhstan's ratification of the International Covenant on Economic, Social and Cultural Rights on 21 November 2005, and of the International Covenant on Civil and Political Rights on 28 November 2005. Moreover, an important element in the process of reforming the judicial system is the introduction of criminal proceedings with the participation of jurors. One of the strategic objectives in the organization of the judicial system is to improve personnel management. A draft law on the creation of a panel to determine a judge's professional suitability to administer justice was proposed. Furthermore, the draft law sets out, inter alia, the grounds for suspending or terminating a judge's power, which will improve the quality of the administration of justice in line with the Special Rapporteur's recommendations (para. 80). With respect to the Special Rapporteur's recommendation on the creation of an effective system of education and professional training of judicial personnel (para. 74), reference was made to the establishment of the Justice Institute of the State Administration Academy attached to the Office of the President. In addition, Kazakhstan was making efforts to improve ethical standards, openness, access to courts and the transparency of judicial procedures in line with the recommendations contained in the report (paras. 86-88). While not denying individual occurrences of negative phenomena among judges, the participants in the seminar could not agree with the assertion that the entire judicial system is corrupt. In order to combat corruption, organizational and functional measures are being taken to eliminate the causes of corruption such as the automated system of assigning cases to judges and complete audio recordings of legal proceedings. Preparations are also being made to introduce a system of specialized juvenile courts in line with paragraph 89 of the recommendations. As regards the Bar, a bill on strengthening the role of lawyers in legal proceedings is being prepared, which would also broaden lawyer's procedural powers, including their access to factual information necessary for providing legal assistance (para. 81). Finally, with the ratification of the International Covenant on Civil and Political Rights the power to authorize detention has been transferred to the courts.

222. On 17 January 2007, the Government of Kazakhstan provided further information on the actions taken to follow up on the recommendations listed in the Special Rapporteur's mission report to Kazakhstan. The Special Rapporteur thanks the Government for its cooperation. Unfortunately, this reply could not be translated in time for inclusion in the present report.

Special Rapporteur's comments and observations

223. The Special Rapporteur thanks the Government for its cooperation and for its replies of 31 January 2006 and 17 January 2007 on the follow-up to his mission report. Concerning the reply of 31 January 2006, the Special Rapporteur notes with satisfaction that Kazakhstan is taking steps to further harmonize the judicial system with international principles and standards. He particularly welcomes the introduction of criminal proceedings with the participation of jurors, and the proposed establishment of the Justice Institute of the State Administration Academy attached to the Office of the President. He also welcomes the two draft laws on the status of judges and on strengthening the role of lawyers in legal proceedings that are being prepared. He hopes to receive further information on the status of these draft laws, on the introduction of the jurors system in criminal proceedings and the proposed establishment of the Justice Institute of the State Administration Academy, and on the implementation of the other recommendations included in his report.

224. The Special Rapporteur assures the Governments that he will study its reply of 17 January 2007 as soon as he receives the translation.

Kyrgyzstan

Communications sent

225. On 20 June 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture, regarding Zhakhongir Maksudov, Odilzhon Rakhimov, Yakub Toshboev and Rasulzhon Pirmatov. They were the subject of an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers on 30 December 2005 and of urgent appeals sent on 23 June 2005 and on 26 January 2006 by the Special Rapporteur on the question of torture. These cases are furthermore pending before the Human Rights Committee, which has requested the Government to take interim measures of protection, i.e. not to proceed with the extradition of the men to Uzbekistan as long as the communications are pending. According to additional information received, the four men's appeals against the extradition decisions were rejected by the Supreme Court of Kyrgyzstan in April and May 2006 for Zhakhongir Maksudov, Odilzhon Rakhimov, Yakub Toshboev, and on 13 June 2006 for Rasulzhon Pirmatov. It is reported that on 19 June 2006, the authorities said that they would extradite them, but a date has not yet been set. The four men are still in detention. Concern is expressed that these persons may be at risk of torture or ill-treatment if they are forcibly returned to Uzbekistan.

226. On 23 November 2006, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the question of torture, the Special Rapporteur on trafficking in persons, especially women and children, and the Special Rapporteur on violence against women, its causes and consequences, concerning Ms. R.G.D, an 82-year-old woman living in Ananievo, Issyk-Kul. According to the information received, during the night of 22 April 2005, Ms. D. was raped in her home by a man she was able to identify as Salamat Avasovich Akmataliev. The alleged perpetrator ordered her to cover

her eyes with a blanket and demanded to know whether she recognized him. She denied knowing him, and promised not to report him to the police, fearing for her life. The next morning, Ms. D. reported the incident to the police. She underwent a physical examination, which confirmed that she had been raped. Ms. D. then went to the oblast prosecutor's office, where she was informed by the prosecutor that Mr. Akmataliev was under investigation and that he had provided a written undertaking not to leave the area. He claimed that the case would be sent to court once the investigation was completed. Later, however, the assistant prosecutor in Cholpon-Aty Mairambek informed Ms. D. that her case had been transferred to the oblast authorities. To date, there has been no trial regarding this matter. Reportedly, Mr. Akmataliev was interrogated by three investigators, but bribed them in order to terminate the investigation. Sources allege that Mr. Akmataliev publicly boasted that he has enough money to guarantee his impunity. According to the information received, this rape case is not an isolated incident; impunity for rape and other forms of sexual violence is said recently to have intensified. The experts expressed particular concern about the increasingly widespread practice of "bride kidnapping", whereby a woman or girl is taken against her will, through deception or force, and made to marry one of her abductors. Sources allege that the abductors are often intoxicated and act in groups, using physical or psychological coercion to compel the woman to "agree" to the marriage. These marriages are reportedly rarely registered with the State. It is further alleged that kidnapped women are often raped by the abductors, but fail to report the crime for fear of repercussions. The abductions occur in all parts of Kyrgyzstan, both urban and rural. The women involved are typically under the age of 25. Some victims are also minors. Despite the fact that article 155 of the Criminal Code outlaws non-consensual marriage, it is reported that the perpetrators of such kidnappings are rarely prosecuted and enjoy impunity for their crime. The police are often said to fail to even investigate reported cases of bride kidnapping, as many police officers do not view this as a law enforcement issue, but consider it to be a legitimate traditional practice.

227. On 27 November 2006, the Special Rapporteur sent a letter to the Government requesting information on the actions taken to follow up on the recommendations listed in the report of his mission to Kyrgyzstan (E/CN.4/2006/52/Add.3), as well as other more general information on the progress made in the country in matters pertaining to his mandate.

Communications received

228. On 16 February 2006, the Government replied to the the Special Rapporteur's letter of 13 December 2005, regarding the advance unedited copy of the draft report concerning the visit of the Special Rapporteur to Kyrgyzstan in September 2005. The Government was to reply with any possible alternations by 2 January 2006. The Government commented on the conclusions and recommendations made by the Special Rapporteur. First, the Government disagreed with the Special Rapporteur's concern that the Kyrgyz Republic is unable to fulfil its role to effectively protect citizens' rights and that there is increasing distrust among the population of the judicial system. The Government offered statistics indicating that the number of cases tried by the Kyrgyz courts is up by almost 23 per cent, due mainly to the increase in the number of civil and economic disputes. With respect to

the Special Rapporteur's concern relating to corruption among judges, the Government advised that a mechanism for bringing disciplinary proceedings against members of the judiciary was established in 2003. Furthermore, the Congress of Judges of the Kyrgyz Republic adopted a Judicial Code of Conduct in 1996. With regard to the Special Rapporteur's call to abolish the death penalty and to extend the moratorium on executions pending the abolition, the Government indicated that a presidential decree extended the moratorium on the execution of the death penalty as of 1 January 2006. Furthermore, pursuant to this decree the Government was given two months to prepare and submit to the President bills on the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and on the abolition of the death penalty and its commutation to life imprisonment or a lengthy term of imprisonment. As regards access to a lawyer, the Government pointed to article 85, paragraph 12, of the Constitution of the Kyrgyz Republic. The Government agreed with the recommendation on repealing the requirement that a lawyer must obtain permission from the investigator before gaining access to his or her client. As to the use of metal cages, the Government indicated that their removal is being envisaged once public security has stabilized and people have developed better legal awareness. The Government completely agreed with the recommendation that, where there is insufficient evidence to convict, defendants should be acquitted. Judicial practice in the last three years indicated that the courts have handed down acquittals in a significant number of cases. The numbers of acquittals increased by 22 per cent on average during this period. With regard to the Special Rapporteur's call to introduce alternatives to the deprivation of liberty, the Government advised that a draft law in that regard is being prepared. The principal innovation is the introduction of new types of penalties unconnected with deprivation of liberty, such as restriction of liberty and punitive deduction of earnings. The Government agreed to the Special Rapporteur's call that the right of the prosecutor to initiate supervisory reviews should be abolished. As to the establishment of a system of juvenile justice as a matter of priority, the Government indicated that on 14 August 2001 the State Programme for the Realization of Children's Rights, "New Generation", was adopted, one component of which is the introduction of a juvenile justice system. Regarding the Special Rapporteur's recommendation that candidates for judicial positions in the highest courts should have prior solid judicial experience, the Government reported that the Supreme Court proposed an amendment to the Constitution requiring prospective appointees to the Court to have 10 years of legal experience, of which at least five years must have been spent working in the courts. With respect to the call of the Special Rapporteur to strengthen the Bar, the Government advised that a policy framework for the reform, which had been developed with direct input from practising legal experts, was ratified by the Government Decision of 21 April 2005. The policy framework is a set of viewpoints on the present state of the legal profession and its future development. In June 2005, the Kyrgyz Parliament adopted the bill on legal practitioners and the Kyrgyz Bar at its first reading.

Special Rapporteur's comments and observations

229. The Special Rapporteur regrets the absence of an official reply by the Government to the communications he sent in 2006 and urges the Government of Kyrgyztan to provide substantive detailed information at the earliest possible date, and preferably before the end

of the fourth session of the Human Rights Council. Concerning his letter of 27 November 2006 on the follow-up to the recommendations contained in his mission report, he acknowledges the indications by the Government that a particularly unstable potilical situation in the last few months has prevented the Government from providing a reply on time, but that it will cooperate as soon as a new Government is in place.

Liberia

Communications sent to the Government by the Special Rapporteur

230. On 12 April 2006, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on violence against women, its causes and consequences concerning the rapes of two girls aged 9 and 12. According to information received, on 27 February 2006, a 9-year-old girl was allegedly raped by a 19-year-old man in Lofa County. When the family reported the matter to the authorities, the Circuit Sheriff Court allegedly tried to extort a bribe of 350 Liberian dollars from the victim's father to arrest the alleged perpetrator. It is furthermore alleged that the magistrate of Voinjama also demanded a payment of 300 Liberian dollars to issue an arrest warrant. The judge reportedly claimed that the money was needed to cover the cost of transporting the alleged perpetrator to jail. On 7 March 2006, after the victim's father had paid 100 Liberian dollars to the magistrate, the alleged perpetrator was arrested and sent to pre-trial detention. The next day, the prison authorities released the man pursuant to a written order by the magistrate to the prison authorities stating that the man "is under bond in court with two sureties". Since then the authorities have reportedly not taken any further steps in the matter. In March and April 2005, Joseph Katakao, a 48-year-old pastor of the Living Word Pentecostal Church allegedly raped A.K., a 12-year-old girl from Todee District, Montserrado County, on three separate occasions. Joseph Katakoa allegedly threatened the victim with death if she told her mother. A.K. only told her mother that she had been raped when the mother discovered that she was pregnant. When the mother confronted Joseph Katakoa, he allegedly gave her 250 Liberian dollars for an abortion. The family reported this to the Careysburg Police Detachment. However, the police initially decided that there was no need to arrest Joseph Katakoa or initiate criminal proceedings against him since he had taken steps to settle the issue amicably with the victim's family. Following an intervention by the United Nations Mission in Liberia Joseph Katakoa was arrested, taken to the Careysburg Magistrates' Court and later transferred to the City Court in Monrovia. On 16 May 2005, a pre-trial conference was held in the chambers of the Stipendiary Magistrate of the City Court, where the defendant's counsel attempted to settle the case by offering a promissory note signed by Joseph Katakoa to the victim's family. The document contained a pledge to provide support to the victim during her pregnancy and take financial responsibility for the care of the child. The family refused the settlement offer and requested the Assistant County Attorney to proceed with the prosecution of the case. The case was forwarded to the 1st Judicial Circuit Court Criminal Court "A" for trial. Reportedly, the grand jury hearing the case later attempted to exhort 1,500 Liberian dollars to allow the victim to testify. When the family refused to pay the bribe, the grand jury refused to hear the case.

Communications received

231. None.

Special Rapporteur's comments and observations

232. The Special Rapporteur regrets the absence of an official reply by the Government of Liberia and urges it to provide substantive detailed information at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Malaysia

Communications sent

233. On 23 August 2006, the Special Rapporteur sent a joint urgent appeal, together with the Special Representative of the Secretary-General on the situation of human rights defenders, concerning Malik Imtiaz Sarwar, one of two lawyers currently representing Ms Lina Joy in the Federal Court of Malaysia. Ms. Joy is reported to be a Malay woman who has renounced her Muslim faith and embraced Christianity, and the court proceedings are concerned with whether she can renounce Islam and has the right to have the religious affliation on her identity card deleted. According to the information received, Malik Imtiaz has received death threats from an unknown group which openly calls for his death because of his role in this case. Mr. Sarwar is portrayed on posters and on the Internet as a betrayer of Islam and a monetary reward is offered to anyone who will kill him. Concern is expressed that such threats are linked to the lawful professional activity of Imtiaz Sarwar as a lawyer and may represent an attempt to intimidate lawyers who take on cases in defence of the right to freedom of religion and belief.

Communications received

234. None.

Special Rapporteur's comments and observations

235. The Special Rapporteur is concerned about the absence of any official reply and urges the Government of Malaysia to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, detailed substantive answers to the above allegations.

Mexico

Comunicaciones enviadas

236. El 16 de enero del 2006, el Relator Especial, junto con la Presidenta-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario

General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente, en relación con el señor Martín Amaru Barrios Hernández, abogado y Presidente de la Comisión de Derechos Humanos del Valle de Tehuacán (CDHL), un organismo que trabaja en defensa de los derechos humanos de de los obreros maquiladores en Tehuacan y la Sierra de Puebla. Según la información recibida, el 29 de diciembre de 2005, Martín Amaru Barrios Hernández habría sido detenido por miembros de la Policía Judicial de Puebla bajo el cargo de "presunto chantaje", en virtud de las denuncias formuladas por un empresario y dueño de una de las maquiladores de la región. Dicho empresario habría denunciado que Martín Amaru Barrios Hernández le habría exigido la suma de 150.000 pesos a cambio de poner fin a un movimiento de 163 obreros maquiladores exigiendo una justa liquidación luego de ser despedidos por este empresario. Como abogado, Martín Amaru Barrios Hernández habría combatido la explotación de la cual serían víctimas los trabajadores de las maquiladoras de Tehuacán, principalmente del ramo textil, como el caso de la empresa propiedad del denunciante. Asimismo habría denunciado los daños que las maquiladoras estarían ocasionando a los ríos y tierras de la región, que habrían quedado improductivas por la contaminación de los productos químicos que desechan las maquiladoras. El 4 de enero de 2006, el juez del Juzgado Tercero de lo Penal habría decretado auto de prisión formal contra Martín Amaru Barrios Hernández por la presunta comisión del delito de chantaje en contra del denunciante. Según la información recibida, la defensa habría anunciado que existirían varias anomalías en el proceso y que presentará una queja ante la Corte Interamericana de Derechos Humanos por estas anomalías. Se teme que la detención del Sr. Martín Amaru Barrios Hernández esté relacionada con su trabajo en defensa de los derechos humanos de los obreros maquiladores en Tehuacan y la Sierra de Puebla.

237. El 2 de marzo del 2006, el Relator Especial junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente, en relación con Erica Serrano Farías, abogada ambientalista, asesora jurídica de la Red de Organizaciones No Gubernamentales Ambientalistas de Zihuatanejo (ROGAZ) cuyo objetivo es la protección, rescate y conservación de la Bahía de Zihuatanejo. De acuerdo con dicha información, el 23 de febrero de 2006 en el municipio de José Azueta (Estado de Veracruz), aproximadamente a las 15.30 horas, el hijo de uno de los trabajadores del restaurante de propiedad de la familia de Erica Serrano Farías habría encontrado una granada de uso exclusivo del Ejército en frente de la entrada del negocio. La Sra. Isabel Farías, madre de la abogada, habría notificado a la policía municipal, la cual en un principio se habría negado a recibir la granada, pero finalmente habría accedido a llevársela. Posteriormente, según se nos informa, el Director de Seguridad Pública del Municipio, Eduardo Enrique Domínguez, habría acudido al domicilio de la familia Serrano Farías para disculparse por la situación y habría explicado que se trataba de una "granada de práctica" utilizada por los militares con fines de entrenamiento y habría agregado que seguramente alguien quería asustarlos. Finalmente, según se informa, tanto Erica Serrano, como su familia ya habrían sido objeto de amenazas e intimidaciones, en virtud de sus actividades como abogada. Así, sus padres habrían sido víctimas de fabricación de procesos penales en su contra, habrían sido amenazados con la clausura del negocio familiar y los trabajadores de éste último habrían sido el objeto de

agresiones físicas. Igualmente, según la información allegada, existe un clima de violencia en la zona, donde ya se han presentado algunos incidentes de explosión de granadas, entre ellos el atentado contra la casa del ex director de Seguridad Pública de Zihuatanejo. Se teme que estas amenazas y hostigamientos puedan estar relacionadas con el trabajo que hace Erica Serrano Farías en defensa de derechos humanos. En su calidad de asesora jurídica de la Red de Organizaciones Ambientalistas de Zihuatanejo (ROGAZ), Erica Serrano Farías habría denunciado públicamente las irregularidades que habría cometido la inmobiliaria Punta del Mar en el desarrollo de un proyecto turístico en la zona, así como las omisiones en que habrían incurrido las autoridades.

238. El 2 de marzo de 2006, el Relator Especial junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente en relación con el Sr. Martín Barrios Hernández, abogado, defensor de los derechos humanos de los indígenas en el Tehuacan y de la Sierra de Puebla y presidente de la CDHL, Rodrigo Santiago Hernández y Gastón de la Luz Albino, integrantes ambos de la CDHL. La CDHL es un organismo que trabaja en defensa de los derechos humanos de los obreros maquiladores en Tehuacan y la Sierra de Puebla. El Sr. Martín Barrios Hernández fue objeto de un llamamiento urgente enviado el 16 de enero de 2006 por el Relator Especial, juntamente con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, la Presidenta-Relatora del Grupo de Trabajo sobre la Detención Arbitraria y el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión. Estos agradecen al Gobierno de México su respuesta a dicha comunicación. De acuerdo con nuevas informaciones, el Sr. Martín Barrios Hernández continuaría en situación de riesgo. Según estos nuevos datos, el pasado 12 de febrero de 2006, durante un foro publico celebrado en el municipio de Altepexi, colindante con el valle de Tehuacan en el Estado de Puebla, una persona cercana a la familia Barrios le habría comentado a la hermana del Sr. Barrios: “Cuídense y cuiden a Martín porque ya está contratada una persona que va sobre su cabeza… La cabeza de Martín ya tiene precio”. Según esta persona, la fuente que le habría proporcionado esta información era fidedigna y de confianza. Horas más tarde ese mismo día, otro individuo se habría acercado al Sr. Martín Amaru Barrios Hernández para señalarle que efectivamente un individuo habría sido contratado para matarlo y que debía tener cuidado. De acuerdo con la información recibida, los Sres. Rodrigo Santiago Hernández y Gastón de la Luz Albino, integrantes ambos de la CDHL, se habrían percatado de que, en distintos momentos desde mediados del mes de febrero de 2006, un grupo de hombres jóvenes, con aspecto de pertenecer a cuerpos de seguridad, les habían seguido, vigilado y fotografiado. Se teme que estas amenazas puedan estar relacionadas con el trabajo que lleva a cabo el Sr. Martín Barrios Hernández en defensa de los derechos humanos de los indígenas y de los obreros maquiladores en Tehuacan y la Sierra de Puebla. Además, se teme que estas amenazas formen parte de una campaña de hostigamiento contra los miembros de la CDHL. De acuerdo con la información recibida se habrían solicitado medidas cautelares a la Comisión Interamericana de Derechos Humanos (CIDH) y a la Comisión de Derechos Humanos del Estado de Puebla para la protección del Sr. Martín Barrios Hernández.

239. El 6 de marzo del 2006, el Relator especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, la Relatora Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias y la Relatora Especial sobre la violencia contra la mujer, sus causas y consecuencias, envió una carta de alegación sobre el abogado y defensor de derechos humanos Dante Almaraz. De acuerdo a dicha información, el 26 de enero de 2006 Dante Almaraz fue asesinado con un arma de fuego por hombres no identificados, mientras conducía en el centro de Ciudad Juárez (Estado de Chihuahua). En efecto, según la información recibida, en dicha fecha el vehículo del Sr. Almaraz fue interceptado por otro vehículo tripulado por varios hombres no identificados, quienes le dispararon en repetidas ocasiones. Durante dicho ataque resultó herido uno de sus acompañantes. La CIDH ya había ordenado al Estado de México tomar todas las medidas necesarias para proteger la integridad de Dante Almaraz. Dante Almaraz era un reconocido abogado defensor de derechos humanos de Ciudad Juárez. Antes de su muerte había defendido a Víctor Javier García Uribe, quien al parecer habría sido torturado con el fin de que confesara la autoría del homicidio de ocho mujeres en 2001. El Sr. García Uribe fue condenado a 50 años de prisión. Asimismo, según la información recibida, la familia de Dante Almaraz habría recibido varias amenazas anónimas de muerte, con el fin de que éste no continuara con la defensa del Sr. García Uribe. Este último fue liberado como resultado de un recurso de apelación. Por otra parte, otro abogado que participó en la defensa de los acusados del caso de los ocho homicidios en Ciudad Juárez, Mario Escobedo Anaya, habría resultado muerto en una persecución llevada a cabo por la policía en febrero de 2002. Su defendido, el Sr. Gustavo González Meza, murió en prisión en el año 2003.

240. El 10 de mayo del 2006, el Relator Especial junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario General sobre la situación los defensores de los derechos humanos, envió un llamamiento urgente, en relación con el señor Damián Gustavo Camacho Guzmán, abogado y Coordinador Jurídico de la Comisión Independiente de Derechos Humanos de Morelo. De acuerdo con la información recibida, el 4 de mayo de 2006 el señor Damián Gustavo Camacho Guzmán habría sido detenido por miembros de la Policía Federal Preventiva frente a un hotel ubicado en las inmediaciones de San Salvador Atenco. El Sr. Damián Gustavo Camacho Guzmán estaba actuando en calidad de observador de las violaciones de los derechos humanos que en ese momento estaban ocurriendo y como abogado defensor comisionado por la Comisión Independiente de Derechos Humanos de Morelo para monitorear las violaciones de derechos humanos que se habrían cometido en contra del pueblo de San Salvador Atenco desde el día 3 de mayo de 2006 en el mercado de flores de Texcoco, respondiendo al llamado de los vendedores de flores de San Salvador Atenco quienes habrían sido detenidos. Al momento de ser detenido el Sr. Damián Gustavo Camacho Guzmán estaba brindando información relativa a las detenciones a periodistas. De acuerdo con la información recibida, la policía lo habría arrestado sin presentar una orden de aprehensión y sin que se le encontrara en flagrancia cometiendo algún ilícito. Se teme que la detención del Sr. Damián Gustavo Camacho Guzmán es arbitraria y pueda ser relacionado con su trabajo en defensa de derechos humanos, en particular por su defensa de los vendedores de flores en San Salvador Atenco.

241. El 18 de Julio del 2006, el Relator Especial, junto con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y la Relatora Especial sobre la violencia contra la mujer, sus causas y consecuencias, envió un llamamiento urgente en relación con Socorro Melo de Jesús, estudiante indígena de 20 años, quien vive en el Estado de Guerrero. Según la información recibida, el 6 de abril del 2005, en su camino hacia la escuela, Socorro Melo de Jesús fue violada por un agente de policía, quien le puso una pistola en la espalda y la obligó a tener relaciones sexuales. La estudiante pudo observar a su captor, quien portaba un uniforme de policía. Después de la violación, su captor la amenazó diciéndole que sería inútil que denunciara los hechos ante las autoridades puesto que él trabajaba en la policía y no recibiría ninguna sanción. Los familiares de Socorro Melo de Jesús denunciaron los hechos ante el Ministerio público investigador. El mismo día fue detenido Aurelio Gregorio Azuares, un policía preventivo del Municipio de Tlapa de Comonfort, quien fue reconocido por la víctima sin temor a equivocarse como responsable del delito de violación. El 7 de abril de 2005, Aurelio Gregorio Azuares fue puesto a disposición del Juzgado de Primera Instancia en materia Penal de la ciudad de Tlapa, bajo el cargo judicial de violación, en el expediente penal 58/2005-III. Sin embargo, hasta el día de hoy el Juez no ha dictado sentencia. Según la información recibida, durante el proceso judicial el Juez no ha actuado de manera imparcial. Por una parte, se alega que éste tuvo una conducta hostigante hacia Socorro Melo de Jesús, puesto que la obligó en tres ocasiones a enfrentarse a su agresor, haciendo preguntas sobre su vida privada, y poniendo varias veces en duda sus alegaciones, a pesar de que ella había manifestado su total certidumbre frente a los hechos. Por otra parte, el Juez habría recurrido a métodos de dilación. Así, se habría negado a resolver el caso aduciendo que aún faltaban pruebas por practicar, a pesar de que ninguna de las dos partes ha solicitado mayores medios probatorios. Asimismo, el Juzgador de oficio habría pedido recientemente la práctica de una prueba de muestras de semen del inculpado: sin embargo, esta prueba no tendrá ninguna utilidad, puesto que a pesar de que hace más de un año en el cuerpo de Socorro se detectó semen de su violador, ya ha pasado demasiado tiempo para que se pueda determinar el ADN de dichas muestras.

242. El 27 de Julio del 2006**,** el Relator Especial, junto con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, envió un llamamiento urgente recibido en relación con Genaro Cruz Apóstol, un indígena del pueblo Amuzgo, presidente del Comisariado de Bienes Ejidales de Xochistlahuaca (Estado de Guerrero). Según las informaciones recibidas, el 2 de mayo de 2004, la Asamblea Ejidal del Comisariado de Bienes Ejidales de Xochistlahuaca, cuyo presidente es el Señor Genaro Cruz Apostol, encarceló durante 12 horas a Narciso García, quien se había apropiado de forma ilegal de más de 12 hectáreas de tierras de uso común pertenecientes al ejido. Antes de ser citado a la Asamblea, el Presidente del Comisariado de Bienes Ejidales, Genaro Cruz Apóstol, citó al Sr. Narciso García con el fin de hablar con él y hacerle consciente del daño que estaba ocasionando a la comunidad. Sin embargo, éste no habría acudido, motivo por el cual fue citado para presentarse ante la Asamblea General de Ejidatarios el día 2 de mayo del 2004. En dicha reunión la Asamblea hizo énfasis en que las tierras eran de uso común, y que por su mismo carácter no podrían ser destinadas al uso o posesión de ningún particular, puesto que estaban destinadas a un beneficio colectivo. Sin embargo, el Sr. Narciso García habría insistido en desconocer las razones de la acusación, así como las

autoridades e instituciones que le demandaban devolver las tierras de las cuales se había adueñado ilegítimamente. Según la información recibida, el Sr. García respondió de manera muy agresiva y abandonó el lugar de la Asamblea, la cual a pesar de este hecho continuó con la discusión y decidió imponer al Sr. García una sanción correctiva consistente en una detención por 12 horas. Se afirma que durante la detención al Sr. García le fue permitido comunicarse con su familia y fue alimentado adecuadamente. Después de su liberación, Narciso García presentó una denuncia penal ante el Ministerio Público del fuero común, en el municipio de Ometepec (Guerrero), en contra de Genaro Cruz por privación de libertad. El 14 de julio de 2004, el Sr. Genaro Cruz fue detenido por policías judiciales del Estado y trasladado al Penal de Ometepec, saliendo posteriormente bajo libertad condicional. Desde entonces el Sr. Cruz ha estado bajo investigación penal en el Juzgado Penal de Primera Instancia del Distrito Judicial de Abasolo. El Juzgado es presidido por el juez Aurelio Gutiérrez Cruz, a quien le corresponderá dictar sentencia en el mes de agosto del 2006; el número de la acusación penal es: 110/2004.

243. El 21 de diciembre del 2006, el Relator Especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente en relación con la Sra. Yésica Sanchez Maya, abogada y Presidenta de la Liga Mexicana por la Defensa de los Derechos Humanos (LIMEDDH) filial Oaxaca, y la Señora Aline Castellanos Jurado, ex-Presidenta de dicha organización y miembro del Consorcio para el Dialogo Parlamentario y la Equidad AC. La LIMEDDH fue sujeto de una comunicación de la Representante Especial del Secretario-General para los defensores de los derechos humanos, con fecha de 3 de noviembre de 2006. De acuerdo con la información recibida, el 7 de diciembre de 2006, las Sras. Yésica Sanchez Maya y Aline Castellanos Jurado habrían recibido una orden de aprehensión del juzgado primero penal de primera instancia del distrito judicial de Etla, Oaxaca. Supuestamente las dos activistas fueron acusadas del delito de despojo agravado contra la Corporación Oaxaqueña de Radio y Televisión, Canal 9, en hechos ocurridos el 1 de agosto de 2006. Según los informes, la LIMEDDH ha presentado varios informes y acciones urgentes sobre graves violaciones de derechos humanos llevadas a cabo durante la represión de las protestas sociales que han tenido lugar desde mayo de 2006 en Oaxaca. También, el 27 de octubre de 2006, la Sra. Yésica Sanchez Maya denunció estas mismas violaciones ante de la CIDH en Washington, durante una audiencia requerida por la LIMEDDH. Se expresa preocupación sobre la orden de aprehensión en contra de las Sras. Yésica Sanchez Maya y Aline Castellanos Jurado que puede representar un intento de disuadir a todos los miembros de LIMEDDH de continuar con su trabajo en defensa de los derechos humanos, y en particular de su labor en su calidad de observadores, supervisando y documentando las violaciones de los derechos humanos.

Comunicaciones recibidas

244. Mediante comunicación del 10 de febrero de 2006 el Gobierno de México transmitió la siguiente información en relación con el llamamiento urgente del 16 de enero de 2006 sobre el caso del Sr. Martín Amaru Barrios Hernández. El Gobierno de México informó de que ya se han iniciado las investigaciones por parte de la Procuraduría Estatal y se indicó que la detención del Sr. Barrios Hernández obedeció a la orden de aprehensión librada por

el Juez Tercero de lo Penal dentro de la causa penal 496/2005, por el delito de chantaje cometido en agravio del Sr. Lucio Gil. Asimismo se informó de que durante el tiempo que el Sr. Barrios Hernández permaneció en el Centro de Readaptación Social del Estado de Puebla, a petición de la CDHP, las autoridades del dicho centro otorgaron medidas precautorias para salvaguardar su vida e integridad física. Además, con referencia a un incidente ocurrido el 30 de diciembre de 2003, en que el Sr. Barrios Hernández fue agredido por una persona de nombre Iván Carrera, y posteriormente a ese hecho, manifestó ser amenazado de muerte por medio de un correo electrónico, se informó de que como consecuencia de estos incidentes la autoridad ministerial inicio una averiguación previa pero no se ha procesado a persona alguna por dichos hechos.

245. Mediante comunicación del 21 de abril de 2006 el Gobierno de México transmitió la siguiente información en relación con el llamamiento urgente del 16 de enero de 2006 sobre el caso del Sr. Martín Amaru Barrios Hernández. El Gobierno de México informó que de acuerdo con la decisión de la CIDH, sobre la adopción de medidas cautelares para proteger la vida y la integridad personal de Martín Amaru Barrios Hernández, Martín Barrios Torres, Concepción Hernández Méndez, Inti Naxhietii Barrios Hernández, Eulalia Martínez Sánchez, Rodrigo Sánchez Hernández y Gastón de la Luz, el 10 de abril de 2006, tuvo verificativo la segunda reunión de trabajo. Se indicó que por parte del Gobierno Federal asistieron representantes de la Unidad para la Promoción y Defensa de los Derechos Humanos de la Secretaria de Gobernación, y de la Coordinación General de Participación Ciudadana y Derechos Humanos de la Secretaria de Seguridad Publica y la Secretaria de Relaciones Exteriores. Por el Gobierno Estatal de Puebla, asistieron representantes de la Secretaria de Gobernación, la Procuraduría General de Justicia y la Secretaria de Seguridad Publica, y por parte de los peticionarios asistieron Martín Amaru Barrios Hernández, Inti Naxhietii Barrios Hernández, y su representante Luisa Pérez Escobedo del Centro de Derechos Humanos Miguel Agustín Pro Juárez. Se informó que se alcanzaron los siguientes acuerdos: *a*) que sean intensificados los rondines implementados por la Policía Federal Preventiva (PFP), y que sean más visibles en el domicilio de Martín Barrios Hernández; *b*) que la Secretaria de Seguridad Pública elevara una petición al Estado Mayor de la Policía Federal Preventiva para la aprobación de rondines en los domicilios de los otros dos beneficiarios; *c*) que la Procuraduría General de Justicia del Estado de Puebla (PGJ-Puebla), investigara si se ha iniciado alguna denuncia ante el ministerio público relacionado con los peticionarios; *b*) que se celebrara una próxima reunión, el 16 de mayo de 2006. Se indicó que los peticionarios manifestaron su conformidad por la forma en que se vienen implementando las medidas cautelares, aclararon que han coadyuvado con la PGJ-Puebla en el esclarecimiento de los hechos de las averiguaciones previas manifestadas en la minuta de fecha 6 de marzo de 2006.

246. Mediante comunicación del 5 de junio de 2006 el Gobierno de México transmitió la siguiente información en relación con el llamamiento urgente del 2 de marzo de 2006 sobre el caso del Sr. Martín Amaru Barrios Hernández. El Gobierno de México informa de que el 22 de mayo de 2006, tuvo verificativo la tercera reunión de trabajo. Se acordó lo siguiente: *a*) La Secretaria de Seguridad Publica Federal manifestó que se someterá a consideración del área respectiva la petición de intensificación del rondín y su instalación en los domicilios de Rodrigo Santiago Hernández y de Gastón de la Luz Albino; *b*) Los

peticionarios y la Procuraduría General de Justicia del Estado de Puebla tendrán una reunión de seguimiento sobre los avances de la investigación ante la autoridad ministerial; *c*) Se acordó una próxima reunión, el 24 de julio de 2006. El Gobierno de México informa también que la narración de los hechos contenida en el comunicado debe corresponder a la trascripción de la información proporcionada por el propio señor Martín Amaru Barrios Hernández, y que sobre los hechos expuestos por Martín Amaru Barrios Hernández y transcritos en el comunicado, no existe queja o denuncia. No obstante, por escrito de fecha 3 de marzo de 2006, ratificado ante Agente del Ministerio Publico, Gastón de La Luz Albino, denunció hechos diferentes, que permitió transcribir:

> "1. El 12 de febrero del presente de 2006, aproximadamente a las 14:30 hrs., el suscrito Gastón de la Luz Albino, en compañía de Rodrigo Santiago Hernández y Martín Barrios Hernández, integrantes todos de la Comisión de Derechos Humanos y Laborales del Valle de Tehuacan, participarnos en un foro político cultural celebrado en la Casa de Cultura de Altepexi, Puebla. Al término del encuentro, una persona desconocida de sexo masculino, alto, de tez blanca, se acercó a nosotros y nos dijo:
> "Cuídense y cuiden a Martín porque ya está contratada una persona que va sobre su cabeza .... La cabeza de Martín ya tiene precio".
> 2. Dicho individuo nos dijo que la persona que ha sido contratada para atentar contra nuestras vidas es un hombre alto de complexión delgada y que quizás puede estar relacionada con algunos empresarios del ramo textil radicados en Ajalpan y Tehuacan, sin que a mi me conste la plena veracidad de dicha información."

247. Se dio inicio a la constancia de hechos 1008/2006/7°, de la Séptima Agencia del Ministerio Publico del Distrito Judicial de Tehuacin, con residencia en la ciudad de Tehuacan. En el escrito de denuncia no se contiene relación de hecho alguno respecto del que Gastón de la Luz Albino o Rodrigo Santiago Hernández se hayan percatado de que en distintos momentos desde mediados del mes de febrero de 2006, un grupo de hombres jóvenes con aspecto de pertenecer a cuerpos de seguridad le hayan seguido, vigilando y fotografiando. Las investigaciones no han concluido, por ser necesario establecer en primer lugar, la identidad de la persona desconocida a la que Gastón de la Luz Albino refiere haber visto el 12 de febrero de 2006, aproximadamente a las 14.30 horas, en la Casa de Cultura de Altepexi, independientemente de que a la luz de las alegaciones trascritas en la persona buscada como cercana a la familia Barrios, hecho que se hará de inmediato conocimiento al Agente del Ministerio Publico para la prosecución de la investigación.

248. Por lo que se refiere a las diligencias judiciales y administrativas practicadas, el Gobierno informa que a la fecha se tienen los resultados de:

a) Inspección Ministerial, practicada el día martes 07 de marzo de 2006, a las 12:30 horas, en la población de San Francisco Altepexi;

b) Inspección Ministerial de Fecha 29 de marzo de 2006, donde hicieron suya la denuncia presentada por Gastón Cirilo de la Luz Albino;

c) Declaración de los testigos Martín Amaru Barrios Hernández y Rodrigo Santiago Hernández de fecha 3 de abril de 2006, donde hicieron suya la denuncia presentada por Gastón Cirilo de la Luz Albino. Al no haber concluido la etapa de

averiguación previa, para la búsqueda de los elementos probatorios de la exactitud de los hechos y su punibilidad, aun no se ha dado intervención a la autoridad judicial.

249. Mediante comunicación del 5 de junio de 2006 el Gobierno de México transmitió la siguiente información en relación con el llamamiento urgente del 2 de marzo de 2006 sobre el caso de la Sra. Erica Serrano Farías. El Gobierno de México informó de que no está en posibilidad de determinar sobre su exactitud y veracidad, toda vez que el Gobierno de Veracruz manifestó que después de que sus autoridades ministeriales realizaran una búsqueda exhaustiva en los libros de gobierno de la Agencia del Ministerio Público de José Azueta (Estado de Veracruz), no se halló registro alguno de investigación ministerial o averiguación previa que tenga relación con la descripción de los hechos referidos en el llamamiento urgente. Se indicó que personal perteneciente a la Agencia del Ministerio Publico de José Azueta, investigó si alguno de los restaurantes de dicho municipio pertenecía a la familia de Erica Serrano Farías y obtuvo respuesta negativa. Se informó que en concordancia con la política que sobre el particular ha consolidado México sobre el particular y que ya ha sido expuesta, se conmina a la Sra. Serrano a presentar su denuncia sobre los hechos de los que dice haber sido objeto ante las autoridades ministeriales del Estado de Veracruz, para estar en posibilidad de iniciar las investigaciones correspondientes y en su caso sancionar a los responsables.

250. Mediante comunicación del 17 de julio de 2006, el Gobierno de México transmitió la siguiente información en relación con el llamamiento urgente del 10 de mayo de 2006. El Gobierno de México informó de que ya se han iniciado las investigaciones por parte de la Procuraduría General de la República (PGR) en los casos en que se hubiera podido cometer abusos por parte de las autoridades en el caso San Salvador Atenco. Se señaló que el Gobernador del Estado de México reconoció que se podrían acreditar excesos en el uso de violencia, por lo que instruyó al Procurador General de Justicia para iniciar las averiguaciones previas. Por el momento se han anunciado la imposición de sanciones administrativas a nueve policías y se han solicitado órdenes de aprehensión en contra de otros 23.

251. Mediante comunicación del 18 de agosto de 2006, el Gobierno de México transmitió la siguiente información en relación con el llamamiento urgente del 10 de mayo de 2006. El Gobierno de México informó de que la detención del Sr. Camacho Guzmán, quien manifestó ser estudiante, obedeció a que se le encontró en flagrancia participando en los hechos violentos del 4 de mayo de 2006 en San Salvador Atenco. Se indicó que ninguna queja fue presentada, pero que sin embargo los sucesos ocurridos fueron objeto de análisis por parte de la Comisión Estatal de Derechos Humanos del Estado de México. Asimismo se informó de que se hicieron visitas de inspección en el lugar de los enfrentamientos, que se solicitaron medidas precautorias tendentes a garantizar el derecho a la vida de las personas involucradas en el suceso, que se verificó el estado de salud de las personas detenidas y que se entrevistó al Sr. Camacho Guzmán. Además se indicó que el Juez Segundo de lo Penal ordenó la libertad del Sr. Camacho tras éste exhibir garantía suficiente. Por el momento se han anunciado la imposición de sanciones administrativas a nueve policías y se han solicitado órdenes de aprehensión en contra de otros 23, acusados de haber cometido el delito de abuso de autoridad.

252. Mediante comunicación del 16 de junio del 2006, el Gobierno de México proporcionó información con respecto al llamamiento enviado el 6 de marzo. Indicó que es pertinente precisar que el homicidio ocurrió el 25 de enero de 2006, y a partir de este hecho la Procuraduría General de Justicia del Estado de Chihuahua inició la averiguación previa 1102-3212/06, cuya integración se encuentra supervisada directamente por la Procuradora General, la que además dispuso la confirmación de un grupo especial de investigación integrado por agentes del ministerio Público y elementos de la Agencia Estatal de Investigación, capacitados particularmente en metodología técnico-científica. La Directora de Atención a Víctimas del Delitos y personal especializado en materia de psicología estuvieron pendientes de brindar el apoyo necesario a los deudos desde el momento en que la autoridad recibió noticias del hecho. Además, se les acompañó durante el proceso de identificación y en las exequias. El 31 de enero de 2006, la Procuradora General de Justicia se reunió con los parientes del Sr. Sergio Dante Almaraz, para informarles acerca de la investigación y para presentarles a los encargados de realizarla. Asimismo, se les ha brindado información oportuna sobre los progresos realizados dentro de la investigación. El Ministerio Público determinó, para efectos de protección y con fundamento en lo ordenado en el artículo 120, inciso *a*, del Código de Procedimiento Penales del Estado de Chihuahua, establecer las medidas particulares de vigilancia de los domicilios de los familiares de Sergio Dante Almaraz Mora. Se han practicado diversas diligencias con el objeto de recolectar las pruebas pertinentes para la comprobación de la probable responsabilidad de quien perpetró el delito: para tal efecto, se han recabado diversos testimonios y se han establecido diversas líneas de investigación.

253. Mediante comunicación del 13 de septiembre de 2006, el Gobierno de México proporcionó información con respecto al llamamiento urgente enviado el 18 de julio. El Gobierno indicó que derivado de dicha denuncia, la autoridad ministerial dio inicio a una averiguación previa por el delito de violación cometido en contra de Socorro Melo de Jesús, perpetrado por Aurelio Gregorio Azuarez, Policía del Municipio de Tlapa de Comonfort (Estado de Guerrero). El 6 de abril de 2005, Aurelio Gregorio Azuarez fue puesto a disposición del ministerio público, como presunto responsable del delito de violación. En ese mismo acto ordenó la retención legal y practicó las siguientes diligencias: declaración ministerial de dos testigos, dictamen en materia de química forense, inspección ocular en el lugar de los hechos, declaración ministerial del inculpado, dictamen pericial en materia de psicología y dictamen de criminalistica de campo y fotografía forense. Con base en el material probatorio reunido en la indagatoria, el 8 de abril de 2005 el ministerio público consignó a Aurelio Gregorio Azuarez, quien ejercitó acción penal en su contra, por el delito de violación cometido en agravio de Socorro Melo de Jesús. El 14 de abril de 2005, la autoridad judicial resolvió su situación jurídica, dictando auto de formal prisión dentro de la causa penal 58/205-III, por el delito en comento.

254. Mediante comunicación del 25 de octubre de 2006, el Gobierno de México proporcionó información con respecto al llamamiento urgente enviado el 27 de julio. Indicó que son parcialmente ciertos los hechos expuestos en la comunicación, por las siguientes consideraciones. Con base en una decisión de la Asamblea General de Ejidatarios, el señor Genaro Cruz Apóstol, en su carácter de presidente del Comisariado

Ejidal de Xochistlahuaca, Guerrero, aplicó una sanción correctiva en contra de Narciso García Valtierra, con motivo de haberse apropiado ilegalmente de 12 hectáreas de tierras de uso común perteneciente al ejido. La sanción impuesta a Narciso García Valtierra consistió en su detención por un lapso de 12 horas. Con motivo de esos hechos, la señora Gloria de Jesús Valtierra presentó una denuncia ante el Ministerio Público de Ometepec, Guerrero, compareciendo posteriormente a ratificarla el señor Narciso García Valtierra. A fin de esclarecer los hechos, el Ministerio Público practicó diversas diligencias, entre las que se destacan las declaraciones de los testigos presénciales de los hechos, el dictamen en materia de criminalística de campo y fotografía forense, el reconocimiento médico del señor Genaro Cruz Apóstol por parte del médico legista, la inspección ocular practicada en el lugar en donde estuvo privado de su libertad, así como el informe de investigación de la Policía Ministerial, actuaciones y diligencias ministeriales que fueron aptas y responsabilidad penal del señor Genaro Cruz Apóstol. El 18 de junio de 2004 el Ministerio Público ejercitó acción penal en su contra, solicitando al juez penal girara la orden de aprehensión por su probable responsabilidad por el delito de privación legal de la libertad. El 14 de julio de 2004, fue cumplimentada la orden de aprehensión poniéndolo a disposición del Juez de Primera Instancia del ramo penal del Distrito Judicial de Abasolo (Guerrero), quedando interno en el Centro de Readaptación Social de Ometepec (Guerrero). El 15 de julio de 2004, rindió su declaración preparatoria y posterior a ello, su defensor particular solicitó la duplicidad del término constitucional y tramitó su libertad provisional bajo caución, pues el delito por el cual se le atribuye su probable responsabilidad, no es considerado como grave. El 16 de julio de 2004, el juez penal le otorgó el beneficio de la libertad bajo fianza. En la ampliación del término constitucional, el señor Genaro Cruz Apóstol y su defensor particular ofrecieron los interrogatorios del agraviado, de la denunciante y de los testigos de cargo, así como la ampliación de su declaración preparatoria y las testimoniales de descargo. Una vez desahogadas las pruebas ofrecidas por el señor Cruz Apóstol, el juez penal dictó el 20 de julio de 2004, auto de formal prisión, pues consideró que as pruebas ofrecidas no era suficientes para desvirtuar la probable responsabilidad del delito de privación ilegal de la libertad personal. El 1.º de septiembre de 2004, se desahogaron diligencias de careos entre la denunciante, agraviado y los testigos de descargo, así como testimoniales de descargo a favor del procesado y se agregó al expediente el dictamen en materia de antropología social solicitando por la defensa del procesado. El 6 de septiembre de 2005, se llevó a cabo la diligencia de interrogatorio que le formuló el defensor particular al procesado Genaro Cruz Apóstol, así como a la denunciante y a los testigos de descargo. El 24 de mayo de 2006, el defensor particular del señor Genaro Cruz Apóstol solicitó al juez penal el cierre de la instrucción, no obstante que aún se encontraban pruebas pendientes por desahogar. Una vez recibida la solicitud y después de hacer un análisis de las probanzas contendidas en la causa penal, el juez penal advirtió la existencia de pruebas pendientes por desahogar, lo que dejaba en estado de indefensión al procesado, considerando procedente no consentir el cierre de la instrucción. Actualmente el proceso penal se encuentra en período de instrucción o pruebas.

255. El 10 de agosto de 2004, la Comisión de Defensa de los Derechos Humanos del Estado de Guerrero recibió una queja presentada por la Red de Defensores Comunitarios por los Derechos Humanos, mediante la cual señalaron presuntas violaciones a los derechos humanos del señor Genaro Cruz Apóstol, por parte de elementos de la Policía

Ministerial del Estado de Guerrero, del Delegado del Gobierno de Guerrero y por el Juez penal de primera instancia. Dicha institución solicitó a las autoridades señaladas como responsables, que rindieran el informe correspondiente, notificándoles la apertura del período probatorio. Las autoridades señaladas como responsables rindieron el informe solicitado y ofrecieron las pruebas que estimaron pertinentes. El señor Genaro Cruz Apóstol ratificó en todas y cada de sus partes el escrito de queja y ofreció la declaración de testigos. A efecto de allegar mayores al expediente de queja, representantes de la CDDH-GRO solicitaron un informe complementario al Coordinador Regional de la Policía Ministerial del Estado, quien presentó el informe solicitado y anexó diversas documentales como prueba. Una vez reunidas las probanzas, el 18 de octubre de 2004 la CDDH-GRO emitió una opinión dirigida al Procurador General de Justicia del Estado de Guerrero, pues consideró que al ejecutar la orden de aprehensión los elementos de la policía ministerial, contravinieron las disposiciones legales al allanar el domicilio del señor Genaro Cruz Apóstol. No se inició ninguna investigación ya que en ese caso el señor Genaro Cruz Apóstol es señalado como probable responsable del delito de privación ilegal de la libertad personal en agravio de Narciso García Valtierra. Como se observa, la decisión del señor Genaro Cruz Apóstol consistente en aplicar una sanción correctiva en contra de Narciso García Valtierra fue contrario a las normas establecidas en el derecho interno, ya que existen las instancias y autoridades competentes encargadas de la procuración y administración de la justicia.

Comentarios y observaciones del Relator Especial

256. El Relator Especial agradece al Gobierno de México por su grata cooperación y aprecia que el mismo haya tenido a bien enviarle en un plazo razonable informaciones sustantivas en respuesta a todas las alegaciones que les transmitió. Sin embargo, el Relator Especial nota con preocupación que no menos de nueve comunicaciones fueron enviadas al Gobierno durante el año 2006. Puesto que la mayoría se refieren a las condiciones de peligro, hostigamiento y persecución judicial en las cuales trabajan los abogados y defensores de derechos humanos, el Relator Especial insta al Gobierno a tomar medidas para que estos hechos cesen de ocurrir y los operadores juridicos puedan trabajar en un ambiente que garantice su seguridad así como el respeto de los derechos de sus clientes.

Moldova

Communications sent

257. On 10 May 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right to food and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Vitalii Kolibaba, previously held at the remand centre (IVS) in Chisinau central police station and currently held at the remand centre (IVS) at 6 Tighina Street in Chisinau. According to the information received, Vitalii Kolibaba was arrested at his home early on 21 April 2006 and taken to Buiucani disctrict police station. On 25 April 2006, at Buiucani police station, three police officers tied his arms to his legs, stuck a crowbar under his elbows and hung him in this

position from the crowbar for 40 minutes, beating him onthe head and neck with a stool while he was suspended until he passed out. This was allegedly done to force him to confess to having injured a policeman, which he denies. After he was taken back to his cell, Vitalii Kolibaba tried to commit suicide by cutting his wrists. An ambulance was called and his wounds were stitched, but the medics left him in the police station. On 27 April Vitalii Kolibaba was allowed to see a lawyer for the first time since his arrest. He told the lawyer that he had been tortured, following which the lawyer filed a complaint with the prosecutor's office. When the police officers from Buiucani district police station who had tortured him found out that he had complained, they beat him again. This time the three police officers beat him on the head with a plastic bottle full of water, so as to leave no marks, and punched him in the kidneys. His lawyer is allowed to meet him only in the presence of the procurator or the police officers. On 29 April 2006, Vitalii Kolibaba was taken for a forensic medical examination. The examination was superficial and the three officers who had tortured him were present. The forensic expert reported that there was no evidence of torture. Vitalii Kolibaba was taken to Buiucani district police station every day for questioning. There are no facilities for providing food at Buiucani district police station, which means that he is forced to beg food from other prisoners. In the remand centre where he is currently held prisoners are provided with hot water and bread, but this food is said to be inedible. The utensils are filthy and the bread is of very poor quality. All prisoners rely on packages brought by relatives. As he is not allowed to receive packages from his mother he does not have access to adequate and sufficient food.

258. On 19 July 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary General on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Ana Ursachi and Roman Zadoinov, lawyers. According to the information received, Ms. Ursachi and Mr. Zadoinov are, respectively, the lawyers of Mr Kolibaba and Mr. Gurgurov, two persons who allege having been tortured by the police during detention and who were the subject of communications sent by the Special Rapporteur on the question of torture, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right to food and the Special Rapporteur on the independence of judges and lawyers on 10 May 2006 (see above), and by the Special Rapporteur on the question of torture and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention on 23 November 2005. The two lawyers have worked closely with human rights organizations on torture cases. On 26 June 2006, the Procurator-General wrote to the National Bar Association accusing Ms Ursachi and Mr Zadoinov of misuse of position, which means that they could face a maximum prison sentence of five years or a fine. He referred to the urgent appeals issued in cases of Mr. Kolibaba and Mr. Gurgurov and claimed that there was no evidence of torture in either case. He blamed the irresponsible and unfounded oppositional behaviour of the lawyers and asked the Bar Association to ensure that there was no further damage to the interests of the State. On 28 June 2006, both lawyers were informed that they faced criminal prosecution for spreading false information about human rights violations in Moldova. Ms. Ursachi’s client was released after an urgent appeal launched by an NGO. However, the publicity embarrassed the Procurator-General, who, in a letter to the NGO on 9 March 2006, stated that the version of events given in the urgent appeal did not correspond to the

reality, and gave a bad image of the State. No action was taken against the alleged perpetrators of torture. Mr. Zadoinov's client was also released on bail after an urgent appeal. At the end of May 2006, the Procurator-General's Office reported that no criminal case would be brought against the police officers accused of torture. Concerns are expressed that the letter to the Bar Association of Moldova is a deliberate attempt to intimidate Ana Ursachi and Roman Zadoinov and to prevent them and other lawyers in Moldova from carrying out their lawful professional activities for the protection of human rights, and in particular against grave human rights violations such as torture.

Communications received

259. On 5 July 2006, the Government replied to the joint urgent appeal sent on 10 May 2006. The Office of the Procurator-General considered the communication relating to reports carried in the international press concerning the case of Vitalii Kolibaba and the vigorous steps taken by representatives of Amnesty International to defend and restore his allegedly infringed rights. Particular emphasis is placed on the fact that from 21 April to 27 July 2006 Mr. Kolibaba was subjected to beatings, torture and inhuman treatment by officers of the Buiucani district police station. Following careful examination of the applications submitted by Mr. Kolibaba's lawyer in accordance with article 274 of the Code of Criminal Procedure, the procurators of the Buiucani district procurator's office concluded that the arguments put forward were irrelevant, and declined to initiate criminal proceedings on the grounds that no offence had been committed by the police officers. The facts as established by the procurators are as follows. Mr. Kolibaba came to the attention of the authorities in 2002, when he was registered as an opium user. On 18 April 2006, at around 2.30 a.m., while being pursued by the police for having committed an offence, Mr. Kolibaba, acting out of contempt for law enforcement officials and endeavouring to escape arrest, unexpectedly struck police officer Dmitrii Bobeico with a sharp object on his face and neck causing him moderate bodily harm. Mr. Kolibaba thereupon disappeared from the scene of the incident, without providing any medical assistance or calling an ambulance. On the basis of this evidence, on 26 April 2006, criminal proceedings were initiated against Mr. Kolibaba under article 350, paragraph 1, of the Criminal Code for an attempt on the life of a police officer. On 21 April 2006, Mr. Kolibaba had been arrested for an administrative offence committed prior to the criminal offence mentioned above and appeared before a judge, who sentenced him to five days' administrative detention. Subsequently, during the criminal proceedings against him, Mr. Kolibaba was held in preventive detention and was released on bail on 15 May 2006. It should be noted that when Mr. Kolibaba was examined by doctors in the emergency department at the hospital, and subsequently by the court medical expert, no internal or external injuries were found apart from a cut on his right forearm, which he had himself inflicted with a piece of metal while he was being held in custody in order to mislead the procurator and avoid criminal prosecution. The Buiucani district procurator's office submitted a report to the chief of police concerning the breach of conduct by the officers responsible, who had allowed Mr. Kolibaba to obtain a piece of metal while he was being held in custody. In view of the foregoing, the Office of the Procurator-General considers that the circumstances and manner in which the injuries were sustained were correctly established by the procurators in the Buiucani district procurator's office, in Chisinau. No evidence was found of the use

of torture or ill-treatment against Mr. Kolibaba. According to the Government of the Republic of Moldova, the position taken by the lawyer is clearly untenable: his appeal to the international organizations to take up Mr. Kolibaba's case is quite unwarranted and he is surrounding the issue with a mass of misinformation in the hope of winning his case.

Special Rapporteur's comments and observations

260. The Special Rapporteur thanks the Government of Moldova for its reply to his communication of 10 May 2006. While the Special Rapporteur appreciates the Government's cooperation and its detailed information in response to the allegation, he wishes to obtain more information related to the investigation led by the procurators of Buiuciani into Mr. Kolibaba's complaint that he had been subjected to torture by police officers.

261. The Special Rapporteur regrets the absence of an official reply to his communication of 19 July 2006 and urges the Government of Modlova to provide substantive detailed information at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Morocco

Communications envoyées

262. Aucune.

Communications reçues

263. Par lettre du 23 janvier 2006 le Gouvernement marocain a fait parvenir au Rapporteur spécial la synthèse du rapport final de l'Instance Equité et Réconciliation concernant les violations des droits de l'homme au Maroc, et en particulier le règlement du dossier des disparitions forcées et des détentions arbitraires. L'Instance Equité et Réconciliation avait pour mandat de réaliser une investigation sur les violations graves des droits de l'homme qui revêtaient un caractère systématique et/ou massif, ayant eu lieu durant la période de 1956 au 1999 et qui comprenaient la disparition forcée, la détention arbitraire, la torture, les violences sexuelles, les atteintes au droit à la vie, du fait notamment de l'usage disproportionné de la force, et l'exil forcé. L'Instance Equité et Réconciliation a procédé à une évaluation globale du processus de règlement du dossier de la disparition forcée et de la détention arbitraire, et mené des recherches et des concertations avec les pouvoirs publics, les victimes, leurs familles ou leurs représentants et les organisations non gouvernementales concernées. Elle a aussi œuvré à l'établissement de la vérité sur les violations graves des droits de l'homme, au moyen d'investigations, du recueil de témoignages, d'audiences publiques des victimes et audiences à huis clos avec des témoins et d'anciens responsables, de l'examen d'archives officielles et de la collecte de données de toute source disponible. L'Instance a pu ainsi établir la nature, la gravité et le contexte des dites violations, à la lumière des principes et des normes du droit international

des droit de l'homme. En matière de réparation, l'Instance Equité et Réconciliation a instruit et statué sur les demandes reçues de la part des victimes des violations graves des droits de l'homme ou leurs ayants droit. Outre les décisions d'indemnisation, elle a également présenté des recommandations en matière de réhabilitation médicale et psychologique, de réinsertion sociale, de résolution de problèmes d'ordre juridique, administratif et professionnel pour certaines victimes, ainsi que des cas d'expropriation. Dans son un rapport final, l'Instance Equité et Réconciliation a formulé des recommandations concernant des réformes susceptibles de préserver la mémoire, de garantir la non répétition des violations, d'effacer leurs séquelles, de restaurer et de renforcer la confiance dans les institutions et le respect de la règle de droit et des droits de l'homme. Cette série de recommandations porte sur la consolidation des garanties constitutionnelles des droits humains, l'adoption et la mise en œuvre d'une stratégie nationale intégrée de lutte contre l'impunité, la consolidation de l'état de droit et l'établissement et la mise en œuvre des mécanismes de suivi.

Commentaires et observations du Rapporteur spécial

264. Le Rapporteur spécial remercie le Gouvernment pour l'information qu'il lui a fournie et souligne l'importance du travail réalisé par l'Instance Equité et Réconciliation particulièrement à la lumière de la résolution de la Commission des droits de l'homme 2005/66 intitulée « Le droit à la vérité ». Le Rapporteur spécial invite le Gouvernement à lui faire parvenir des informations sur le progrès de la mise en œuvre des recommandations adoptées. Dans ce contexte, le Rapporteur spécial encourage le Gouvernement à partager avec d'autres États, en particulier de la région africaine, l'expérience de cette Instance Equité et Réconciliation.

Myanmar

Communications sent

265. On 22 March 2006, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the situation of human rights in Myanmar regarding the situation of Thein Zan, a lawyer assisting the family in a case related to the death of Win Lwin at a stone quarry at Yathe, a.k.a. Kyauksarit Mountain, and of Ko Zaw Htay and Aung Than Htun, two other persons also assisting the victim's family in this case. According to information received, on 8 December 2004, Win Lwin was killed while working at the stone quarry at Kyauksarit Mountain. It would appear that the Ngapying village authorities ordered the work, in spite of a legal prohibition (Order 1/99 and the Supplementary Order). In February 2005, Win Lwin's brothers and sister lodged a complaint of forced labour before the delegation of the International Labour Organization (ILO) and the Ministry of Labour. It is reported that on 4 and 6 April 2005, officials from the Department of Social Welfare, the Department of General Administration and the Magwe Division of the Peace and Development Council went to Ngapying village in an attempt to bribe members of the Union Solidarity and Development Association (USDA) as well as other villagers to deny that they had been instructed to carry out forced labour. Moreover, it is alleged that on 6 April 2005, township-level authorities headed by Myint

Maung tried to pressure and threaten Win Lwin's brothers, Ko Min Lwin and Ko Aung Win. It is alleged that Ko Min Lwin was forced to sign a statement saying that he had wrongly reported the case to the ILO. It is alleged too that on 24 April, two staff members of the Ministry of Labour took to Yangon some members of Win Lwin's family - Ko Aung Win, Ko Min Lwin, Thein Thein and a nephew named Hpoe Kyaw - who were kept in a room under police surveillance until 29 April 29. During this time they were reportedly threatened by different persons who wanted to obtain the names of the people who helped them lodge the complaint with the ILO. The Deputy Minister of Labour, Win Sein, also allegedly visited the group, offering various incentives to drop the charges. In the meantime, it appears that the Magwe Division Peace and Development Council instructed the Thayet District Peace and Development Council to prosecute Thein Zan, Ko Zaw Htay and Aung Than Htun for having damaged the national reputation. On 14 October 2005, they were summoned by Aung Lan township court judge Khin Khin Swe and charged on 20 October under section 182 of the Criminal Code for knowingly giving false information to a public servant, which carries a six-month jail term.

266. On 13 April 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the situation of human rights in Myanmar regarding Aye Myint, a lawyer. Aye Myint, who was previously sentenced to death for "high treason" on the grounds of alleged contacts with the ILO, was released from custody in January 2005, and rearrested in August 2005 and charged under section 5 (e) of the 1950 Emergency Provisions Act, for "spreading false information". The grounds for the charge appear to be a letter concerning a land confiscation case which he had sent to the authorities on behalf of his clients, a copy of which he had forwarded to the ILO. On 31 October 2005 Aye Myint was convicted by the Daik-U township court for having disseminated "false information", and sentenced to seven years' imprisonment. It has been reported that the case was summarily dismissed by the Bago District Court on 2 January 2006 (where Judge Khin Win Myint presided), and again subsequently by the Bago Divisional Court on 2 March 2006 (where Assistant Divisional Judge Khin Saw Nyunt presided). It is understood that the lawyers representing Aye Myint are preparing to lodge an appeal at the Supreme Court. Concern is expressed that the charges against Aye Myint may represent an attempt to prevent him from carrying out his work in defence of his client's human rights. Furthermore, there is serious concern that Aye Myint to date has not been afforded a fair trial and may not receive a fair hearing at the Supreme Court. The reasons for this concern are threefold. Firstly, the two key witnesses, farmers Kanya and Kyaing (prosecution witnesses Nos. 6 and 7), have maintained that they, and not Aye Myint, initiated a letter of complaint dated 6 June 2005 to the ILO regarding insufficient allocation of pastureland (132.5 out of an existing 452.6 acres) for their cattle at a meeting called by the Daik-U Township Peace and Development Council in Phaungdawthi village on 5 June, chaired by the township secretary, Aye Ngwe. They have also insisted that their complaint is genuine. It is alleged that there are no grounds for assuming that Aye Myint is guilty of spreading false information, as no evidence has emerged that the information is false as argued by the authorities. Secondly, there is concern that the court may have punished Aye Myint for having had contact with the ILO. However, the Supreme Court has earlier held that as Myanmar is a State Member of the United Nations and the ILO, it cannot be illegal for its citizens to have contact with these agencies (Supreme Court judgements in Special Appeal

Nos. 22 and 23 of 2004: *Zaw Myo Htet (a.k.a.) Zaw Zaw and three others* v. *Union of Myanmar*; *Naing Yeitkha (a.k.a.) Ne Win and eight others* v. *Union of Myanmar*, 14 October 2004). Thirdly, in 1989 the Government issued an order that the Emergency Provisions Act could only be exercised with the approval of the Ministry of Home Affairs (State Law and Order Restoration Council, document No. 021/1 1/NaWaTa, 11 May 1989). However, in this case no permission has apparently been given. The case has been lodged through the local authorities, with a police officer as complainant. Therefore, the case is alleged to be procedurally incorrect and the conviction illegal.

267. On 18 October 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in Myanmar regarding Myint Aye, leader of the Human Rights Defenders and Promoters group and former Chairperson of the National League for Democracy (NLD) in Kyeemyintdaing township. According to the information received, on 30 September 2006, at approximately 10.15 a.m., Myint Aye was taken from his home by two policemen, Aung Kyaw Oo from the Special Branch and Lt. Aung Aung Myint from the West Yangon division. Myint Aye was told that he was being taken for discussions with the authorities; however, he has not had contact with his family or his legal representative since and his current whereabouts are unknown. On 29 September Myint Aye and 10 others had released a statement, in the name of the Human Rights Defenders and Promoters, calling for the release of three former student leaders of the 88 Generation Student Group who had allegedly been detained without charge on 27 September 2006. It is further reported that Myint Aye has been detained on four previous occasions in relation to his work. Concern is expressed that the alleged detention of Myint Aye may represent an attempt by the authorities to prevent him from carrying out his legitimate activities in defence of human rights, and particularly his work in reporting human rights violations in Myanmar.

268. On 23 October 2006, the Special Rapporteur sent an allegation letter concerning a series of court ruling which raise serious concerns regarding the lack of independence of the judiciary in Myanmar. According to the information received, on 29 March 2006, Tin Nyein, a farmer of Kyun village tract, was jailed for complaining that on 19 August 2005, six workers assigned by the township authorities to land and water works in Kwunthi Chaung village demolished embankments that he had constructed in a stream on his land, thereby destroying over 100 acres of crops. The authorities allegedly denied his allegations and on 6 December 2005, one of the workers, San Myint, lodged a counter-complaint in the township court arguing that Tin Nyein had made false claims against him and his colleagues in order to injure their reputations. Tin Nyein then lodged a petition with the Pyapon District Court against the legal action of San Myint, but it was rejected without a hearing on 23 December. On 14 February 2006, he lodged an appeal with the divisional court that the case against him was illegal for procedural reasons. It has been reported that the court agreed but did not dismiss the case completely; Instead, it instructed that charges be brought under suitable provisions of the law. As a result, in March 2006, Police Superintendent Tin Htun of Bogolay township police station lodged a new complaint against Tin Nyein for attempting to cause a breach of the peace and upset public

tranquillity. On 29 March, Judge Bhyein Aung ruled that Tin Nyein was guilty of both charges and sentenced him to two years in jail. The latter lodged an appeal with the Pyapon District Court but it was rejected on 29 May 2006. The case will now be prepared to go to the Ayeyawaddy Divisional Court. The Special Rapporteur also drew the Government's attention to the case of Ma Su Su New, a villager who had won a case in early 2005 against local government officials concerning their use of forced labour on a road construction project. However, in October 2005, the new local authorities accused Ma Su Su New of criminal intimidation and lodged charges against her. During the trial, the judge was allegedly replaced with another judge who reportedly did not even listen to the arguments of the defence lawyer. She was found guilty and the court rejected her successive appeals. She has been sentenced to 18 months in jail and was immediately transported to Insein Prison, where she has been kept in special quarters. Other similar cases have been reported. On 20 and 21 September 2005, Ma Aye Aye Aung, a betel nut seller, was reportedly surrounded and beaten up in public together with her husband by a group led by the local Council Chairman in Mandalay Division. The couple lodged a complaint before the township criminal court but they had to go to the court more than 25 times before the case was heard. Furthermore, the medical reports of their injuries were reportedly given to the police and not to the couple, and the doctor who examined Aye Aye Aung and her husband was not heard by the court, in violation of article 14 3 (e) of the International Covenant on Civil and Political Rights. On 27 December the court found that the Council Chairman was not guilty. The accused were ordered to pay 5,000 kyats each for verbal abuse. Reportedly, they could have been charged with offences that carry up to 10 years' imprisonment. Furthermore, Ma San San Aye and Ma Aye Mi San were allegedly raped in 2004 by a local government official in Pyapon township. At least one of the two was a minor at the time. The victims were convicted of defamation and sentenced to four years' imprisonment after attempting to bring the case to court. This case was the subject of a joint urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on the situation of human rights in Myanmar in 21 April 2004. Finally, Aye Win and Win Nyunt were allegedly sentenced to two years in prison on 2 December 2005, after complaining to the township authorities that their village council was extorting money. The village council undertook legal action at the Bogolay Criminal Court against the complainants for making false allegations. Several witnesses testified that the original complaint of the farmers was genuine. On 2 December, Judge Bhyein Aung found the two men guilty and sentenced them to the maximum term of two years at hard labour. Concern is expressed that such rulings might reflect a trend of the judiciary to side with State officials in virtually all cases where a private citizen stands against a State agent, thus undermining the possibility of obtaining redress for human rights violations.

269. On 30 November 2006, the Special Rapporteur sent a joint 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 Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in Myanmar regarding Ko Win Ko, 38 years of age, a member of the NLD, currently detained at Paungte Prison, and Phyoe Zaw Latt (a.k.a. Ko Wa Toat), 23 years of age, currently

detained at Tharawaddy Prison, both residents of Yethabhyar village, Hteindaw village tract, Minhla District, Moenyo township, Bago Division. According to the allegations received, both men were stopped by about 10 members of the Letpadan township police and of the Union Solidarity and Development Association (USDA) at Letpadan train station on 6 October 2006 at around 10 a.m. While searching the men, the officials found signature sheets bearing more than 400 signatures in support of a petition calling for the release of Aung San Suu Kyi, General Secretary of the NLD, and of detained student activists including Paw Oo Tun (a.k.a. Min Ko Naing), Ko Ko Gyi, Htay Kywe, Min Zeya and Pyone Cho. The latter were already the subject of a joint urgent appeal 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, the Special Rapporteur on the question of torture and the Special Rapporteur on the situation of human rights in Myanmar on 6 October 2006, which has unfortunately remained without a reply from the Government of Myanmar. Following the search, Than Myat Soe and Than Zaw Win, both USDA members from Letpadan township, produced evidence that they claimed to have found in Ko Win Ko's bag. The two men were taken to the Letpadan township police station where Ko Win Ko was charged pursuant to section 353 (2) of the Penal Code on resisting arrest and sections 15 (a) and 16 (a) of the Gambling Act on illegal gambling. Phyoe Zaw Latt was apparently not charged immediately, but kept in detention. The signature sheets were confiscated. On 19 October 2006 senior lawyer Khin Maung Yin arrived at the Letpadan township court to represent Ko Win Ko at his trial, scheduled to take place on that day. However, he was informed that Ko Win Ko had been heard, convicted and sentenced to three years' imprisonment the day before (criminal case Nos. 652/06 and 653/06). On 25 October 2006 the lawyer attempted to gain access to his client at Paungte Prison, but was informed by prison director Myint Aung that he had to wait for some days more. It is not known whether Khin Maung Yin has been able to establish contact with his client. On 22 October 2006 Phyoe Zaw Latt was released from police custody by the Letpadan township court on a six-month good behaviour bond pursuant to section 5 (1) (f) and (g) of the 1961 Restriction and Bond Act. However, on the same day, he was rearrested by the Moenyo township police at his home and charged pursuant to sections 420, 465 and 468 of the Penal Code on deceit and forgery. He was detained incommunicado at Tharawaddy Prison awaiting trial. The trial was scheduled for 3 November 2006 before a special tribunal within the prison, although Phyoe Zaw Latt was charged with ordinary offences for which the establishment of a special tribunal is not foreseen under Myanmar law. He was not allowed to appoint a lawyer to act on his behalf at the trial. Concern is expressed that the arrest, detention and sentencing of Ko Win Ko and Phyoe Zaw Latt may be connected to their peaceful human rights activities, namely the legitimate exercise of their right to freedom of association and freedom of opinion and expression on behalf of those advocating for democratic change. In view of their incommunicado detention, further concern is expressed as regards their health and physical integrity.

Communications received

270. On 21 July 2006, the Government replied to the joint allegation letter sent by the Special Rapporteur on 22 March 2006 concerning Thein Zan, Ko Zaw Htay and Aung

Than Htun, stating that the authorities had thoroughly investigated the matter and the report prepared by the Field Observation Team found that the renovation work for the road heading to the motorway from Ngapyin village is done on an annual basis with the voluntary participation of the local people. There was no collection of money by force or the imposition of fines. It determined after investigation that Ko Win Lwin died as a result of the collapse of a mound of laterite where he was working. Thein Zan, Zaw Htay and Aung Than Tun, who lodged the complaint, were members of NLD and with bad intent had made a false complaint against the State relating to forced labour. The responding police officer had therefore filed the lawsuit against them with the Aung Lan township court in accordance with the existing law and procedures. The Government pointed out that Aung Than Tun did not appear before the court at the first trial, when both Thein Zan's lawyer, Daw Hla Hla Tint, and Zaw Htay's lawyer, Tun Aung Kyi, requested that their clients be released upon the execution of an appropriate bond, to which the court agreed. It added that as Aung Than Tun lived in Taungoke township, he was not able to appear before the Aung Lan court on 25 October 2005. The Government added that the summons to appear before the Aung Lan court at the next trial could not be delivered and served as there was no one to receive it at Aung Than Tun's house. It asserted that the court had issued the warrant on 20 June 2006 because the local authority could not provide the new address of Aung Than Tun to the Aung Lan court. Later, the Taungoke township court reported that Aung Than Tun had moved to Mingaladon township, Yangon Division, and then the Aung Lan court communicated with the authority concerned of Mingaladon township and set the date to serve the warrant on 20 July 2006.

Special Rapporteur’s comments and observations

271. The Special Rapporteur thanks the Government of Myanmar for its reply to his communication of 22 March 2006. While the Special Rapporteur appreciates the Government’s cooperation and its detailed information in response to this allegation, he wishes to obtain further information on the lawsuit against Thein Zan, Zaw Htay and Than Tun at the Aung Lan township court for having logded complaints to the ILO and the Ministry of Labour.

272. The Special Rapporteur regrets the absence of any official reply to his communications of 13 April 2006, 18 October 2006, 23 October 2006 and 30 November 2006 and urges the Government of Myanmar to provide substantive detailed information at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Nepal

Communications sent to the Government by the Special Rapporteur

273. On 28 March 2006, the Special Rapporteur sent a joint 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 regarding Hom Bahadur Bagale, who had been the subject of previously transmitted

communications (see E/CN.4/2004/56/Add.1, para. 1139, and E/CN.4/2005/62/Add.1, para. 1023). According to the allegations received, on 20 March 2006, Mr. Bagale, a police officer, was taken to Police Headquarters in Naxal, Kathmandu, where he was threatened with dismissal unless he withdrew two complaints he had lodged in court against his superiors. On 21 March, Hom Bahadur Bagale was subjected to ill-treatment at Police Headquarters. He managed to escape and took a taxi to the offices of daily newspaper publisher Kantipur Publications, where he described how police had beaten him, shaved the top of his head to humiliate and degrade him, and dragged him through puddles of dirty water in his uniform. Before Kantipur staff could give him any help, police officers arrived from the nearby Naya Baneshwor Ward Police Office and took Mr. Bagale away in a police van. On the same day, he was arrested by police and detained at Hanuman Dhoka District Police Office (DPO), where he was held incommunicado. Deputy Superintendent Sharad Kumar Oli told lawyers that no access to Hom Bahadur Bagale was permitted until the police completed their investigation. Lawyers, relatives and human rights activists tried to visit him in custody that day, but were turned away by police. On 28 March, Officer Bagale was brought before the Supreme Court and ordered released. The Court found that there were no permissible grounds to continue to detain him. Mr. Bagale was therefore released but he fears further reprisals by the Nepal Police. The National Human Rights Commission has been informed. Hom Bahadur Bagale has been pursuing a claim since 2002 that he was tortured by other police officers. The Special Rapporteur recalls that the Special Rapporteur on the question of torture visited Hanuman Dhoka DPO on 12 September 2005 where he interviewed Deputy Superintendent Oli who, together with Chief Superintendent Indra Prasad Neupane and Deputy Superintendent Ganesh Kesha, admitted that torture does take place in Hanuman Dhoka DPO.

Communications received

274. On 8 February 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 26 September 2005 regarding the rearrest of Prem Bahadur Oli, Tek Bahadur Khatri, Man Bahadur Bista, Padam Sarki, Birman Sarki, Tapta Bahadur Giri, Bir Bahadur Karki, Padam Bahadur Budha, Gagan Singh Kunwar, Dhawal Singh Bohara and Ujal Singh Dhami, all from Jogbudha Village Development Committee (VDC) in Dadeldhura District. The Government states that Bin Man Sarki was released on 22 June 2005 by the decision of the District Security Committee Kanchanpur. Prem Bahadur Oli, Tek Bahadur Khatri, Man Bahadur Bista, Padam Sarki, Tapta Bahadur Giri, Bir Bahadur Karki, Padam Bahadur Budha, Gagan Singh Kunwar, Dhawal Singh Bohara and Ujal Singh Dhami, who were released by the order of the Appellate Court Mahendranagar on 17 September 2005, were rearrested on 21 September 2005 at Daivi VDC-3, in the Ojhakhali area of Kanchanpur District. On 22 September 2005, the District Security Committee Kanchanpur ordered them to be held in preventive detention for six months in accordance with the Terrorist and Disruptive Activities Ordinance (TADO). On 11 December 2005, Tek Bahadur Khatri, Padam Bahadur Budha, Bir Bahadur Karki and Ujal Singh Dhami were released by the District Administration Office Kanchanpur and handed over to human rights activist and journalist Mohan Raj Bhatta.

275. On 22 March 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 24 February 2004 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 and the Special Rapporteur on the question of torture regarding two lawyers, Bal Krishana Devkota and Dhananjaya Khanal, who were reportedly arrested on 21 February 2004 in separate incidents. The Government replied that Mr. Devkota was arrested for necessary investigation under TADO on 21 February 2004 and was released on 26 February 2004 and handed over to his wife, Sita Devkota. He was informed of the grounds for his arrest and detention. He was brought before the competent authority and was held under detention by the order of that authority. During his detention, he was allowed to meet with family members and consult with legal practitioners of his choice. At present he is living a normal life.

276. On 22 March 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 26 April 2004 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 question of torture regarding an order banning public demonstrations and the assembly of more than five persons within the Kathmandu Ring Road and Lalitpur areas, and the arrest in particular of the following lawyers: Shyam Kumar Shrestha, Gopi Krishna Thapaliya, Gopi Bahadur Bhandar, Basudev Sigdel, Krishna Silwal, Laxman Prasar Ayral and Jeetaman Basnet. The Government replied that Gopi Krishna Thapaliya was arrested on 4 November 2003 in Koteshwar, Kathmandu, under TADO. He was released and handed over to his brother, Bahrat Thapaliya, on 14 November 2003. During his detention, he was allowed to meet with family members and consult with legal practitioners of his choice. The Government also reported that Jeetman Basnet was arrested under TADO on 6 September 2004 in Shantinagar, Kathmandu. He was released and handed over to his brother, Top Bahadur Basnet, on 18 October 2004. During his detention he was allowed to meet with family members and consult with legal practitioners of his choice. No information was provided about Shyam Kumar Shrestha, Gopi Bahadur Bhandar, Basudev Sigdel, Krishna Silwal and Laxman Prasar Ayral.

277. On 22 March 2006, the Government replied to a joint urgent appeal sent by the Special Rapporteur on 6 August 2004 together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention regarding a 30-year-old man named Upendra Timilsena who was being detained at Mahabir Guan Himalaya Barrack, Chauni, Kathmandu, despite a Supreme Court order to the Chief District Officer, Kathmandu to release him on 23 July 2004. The Government replied that Mr. Timilsena was arrested on 8 June 2004 under TADO, released on 28 July 2004 and handed over to his brother-in-law, Uddav Gautam. He was informed of the grounds for his arrest and was held in detention by the order of the same authority. During his detention, he was allowed to meet with family members and consult with legal practitioners of his choice.

278. On 22 March 2006, the Government sent a second reply to the joint urgent appeal sent by the Special Rapporteur on 26 September 2005 regarding the rearrest of Prem Bahadur Oli, Tek Bahadur Khatri, Man Bahadur Bista, Padam Sarki, Birman Sarki, Tapta Bahadur Giri, Bir Bahadur Karki, Padam Bahadur Budha, Gagan Singh Kunwar, Dhawal

Singh Bohara and Ujal Singh Dhami, all from Jogbudha VDC in Dadeldhura District. The information confirms what was stated in the Government's reply of 8 February and makes no further comments on the case related to the above-mentioned persons.

279. On 22 March 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 29 September 2004 together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture regarding Jimdar Kewat, 16 years old, and his father, Keshu Ram Kewat, aged 50, both residents of Banke District, Betahani VDC-5. The Government reported that Jimdar Kewat was arrested on 31 May 2004 and released on 3 September 2004. He was rearrested on 8 September 2004 and released on 19 September 2004 by the order of the Appellate Court, Nepalgunj. Following his release, he was again found to be involved in terrorist activities and was therefore arrested under TADO on 20 September 2004 and released on 20 December 2004. Then he was again rearrested on 21 December 2004 and released on 20 March 2005. He was then again arrested on 21 March 2005, released on 17 July 2005 and handed over to Ramesh Tripathi, his neighbour. He was arrested and detained in custody and was given information of the grounds for his arrest and detention and was brought before the competent authority and held under detention by the order of the same authority. During his detention, he was allowed to meet with family members and consult with legal practitioners of his choice. Keshu Ram Kewat was arrested on 31 May 2004 and was released on 3 September 2004. He was then rearrested on 8 September and released on 19 September 2004 by the order of the Appellate Court, Nepalgunj. Following his release he was again found to be involved in terrorist activities and was therefore again arrested under TADO on 20 September 2004 and released on 20 December 2004. He was again arrested on 21 December 2004 and released on 20 March 2005. Then he was arrested once more on 21 March and released on 17 July 2005 and handed over to Ramesh Tripathi, his neighbour. He was informed of the grounds for his arrest and detention. He was produced before the competent authority and was held in detention by the order of the same authority. During his detention, he was allowed to meet with family members and consult legal practitioners of his choice.

280. On 22 March 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 29 September 2004 together with the Special Rapporteur on the question of torture regarding Govinda Damai, a 18-year-old man belonging to the Dalit community. The Government replied that it has no information concerning the arrest and detention of Mr. Damai.

Special Rapporteur's comments and observations

281. The Special Rapporteur thanks the Government of Nepal for its replies to his communication of 26 September 2005. While the Special Rapporteur appreciates the Government's cooperation and the information it provided in response to the allegation, he wishes to obtain more information related to the preventive detention for six months of the mentioned individuals under the Terrorist and Disruptive Activities Ordinance and wishes to know whether there has been a judicial review of this detention, as required under international law.

282. The Special Rapporteur regrets the absence of an official reply to his communication of 28 March 2006 and urges the Government of Nepal to provide substantive detailed information at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Pakistan

Communications sent

283. On 2 June 2006, the Special Rapporteur sent an allegation letter concerning the situation of Makhdoom Javed Hashmi, a member of the National Assembly of Pakistan. According to the information received, Mr. Hashmi was arrested on 29 October 2003 and sentenced under various charges on 12 April 2004 to a 23-year prison term. A matter of special concern to the Special Rapporteur is that Mr. Hashmi's trial was reportedly held in camera and did not respect the rights of the defence. It is reported that Mr. Hashmi subsequently filed an application for bail, which was dismissed on 24 February 2005. He then lodged an application for suspension of sentence with the Supreme Court, but the hearing scheduled for 27 June 2005 before the Supreme Court was postponed, allegedly because the senior judge did not attend and the other two judges on the bench felt that they could not take a decision without him. It is reported that despite repeated applications by Mr. Hashmi's defence counsel, no other hearing has as yet been scheduled and the appeal against his conviction and sentence which he filed on 25 April 2004 in the Lahore High Court is still pending. The Special Rapporteur notes the information received that Mr. Hashmi is eligible for release on the basis of entitlements to remission under article 45 of the Pakistani Constitution and under the existing Pakistani Prison Rules. It has also been reported that while the Government of Pakistan states that Mr. Hashmi has been provided with good prison facilities and has a separate kitchen and a servant, he has in fact been transferred to a prison outside Lahore where he is held in solitary confinement, with limited visiting rights, and though he has recently received emergency medical treatment, he has not been provided in the course of his imprisonment with the kind of health treatment recommended by physicians. Concern is expressed for the particularly long delays in judicial proceedings regarding Mr. Hashmi's appeal against his conviction and sentence in contrast to the swiftness of the first-instance proceedings, a situation that violates the fundamental right to be tried without undue delay – a principle that is at the centre of the mandate as Special Rapporteur. Such delay may indeed be interpreted as a denial of justice. The Special Rapporteur is also concerned at the continuing imprisonment of a person who, according to the information available, should have already been released on the basis of legal entitlements to remission of sentence. The Special Rapporteur would appreciate detailed information in that specific connection. He would also appreciate urgent information as to Mr. Hashmi's real conditions of imprisonment and his health condition. The Special Rapporteur is sure that the Government appreciates that any form of solitary confinement is a drastic measure which should be avoided to the extent possible as a matter of principle and in any case should not be imposed by any authority other than the judiciary. He notes that there has been no judicial order imposing this measure on Mr. Hashmi. The Special Rapporteur requests the Government to provide clarification on this matter and,

should the reports be well founded, to take swift action to remedy the situation and release Mr. Hashmi if he is entitled to release.

Communications received

284. None.

Special Rapporteur's comments and observations

285. The Special Rapporteur regrets the absence of an official reply and urges the Government of Pakistan to provide substantive detailed information at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Paraguay

Comunicaciones enviadas

286. El 27 de noviembre del 2006, el Relator Especial, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente en relación con el Sr. Martin Almada, abogado y miembro del Comité Ejecutivo de la Asociación Americana de Juristas (AAJ). El Sr. Almada fue el objeto de una carta de alegaciones mandada el pasado 19 de octubre de 2006 por el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos. De acuerdo con la información recibida, el Sr. Almada se encontraría hoy sometido a procesos penales por supuestos delitos contra el honor de conocidos exponentes de la dictadura de Alfredo Stroessner: el ex comisario Rolando Alum e Hirán Delgado von Leppel. El Sr. Almada ha sido victima de prisión y torturas en las cárceles durante el periodo de la dictadura, junto a su esposa quien falleció. Desde entonces, el Sr. Almada ha realizado una de las más importantes contribuciones para el esclarecimiento de los crímenes de lesa humanidad cometidos durante el régimen de Alfredo Stroessner con el hallazgo de los archivos de la Policía Política de la dictadura militar de Alfredo Stroessner ("Archivos del terror"). Desde que descubrió los archivos del terror, el Sr. Almada promovió querella criminal contra Alfredo Stroessner, Sabino A. Montanaro, ex Ministro del Interior, y Pastor Coronel, ex Jefe de la Policia Politica, y pidió a la justicia paraguaya la investigación del Operativo Cóndor, pacto entre los militares de la Argentina, el Brasil, Bolivia, Chile, el Paraguay y el Uruguay. En el año 2000, comenzó el hostigamiento judicial del Sr. Almada por sus comentarios hechos a la prensa sobre la corrupta gestión del Administrador durante la dictadura de la Empresa binacional Yacyreta (Argentina/Paraguay), Magno Ferreira Falcon. En octubre de 2003, en los pasillos de los Tribunales el Sr. Almada trató de "torturador" al Comisario Rolando Agustin Alum, quien le promovió una querella criminal por difamación y calumnia. En los "Archivos del terror", el Dr. Almada encontró las pruebas que el Comisario Alum fue el responsable de torturas en el centro de tortura "la Técnica", pruebas que fueron presentadas al Juzgado de Liquidación y Sentencia que absolvió al Sr. Almada en el 2005. Pero la Cámara de

Apelación anulo la decisión y ordeno reiniciar el juicio. También, en agosto de 2006, con motivo del fallecimiento del ex dictador Stroessner en Brasilia, el Sr. Almada declaró a la prensa nacional e internacional que la herencia de la dictadura era la corrupción y la impunidad, y que los cómplices y encubridores del dictador debían ser juzgados y remitidos a la Penitenciaria Nacional. El ex Presidente de la Corte Suprema de Justicia, Hiram Delgado von Leppel, se dio por aludido y promovió una querella criminal por difamación y calumnia en contra del Sr. Almada, por haberle herido en su honor. La primera audiencia de conciliación estaría fijada para el 27 de noviembre. En este contexto, se expresa temor que las querellas criminales presentadas en contra del Sr. Almada tengan el propósito de disuadirlo en el ejercicio legitimo de su libertad de expresión y de sus actividades de abogado y defensor de los derechos humanos, en relación con sus reclamos de justicia respecto a las graves violaciones de derechos humanos de la época de la dictadura.

Comunicaciones recibidas

287. No se recibió ninguna comunicación.

Comentarios y observaciones del Relator Especial

288. El Relator Especial se preocupa por la ausencia de respuesta oficial y pide encarecidamente al Gobierno del Paraguay tenga a bien enviarle a la brevedad posible, y preferentemente antes de la clausura del cuarto período de sesiones del Consejo de Derechos Humanos, informaciones precisas y detalladas acerca de las alegaciones arriba resumidas.

Peru

Comunicaciones enviadas

289. El 10 de octubre de 2006, el Relator Especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente en relación con la Sra. Karim Virginia Ninaquispe Gil, abogada de los derechos humanos y integrante del equipo legal de la Asociación Pro-Derechos Humanos (APRODEH). La organización APRODEH ha asumido la defensa de casos importantes por parte de las victimas de graves violaciones de derechos humanos y en particular las desapariciones forzadas y las ejecuciones extrajudiciales relacionadas con el conflicto armado interno peruano, incluso la masacre en Cayara Accomarca de 1985. De acuerdo con la información recibida, el 22 de septiembre de 2006, aproximadamente a las dos de la tarde, la Sra. Karim Virginia Ninaquispe Gil habría recibido una llamada telefónica amenazante de un individuo desconocido que le habría dicho: “No salgas de tu casa, vas a morir”. Se informa de que la Sra. Karim Virginia Ninaquispe Gil habría sido victima de otros actos de intimidación en los últimos meses. Además, se informa de una serie de actos de hostigamiento en contra de los magistrados, testigos, abogados defensores y expertos desde que se abrieron varios casos sobre graves violaciones de derechos humanos ante los tribunales. Se expresa preocupación que los actos de intimidación en

contra a la Sra. Karim Virginia Ninaquispe Gil puedan estar relacionados con sus actividades en defensa de los derechos humanos y en particular su trabajo de defensa de las victimas en varios casos de graves violaciones de derechos humanos.

Comunicaciones recibidas

290. No se recibió ninguna comunicación.

Comentarios y observaciones del Relator Especial

291. El Relator Especial se preocupa por la ausencia de respuesta oficial y pide encarecidamente al Gobierno de Perú tenga a bien enviarle a la brevedad posible, y preferentemente antes de la clausura del cuarto período de sesiones del Consejo de Derechos Humanos, informaciones precisas y detalladas acerca de las alegaciones arriba resumidas.

Philippines

Communications sent

292. On 26 April 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Elpidio de la Victoria, environmental lawyer and programme director of the Cebu City Bantay Dagat Commission, and his colleague Antonio Oposa, environmental lawyer and leader of the Visayan Seas Squadron. The two organizations oppose illegal commercial fishing and campaign against environmental degradation in the Visayan Sea Marine Triangle. According to the information received, on 12 April 2006 Mr. de la Victoria was shot in the back of the head by an unknown gunman as he was leaving his house in Barrangay Dauis, Talisay City. He was taken to hospital, where he died on 13 April as a result of his injuries. It is further reported that a police officer has been arrested in connection with the killing of Mr. de la Victoria. It is alleged that in the weeks prior to his death, Mr. de la Victoria had told friends and relatives that those opposed to his and Mr. Oposa's work had raised 1 million pesos to kill them both. It is also reported that Mr. Oposa has received serious death threats in recent weeks. Grave concern is expressed that the killing of Elpidio de la Victoria and the threats against Antonio Oposa may be connected to their work in defence of the environment, in particular their work to protect coral reefs in the Visayan Sea Marine Triangle from illegal fishing and environmental degradation. Further concern is expressed that the life of Antonio Oposa may be in immediate danger.

293. On 19 June 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders concerning Ms. Elisa Tita Lubi, a pro-democracy activist, a member of the Board of Trustees of SELDA, an organization of former political prisoners,

a participant in the Program and Management Committee and Regional Council of the Asia-Pacific Forum on Women, Law and Development and former Coordinator of the GABRIELA Commission on Women's Rights. SELDA is a member organization of the National Alliance for the Advancement of People's Rights. According to the information received, the Ministry of Justice of the Philippines is currently seeking a court order for an arrest warrant for Elisa Tita Lubi, together with 48 other individuals, based on the charges of rebellion/insurrection under articles 134 and 135 of the Revised Penal Code, allegedly because of Ms. Lubi's pro-democracy activities and her open criticism of the Government. It is reported that on 4 May 2006 the judge of the Makati Regional Trial Court dismissed the charges against Ms. Lubi. The Department of Justice then filed a motion against this judgement on the grounds that the judge had not acted impartially, and a new judge was assigned to the case which is scheduled to be heard again on 21 June 2006. Concern is expressed that the charges may be related to Ms Lubi's legitimate activities in defence of human rights, in particular because of her pro-democracy activities.

294. On 9 November 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Ms. Aprilyn Perido, aged 26, organizer of the provincial chapter of the urban poor group Kalipunan ng Damayang Mahihirap; Ms. Eloisa Tucay, aged 24, member of the Abakbayan Youth Group; Mr. George Lavadia, aged 32, former spokesperson of the Erap Resign Movement and member of the AMA-Sugbo-KMU, and Ms. Sharon Abangan, aged 33, member of the Panaghiusa sa Gagmay'ng Mangngisda sa Sugbo and the Salvador Bantay Dagat Association and campaign manager of the Anakpawis political party. According to the information received, on 1 September 2006, Mr. Lavadia and Ms. Abangan were arrested by the police in Talisay City on suspicion of being involved in "subversive activities". It is alleged that the pistols, grenades, laptop and documents seized from them could have been planted. Although the police at first denied having arrested them, it was later confirmed that they are being held incommunicado in police custody. On 4 September 2006, Ms. Perido and Ms. Tucay were arrested by the Philippines National Police Provincial Special Operations Group (PSOG) in front of the Wesley Divinity Seminary School of the United Methodist Church on Mabini Street, Cabanatuan City. They were both detained without any formal charge. Although PSOG initially denied having arrested them, officials later confirmed that they were being held in custody. They are also being detained incommunicado. Concern is expressed that these arrests may be connected with the legitimate activities of human rights defenders, particularly those in connection with the promotion and defence of the rights of indigenous peoples, and may represent an attempt to prevent the persons concerned from meeting and communicating with other international human rights defenders.

Communications received

295. On 28 August 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 19 June 2006, stating that a complaint against Ms. Lubi and other individuals for the crime of rebellion is pending before the trial court. The Government explained that the usual domestic procedure begins with a police investigation of the case. Afterwards, a criminal complaint is filed against the person who was found by the police to have committed the offence. The complaint is then filed before the municipal/city prosecutor's office (of the Department of Justice) or, in places where there are no prosecutors, before the municipal trial court judge of the place where the criminal act was alleged to have been committed. The prosecutor, or the municipal trial court judge, then conducts a preliminary investigation or examination of the complaint. In the course of the investigation/examination, the prosecutor or the judge calls upon the complainant, the person being accused of the offence, and their witnesses to determine the veracity of the complaint. If the prosecutor or the judge is satisfied that there is reasonable ground to believe that the crime charged has been committed and that the accused is probably guilty thereof, he recommends the filing of the criminal case before the trial court. After the filing of the criminal complaint (which is also called an information), trial of the case ensues. Once an information is filed in the regional trial court (RTC) of the place where the offence was committed, it will be raffled among the different branches of the RTC to determine which branch will hear the case. During the trial, the accused is accorded all the rights due an accused under the Constitution, such as, but not limited to the following: the right to be presumed innocent; the right to counsel; the right to be informed of the accusation against him; the right to speedy, impartial, and public trial; the right to confront witnesses against him; and the right to compel the attendance of witnesses in his behalf. Upon the conclusion of trial, the trial court which heard the case will make a finding on the guilt of the accused and impose sanctions if it finds the accused guilty of the crime charged. In the present case, the Directorate for Investigation and Detective Management of the Philippine National Police (PNP) conducted an investigation of several individuals suspected of committing the continuing crime of rebellion. The offence of rebellion is punishable under articles 134 and 135 of the Revised Penal Code. In the Philippines' jurisprudence, the crime of rebellion is by its nature a crime of a multitude, a vast movement of men and complex net of intrigues and plots. In committing the offence, participation by the offender in the actual clash of arms with government forces is not absolutely necessary. The mere fact that a person knowingly identifies himself with an organization which is openly fighting to overthrow the Government is enough to make him liable for rebellion. In the case at hand, it appears that following police investigation, the PNP instituted a complaint for rebellion against Jose Ma. Sison and 50 other individuals, including Ms. Tita Lubi, before the National Prosecution Service of the Department of Justice (DOJ). The complaint was docketed as I.S. 06-225. The charges against Ms. Lubi and her co-respondents were not made in relation to her legitimate activities in defence of human rights and her pro-democracy activities but based on the results of the preliminary investigation conducted by the prosecutors pursuant to their legally mandated functions and reflected in their findings and resolutions which are in accordance with the law, evidence, and established jurisprudence on the matter.

296. The DOJ, in the conduct of preliminary investigation of the case, asked the respondents to submit their written responses to the charge. However, Ms. Tita Lubi chose

not to participate in the preliminary investigation and did not answer the complaint against her. Records show that only 10 respondents answered the complaint. Following the conduct of preliminary investigation, the DOJ found probable cause against the respondents, including Ms. Lubi, for the crime charged. A criminal information for rebellion was thereafter instituted against the respondents before the RTC of Makati. The case was raffled to Branch 137 of the RTC which is being presided by Judge Jenny Lind Delorino. At about the same time, it appears that another case for rebellion was also being instituted against 14 individuals by the DOJ. The complaint was docketed as I.S. No. 06-226 and is separate and distinct from the complaint instituted against Ms. Lubi. It appears, however, that his case was also raffled to Branch 137 of the RTC Makati City being presided by Judge Delorino and was docketed as Criminal Case No. 06-452. Subsequently, following the conduct of prelimary investigation in I.S. No 06-226, it was discovered by DOJ that the respondents in I.S. No. 06-225 and in I.S. No. 06-226 were guilty of the same act of rebellion. Hence, DOJ sought to amend the criminal information filed in Criminal Case No. 06-452 (which stemmed from the complaint subject of I.S. No 06-226) by including those respondents in I.S. No. 06-225. After the accused in a criminal case has entered his plea, an amendment of the information against him can only be made with leave of court. In the instant case, the DOJ sought the permission of Judge Delorino to amend the information filed in Criminal Case No 06-452 against the 14 individuals. By amending the information in Criminal Case No. 06-452, DOJ would have had included the 50 other individual subjects of I.S. No. 06-225 in this case (Criminal Case No. 06-452). Judge Delorino however denied the DOJ plea, following which DOJ filed a motion for the inhibition of Judge Delorino. Judge Delorino voluntarily inhibited herself from hearing Criminal Case No. 06-452. Judge Delorino also issued an order inhibiting herself from hearing the criminal case which stemmed from I.S. No. 06-225 filed against the 50 individuals including Ms. Tita Lubi.

Special Rapporteur's comments and observations

297. The Special Rapporteur thanks the Government for its cooperation and for the detailed information it has provided in reply to his urgent appeal of 19 June 2006. He regrets however the absence of official replies to the joint urgent appeals of 26 April 2006 and 9 November 2006 and urges the Government to provide substantive detailed information at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Russian Federation

Communications sent

298. On 2 March 2006, the Special Rapporteur sent a joint 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 Isa Gamaev and Mekhti Mukhaev, aged 47, a farmer from the Itum-Kali region

of the Chechen Republic. According to the information received, on 10 December 2005, Isa Gamaev was detained in the city of Nalchik in the Republic of Kabardino-Balkaria, in connection with allegations that he was involved in the conflict in Chechnya. He was detained for three days in Nalchik. He was then transferred to Khankala, the headquarters of Russian armed and security forces in the North Caucasus, where he remained for approximately 10 days. He was then transferred to another, unknown place of detention. Isa Gamaev has alleged that he was tortured in all three places, including by electric shock. While under duress, he made a statement to the security forces about his alleged participation in armed opposition groups and named Mekhti Mukhaev as a member of an armed group. In late December or early January Isa Gamaev was transferred to the Interior Ministry's Operative and Search Bureau, known as ORB-2, in the Chechen capital Grozny, and from there to the pre-trial detention centre (SIZO-1) in Grozny, where he was able to send a letter to an NGO about his treatment in detention. He subsequently withdrew his "confession". On 5 or 6 February 2006, Isa Gamaev was reportedly again taken to ORB-2, where he was allegedly threatened with rape if he refused to stand by his “confession”. On 30 December 2005, Mekhti Mukhaev was arrested in the town of Gikalo, near Grozny. At about 1 a.m., a group of men in masks and camouflage uniforms broke into the house where he was staying and took Mekhti Mukhaev to the Regional Police Department (ROVD) in Itum-Kali, where he was charged with hooliganism. The basis for the charge is not known. From there he was taken to the Regional Police Department in the Chechen town of Shatoi, where he was interrogated. During the interrogation, police officers reportedly beat him and threatened to shoot him while showing him pictures of various people whom they wanted him to identify. After 11 days in detention at the ROVD in Shatoi, Mekhti Mukhaev was transferred to ORB-2, where his interrogation continued. He was subjected to electric shocks and his arms and legs were bent backwards into painful positions. He was beaten with truncheons and was threatened that he would “disappear” if he did not confess to being a member of an armed opposition group. He reportedly lost consciousness several times. On 18 January 2006, Mekhti Mukhaev was transferred to the SIZO-1 in Grozny. After almost three weeks in incommunicado detention, he was granted access to a lawyer and his relatives learned of his whereabouts. When his relatives visited him, he complained about pain in his head, legs, lungs and kidneys. Mekhti Mukhaev told his lawyer that after eight or nine days of ill-treatment he had decided to “admit” to having given food and shelter to members of an armed opposition group. While detained in the SIZO, Mekhti Mukhaev retracted his confession. On 1 February 2006, Mekhti Mukhaev was returned to ORB-2, where security forces personnel beat him with a chair and with their fists and kicked him, in order to force him to repeat his "confession". He was returned to the SIZO the following day. Mekhti Mukhaev was charged on 8 February 2006 with banditism (article 209 of the Russian Criminal Code). There is concern that both men are at risk of further torture or ill-treatment in order to force them to reaffirm their previous "confessions".

299. On 16 March 2006, the Special Rapporteur sent an allegation letter concerning Pavel Vladimirovich Shtukaturov, a Russian citizen detained against his will since 5 November 2005 in City Psychiatric Hospital No.6 in St. Petersburg. It appears that some days before his detention he hired as attorney Dmitri Bartenev. On 8 and 9 November 2005, borrowing a visitor’s mobile phone, Mr. Shtukaturov called Mr. Bartenev asking

him to come to visit him in the hospital. Mr. Bartenev went to the hospital on 9 and 10 November, but was not allowed to see his client. It is reported that on 10 November, Mr. Bartenev was asked by the hospital's Deputy Director, Dr. Sergey Shesternin, about the exact content of the proposed conversation with Mr. Shtukaturov. It would appear that when he refused to give this confidential information, Dr. Shesternin refused him access to his client, on the basis that Mr. Shtukaturov's mental health condition prevented him from seeing an attorney. It is also alleged that Mr. Shtukaturov has filed numerous written and oral complaints to the hospital administration, but did not receive any response. Moreover, it is reported that on 10 November 2005, an urgent application was made to the European Court of Human Rights requesting interim measures to order the Government to allow Mr. Shtukaturov to see his lawyer in private. The Court invited the Government to provide an explanation for the situation by 30 January 2006. On 7 February 2006, Mr. Bartenev was contacted by Alexander Tscherbakov, a former patient of City Psychiatric Hospital No.6, in the same department where Mr. Shtukaturov is interned. Mr. Tscherbakov informed him that around 31 January 2006, the hospital increased the dosage of medication administered to Mr. Shtukaturov against his will. It appears that the drug has potentially damaging side effects and a marked sedative effect. It is also reported that around the same date, Mr. Shtukaturov was transferred to the observation department of the hospital and that he has been prohibited from using writing implements and from making telephone calls. It is alleged that the hospital's recent actions coincide with the date on which the Government was contacted by the European Court of Human Rights, and that these acts were intended to intimidate Mr. Shtukaturov and Mr. Bartenev into withdrawing the application. It is also alleged that Mr. Shtukaturov's situation is aggravated by the fact that he has been deprived of his legal capacity via proceedings which breached fair trial guarantees. Finally, it is reported that despite the existence of a law on psychiatric care adopted in 1999, which obliges the State to establish in-hospital advocacy services in psychiatric hospitals, the State-appointed lawyers do not perform their job properly. Psychiatric institutions are reportedly completely closed to public scrutiny.

300. On 6 June 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention regarding defence lawyer Mikhail Trepashkin who has been imprisoned since May 2005 for "divulging State secrets" and "Illegal possession of ammunition". Mr. Trepashkin's situation had already been brought to the Government's attention in a communication sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers on 10 October 2005. According to new information received, Mr. Trepashkin suffers from chronic asthma and has repeatedly complained to the authorities about not receiving adequate treatment in prison. On 29 May 2006, the district court in Tagil, Sverdlosk region, was to decide on his appeal to secure medical treatment; however, during the hearing he suffered an asthma attack and the judge called an ambulance. The medical corps allegedly said that he needed urgent treatment, because he had developed a severe form of bronchial asthma. The judge therefore decided to postpone the hearing and insisted that he must be taken to the hospital immediately. He was taken to the hospital in Nizhnii Tagil. It is alleged that on the same day, at around 10 p.m., the head of the prison colony where Mr. Trepashkin was serving his sentence went to the hospital with five more persons and took him back to the prison without any judicial

authorization. It appears that the Deputy Head of the prison colony stated that Mr. Trepashkin would be brought to the hospital for treatment twice a week. Finally, it is reported that his lawyer has not been allowed to see him and that she has not been provided with any information regarding his current medical condition.

301. On 15 September 2006, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, concerning Ravil Gumarov and Timur Ishmuratov, two former detainees at Guantánamo Bay, Cuba. Ravil Gumarov and Timur Ishmuratov were the subject of an urgent appeal sent to the Government by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention on 27 May 2004. According to the information received, in February 2004, Ravil Gumarov and Timur Ishmuratov, along with five other Russian citizens, were returned from Guantánamo Bay to Russia. In April 2005, they were arrested in connection with a pipeline explosion in Tatarstan in January 2005. In detention, interrogators pulled hairs from Ravil Gumarov's beard and forced vodka down his throat, which is a particularly offensive form of ill-treatment for abstinent Muslims, in an effort to force him to confess to the crime. Interrogators warned Timur Ishmuratov that they would call in his pregnant wife for questioning and could not guarantee the safety of the foetus. Both men confessed during the investigation, but subsequently withdrew their confessions in court. In September 2005, a jury unanimously acquitted them and a third defendant, Fanis Shaikhutdinov, of the charges. However, prosecutors subsequently got approval from the Russian Supreme Court to annul the verdict so that the three could be tried again for the same crime. On 5 May 2006, the defendants were convicted of terrorism and illegal possession of weapons or explosives (articles 205 and 222 of the Russian Criminal Code). They were also ordered to pay damages of about US$ 2,000 for property damage. Ravil Gumarov was sentenced to 13 years' imprisonment and Timur Ishmuratov to 11 years and 1 month. The third man, Fanis Shaikhutdinov, received a sentence of 15 years and 6 months. According to the information received, another suspect had confessed to carrying out the crime in July 2005; however, the defence lawyers for the three men were never informed of this confession. All three have appealed their convictions to the Russian Supreme Court. According to the information received, two witnesses at the trial were detained and beaten to force them to testify against the defendants. On 31 March 2005, Timor Ishmuratov's brother, Rustam Hamidullin, was detained by the Tatarstan Organized Crime Unit at his aunt's house in Nefteyugansk, in Khanti-Mansiisk Province. Police held him for several days at Nefteyugansk police station and beat him while he was handcuffed to a radiator to coerce him to admit that he had witnessed preparations for the crime. Police then took him on the train to Tatarstan. Rustam Hamidullin was ill-treated during the two-day train trip. On 1 April 2005, Ildar Valeev, another witness for the prosecution, was called in for questioning to the Organized Crime Unit in Almetievsk, Tatarstan. He was subsequently sentenced to five days' administrative arrest for swearing in a mosque. He was held in an investigation cell in Bugulma, where he was stripped, beaten and subjected to threats and psychological pressure until he agreed to sign a statement saying that he had witnessed the explosion. He was released on 27 April 2005. Both Rustam Hamidullin and Ildar Valeev withdrew their statements at their trials.

302. On 20 October 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary General on the situation of human rights defenders regarding acts of harassment against human rights defenders in the Russian Federation, including threats made against Ms. Svetlana Gannuchkina, President of the Committee of Civil Assistance, Mr. Sergey Kovalov, a founder of the Memorial Society in Grozny, and Ms. Lidia Yusupova, lawyer, Director of the Memorial Society and Nobel Peace Prize nominee. Further reports have also been received in relation to the harassment of Mr. Stanislav Dmitrievsky and the subsequent closure of the Russian-Chechen Friendship Society (RCFS), an NGO that monitors human rights violations in Chechnya and other parts of the North Caucasus. Mr. Dmitrievsky, Executive Director of RCFS, and Ms. Oksana Chelysheva, Deputy Director of RCFS, were the subjects of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders on 15 November 2005, and of an allegation letter sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 9 June 2005. According to new information received, an ultranationalist group calling itself “The Russian Will” has recently published a list, including personal data, of 89 individuals on a web site. The list includes the names of several human rights defenders, including Svetlana Gannuchkina and Sergey Kovalov, and the group calls for their physical elimination. It has also been reported that on 12 October 2006, Lida Yusupova reportedly received a threatening phone call on her mobile phone from an unidentified caller who said, in Chechen: “Are you pleased to be a nominee for the Nobel Peace Prize? Presuming you’ll still be alive then!” Furthermore, on 13 October 2006, a court in Nizhniy Novgorod reportedly ordered the closure of RCFS, in accordance with a request from the regional prosecutor’s office, on the basis that Stanislav Dmitrievsky had remained as Executive Director of RCFS despite being sentenced in February 2006 to a two-year suspended sentence for “incitement to national hatred”. The court allegedly based its decision to close the RCFS on the “law to combat extremist activities”. The experts believe that the threats made against Svetlana Gannuchkina, Sergey Kovalov and Lida Yusupova should be treated seriously, particularly in the light of the recent killing of Anna Politkovskaya, and may represent attempts to deter human rights defenders in the Russian Federation from carrying out their legitimate activities. Furthermore, serious concerns are expressed that the amendments adopted in summer 2006 to the "law to combat extremist activities” may be used against human rights defenders, and the charges brought against the RCFS based on this law may set a precedent under which other human rights NGOs may also be shut down.

303. On 30 October 2006, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding Rustam Muminov, an Uzbek national. According to the information received, at about 11.45 a.m. on 17 October 2006, Mr. Muminov was detained by plain-clothes police at the office of the human rights organization Civic Assistance Committee (Komitet “Grazhdanskoe Sodeistvie”) in Moscow. He was then taken to a district court in Moscow, which ordered him to be deported to Uzbekistan because he could not present a residency permit. During the hearing he was not represented by a lawyer and was not given an opportunity to speak on his own behalf. He was deported to Uzbekistan

on the evening of 24 October 2006. Rustam Muminov had moved from Uzbekistan to Russia in 2000 and acquired a temporary residency permit. In 2005, the authorities in Uzbekistan accused him of membership of Hizb-ut-Tahrir. In February 2006, he was detained in the city of Lipetsk following an extradition request from the General Procuracy of Uzbekistan. In September 2006, the General Procuracy of the Russian Federation decided not to extradite Rustam Muminov and he was released on 29 September 2006. His temporary residence permit expired while he was in detention, and the authorities refused to renew it. According to the information received, he was returned to Uzbekistan despite the fact that a lawyer from Komitet "Grazhdanskoe Sodeistvie" had filed an appeal with the court, which was due to be examined on 26 October 2006. Furthermore, on 24 October, the European Court of Human Rights under rule 39 of the Rules of Court had indicated to the authorities that they should adopt interim measures to ensure that Rustam Muminov remained in the Russian Federation.

304. On 4 December 2006, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary General on the situation of human rights defenders concerning the International Protection Centre (IPC), a Russian human rights organization that assists Russian citizens in securing access to international mechanisms of human rights protection, and its founder, Ms. Karinna Moskalenko. Specifically, the IPC has brought a number of cases before the United Nations Human Rights Committee and the European Court of Human Rights in relation to alleged human rights violations committed by the Russian authorities. According to the information received, on 17 July 2006, the IPC was fined US$ 170,000 by the Russian tax authorities for having failed to pay taxes in respect of foreign grants received between 2002 and 2005. The IPC had declared these grants, which were used for research and education purposes related to human rights, to the Russian authorities regularly during the period but the authorities had not requested the IPC to pay any taxes on them. A tax audit of the IPC has been ongoing for more than a year which has distracted the IPC from its activities and may possibly hold the organization's directors criminally liable. Furthermore, it is reported that the IPC is unable to pay the aforementioned fine and will be forced to close. It is also alleged that in December 2005, a representative of the Russian Federation at the European Court of Human Rights requested the lawyer registry body of the Ministry of Justice to initiate disciplinary proceedings against Ms. Moskalenko and to have her disbarred. Concerns are expressed that these events may be connected with the human rights activities of the IPC and particularly Ms. Moskalenko's advocacy work bringing human rights cases before the United Nations Human Rights Committee and the European Court of Human Rights.

305. On 15 December 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention regarding the imprisoned Russian defence lawyer Mr. Mikhail Trepashkin, currently imprisoned at IK 13, an open prison colony located in the Sverdlovsk region. Mr. Trepashkin's case was the subject of an urgent appeal by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers on 10 October 2005, and an urgent appeal by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and

the Special Rapporteur on the independence of judges and lawyers on 6 June 2006 (see above). Responses from the Government were received on 23 December 2005, 10 August and 29 September 2006; however, the experts drew the attention of the Government to new developments related to Mr. Trepashkin's situation according to which Mr. Trepashkin was still being denied access to adequate medical treatment for chronic, life-threatening asthma. At present, Mr. Trepashkin is suffering from asthma attacks almost every day. Earlier in October 2006 an ambulance had to be called from outside the prison, since medical staff in the prison colony was unable to provide adequate treatment for a particularly serious attack, during which Mr. Trepashkin lost consciousness and stopped breathing. In May and October 2006 Mr. Trepashkin was preliminarily diagnosed with asthma sufficiently serious that, under Russian law, it qualifies him for transfer to a hospital for treatment and for consideration of early release. However, prison authorities have so far refused to allow a full and thorough independent medical examination. They have further denied his lawyers the results of medical examinations carried out in May and October 2006, making it impossible for his lawyers to contest the refusal of transfer. The head of the health department of the prison has stated repeatedly that Mr. Trepashkin is in need of transfer to a hospital since the prison's medical staff is not in a position to treat him adequately. Furthermore, Mr. Trepashkin has repeatedly been placed in a punishment cell, apparently in connection with his demands for medical treatment in accordance with the law. He developed further health problems due to dire hygienic conditions in prison cells, which are neither heated nor ventilated irrespective of the temperature. Grave concern is expressed as to the deteriorating health situation of Mikhail Trepashkin, which has reportedly become life-threatening.

Communications received

306. On 21 June 2006 and 21 August 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 2 March 2006. In its reply of 21 June 2006, the Government indicated that the following facts have been established with regard to the arrest and detention conditions of Isa Gamaev and Mekhti Mukhaev. Isa Mairbekovich Gamaev, born in 1978 in the village of Ushkaloy in the Itum-Kale District of the Chechen Republic, where he still lives, has, since the spring of 2003, been an active member of illegal armed formations, having transferred to the armed group led by Tarkhan Gaziev from the armed gang led by Doku Umarov. On 24 December 2005, he was arrested in Nalchik on suspicion of having committed offences under article 209 (Banditry), paragraph 2, article 208 (Membership of an illegal armed formation) and article 317 (Attempt on the life of a law enforcement officer) of the Criminal Code of the Russian Federation. On 24 December 2005, by a decision of the Zavodsk District Court in Grozny, Chechen Republic, he was remanded in custody as a preventive measure. On 30 December 2005, Mr. Gamaev was taken to pre-trial detention centre No. 1 (SIZO-1) of the Russian Federal Penal Correction Service for the Chechen Republic. During his detention in SIZO-1, Mr. Gamaev was, pursuant to decisions of the investigator attached to the Office of the Procurator of the Chechen Republic, transferred on five occasions to the temporary holding facility of the Operative and Search Bureau No. 2 (ORB-2) of the Central Administration of the Ministry of Internal Affairs of the Russian Federation for the Southern Federal District. Mekhti Makhmudovich Mukhaev, born in 1958 in the village of Dzumsoy in the

Itum-Kale District of the Chechen Republic, where he still lives, has been an active member of Doku Umarov's armed group since 2000. On 13 January 2006, Mr. Mukhaev was arrested on suspicion of having committed offences under article 209, paragraph 2, article 208, article 317 and article 105 (Murder) of the Criminal Code. By a decision of 13 January 2006 of the Zavodsk District Court in Grozny, Chechen Republic, he was remanded in custody as a preventive measure. On 18 January 2006, Mr. Mukhaev was transferred to SIZO-1 of the Russian Federal Penal Correction Service for the Chechen Republic. From 1 to 2 February 2006, he was held in the ORB-2 temporary holding facility pursuant to a decision of the investigator attached to the Office of the Procurator of the Chechen Republic. On 3 February 2006, Mr. Gamaev and Mr. Mukhaev submitted applications, through the administration of SIZO 1, to the Office of the Procurator of the Chechen Republic, claiming that they had been subjected to illegal methods of investigation in the Shatoy District internal affairs office and the ORB-2 of the Central Administration of the Ministry of Internal Affairs of the Russian Federation for the Southern Federal District. Communications from the Office of the Procurator of the Chechen Republic indicate that this information was not independently confirmed. It was therefore decided to refuse the application for the institution of criminal proceedings.

307. In its reply of 21 August 2006, the Government indicated that on 24 December 2005, the Office of the Procurator of the Chechen Republic instituted criminal proceedings against Isa Mairbekovich Gamaev on the basis of an offence under article 209, paragraph 2, of the Criminal Code of the Russian Federation, in connection with armed attacks committed by him in the Chechen Republic as part of an armed gang. On the same day, he was taken into custody as a suspect. On the basis of a court decision, he was remanded in pre-trial detention as a preventive measure. During the investigation, in the presence of a lawyer, I.M. Gamaev made a statement regarding the crimes he had committed, as well as the fact that Mekhti Makhmudovich Mukhaev had aided and abetted members of an armed gang. On the basis of the information collected during the investigation, on 13 January 2006 the Office of the Procurator of the Chechen Republic instituted criminal proceedings against M.M. Mukhaev, which was subsequently combined into one trial with the case against I.M. Gamaev. On the same day, M.M. Mukhaev was taken into custody, suspected of banditry, and granted access to a lawyer. When questioned, M.M. Mukhaev confirmed that he had aided and abetted members of the armed gang. The court remanded him in pre-trial detention as a preventive measure. The involvement of the accused in the commission of the offences is confirmed by all of the evidence obtained during the investigation. On 12 May 2006, the criminal case in which the men were accused of committing offences under article 208, paragraph 2, of the Criminal Code (Membership of an illegal armed formation) was brought before the court for consideration on the merits. The admissibility of the evidence gathered will be subjected to a legal evaluation. The reports that I.M. Gamaev and M.M. Mukhaev were subjected to illegal methods of investigation have been checked by the Office of the Procurator of the Chechen Republic under articles 144 and 145 of the Code of Criminal Procedure of the Russian Federation. On the basis of the results of that verification, on 9 February 2006 the Office of the Procurator of the Chechen Republic decided not to institute criminal proceedings. The report on the checks was studied at the Office of the Procurator-General of the Russian Federation, and there are no grounds for overturning that decision. It has been ascertained

that on 30 December 2005, M.M. Mukhaev was detained in the Itum-Kali District internal affairs office in the Chechen Republic in connection with his possible membership of illegal armed formations, following which he was released the same day. Following a court decision, he was imprisoned for an administrative offence. While serving his sentence, he was the subject of an investigation into the above-mentioned criminal offence. I.M. Gamaev and M.M. Mukhaev were held in institution IZ-21/1 of the Federal Penal Correction Service for the Chechen Republic throughout the investigation period. They were transferred to a police holding facility for the purposes of the investigation in accordance with the legislation in force. According to information from the directors of the provisional joint group of divisions and subdivisions of the Ministry of Internal Affairs of the Russian Federation, I.M. Gamaev was not taken to Khankala, and was not the subject of any search activities. In order to verify this information further, in accordance with the legislation on criminal procedure, on 6 May 2006, materials were taken from the file on the aforementioned criminal case and sent to the Office of the Procurator of the Grozny District of the Chechen Republic. I.M. Gamaev's allegation regarding the illegal actions of law enforcement officials in the towns of Nalchik and Khasavyurt were also checked by the procurators' offices of those towns, under articles 144 and 145 of the Russian Code of Criminal Procedure. The evidence collected was studied at the Office of the Procurator-General of the Russian Federation, and the decisions not to institute criminal proceedings were found to have been premature. The evidence has been returned for further checks, the outcome of which is being monitored by the Office of the Procurator-General of the Russian Federation.

308. On 10 August and 29 September 2006**,** the Government of the Russian Federation replied to the joint urgent appeal sent on 6 June 2006. In its reply of 10 August, the Government established that M.I. Trepashkin was pulled over by the traffic police on 22 October 2003 while travelling in a motor car. Upon inspecting his vehicle (in the presence of official witnesses), the officers discovered a pistol and seven cartridges for it under the rear seat. On 24 October 2003, the Dmitrov City Court remanded Mr. Trepashkin in custody as a pre-trial restraining measure on suspicion of an offence under article 222, paragraph 2, of the Criminal Code of the Russian Federation (Unlawful acquisition, storage, carrying and transportation of firearms and ammunition). In accordance with article 23 of the Federal Act on the remand of suspects and accused persons, health regulations stipulate a space requirement of 4 m^2 per prisoner in a remand cell. Thus no violation of the law has occurred (Mr. Trepashkin's cell measures 39.6 m^2 and can hold six other persons). The allegation that Mr. Trepashkin was rearrested in 2005 in connection with legal work he performed in 1999 has no basis in fact. Pursuant to the judgement handed down by the Moscow District Military Court on 19 May 2004, Mr. Trepashkin was sentenced to four years' deprivation of liberty and was directed to serve this sentence at an open prison in Sverdlovsk Province. Tagilstroy District Court in Nizhny Tagil (Sverdlovsk Province) ordered Mr. Trepashkin's release on parole on 19 August 2005. In connection with irregularities in the consideration of Mr. Trepashkin's parole application and further to an application for cassation review filed by the Office of the Procurator of Sverdlovsk Province, the Criminal Division of Sverdlovsk Provincial Court overturned the decision of Tagilstroy District Court on 16 September 2005 and the case file was referred back with a view to initiating new proceedings. The decision to grant him parole having been

overturned, Mr. Trepashkin reverted to his former legal status (i.e. he was obliged to serve out the sentence handed down by the Moscow District Military Court on 19 May 2004), and accordingly was detained in Moscow on 18 September 2005 by officers of the Sverdlovsk Province Branch of the Federal Penal Correction Department and transported under guard to serve out his punishment at a correctional facility in Sverdlovsk Province.

309. In its reply of 29 September 2006, the Government of the Russian Federation further indicated that Mikhail Ivanovich Trepashkin, born in 1957, was convicted on 19 May 2004 by the Moscow District Military Court of offences under article 222, part 1, of the Criminal Code of the Russian Federation (Unlawful acquisition, transfer, supply, storage, transport or carriage of weapons or their component parts, munitions, explosive substances or explosive devices), as well as article 283, part 1 (Disclosure of State secrets), and, bearing in mind article 69, part 2 (Sentencing for multiple offences), was sentenced to four years' deprivation of freedom, the sentence to be served in an open prison. The Government indicated that M.I. Trepashkin is being provided with the requisite medical care by skilled personnel of the medical section of IK-13 prison. A check carried out by the Office of the Procurator of Sverdlovsk Province has established that the conditions in which he is being held in the IK-13 open prison unit do not contravene the requirements laid down in legislation governing the enforcement of sentences. The prisoner M.I. Trepashkin is allowed meetings with his lawyer in accordance with article 12, paragraph 8, of the Penal Enforcement Code of the Russian Federation. During the current year M.I. Trepashkin has met his lawyer, L.B. Kosik, 35 times, and has also met human rights activists D.I. Rozhin, V.I. Popov and V.D. Kuznetsov.

310. On 28 December 2006, the Government of the Russian Federation replied to the allegation letter sent by the Special Rapporteur on 15 September 2006. The Government reported that the Prosecutor's Office, during the investigation, received a number of complaints about illegal activities of the law enforcement bodies concerning Ravil Gumarov and Timur Ishmuratatov as well as the two witnesses Ildar Valeev et Rustam Hamidullin. However, for none of the complaints had the Prosecutor's Office of the Republic of Tatarstan found verifying evidence. The Government also reported that, during the trial held in September 2005, Ildar Valeev and Rustam Hamidullin denied previous testimonies against the defendants Ravil Gumarov and Timur Ishmuratatov. The jury thus acquitted Ravil Gumarov and Timur Ishmuratatov. The Office of the Prosecutor of the Republic of Tatarstan appealed against the acquittal. Consequently, the Supreme Court of the Russian Federation ordered the annulment of the acquitting judgement and the conduct of further investigations. On 12 May 2006, Ravil Gumarov, Fanis Shaikhutdinov and Timur Ishmuratatov were convicted of terrorism and illegal storage, transfer and possession of explosives persuant to article 205, paragraph 3, and article 222, paragraph 3, of the Criminal Code of the Russian Federation and sentenced to 13 years, 15 years and 6 months, and 11 years and 1 month of prison, respectively. On 29 November 2006, the Supreme Court of the Russian Federation amended the judgement by decreasing the prison sentences: Ravil Gumarov was sentenced to 9 years, Fanis Shaikhutdinov to 10 years and 6 months and Timur Ishmuratatov to 8 years and 1 month. The remaining part of the judgement issued by the Supreme Court of the Republic of Tatarstan of 12 May 2006 remained in force.

311. On 28 December 2006, the Government of the Russian Federation replied to an urgent appeal sent on 15 December 2006 by the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Government stated that Mikhail Trepashkin has been imprisoned since 27 July 2005 in FGU IK-13 GU of the Russian Federal Service of the Execution of Punishments of the Sverdlovsk region. His health is being monitored by the medical department of the institution. He has consulted several medical specialists of municipal hospital No. 4 of Nishnyi Tagil', e.g. in April, May, June and October 2006 he consulted a specialist in respiratory diseases and in October 2005 and October 2006 he consulted an allergist. Pursuant to the recommendations of these specialists, Mr. Trepashkin is being treated according to medical prison regulations. On October 2006, a medical emergency aid team was called at the request of Mr. Trepashkin. The medical specialists of the municipal hospital of Nishnyi Tagil' did not recommend that Mr. Trepashkin be ordered inpatient treatment. In addition, there has not been any confirmation that the head of the health department of the prison recommended that it was necessary to hospitalize Mr. Trepashkin. Furthermore, Mr Trepashkin has been in punitive confinement after having violated rules on the internal order of the prison. He was given a medical examination prior to being in punitive confinement. In addition, he has been medically checked and treated on a daily basis during the confinement. The punitive confinement prison cell of IK-13 complies with the exigencies of sanitary norms. On 19 December 2006, Mr. Trepashkin was examined by a physician of the IK-13. Mr Trespashkin continues to receive ambulantory treatment; at present his medical situation does not require inpatient treatment.

Special Rapporteur's comments and observations

312. The Special Rapporteur thanks the Government of the Russian Federation for its replies to his communications of 2 March 2006, 6 June 2006, 15 September 2006 and 15 December 2006. The Special Rapporteur appreciates the Government's cooperation and its detailed information in response to the allegations. He is, however, concernend that no fewer than eight communications have been sent to the Russian Federation during the year 2006.

313. With respect to the replies to the communication of 2 March 2006, the Special Rapporeur wishes to be informed about the results of the complaint that Mr. Gamaev lodged for illegal action by law enforcement officials in the towns of Nalchik and Khasavyurt and checked by the Office of the Prosecutor- General.

314. As regards the reply to his communication of 15 September 2006, the Special Rapporteur reiterates his concern about the violation of the priniciple of *ne bis in idem* represented by the retrial and conviction of Ravil Gumarov and Timur Ishmuratatov.

315. The Special Rapporteur thanks the Government for its continued cooperation and encourages it to provide substantive detailed information to his communications of 16

March 2006 and 20 October 2006, 30 October 2006 and 4 December 2006 at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Saudi Arabia

Communications sent

316. None.

Communications received

317. On 30 January 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 22 December 2005 regarding Puthan Veettil `Abd ul-Latif Noushad, an Indian citizen. The Government reported that the case has been settled amicably following the victim's renunciation of his private right. The case has been closed and the Indian citizen in question will not be subjected to the penalty in question.

Special Rapporteur's comments and observations

318. The Special Rapporteur thanks the Government of Saudi Arabia for its reply to his communication of 22 December 2005.

Serbia

Communications sent

319. On 30 March 2006, the Special Rapporteur sent an allegation letter regarding Sekic Petar, who was a pilot with JAT Airways, the national airline company in Serbia, and his lawyer, Sekic P. Vladimir. According to information received, in 2003, Mr. Petar was fired by JAT Airway after 39 years and 9 months as a pilot with the company. It is alleged that his dismissal was due to Mr. Petar's activities as a member of the Pilots' Union of Serbia, which is seeking better working conditions for pilots. In 2004, Mr. Petar filed a complaint against JAT Airways before the IV Municipal Court in Belgrade, alleging several violations of the National Labour Act. It is alleged that during the hearing held on 7 December 2005, Judge Sanja Knezevic-Jijic, who is in charge of Mr. Petar's case, instructed Mr. Vladimir not to submit important documentation for the trial, because she had "no intention to read it". Moreover, it appears that there were some irregularities in the taking of the minutes of the hearings, and that the objections made by Mr. Vladimir in this regard have been ignored. It is reported that on 9 February 2006, during another hearing, Judge Knezevic-Jijic excluded the public from the court, in spite of legal provisions establishing that hearings for these trials should be public. It is alleged that she ordered Miroljub Rakocevic, the President of the trade union of the JAT Airways flight staff, to "get out" of the courtroom. It is also reported that she refused to include in the minutes Mr. Rakocevic's question about the reason for this decision. Moreover, it appears that during

the hearing held on 7 December 2005, she gave a similar order to Mr. Rakocevic and to another trade union member. Moreover, it is reported that Judge Knezevic-Jijic behaved with bad manners towards the plaintiff and his lawyer. This created an atmosphere of fear which resulted in their refraining from taking any legal action that she could dislike. It is also alleged that Judge Knezevic-Jijic has suggested to the defendant the kind of legal action he should take, which reportedly would be against his interests. Furthermore, it is stated that according to National Labour Act, this kind of matter has to be decided within six months; whereas this procedure has taken almost two years. Finally, Mr. Vladimir has submitted two criminal charges to the National Prosecutor's Office against Judge Knezevic-Jijic: for forging the minutes of the hearings and for infringing the law. Mr. Petar, Mr. Rakocevic and Stevan Zivkovic, a pilot, also submitted complaints against Judge Knezevic-Jijic. It appears that the President of the IV Municipal Court, Verica Vukic Mihalcic, recently received Sanja Knezevic-Jijic's statement and concluded that she did not commit any fault in the case relating to Mr. Sekic and the national air company, JAT Airways. The Special Rapporteur is concerned that in these proceedings the right to a fair and public hearing and the international norms and standards on judicial conduct and impartiality have not been respected, which would result in a denial of justice.

Communications received

320. None.

Special Rapporteur's comments and observations

321. The Special Rapporteur regrets the absence of an official reply to his allegation letter of 30 March 2006 and urges the Government of Serbia to provide substantive detailed information at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Sierra Leone

Communications sent

322. On 25 August 2006, the Special Rapporteur sent a joint allegation letter, together with the Special Rapporteur on violence against women, its causes and consequences concerning usurpation of judicial power by local chiefs resulting in violence and discrimination against women. According to information received, customary law forms part of the common law in all parts of the country, except for the capital, Freetown, and is relevant to 85 per cent of the population. Under the Courts Act of 1963, the Local Courts are the only institutions competent to adjudicate customary law. Furthermore, according to the Statute the presiding judge of a Local Court is appointed by the local paramount chief with the approval of the Ministry of Local Government and Community Development. The Local Courts' rulings are supposed to be monitored by officers of the Ministry of Justice and may be overturned by these officers. In practice, however, most customary law cases are dealt with outside the Local Court system and are decided by local chiefs. The practice is allegedly widely tolerated by officials of the Justice Ministry. Sources allege that some

of the chiefs, who usurp judiciary powers, routinely issue rulings that violate the human rights of women and basic precepts of gender equality. In some criminal cases referred to them by community members, chiefs have reportedly carried out the functions of both prosecutor and judge. Examples include chiefs who have levied arbitrary charges against women such as "witchcraft" (a charge that does not exist in Sierra Leonean law). Reportedly, there have also been cases where chiefs have determined guilt without evidence, imposed arbitrary and exorbitant fines, imprisoned women unlawfully in their homes or in illegal "tribal prisons", or threatened to, or actually did expel women from the community as a form of punishment. Moreover, chiefs also routinely fail to bring to the attention of the competent State authorities cases of rape, which members of local communities often first refer to the chiefs. Moreover, many chiefs also condone violence against women committed by their husbands. The customary law, as applied in the Local Courts, furthers these attitudes since it also condones domestic violence below a certain intensity threshold, regarding it as a justified "chastisement" of the wife.

Communications received

323. None.

Special Rapporteur's comments and observations

324. The Special Rapporteur regrets the absence of an official reply to the joint allegation letter of 25 August 2006 and urges the Government of Sierra Leone to provide substantive detailed information at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Singapore

Communications sent

325. On 20 March 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression regarding Dr. Chee Soon Juan, the Secretary-General of the Singapore Democratic Party (SDP) and the Chairman of the NGO Alliance for Reform and Democracy for Asia (ARDA), who is facing a court hearing on 16 March 2006 for contempt of court. According to the information received, Dr. Chee has strongly and consistently criticized the Government's policies. In 1993, when he was a lecturer at the National University of Singapore, he was fired for misusing his research funds. It is alleged that this occurred because he joined the SDP. When he disputed the dismissal, he was sued by the head of the department of the university and two other staff members for defamation, which resulted in a judgement against him and a fine of approximately US$ 71,000. In November 1995, Dr. Chee was censured by the Parliament for endorsing attacks on the judiciary during a forum held in the United States in September 1995. It is alleged that these attacks were made by Francis Seow, former Solicitor General, and Christopher Lingle, but the Government affirmed that Dr. Chee's failure to contradict the attacks constituted positive assent by "clever omission". In 1996, the Parliament fined him and

other SPD members approximately US$ 25,000 for contempt of Parliament in the context of a debate on health care. In addition, it is reported that in 1999 Dr. Chee was imprisoned on two occasions for making public speeches without a permit. Moreover, Dr. Chee was fined S$ 3,000 for speaking on a religious topic at Singapore's Speaker's Corner and S$ 4,500 under Public Entertainment Acts. However, it is reported that he chose to serve a five-week jail term instead of paying these fines. In 2001, during the national election campaign, Dr. Chee raised questions about alleged government financial support to Indonesia over the previous four years. Dr. Chee was sued for defamation by former Prime Ministers Lee Kuan Yew and Goh Chok Tong. On 11 January 2002, Dr. Chee filed an application asking for. Stuart Littlemore to be admitted as his attorney. Mr. Littlemore is an Australian Queen's Counsel and a defamation expert. It is alleged that Dr. Chee submitted this application because he could not find a local lawyer to represent him because they were afraid of government reprisal. It is reported that on 18 January 2002, the High Court ruled that Mr. Littlemore was not a fit person to practise in the country, because he had criticized the judiciary in an earlier case involving another opposition leader when he was an observer for the International Commission of Jurists. Dr. Chee made a second application to admit Martin Lee of Hong Kong and William Nicholas of Australia, both Queen's Counsels. It is reported that the tribunal dismissed the application, declaring that the case was not complex enough to warrant the assistance of Queen's Counsels. Moreover, it is alleged that in the meantime, Lee Kuan Yew and Goh Chok Tong engaged a Senior Counsel, which is Singapore's equivalent to Queen's Counsel, whereas Dr. Chee represented himself. On 19 August 2002, the court allowed a summary judgement, which allegedly took place in the Registrar's private chambers. It is reported that as result of this procedure the two former Prime Ministers were awarded approximately US$ 300,000 in damages. Dr. Chee appealed the decision, but his appeal was rejected on 4 April 2003. It is reported that Lee Kuan Yew and Goh Chok Tong submitted to the courts a bankruptcy petition against Dr. Chee when he failed to pay. It appears that on 10 February 2006, during the bankruptcy hearing, Dr. Chee accused the judiciary of not being fair and independent, especially when it decides defamation cases involving opposition politicians. It is alleged that the courts declared Dr. Chee bankrupt, a consequence of which is that he would be barred from standing in future elections. Finally, it appears that the Attorney General applied for a hearing to commit Dr. Chee to prison for contempt of court and that the trial took place on 16 March 2006. The details of the hearing are not yet known. Serious concern is expressed at the Government's recourse to criminal sanctions for Dr. Chee's legitimate exercise of his right to freedom of opinion and expression.

326. On 27 October 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the situation of human rights defenders concerning Mr. Ravi, a human rights lawyer who is the defence counsel for 11 Falun Gong practitioners in four separate cases brought by the authorities. According to the information received, on 19 September 2006 Mr Ravi was arrested by the police near MacDonald's restaurant in Yishun, Singapore, while eating with his niece and nephew. He was taken to And Mo Kui Police Station and interrogated without legal counsel. Neither at the time of arrest nor subsequently did the police notify him of any charges against him. The police then sent him to Changi Hospital, and informed the family only after having taken Mr Ravi

there. Mr Ravi's youngest sister complained to the police and questioned the authority on which they did so. The police replied that they were still investigating Mr. Ravi, without specifying the charge. Mr. Ravi's family and friends were informed that they would have to wait for the report of the doctor at Changi Hospital. Mr. Ravi was examined by a doctor on the same day and was declared to be healthy. He was released conditionally into the care of his family. However, two days later, despite the medical results, the police threatened Mr. Ravi's family that unless they sent him to a mental hospital, the police would put Mr. Ravi in jail where they would have no access to him. The family agreed, and Mr. Ravi was forcibly committed to Adam Road Hospital and sedated against his will. He remains in the mental hospital. Concern is expressed that the alleged threats made by the authorities against Mr. Ravi may represent an attempt to prevent him from carrying out his human rights work, in particular his ability to legally represent 11 Falun Gong practioners whose cases are pending.

327. On 22 December 2006, the Special Rapporteur sent an allegation letter regarding Madasamy Ravi, who was already the subject of an joint urgent appeal of 27 October 2006 sent by the Special Rapporteur on the independence of judges and lawyers, the Special Representative of the Secretary-General on the situation of human rights defenders and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention (see above). According to the information received, Mr. Ravi had not requested a defence counsel. The Supreme Court of Singapore also suspended Mr. Ravi's licence to practice law. It is alleged that the suspension is related to an exchange in court between Mr. Ravi and a judge, Ms. Wong Chun Ngee, three years ago during which it was alleged that Mr. Ravi showed disrespect for judicial authority. According to the information received, there was no evidence to prove the allegation since the judge concerned was unwilling to testify. In addition, it has been reported that Mr. Ravi was told that if he would drop the current controversial cases he is handling, he would be able to return to the bar after a short period of time. The suspension decision seems disproportionate, all the more so that on 20 June 2006, the disciplinary committee of the court had already condemned Mr Ravi to pay US$ 2,000 to the Law Society. While taking note of the Government's assurances that the arrest of Mr Ravi had nothing to do with his professional activities, concern is expressed that the decision to suspend Mr Ravi's licence may represent an attempt to prevent him from carrying out his human rights work as a lawyer, and in particular impair his ability to legally represent 11 Falun Gong practitioners whose cases are pending.

Communications received

328. On 4 April 2006, the Government replied to the joint allegation letter sent by the Special Rapporteur on 20 March 2006, stating that the information received by the Special Rapporteur was not fully accurate and even misleading to some extent. It pointed out that Singapore has an open and transparent legal system, enabling critics of the Government and political opponents to freely express their views. According to the Government, many opposition politicians in Singapore are openly vocal in criticizing the Singapore Government, both within and outside Parliament, and are not sued or prosecuted purely because of the expression of their views. It added, however, that no one who commits breaches of the law, including contempt of Parliament or contempt of court, can claim

immunity from prosecution on account of being a politician. Singapore's defamation law follows the common law model. Those who have been defamed without justification have the right to seek legal redress to protect their reputations, since, according to the Government, the right to freedom of speech does not include a right of defamation. In the August 2002 proceedings, a defamation order was made summarily by a Senior Assistant Registrar in chambers. This is a standard procedure by a Senior Assistant Registrar in chambers and in many common law countries. A plaintiff who feels that the defendant does not have a defence may apply for summary judgement under Order 14 of the Rules of Court. In that case, the plaintiff made such an application and the Registrar was satisfied that the defendant did not have a defence. The Government indicated that on 16 March 2006, the High Court found Dr. Chee to be in contempt of court. He compounded his contemptuous statement in court and was sentenced to one day's imprisonment and fined $6,000 (approximately US$ 3,700). Dr. Chee chose not to pay the fine and was jailed for another seven days in lieu of the fine. The Government asserted that with respect to the Basic Principles on the Role of Lawyers, Dr. Chee has never been prevented from having legal representation. In the most recent proceedings relating to contempt of court, a lawyer addressed some issues on his behalf while Dr. Chee chose to address the court directly on other points. In earlier cases, Dr. Chee had applied for Queen's Counsels to represent him. The ad hoc admission of Queen's Counsels (QC) in Singapore is provided for by the Legal Profession Act, which sets out the conditions for such admissions, one of which is that the difficulty and complexity of the case should warrant the employment of a QC. One of Dr. Chee's applications was rejected because the case did not comply with this condition. Another application was rejected by the court because the QC in question had, on several previous occasions, made statements that showed contempt and disrespect for the Singapore judiciary, and would thus not have been of assistance to the court in its deliberations upon the proceedings. The Government concluded by stating that Singapore's legal and judicial system is internationally recognized to be independent, efficient and honest and that if Dr. Chee Soon Juan insisted on intentionally flouting the laws of Singapore, he should be prepared to face the courts and answer for his actions.

329. On 6 December 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 27 October 2006 stating that the allegations contained in the letter were completely untrue and that Mr. Ravi's arrest had nothing to do with his professional activities, including his work with the 11 Falungong practitioners, or any of his other activities connected with human rights matters. According to the Government, Mr. Ravi was arrested by the police for disorderly behaviour in public, after a member of the public called the police on 18 September 2006 and reported that a barefoot man was making a nuisance of himself in public. Police allegedly responded to the call and found Mr. Ravi, who was involved in an apparent argument with another individual. Despite advice from his female relative and a female friend who were at the scene, as well as several warnings from the police to behave himself, Mr. Ravi did not do so and continued to shout incoherently. After failing to heed repeated warnings by the police, Mr. Ravi was arrested. At the time of his arrest, Mr. Ravi was informed that he was being placed under arrest for the offence of disorderly behaviour. The police had not decided at the time of arrest whether to charge Mr. Ravi in court. Mr. Ravi was interviewed while in police custody. During this interview, Mr. Ravi alledgedly did not request the presence of a lawyer. While

in police custody, Mr. Ravi was examined by a doctor who wrote a referral letter for Mr. Ravi to be further examined at the Institute of Mental Health. This referral letter was alledgedly handed to a female relative of Mr. Ravi who bailed him out. She told the police that she did not wish to send him to IMH for examination. The Government asserted that the police did not commit Mr. Ravi to a mental institution, forcibly or otherwise, nor was his family compelled by the police to do so, but a male relative of Mr. Ravi had caused Mr. Ravi to be admitted to Adam Road Hospital (a specialist private hospital offering psychiatric and psychological services) for treatment. The Government stated that Mr. Ravi has since been discharged from Adam Road Hospital.

Special Rapporteur's comments and observations

330. The Special Rapporteur thanks the Government of Singapore for its replies to his communications of 20 March 2006 and 27 October 2006. The Special Rapporteur appreciates the Government's cooperation and its detailed information in response to the allegations.

331. With respect to the reply to the communication of 27 October 2006, the Special Rapporteur wishes to be advised whether Mr. Ravi had been informed immediately upon arrest of his right to be assisted by a lawyer, in accordance with the Basic Principles on the Role of Lawyers, in particular principle 5.

Sri Lanka

Communications sent

332. On 8 December 2006, the Special Rapporteur sent a joint allegation letter together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding the arrest of and charges brought against Fr. Jesuratnam Jude Bernard Omi, Director of the Centre for Peace and Reconciliation (CPR) in Jaffna, Sri Lanka. According to the information received, on 24 November 2006, Fr. Omi was arrested after he intervened in a matter concerning a young man, Mariyanayaham Godfry Morris Gnanageethan, who had been detained for allegedly distributing leaflets issued by the Justice Peace Commission (JPC) concerning the humanitarian situation in Jaffna. It is reported that Mr. Mariyanayaham had been queuing for food at the 6 CLI army camp when his cousin, Ms. Alanday Dinosha, spoke with him and gave him one of the aforementioned leaflets to read. Members of the Sri Lankan Army (SLA) reportedly confiscated the leaflet and asked Mr. Mariyanayaham questions relating to its origin. When he referred to his cousin, troops allegedly went to her house in order to arrest her, but she had gone to seek the assistance of Fr. Omi, who immediately contacted and informed the JPC of the situation. A member of the JPC, Fr. Francis Xavier Jeyasegaram, accompanied Fr. Omi, Ms. Alanday and her mother to the army camp where Mr. Mariyanayaham was detained. They were allegedly photographed by SLA troops and threatened by Colonel Manjula who said, "If you all can organize a campaign against the forces we will also do things against you all. You all will face the consequences soon." As

they left the camp with Mr. Mariyanayaham, the colonel allegedly circled around them on a motorcycle. Later that day, it is reported that Fr. Omi went to the High Court where Brigade Commander Godipilli stated that Fr. Omi and Fr. Jeyasegaram had distributed the leaflets to people in the queue. Two soldiers were apparently called as witnesses but they never appeared before the court. It is further reported that Fr. Omi then went to the District Court to record a statement, but while there, army troops surrounded the office of the CPR and arrested Fr. Jeyasegaram. According to reports, Fr. Omi went to the Human Rights Commission and recorded a statement before going to the 6 CLI camp escorted by members of the Non-Violent Peaceforce. The sources indicate that the SLA transferred the two priests, along with Mr Mariyanayaham, Ms. Alanday and their parents, in an army vehicle to the police station, where they were handed over to the police. Reportedly they all made individual statements and Ms. Alanday was subjected to a full-body search. At approximately 10.55 p.m.the two priests were allegedly taken to the acting magistrate in relation to a curfew pass and were released at 11.45 p.m. and taken to the bishop's house. Mr. Mariyanayaham and Ms. Alanday were reportedly released on bail the next day. On 29 November 2006, the four individuals appeared before the Magistrate's Court of Jaffna where they were allegedly charged under criminal law although they were not informed of the charges brought against them. They were told that their file would be sent to the Attorney General's Department and the charges against them should be announced by 31 January 2007. They have all reportedly been ordered not to leave the country and they will not be permitted to leave Jaffna before the start of the trial. Concern is expressed that the arrest of Fr. Jesuratnam Jude Bernard Omi may be related to his defence of the right of Mr. Mariyanayaham Godfry Morris Gnanageethan and Ms. Alanday Dinosha to exercise their freedom of expression. Further concern is expressed that the charges against him are fabricated and that he will not receive a fair or impartial trial.

Communications received

333. None.

Special Rapporteur's comments and observations

334. The Special Rapporteur regrets the absence of an official reply and invites the Government of Sri Lanka to provide substantive and detailed information on the joint allegation letter of 8 December 2006 at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Sudan

Communications sent

335. On 13 January 2006, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding Abdella Salih Hussain Mohamed, aged 35. According to the information received, on 25 December 2005, Mr. Mohamed was sentenced by the Zalingy Special Criminal Court to cross amputation of his right hand and left foot, and to a total of

six years' imprisonment in connection with charges of murder and robbery at the Alhisahisa Internally Displaced Persons Camp, Zalingy. He was detained by the Zalingy police on 3 June 2005, and on 7 September, the case was transferred to the Special Criminal Court. Following presentations by both the prosecution and defence, Mr. Mohamed was found guilty on the same day. The Special Court, established in accordance with the State of Emergency Act 1998 by the Governors of Southern and Northern Dafour Provinces, deals with crimes of armed robbery, crimes against the State, as well as crimes relating to drugs and public nuisance. According to the information received, including admissions from the Sudanese Minister of Justice, the Special Criminal Court does not follow correct judicial procedures and internationally recognized principles of due process. The penalty for armed robbery (*Hiraba*) under article 168 of the Penal Code provides for, among other things, "…the amputation of the right hand and left foot if his act results in grievous hurt or robbery of property equivalent to the minimum (*Nisab*) for capital theft…."

336. On 19 May 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning Mossaad Mohamed Ali¸ lawyer and Coordinator of the Amel Centre for the treatment and rehabilitation of victims of torture in Nyala, and Adam Mohammed Sharief, member of the Amel Network of Lawyers in Nyala. According to the information received, on 15 May 2006, at 9.30 a.m., Mossaad Mohamed Ali and Adam Mohammed Sharief were summoned for questioning at their offices by officers from the National Security Bureau (NSB) in Nyala. They were first detained without charges for 13 hours in a cell in the NSB offices and were eventually released at 10 p.m. on the same day. On 16 May 2006, in the early morning, they were summoned once again to the NSB offices where they were arrested. No reason was given for their arrest and their families, legal counsel and UNMIS were denied access to them. In view of their incommunicado detention, concerns have been expressed that they may be at risk of torture or ill-treatment. Additionally, concern has been expressed that their detention and arrest may be related to their activities as human rights defenders and lawyers, particularly in view of the absence of charges.

337. On 8 August 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding Mossad Mohamed Ali, Ms. Najat DafaAlla, Ms. Rasha Souraj and Ms. Ebtisam Alsemani, lawyers and volunteers with the Amel Centre. Mr. Ali was already the subject of an urgent appeal sent on 19 May 2006 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders (see above). According to the information received, on 1 August 2006 Mr. Ali and Ms. DafaAlla reported to the NSB office in response to an order they had received from the Attorney General, to attend an interrogation in relation to a case that had been filed against them. The order reportedly accused them of sending false reports and disclosing

information relating to Sudanese military forces in Nyala. On arrival at the NSB office, Mr. Ali and Ms. DafaAlla were reportedly separated and interrogated regarding events in Otash camp for internally displaced persons that took place after the signing of the Darfur Peace Agreement in May 2006. Allegedly, five residents of the Otash camp had been arrested while participating in a peaceful demonstration and Mr. Ali, Ms. DafaAlla and Ms. Alsemani had written a letter to the Security Committee requesting information on the whereabouts of these five individuals. During their interrogation, Mr. Ali and Ms. DafaAlla were allegedly accused of spreading false information and of being a threat to national security. They were released and told that their case would be referred to the Attorney General for prosecution. Mr. Ali was reportedly previously arrested on 16 May 2006 and released on 20 May 2006 without charges. He was interrogated in relation to the activities of the Amel Centre, and accused of opposing the Darfur Peace Agreements. It is also reported that on 29 July 2006, Ms Alsemani received a letter from the Attorney General's office ordering her to the NSB office on 30 July 2006 for interrogation in relation to offences against the State. Ms Alsemani is reportedly currently in Khartoum and will have to attend the interrogation on her return to Nyala. Concerns are expressed that the above events are connected with the activities of Mr. Ali, Ms. DafaAlla, Ms. Souraj and Ms. Alsemani in defence of human rights, in particular the rights of internally displaced persons and victims of the armed conflict in Southern Darfur. Further concerns are expressed that these most recent events may form part of a campaign of harassment against the staff of the Amel Centre, aimed at preventing it from carrying out its human rights work.

338. On 29 September 2006, the Special Rapporteur sent a joint 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 regarding Saleh al-Sayer Muhammad, Fursha of Foro Baranga (a member of the Native Administration), Muhamed Saleh Ismail, Bara Benzi, Nasr al-Din Abakir Younes, Adam Khamis Idriss, Juma Adam, Yousif Zackaria and Adam Abubaker and four other unidentified individuals. According to the information received, between 3 and 9 September 2006, the above-mentioned individuals were arrested by members of the National Intelligence and Security Services (NISS) in and near Foro Baranga town, Western Darfur. All 12 detainees were reportedly beaten at the NISS office in Foro Baranga by men in military uniforms. They were allegedly beaten with sticks, whips and a car fan-belt. On 11 September 2006, Adam Khamis Idriss, Juma Adam, Yousif Zackaria and Adam Abubaker were reportedly released in Foro Baranga. On 16 September 2006, the Acting Director of NISS confirmed that the NISS was holding seven of the detainees and that they had not been produced before a prosecutor, despite the 72-hour time-limit established by the 1999 National Security Act. The prosecutor did not refer to the whereabouts of the eighth detainee. The detainees were denied access to their family members, lawyers, judicial authorities and medical treatment. On 19 September 2006, six of the detainees were taken to the NISS office in Habila, where people heard screams coming from the office. The following day, the detainees were taken to the El-Geneina office, where they remained in incommunicado detention. It was further reported that the detention of these 12 persons was carried out in response to a rebel attack on a Central

Reserve Police post in the village of Gemeza Babiker. Fears have been expressed that the detainees may be subjected to further acts of torture or ill-treatment.

Communications received

339. None.

Special Rapporteur's comments and observations

340. The Special Rapporteur is concerned at the absence of any official reply to the communications of 13 January 2006, 19 May 2006, 8 August 2006 and 29 September 2006 and urges the Government of the Sudan to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, detailed substantive answers to the above allegations.

Syrian Arab Republic

Communications sent

341. On 11 April 2006, the Special Rapporteur sent a joint 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, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Mohammed Ghanem, a novelist and journalist, resident in Ar-Rika, North Syria. According to the information received, Mohammed Ghanem was arrested by officers of an armed patrol of the Syrian Military Intelligence Department (SMID) at his residence in Ar-Rika on 31 March 2006. The SMID immediately transferred him to Damascus, where he is currently detained in the "Palestine Branch" of the Military Intelligence Security (Branch 235). It is not known whether he has been charged with any offence, and he has not been allowed to meet either his lawyer or members of his family. The Special Rapporteurs are concerned that his detention might be due to his having posted articles denouncing human rights violations in Syria on his web site, "Souriyoun". Considering his allegedly incommunicado detention, the Special Rapporteurs were further concerned that he might be at risk of torture or other inhuman or degrading treatment.

342. On 19 May 2006, the Special Rapporteur sent a joint 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, and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Muhammad Ghanem, online journalist with the news web site "Souriyoun", Anwar Al Bunni, human rights lawyer and member of the Syrian Organization for Human Rights, Ghaleb Ammar, member of the board of the Arab Organization for Human Rights (AOHR), Mahmoud Merri, secretary of the AOHR, Sulieman Al Shamr, member of the National Democratic Coalition, Abbas Abbas, a journalist, Khalil Hussein, former political prisoner and leader of the political organization "Kurdish Future", Mahmoud Issa, former political prisoner, and Nidal Darwish, member

of the board of the Defence Commission for Human Rights and Democratic Freedoms in Syria. According to the information received, on 31 March 2006 Mr. Ghanem was arrested at his home in al-Raqqah by military intelligence officers. He was immediately transferred to Damascus and detained in the "Palestine Branch" of the Military Intelligence Security (Branch 235). On 15 May he appeared before a military court in the northern town of al-Raqqah on charges of publishing false news about human rights violations committed by the Syrian authorities. He was then transferred to al-Raqqah al-Markazi prison where he remains in detention. Mr. Ghanem, who had been previously arrested and detained for 15 days by military intelligence officers in March 2004, has not been allowed to see his lawyer or his family since his arrest. On 16 May 2006 Mr. Darwish and Mr. Merri were arrested and detained by Syrian security forces in Damascus. Their whereabouts remain unknown and reportedly they have had no access to their families or to legal representation since their arrest. Furthermore, on 17 May 2006 Anwar Al Bunni, Sulieman Al Shamr, Ghaleb Ammar, Sulieman Al Shamr, Khalil Hussein, Mahmoud Issa and Abbas Abbas were arrested and detained by security forces in Damascus. Their whereabouts remain unknown. Reportedly, they have had no access to their families or to legal representation since their arrest. It is reported that Mr. Darwish, Mr. Merri, Mr. Al Bunni, Mr. Al Shamr, Mr. Ammar, Mr. Al Shamr and Mr. Abbas had recently signed a petition calling for improvement of relations between Syria and Lebanon. Grave concern is expressed that these arrests and detentions are connected with the activities of the above-named people in defence of human rights, in particular their activities in defence of the right of freedom of opinion and expression in the Syrian Arab Republic.

343. On 2 June 2006, the Special Rapporteur sent a joint 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 Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Michel Kilo, President of the Organization for the Defence of Freedom of Expression and the Press, an organization that advocates for the right to freedom of expression and opinion in Damascus, and a journalist with *al-Quds*, an Arabic-language paper published in London; Anwar Al Bunni, human rights lawyer and member of the Syrian Organization for Human Rights; Ghaleb Ammar, member of the board of the Arab Organization for Human Rights (AOHR); Mahmoud Merri, secretary of the AOHR; Sulieman Al Shamr, member of the National Democratic Coalition; Abbas Abbas, a journalist; Khalil Hussein, leader of the organization “Kurdish Future”, an organization that defends the rights of the Kurdish population in Syria; Mahmoud Issa, former political prisoner; and Nidal Darwish, member of the board of the Defence Commission for Human Rights and Democratic Freedoms in Syria. Mr. - Kilo was the subject of an urgent appeal sent jointly 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, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 17 May 2006. Mr. Al Bunni, Mr. Ammar, Mr. Merri, Mr. Al Shamr, Mr. Abbas, Mr. Hussein, Mr. Issa and Mr. Darwish were the subjects of an urgent appeal sent jointly 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, the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on the situation of human rights defenders on 19 May 2006 (see above). According to new information received, the above-mentioned people were arrested on 17 and 18 May 2006 and are currently detained in Adra Prison in Damascus. They have been charged with "weakening nationalist feelings and inciting racial or sectarian strife", under article 285 of the Syrian Penal Code. These charges allegedly relate to a petition calling for the improvement of relations between Syria and Lebanon that was signed by the above-named individuals. Should they be convicted of these charges, they may face sentences of up to 15 years' imprisonment. It is further reported that during their interrogation they were beaten by prison officers and that they have been allowed to meet with their lawyers only once since their arrest. Mr. Al Bunni has allegedly been on hunger strike since his arrest on 17 May 2006 in protest at his arrest and detention. It is reported that he is currently in a weakened state of health. Grave concern is expressed that these charges are related to the activities of the above-named people in defence of human rights, in particular because of their defence of the right to freedom of expression and opinion. Further concern is expressed that they are being denied adequate access to legal representation.

344. On 27 November 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders concerning Nizar Ristnawi, human rights defender and founding member of the Arab Organization for Human Rights (AOHR-S). Mr. Ristnawi, along with Muhammad Ra'dun, was the subject of an urgent appeal sent 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, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 1 July 2005. According to the information received, on 19 November 2006, Mr. Ristnawi was reportedly sentenced by the Supreme State Security Court to four years' imprisonment for "spreading false news" and "insulting the President". Mr. Ristnawi was arrested on 18 April 2005 and detained incommunicado for two weeks before his family was informed by Military Security that he was in their custody in Hama. He was reportedly held incommunicado until August 2005 when his wife was allowed to visit him on a monthly basis.

345. Proceedings before the Supreme State Security Court reportedly fail to meet international fair trial standards. In particular, defendants have restricted access to lawyers, confessions are admissible as evidence even when they are alleged to have been extracted under torture and allegations of torture are not investigated by the court, and convicted prisoners do not have the right to appeal the sentences. Concerns are expressed that the trial of Mr. Ristnawi has been unfair and falls short of international standards, and that the charging and sentencing of Mr. Ristnawi may be in connection with his legitimate activities in the defence of human rights in the Syrian Arab Republic.

346. On 8 January 2007, the Special Rapporteur sent a joint 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 and the Special Rapporteur on the question of torture regarding ʻAli Nizar ʻAli, 21 years of age, student; Husam ʻAli Mulhim, 21 years of age, student; Tarek Ghorani, student; Maher Ibrahim, around 25 years of age, shop owner; Ayham Saqr, around 30 years of age, employee of a beauty salon; ʻAlam Fakhour, around 26 years of age; ʻOmar ʻAli al-ʻAbdullah, around 21 years of age, student; and Diab Sirieyeh, around 26 years of age, part-time student, all currently detained at Sednaya Prison near Damascus. The cases of Mr. ʻAli and of Mr. Mulhim were already the subject of an urgent appeal 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 Special Rapporteur on the question of torture on 21 February 2006. While the Special Rapporteurs appreciated the response of the Government of the Syrian Arab Republic of 30 August 2006 in these cases, the Special Rapporteurs asked the Government for further clarification in view of new information received. In its reply the Government explained that both persons have taken part in activities hostile to the State and incited public unrest using the Internet, which are acts penalized by article 307 of the Syrian Criminal Code as "any act, writing or correspondence aimed at, or resulting in, the creation of confessional or racial strife or encouragement of conflict between the confessional groups and different ethnic communities of the nation." The two persons have further established a cell of an organization that advocates acts of terrorism against society and the State and solicits support from abroad, which is punishable under articles 306 and 364 of the Syrian Criminal Code. They have accordingly been arraigned before the Higher State Security Court on 4 April 2006. In addition to the request for additional information on these cases, the attention of the Government was also drawn to new information received on the other persons concerned. According to the new allegations, the above-mentioned individuals were arrested between 26 January and 18 March 2006 and have been detained incommunicado ever since, three months in solitary confinement. While in detention they were ill-treated during interrogation at the Air Force Intelligence Branch in the town of Harast, near Damascus. The trial of the eight persons commenced on 26 November 2006 before the Higher State Security Court in Damascus. Each defendant denied the charges brought against him, since their confessions had been obtained by resorting to ill-treatment. The eight individuals had been denied access to counsel until the hearing in court, where they were able to meet briefly with their lawyers, in the presence of guards. At least one of the persons was allowed to meet with his parents inside the courtroom for three minutes with a guard present. The families of the defendants were not permitted to provide them with warm clothing on the occasion of the court hearing in order to protect them from the chilly conditions in prison. The trial has been adjourned until 14 January 2007. According to the Government's reply, ʻAli Nizar ʻAli and Husam ʻAli Mulhim have been charged under articles 306, 307 and 364 of the Syrian Criminal Code. Reportedly, however, all except ʻAli Nizar ʻAli are charged under article 278 of the Syrian Criminal Code, which makes it a criminal offence to take action or make a written statement or speech which could endanger the State or harm its relationship with a foreign country, or expose it to the risk of hostile action by that country. Furthermore, all eight are reportedly charged under article 287 of the Syrian Criminal Code, which penalizes the

"broadcasting of false news considered to be harmful to the State". During the hearing the judge accused the defendants of having established links with an opposition party based outside Syria. Concern was expressed as regards the physical integrity of the above-mentioned persons, particularly in view of their continued incommunicado detention and alleged ill-treatment in prison. Further concern is expressed with respect to their general state of health and well-being since they have reportedly not been provided with proper clothing against the cold or not permitted to receive such clothing from their families.

Communications received

347. On 10 July 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 11 April 2006 concerning Mohammed Ghanem. The Government reported that Mr. Ghanem was arrested on 31 March 2006 for carrying out activities hostile to the State, calling for the dismemberment of Syria and the establishment of sectarian and ethnic statelets. Such activities are punished by Syrian law in accordance with articles 286 to 307 of the Syrian Criminal Code. Mr. Ghanem was brought before the military prosecution department in Damascus on 7 April 2006 for an examination of the charges against him and not, as the letter claims, for writing articles condemning human rights violations in Syria. Mr. Ghanem is a Syrian citizen and Syrian law guarantees his civil rights just like those of all Syrians. It also guarantees him protection against torture and inhuman treatment.

348. On 14 July 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 11 April 2006 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 and the Special Rapporteur on the question of torture regarding. Mohammed Ghanem. The Government reported that Mr. Ghanem was arrested on 31 March 2006 for carrying out activities hostile to the State, calling for the dismemberment of Syria and the establishment of sectarian and ethnic statelets. Such activities are punished by Syrian law in accordance with articles 286 to 307 of the Syrian Criminal Code. The Government further indicated that Mr. Ghanem was brought before the military prosecution department in Damascus on 7 April 2006 for an examination of the charges against him and not, as the letter claims, for writing articles condemning human rights violations in Syria. Mr. Ghanem is a Syrian citizen and Syrian law guarantees his civil rights just like those of all Syrians. It also guarantees him protection against torture and inhuman treatment.

349. On 30 October 2006, the Government replied to the joint urgent appeal sent on 2 June 2006. The Government provided the following information concerning Anwar al-Bunni:

- Anwar al-Bunni provided offices for the Institute for Assistance and Solidarity, based in Brussels, to carry out civil society training. He also employed a local Syrian team and equipped the centre with the necessary furnishings. He did this

before the organization had received a licence to operate in Syria. This is in contravention of the regulations and laws in force;

- Mr. Al-Bunni published information on the Internet making false allegations against Syria of a kind likely to damage the country's standing in the domestic and international arenas. This is punishable under articles 286 and 287 of the Syrian Criminal Code;
- Mr. Al-Bunni signed the Damascus-Beirut Declaration, which contains allegations and assertions made by a Lebanese faction that is hostile to Syria. He encouraged intellectuals to sign the Declaration.
- Mr. Al-Bunni accepted support from foreign Governments and entities that are hostile to Syria. This is punished under article 264 of the Syrian Criminal Code;
- A legal case has been brought against Mr. Al-Bunni for battery and assault of Ms. Ghada al-Hamawi. When this woman was examined by a police doctor, she was found to have bruising on the stomach and head and abrasions on the stomach and in the pelvic area. She was prescribed 20 days of treatment and 10 days off work. The incident happened after lawyer Anwar al-Bunni refused to return the money he had taken from her pursuant to a contract engaging him as her defence counsel. The case is still before the courts.

350. The Government replied to the joint urgent appeal of 11 April 2006 by a letter dated 25 October 2006. The Special Rapporteur regrets and is concerned that this reply has not yet been translated.

Special Rapporteur's comments and observations

351. The Special Rapporteur thanks the Government of the Syrian Arab Republic for its cooperation and the replies it provided to his communications of 11 April 2006 and 2 June 2006. He deeply regrets and apologizes for the fact that the Government's reply of 25 October 2006 has not yet been translated, making appropriate follow-up impossible. With this in mind, he invites the Government to provide substantive and detailed information on the communications sent on 19 May 2006, 27 November 2006 and 8 January 2007 at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council

Tajikistan

Communications sent

352. On 27 November 2006, the Special Rapporteur sent a letter to the Government requesting information on the actions taken to follow up on the recommendations listed in the report on his mission to Tajikistan (E/CN.4/2006/52/Add.4) as well as other more general information on the progress made in the country in matters pertaining to his mandate.

Communications received

353. On 27 February 2006, the Government replied to the letter sent by the Special Rapporteur on 12 December 2005, regarding the advance, unedited copy of the draft report concerning the visit of the Special Rapporteur to Tajikistan in September 2005. The Government was to reply with possible comments by 2 January 2006, for such comments to be taken into consideration for inclusion in the present report**.** The Government of Tajikistan provided statistics on procurators and judges working in Tajikistan. Notably, the following statistics were provided on women and members of ethnic minorities working as procurators and judges. According to the information provided by the Government:

- The percentage of representatives of ethnic minorities working as procurators is as follows: 2000 – 0.6 per cent; 2001 – 0.73 per cent; 2002 – 0.24 per cent; 2003 – 0.24 per cent; 2004 – 0.24 per cent; 2005 – 0.24 per cent.
- The percentage of representatives of ethnic minorities working as judges in ordinary courts of law is as follows: 2000 – 6,9 per cent; 2001 – 6,9 per cent; 2002 – 6,4 per cent; 2003 – 6,4 per cent; 2004 – 6,4 per cent; 2005 – 6,9 per cent.
- The percentage of judges from ethnic minorities in the Higher Economic Court of Tajikistan is as follows: 2000 - 0 per cent; 2001 - 7.6 per cent; 2002 - 15.3 per cent; 2003 - 15.3 per cent; 2004 - 15.3 per cent; 2005 - 12.5 per cent.
- The percentage of judges from ethnic minorities in the Supreme Court of Tajikistan is as follows: 2000 - 2; 2001 - 2; 2002 - 2; 2003 - 2; 2004 - 2; 2005 - 0.
- Moreover, the percentage of women working in the Higher Economic Court of Tajikistan is as follows: 2000 – 4; 2001 - 5; 2002 - 3; 2003 - 3; 2004 - 4; 2005 - 6.
- The percentage of women working as judges in the Supreme Court of Tajikistan is as follows: 2000 - 6; 2001 - 6; 2002 - 6; 2003 - 6; 2004 6; 2005 - 0.
- The percentage of women working as assistants to judges in the Supreme Court of Tajikistan is as follows: 2000 - 0; 2001 - 0; 2002 - 0; 2003 - 0; 2004 0; 2005 - 0.
- The percentage of women working as judges in the Constitutional Court of Tajikistan is as follows: 2000 - 1; 2001 - 1; 2002 - 1; 2003 - 1; 2004 - 1; 2005 – 1; 2006 -1.
- The percentage of women working as assistants to judges in the Supreme Court of Tajikistan is as follows: 2000 - 2; 2001 - 3; 2002 - 3; 2003 - 1; 2004 1; 2005 – 1; 2006 -1.

Special Rapporteur's comments and observations

354. The Special Rapporteur thanks the Government of Tajikistan for its reply of 27 February 2006 and expresses his appreciation for the statistics provided to him. The Special Rapporteur encourages the Government of Tajikistan to continue to follow up closely on the recommendations contained in the report on his visit to Tajikistan (see E/CN.4/2006/52/Add.4) and provide him with relevant information as requested in his letter of 27 November 2006, to which regrettably no reply has been received.

Thailand

Communications sent

355. On 28 March 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Representative of the Secretary-General on the situation of human rights defenders regarding the situation of Angkhana Neelaphaijit, wife of the disappeared human rights lawyer Somchai Neelaphaijit who was the subject of an urgent appeal by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 17 March 2004 and by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 25 June 2004. Ms. Neelaphaijit was the subject of a prompt intervention letter addressed to the Government of Thailand by the Chairperson-Rapporteur of the Working Group on Enforced or Involuntary Disappearances on 22 July 2005. Ms. Neelaphaijit was also the subject of an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 7 September 2005. According to information received, Angkhana Neelaphaijit was reportedly threatened on 21 March 2006, by a man believed to be a State officer or acting on behalf of the State (the name is known to the experts). The man allegedly went to her home and warned her against travelling, saying, "you may get in an accident or find a bomb under your car." This new threat occurred a day before Mrs. Neelaphaijit lodged a complaint with the Ombudsman of Thailand against four policemen in relation to her husband's case and while the search for her husband continued west of Bangkok. It is reported that the person who made the threat had previously gone to Ms. Neelaphaijit's residence, once on 12 March 2006 and again in April 2005, when he warned her against contact with the United Nations and the media regarding the case of her disappeared husband. The Special Rapporteurs reiterated their concerns, expressed in their communications of 17 March 2004, 25 June 2004 and 7 September 2005, that these threats are a means of intimidating Angkhana Neelaphaijit in order to dissuade her from continuing to seek truth and justice in the case of her husband.

356. On 21 September 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding the trial of Ms. Ticha Na Nakorn, former coordinator of the Women and the Constitution Network. According to the information received, Ticha Na Nakorn is currently the subject of a criminal defamation case for publicizing allegations of the sexual harassment of a female news reporter by a senior police officer in 2003. She was acquitted, along with 16 other defendants, in a civil case brought by the former National Chief of Police, Police General Sant Sarutanont, in November 2005, but the Public Prosecutor has decided to proceed with the criminal case against her. The cases against all of the

defendants in the civil suit were heard together; however, it is reported that charges have not been brought against all of the defendants who were party to the civil suit and those that will be brought before the criminal court will be heard individually. It is reported that the charges filed by the former National Chief of Police were investigated by his subordinates; therefore it is feared that the procedure followed was not independent or impartial as the complainant and investigator were the same. Concerns are expressed that the criminal suit brought against Ticha Na Nakorn is an attempt to prevent her from carrying out her activities in defence of human rights, in particular the rights of women. Further concern is expressed that Ticha Na Nakorn may not receive a fair trial.

Communications received

357. None.

Special Rapporteur's comments and observations

358. The Special Rapporteur is concerned about the absence of any official reply to his communications of 28 March 2006 and 21 September 2006 and urges the Government of Thailand to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, detailed substantive answers to the above allegations.

Tunisia

Communications envoyées

359. Le 3 avril 2006, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Rapporteur spécial sur l'indépendance des juges et des avocats, a envoyé une lettre d'allégation concernant Mohammed Abbou, avocat, et sa famille. M. Abbou, sa famille et ses avocats ont déjà fait l'objet d'un appel urgent du 9 mars 2005, envoyé par la Présidente-Rapporteur du Groupe de travail sur la détention arbitraire, le Rapporteur spécial sur l'indépendance des juges et des avocats, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme ; d'un appel urgent du 17 mars 2005, envoyé par le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression ; et de deux appels urgents du 12 mai et le 16 juin 2005, envoyés par le Rapporteur spécial sur l'indépendance des juges et des avocats, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme. M. Abbou, ancien dirigeant de l'Association de jeunes avocats (AJA), membre du Conseil national pour les libertés en Tunisie (CNLT) et de l'Association internationale pour le soutien des prisonniers politiques (AISSP), avait été condamné le 29 avril 2005 à trois ans et six mois de prison, peine confirmée en appel le 10 juin 2005. Il a été reconnu coupable d'agression physique

sur l'une de ses consœurs en 2002 et de diffusion de fausses informations sur Internet. Selon des nouvelles allégations reçues, M. Abbou, emprisonné depuis le 1er mars 2005, subirait les vexations des gardiens et de certains détenus de droit commun, particulièrement à la suite des manifestations en sa faveur, le 2 mars 2006, devant la prison de Kef où il est incarcéré. Il aurait notamment été réveillé dans la nuit par les gardes qui l'auraient battu. Pour protester contre ces mauvais traitements, M. Abbou aurait entamé une grève de la faim le 11 mars 2006. Depuis lors, ses conditions de santé se seraient considérablement aggravées et il n'aurait pas pu avoir accès à des soins médicaux appropriés. D'autres violations ont également été portées à l'attention du Rapporteur spécial : la mère de M. Abbou aurait pu voir son fils, au cours de la visite hebdomadaire, pendant trois minutes seulement avant d'être éloignée par les gardiens, tandis que sa femme, Samia Abbou, serait systématiquement suivie par les forces de l'ordre sur le trajet entre la capitale et la prison de Kef. En raison de la pression exercée sur elle et son mari, Mme Abbou aurait dû renoncer à voir son mari et se contenterait, les jours de visite, d'un sit-in pacifique à l'extérieur de l'établissement pénitentiaire. Le 20 mars 2006, Mme Abbou aurait été arrêtée par des policiers à l'aéroport de Carthage de retour de Genève, où elle aurait participé à des réunions relatives à l'appel à la libération de son mari. Les affaires de Mme Abbou auraient fait l'objet d'une fouille totale et la photo de son mari aurait été saisie. Mme Abbou aurait été bloquée pendant cinq heures à l'aéroport et aurait été victime pendant ce temps d'insultes et d'agressions verbales de la part de policiers. Un agent l'aurait également tenue par l'épaule pendant qu'un deuxième l'aurait menacée en lui disant « Je vais te casser la gueule » et en lui indiquant qu'il ne se gênerait pas pour user de tout son pouvoir répressif si elle ne se pliait pas à leurs demandes. Mme Abbou aurait enfin été libérée suite à l'intervention d'un médecin et d'amis qui auraient manifesté dans la salle des arrivées de l'aéroport. Dans ce cadre, les Rapporteur spéciaux ont invité le Gouvernement à accepter la demande de visite formulée le 4 décembre 1997 et réitérée les 15 avril 2002 et 20 janvier 2004 par le Rapporteur spécial sur l'indépendance des juges et des avocats, afin de lui permettre de se rendre au plus tôt en Tunisie pour vérifier sur place si les allégations d'atteinte à l'indépendance du pouvoir judiciaire et à la liberté d'exercice et d'expression de magistrats et de avocats sont fondées, et formuler des recommandations pour renforcer l'efficacité et l'indépendance du système judiciaire.

360. Le 12 mai 2006, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, et le Rapporteur sur la question de la torture et toute autre forme de traitement cruel, inhumain ou dégradant, a envoyé un appel urgent sur la situation de M. Ayachi Hammami, M. Raouf Ayadi (qui ont fait l'objet de plusieurs communications en 2005 et d'une lettre d'allégation envoyée par le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression le 2 mars 2006) et Me Abderrazak Kilani, avocats, ainsi que d'autres membres du Conseil de l'ordre des avocats. Selon les allégations reçues, le 11 mai 2006 au matin, des agents de la police auraient agressé plusieurs avocats devant la Maison du barreau à Tunis. M. Ayachi Hammami aurait perdu connaissance à la suite des coups violents qu'il aurait reçus. M. Raouf Ayadi et M. Abderrazak Kilani, membres du Conseil de l'ordre des avocats, auraient également été blessés. Ils auraient été hospitalisés avec retard car les services d'urgence n'auraient été

autorisés à accéder aux lieux où se trouvaient les blessés qu'une heure après les faits. Au moment des faits, M. Ayachi Hammami, M. Raouf Ayadi et M. Abderrazak Kilani ainsi que d'autres avocats auraient tenu un sit-in devant leurs locaux en signe de protestation contre des attaques dont l'ordre des avocats aurait fait l'objet les jours précédents. Selon les informations reçues, le 8 mai le Ministère de la justice aurait présenté au Parlement un projet de loi, préparé de façon unilatérale, portant création d'un Institut de formation des avocats, alors qu'une commission mixte associant le Conseil de l'ordre des avocats et le Ministère de la justice aurait au préalable travaillé sur un projet de loi commun. La création de cet Institut ferait partie d'un programme de modernisation de la justice financé par l'Union européenne qui prévoirait la participation active du Conseil de l'ordre des avocats dans la définition et la gestion de cette institution. Le 9 mai, une délégation du Conseil de l'ordre des avocats qui se serait dirigée vers le Parlement en vue d'informer les députés de leurs propositions aurait été bloquée par les forces de police qui, en usant de violences verbales et physiques, auraient quadrillé le quartier et barré la voie aux membres du Conseil de l'ordre en les empêchant de rejoindre le Parlement. Le 9 au soir, la Chambre des députés aurait adopté le projet de loi en question, dans la version élaborée de façon unilatérale par le Ministère de la justice et sans avoir pu connaître les propositions du Conseil de l'ordre des avocats. Depuis lors, il serait interdit aux avocats de se rendre à la Maison du barreau.

361. Le 3 octobre 2006, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, a envoyé une lettre d'allégation sur la situation de Mme Wassila Kaabi, magistrate. Mme Wassila Kaabi avait déjà fait l'objet d'une communication envoyée par le Rapporteur spécial sur l'indépendance des juges et des avocats et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme le 7 septembre 2005. Selon les informations reçues, le 27 septembre 2006 dans l'après-midi, Mme Wassila Kaabi aurait été bloquée à l'aéroport de Tunis-Carthage par la police, qui l'aurait empêchée de quitter le territoire pour se rendre en Hongrie afin de participer au congrès de l'Union internationale des magistrats (UIM) qui s'y tenait. Ce refus de la laisser voyager aurait été motivé par la non-présentation de l'autorisation de quitter le territoire exigée pour les fonctionnaires en service. Selon les informations reçues, Mme Wassila Kaabi, étaitt en congé annuel du 25 septembre au 24 octobre 2006 et, de ce fait, elle avait pour seule obligation d'aviser l'administration, chose qu'elle a faite par lettre recommandée avec accusé de réception et par voie administrative par une demande présentée le 19 septembre 2006. Des craintes ont été exprimées que ce refus de laisser Mme Wassila Kaabi voyager ne soit une manière de l'empêcher de participer à des activités associatives internationales en faveur de la promotion de l'indépendance du pouvoir judicaire.

362. Le 22 décembre 2006 le Rapporteur spécial, conjointement avec le Rapporteur spécial sur l'indépendance des juges et des avocats, la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, ont adressé un appel urgent concernant M. Néjib Hosni, avocat spécialisé dans les droits de l'homme et membre fondateur du Conseil national des libertés en Tunisie (CNLT), M.

Abderraouf Ayadi, ancien membre du Conseil de l'ordre des avocats et ancien secrétaire général du CNLT, M. Abdelwahab Maatar, avocat à Tunis et membre du Congrès pour la République (CPR, parti politique non autorisé), M. Tahar Laabidi, journaliste, M. Ali Ben Salem, président de la section de Bizerte de la Ligue tunisienne des droits de l'homme (LTDH) et vice-président de l'Association de lutte contre la torture en Tunisie (ALTT), M. Moncef Marzouki, ancien président de la LTDH, ancien porte-parole du CNLT et dirigeant du CPR, Mme Samia Abbou, épouse de l'avocat et défenseur des droits de l'homme Mohammed Abbou, , le journaliste Slim Boukhdir et l'avocat Samir Ben Amar. Concernant les personnes susmentionnées, 15 appels urgents précédents ont été envoyées au Gouvernement entre mars et novembre 2006. Le 3 décembre 2006, plusieurs personnes, dont Néjib Hosni, Abderraouf Ayadi, Abdelwahab Maatar, Tahar Laabidi et Ali Ben Salem, aurait été insultées, menacées, et parfois même malmenées par les forces de l'ordre devant le domicile de Moncef Marzouki à qui elles souhaitaient rendre visite, à Tousse. Ce dernier serait inculpé d'« incitation à la désobéissance civile» pour avoir appelé le peuple tunisien, lors d'une interview diffusée par la chaîne Al-Jazira le 14 octobre 2006, à protester pacifiquement contre les restrictions imposées à leurs droits fondamentaux. M. Marzouki serait passible de trois ans de prison. Le groupe de personnes aurait également été soumis à de nombreux contrôles d'identité lors de leur trajet entre Tunis et Tousse. Certains de ces contrôles auraient duré plusieurs heures. Enfin, M. Marzouki aurait été empêché de rejoindre ses amis en partance pour Tunis. Le chef de la police lui aurait clairement signifié qu'il avait reçu des instructions en ce sens. Le 7 décembre 2006, Mme Abbou, M. Marzouki, M. Boukhdir et M. Ben Amar auraient été stoppés à trois reprises par des barrages routiers tenus par les forces de l'ordre alors qu'ils se rendaient à la prison du Kef (à 170 km de Tunis) où est actuellement emprisonné Mohammed Abbou. Au troisième barrage, une quarantaine de policiers les auraient bloqués, leur interdisant de reprendre la route que ce soit dans un sens ou dans l'autre. Leurs papiers auraient été confisqués. Le groupe de personnes aurait ensuite été autorisé à continuer sa route, mais il aurait tout d'abord subi une agression à la sortie d'un restaurant où ils auraient été pris à partie par un groupe de jeunes qui les auraient insultés et bousculés ; puis devant la prison de Kef où une trentaine de personnes les auraient attendus et s'en seraient pris physiquement à Mme Abbou, M. Marzouki, M. Boukhdir et M. Ben Amar et auraient détérioré leur véhicule. Il est allégué que des policiers auraient assisté à la seconde scène et l'auraient même filmée, mais se seraient abstenus d'intervenir. Mme Abbou, M. Marzouki, M. Boukhdir et M. Ben Amar se seraient finalement résignés à rentrer à Tunis, sans avoir pu rendre visite à Mohammed Abbou, et très choqués par ces événements successifs. Des préoccupations ont été exprimées selon lesquelles les actes de harcèlement dont les personnes susmentionnées auraient été victimes seraient liés à leurs activités de défense des droits de l'homme en Tunisie et s'inscriraient dans un contexte d'intimidation et de répression systématique à leur encontre.

Communications reçues

363. Le 10 mars 2006, le Gouvernement a répondu à la lettre envoyée le 12 mai 2005. Le Gouvernement informe le Rapporteur spécial que M. Abbou a comparu le 2 mars 2005 devant le juge d'instruction près du Tribunal de première instance de Tunis. Le Gouvernement ajoute que M. Abbou faisait l'objet d'une instruction déclenchée par le

parquet de Tunis sur la base d'une plainte déposée par l'une de ses consoeurs concernant des préjudices corporels qui aurait entraîné l'admission de celle-ci aux urgences médicales et un arrêt de travail d'un mois. M. Abbou a été également mis en examen pour diffamation des autorités judiciaires et incitation de la population à enfreindre les lois. Le Gouvernement a déclaréa également que, traduit devant la Chambre correctionnelle près du Tribunal de première instance de Tunis le 28 avril 2005, l'accusé a bénéficié des circonstances atténuantes, puisqu'il n'a été condamné qu'à deux ans d'emprisonnement pour violences caractérisées sur sa consoeur ayant entraîné une incapacité permanente de 10 % et à 18 mois de prison pour la diffamation des autorités judiciaires et la diffusion de fausse nouvelles de nature à perturber l'ordre public. La peine a été confirmée en appel le 10 juin 2005. Le Gouvernement a ajouté que la procédure judiciaire, ayant abouti à la condamnation de M. Abbou, s'était déroulée conformément aux règles de procédure en vigueur et dans le plein respect des garanties de la défense, malgré les agissements de certains avocats qui ont voulu provoquer les conditions d'un « procès inéquitable ». En outre, le Gouvernement a souligné que ledit détenu a bénéficié depuis son incarcération de toutes les garanties légales, dont notamment les droits à être soumis à un examen médical et à recevoir la visite de ses proches. Quant à l'allégation relative à une éventuelle parution de certains avocats de M. Abbou devant le conseil de discipline, il est à noter que le pouvoir disciplinaire les concernant appartient au Conseil national de l'ordre des avocats qui examine, en toute indépendance, toutes les plaintes et les demandes en la matière.

364. S'agissant de M. Faouzi Ben Mrad, le Gouvernement tunisien précise que, lors de sa plaidoirie devant la Chambre correctionnelle du Tribunal de première instance de Grombalia dans une affaire de détérioration et dommages causés à la propriété d'autrui, M. Ben Mrad a tenu des propos blessant à l'égard de l'accusé. Il fut alors interrompu par l'avocat de l'accusé qui lui a demandé de s'abstenir d'utiliser ce genre de propos diffamatoires à l'égard de son client. Essayant de mettre fin à cette situation, la cour est intervenue pour permettre à M. Ben Mrad de continuer sa plaidoirie ; c'est alors que l'avocat en question s'adressa au président de l'audience et lui a intimé, à haute voix, l'ordre de se taire en lui disant expressément « lorsque je parle tout le monde se tait et toi aussi tu te tais » en mettent le doigt sur ses lèvres. Face à ce comportement, l'audience a été levée et le parquet a décidé de déférer l'avocat pour outrage à magistrat. Après que l'ordre des avocats a été informé, comme le prévoit la loi, M. Ben Mrad a comparu le même jour devant la Chambre correctionnelle autrement composée, conformément à l'article 46 de la loi réglementant la profession d'avocat. Il a reconnu les faits qui lui sont reprochés en réfutant toute intention délictuelle de sa part. Le Gouvernement signale que le prévenu a été assisté par un grand nombre de ses collègues et après délibéré, le tribunal l'a condamné, en première instance, à quatre mois d'emprisonnement pour outrage à magistrat fait par parole et gestes. Interjetant appel devant la Cour d'appel de Nabeul, celle-ci a confirmé la culpabilité de l'avocat, mais a réduit sa peine à la durée d'emprisonnement déjà exécuté, soit vingt-sept jours, et a prononcé sa mise en liberté immédiate.

365. Le 24 juillet 2006, le Gouvernement a répondu à la lettre d'allégation conjointe envoyée le 3 avril 2006 indiquant que Mohamed Abbou, connu pour son comportement provocateur, agressif et manipulateur, s'est rendu coupable de voies de fait sur la personne d'une de ses consoeurs et de diffamation des autorités judiciaires tunisiennes qu'il est censé

sous serment déontologique respecter en toute circonstance. Pendant son procès, il aurait orchestré avec la complicité de quelques uns de ses collègues, une campagne pour faire croire à un procès inéquitable. Le Gouvernement ajouté que M. Abbou continuerait ses manoeuvres trompeuses pendant sa détention, en véhiculant, dans le cadre d'une campagne de dénigrement et de manipulation, des prétentions ayant pour objectif de faire pression sur les autorités tunisiennes qui s'attachent à appliquer la loi sans excès ni laxisme. Le Gouvernement estime que M. Abbou est coupable d'actes irréfutables dont la preuve n'a jamais été mise en cause et qui entrent sous le coup du droit pénal. Il affirme que tout le long de son procès, M. Abbou a bénéficié de toutes les garanties d'un procès équitable, et a été défendu par plusieurs avocats et a usé de son droit à interjeter appel et à se pourvoir en cassation. Depuis son incarcération en vertu d'un jugement définitif et exécutif, sanctionnant des infractions de droit commun et rendu après épuisement des toutes les voies de recours disponibles, M. Abbou bénéficie à l'instar de tous les autres détenus de toutes les garanties d'un traitement humain et conforme à la législation en vigueur, dont notamment les droits à être soumis à un examen médical chaque fois que cela est nécessaire, à s'entretenir avec ses avocats et à recevoir la visite de ses proches. S'agissant de l'accès aux soins médicaux, M. Abbou a eu droit, dès son incarcération à un examen médical général et a bénéficié de visites et de soins médicaux chaque fois que cela s'est révélé nécessaire. Son état de santé serait tout à fait normal et ne présenterait aucun danger pour sa vie ou son intégrité physique. Pour ce qui est du droit de visite, il aurait reçu plus de 60 visites de la part de son épouse, de ses enfants, de sa mère et de son oncle. Il aurait même été autorisé à recevoir ses enfants à plusieurs reprises sans aucun obstacle. Une quinzaine de ses avocats lui auraient également rendu visite à vingt reprises. Le juge d'application des peines l'aurait également visité les 3 janvier 2006 et 8 mai 2006 ainsi que la délégation du CICR qui l'aurait rencontré lors d'une visite à la prison civile du Kef le 14 février 2006. Le Gouvernement nie le fait que M. Abbou ferait l'objet de vexation de la part des gardiens et de certains détenus. Il a ajouté que la qualité d'avocat de M. Abbou ne pouvait aucunement lui conférer un traitement de faveur qui serait incompatible avec les dispositions de la loi n 52-2001 en date du 14 mai 2001, portant organisation des prisons, qui régit le traitement des personnes privées provisoirement de leur liberté. Le Gouvernement a également indiqué que la Tunisie a adopté les normes internationales, harmonisé sa législation interne avec les instruments de protection des droits de l'homme et modernisé son appareil judiciaire, et s'est engagée de manière irréversible sur la voie de la promotion et de la protection des droits de l'homme dans le cadre de l'état de droit, sans exception, ni discrimination. En ce qui concerne les conditions de détention des personnes privées provisoirement de leur liberté, depuis le 4 novembre 1988, la Tunisie s'est dotée d'un décret portant organisation des prisons et n'a cessé d'œuvrer pour l'amélioration des conditions de détention en prenant diverses mesures organiques et fonctionnelles dont l'adoption de la définition de la torture telle que formulée dans la Convention contre la torture et autres peines ou traitements cruels, inhumains et dégradantset ce en vertu de la loi n 89 du 2 août 1999 portant amendement du Code pénal ; l'institution du système de double degré de juridiction en matière criminelle en vertu de la loi du 17 avril 2000 portant amendement du Code de procédure pénale ; la création de la fonction du juge d'application des peines en vertu de la loi du 31 juillet 2000 portant amendement du Code de procédure pénale telle que modifié par la loi du 29 octobre 2002 ; transfert de la tutelle sur l'administration pénitentiaire du Ministère de l'intérieur au Ministère de la justice et des

droits de l'homme et ce en application de la loi du 3 mai 2001 ; promulgation d'une loi portant sur l'organisation des prisons en date du 14 mai 2001 en remplacement du décret du 4 novembre 1988 ; insertion dans l'article 13 de la Constitution de l'obligation de traiter les personnes privées de liberté dans le plein respect de leur dignité et intégrité physique ; institution du droit à réparation pour toutes les personnes indûment arrêtées et ce, en vertu de la loi du 29 octobre 2002 relative aux dédommagements des personnes arrêtées ou détenues et dont l'innocence a été ultérieurement prouvée. L'État tunisien veillera à l'amélioration des conditions de détention par des visites inopinées du Président du Comité supérieur des droits de l'homme et des libertés fondamentales, et en concluant en avril 2005 un accord avec le CICR autorisant celui-ci à visiter tous les lieux de garde à vue et d'incarcération, observer le traitement réservé aux personnes privées provisoirement de liberté et entendre celles qu'il choisit librement en dehors de tout contrôle de l'administration.

366. Le Rapporteur spécial n'a reçu aucune réponse du Gouvernement relative aux communications du 12 mai 2006 et du 3 octobre 2006.

367. Quant à la lettre d'allégation du 22 décembre 2006, le Rapporteur spécial a invité le Gouvernement à lui transmettre des informations précises et détaillées en réponse à cette allégation avant le 21 février 2007.

Commentaires et observations du Rapporteur spécial

368. Le Rapporteur spécial remercie le Gouvernement tunisien pour sa communication du 24 juillet 2006 répondant à la lettre d'allégation conjointe envoyée le 3 avril 2006. Le Rapporteur spécial regrette toutefois l'absence de réponse officielle aux communications du 12 mai 2006 et du 3 octobre 2006 et invite le Gouvernement de la Tunisie à lui faire parvenir au plus tôt, et de préférence avant la date quatrième session du Conseil des droits de l'homme, des informations précises et détaillées en réponse à ces allégations.

369. Finalement, le Rapporteur spécial attire l'attention sur le fait qu'il n'a toujours pas reçu de réponse du Gouvernement à sa demande de visite formulée le 4 décembre 1997 et réitérée les 15 avril 2002 et 20 janvier 2004, ainsi que dans des communiqués de presse successifs.

Turkey

Communications sent

370. On 5 April 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders concerning Ms. Eren Keskin, a lawyer who works with the project "Legal Aid for Women Raped or Sexually Assaulted by State Security Forces" in Turkey. This project provides legal assistance to victims of sexual violence and is funded by the United Nations Voluntary Fund for Victims of Torture. Ms. Keskin was the subject of an

urgent appeal sent by the Special Representative of the Secretary General on the situation of human rights defenders on 22 April 2005. According to the information received, on 14 March 2006 Eren Keskin was sentenced to 10 months' imprisonment by the Kartal 3rd Court of First Instance. The sentence was converted into a fine of 6,000 liras. It is reported that Ms. Keskin has refused to pay the fine. The sentencing results from charges brought against Ms. Keskin of insulting the Armed Forces. The charges were brought against Ms. Keskin after she gave a speech at a meeting in Cologne, Germany, in 2002 about cases of sexual violence against women inmates by the Turkish State Security Forces. It is reported that Ms. Keskin has appealed this decision to the Court of Appeal. Concern is expressed that the decision is connected with Ms. Keskin 's activities in defence of human rights, in particular the rights of women who have been the victims of sexual violence.

Communications received

371. On 11 January 2006, the Government replied to the joint allegation letter sent by the Special Rapporteur on 31 August 2005 concerning the Tunceli Bar Association. The Government reported that upon the filing of the complaint by the Tunceli Bar Association against the officers at the Gendarmerie Command, the Office of the Chief Public Prosecutor submitted a request to the Governor's Office for permission to conduct a preliminary inquiry into the case. The Governor, after reviewing the case, decided not to grant permission to conduct an investigation for all the suspects; therefore, no such investigation was initiated.

372. On 30 May 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 5 April 2006, acknowledging that the summary of the case contained in the letter of the Special Rapporteur was correct: Ms. Eren Keskin was sentenced to 10 months' imprisonment by the Kartal 3rd Court of First instance on the charge of insulting the Armed Forces, and this sentence was converted into a fine of 6,000 liras. The Government confirmed that Ms. Keskin has lodged an appeal against this decision with the Supreme Court of Appeals, but stated that since the court proceeding was under way, it was impossible to comment further on the case at this stage.

Special Rapporteur's comments and observations

373. The Special Rapporteur thanks the Government of Turkey for its replies to his communications of 31 August 2005 and 5 April 2006. The Special Rapporteur appreciates the Government's cooperation and its detailed information in response to the allegations.

374. With respect to the Government's reply of 11 January 2006, the Special Rapporteur requests the Government to advise him of the grounds on the basis of which the Governor decided not to grant permission to conduct an investigation. As to the Government's reply to the urgent urgent appeal of 5 April 2006, the Special Rapportuer wishes to receive information about the appeals procedure before the Supreme Court of Appeals.

United Arab Emirates

Communications sent

375. On 13 March 2006, the Special Rapporteur sent a joint 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 regarding Sultan Salem Sultan Bunawwas, Magid Muhammad Khalifa al-Mazru`I, Salih Muhammad Hussein Ahmad, Salah Yusif Hamza al-Asmakh, Shihab Muhammad Abdullah al-Mihirbi, Ahmad Muhammad Thani al-Mazru`I, Khalid Jamal Ali al-Manna`I, Abd al-Basit `Ubaid Mubarak, Nawwaf Hassan Sa`id al-Khamairi, Ahmad Rashid Abdullah al-Naqbi, Gum`a Khadim al-Muhairi and Ahmad Hamid Ali al-Marri, who were found guilty of homosexuality and obscenity. According to the information received, on 22 November 2005, police raided a villa in Ghantout and arrested 26 men who were gathering there. The police apparently acted in response to allegations that homosexual conduct was taking place and that some of the men were wearing women's garments or make-up. It is reported that during the raid, police punched, kicked and beat some of the men. A few days after their arrest, a government official alleged that members of the group would be given male hormone injections, though this claim was later denied by another government spokesperson. Police allegedly beat the men again when they were in custody with the aim of forcing them to confess their homosexual conduct. It is also reported that some members of the group were subjected to invasive forensic examinations in an effort to prove their homosexuality. In a trial in February 2006, 12 of the 26 men, including almost all of those who were subjected to invasive bodily examinations, were sentenced to six years' imprisonment on charges relating to homosexuality and obscenity, while a thirteenth man received a lighter sentence. Their case is now pending appeal, which should take place on 14 March 2006. The other 13 men arrested were reportedly prosecuted and acquitted. It is the understanding of the Special Rapporteurs that the law of the United Arab Emirates stipulates that a person can only be found guilty of homosexuality if four witnesses unanimously agree that they saw the act or if one of the participants confesses. In this case, it is reported that no witnesses testified against the defendants and that there was no other indication that any of them had engaged in homosexual conduct together. On the other hand, according to the information received, the alleged confessions presented as evidence were extracted under invasive forensic examinations which could amount to torture and could therefore not be used as an evidence for a conviction.

376. On 8 September 2006, the Special Rapporteur sent a joint 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 and the Special Representative of the Secretary-General on the situation of human rights defenders concerning Mohamed al-Mansoori, a lawyer, human rights activist and President of the Independent Jurist's Association, and Mohamed' Abdullah al-Roken, a lawyer, human rights activist and former President of the Emirates' Jurists' Association. According to the allegations received, on 17 June 2006, an arrest warrant was issued against Mohamed al-Mansoori, based on an accusation of "insulting the Prosecutor". It is alleged that the real motive of this order was to silence Mr. al-Mansoori after he gave several interviews on Arab satellite television in which he criticized the human rights situation in the country. On 23 August 2006, Mohamed' Abdullah al-Roken

was reportedly arrested by members of the State Security, Amn al-Dawla. The reasons for his detention remain unknown. Previously, Mr. al-Roken was arrested and held for one night in July 2006, after he gave an interview regarding the recent conflict in Lebanon on an Arabic television station. It is also alleged that both Mr. al-Mansoori and Mr. al-Roken have been banned for a number of years from giving interviews or writing articles for the media. In addition, in September 2005, the authorities of the Emirate of Fujairah allegedly banned a conference on civil rights, women's rights and democracy organized by the Jurists' Association, without giving any reasons. Serious concerns have been expressed that Mr. al-Mansoori and Mr. al-Roken may be detained on account of their peaceful activities in defence of human rights, and that their detention may form part of a campaign of harassment and intimidation against defenders of human rights in the United Arab Emirates.

Communications received

377. None.

Special Rapporteur's comments and observations

378. The Special Rapporteur is concerned about the absence of any official reply to the joint urgent appeals sent on 13 March 2006 and 8 September 2006 and urges the Government of the United Arab Emirates to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, detailed substantive answers to the above allegations.

United Kingdom of Great Britain and Northern Ireland

Communications sent

379. On 1 March 2006, the Special Rapporteur sent an urgent appeal concerning Manmohan Sandhu, a lawyer practising in Northern Ireland. According to the information received, the Police Service of Northern Ireland (PSNI) conducted covert surveillance of Manmohan Sandhu's consultations with his clients at the Serious Crimes Suite in Antrim, over a period of time. On 31 January, Manmohan Sandhu was arrested, based solely on the information the PSNI obtained by recordings of the solicitor's confidential conversations with his clients in a solicitor's consultation room at the Serious Crimes Suite in Antrim police station. Manmohan Sandhu faces four charges of perverting the course of justice. On 7 February, he was granted bail in the High Court. It is alleged that other lawyers' consultations with their clients which were said to have no connection with Mr Sandhu may also have been recorded.

380. On 15 December 2006, the Special Rapporteur sent an allegation letter regarding the new Constitution for Gibraltar, in which he brought to the Government's attention the following points:

- The Special Rapporteur expressed concen that Constitution might fail to guarantee the independence of the judiciary in Gibraltar. According to the information received, the principle of the independence of the judiciary is not enshrined in the Constitution, a lack that is incompatible with a democratic system founded on the separation of powers and with the international obligations subscribed to by the Government on the need to guarantee the independence of the judiciary. He urged the Government to make sure that this fundamental principle is included in the new Constitution. Also, various provisions of the new Constitution weaken the independence of the judiciary. Concerning the appointment of judges, the Special Rapporteur noted with satisfaction that the Constitution provides for the creation of a Judicial Service Commission. However, he expressed concern at the role of the executive in the judicial appointment process. In particular, an imbalance appears between judicial and executive appointees in article 57 (1) which provides that the Judicial Service Commission of Gibraltar shall consist of the President of the Court of Appeal, who shall be the Chair, the Chief Justice, the Stipendiary Magistrate, two members appointed by the Governor, acting in accordance with the advice of the Chief Minister, and two members appointed by the Governor, acting at his discretion. The Special Rapporteur noted with deep concern the fact that executive appointees have the majority; the lack of criteria for the selection of the non-judicial appointments by the Governor; and the lack of a provision on the length of service of the members of the Commission. In addition, section 58 provides that votes of the Judicial Service Commission can be taken in the absence of some of its members. Furthermore, section 57 2) b fails to give proper protection to junior members of the judiciary in terms of tenure of office. According to this provision, the Governor, acting in accordance with the advice of the Judicial Service Commission, may terminate the appointments of the Stipendiary Magistrate, Justices of the Peace and the Registrar of the Supreme Court. The Special Rapporteur underlined that security of tenure is fundamental to the independence of the judiciary and that this applies to all levels of the judiciary, including the Stipendiary Magistrate, Justices of the Peace and the Registrar. Moreover, the termination of any appointment and control over disciplinary matters should lie solely with the judiciary. He also expressed concern at the lack of transparent, objectively justified criteria by which the power of removal may be exercised;

- He is also deeply concerned at section 64 (7), which allows the appointment of a Chief Justice or Puisne Judge for a specified term only: “A person may be appointed to the office of Chief Justice or of Puisne Judge for such term as may be specified in the instrument of his appointment, and the office of a person so appointed shall become vacant on the day on which the specified term expires”. He fears that this article may undermine the security of tenure of these persons, guaranteed by section 64 (1) of the Constitution which provides for security of tenure for the Chief Justice and Supreme Court Judges until the age of 67. He has been informed that this provision has been justified by the need to replace a judge who for any reason would be unable to perform the functions of his/her office, but believes that such specific cases are already covered by article 63. Therefore, article 64 (7), which is formulated in general terms, appears to threaten the security of tenure of these judges. Moreover, section 57 2) c) gives to the Governor, albeit with the advice of the Judicial Service Commission, the power to exercise disciplinary control over the Stipendiary Magistrate, Justices of the Peace and the Registrar. Finally, section 57 3)

permits the Governor, acting with the prior approval of the Secretary of State, to disregard the advice of the Judicial Service Commission to the executive on appointments, terminations and discipline if compliance with that advice would prejudice Her Majesty's service. The Special Rapporteur is deeply concerned that under this article the Governor would be able to control the appointments, terminations and disciplinary actions of judges and therefore exercise an undue influence on them. In addition, the Constitution does not limit the exercise of this control to very specific or exceptional circumstances. Finally, he expressed concern at the fact that the observations submitted by the Gibraltar judiciary on the draft Constitution may not have been duly taken into consideration;

- The Special Rapporteur stressed that while he does not wish to prejudge the accuracy of these allegations, he nevertheless wished to draw the attention of the Government to the fact that the failure of the Constitution to recognize the independence of the judiciary and the provisions of the Constitution that enable the executive branch to exercise influence over the judiciary appear to be incompatible with the international obligations subscribed to by the Government to guarantee the independence of the judiciary, in particular under article 14 (1) of the International Covenant on Civil and Political Rights. They also appear to be incompatible with the Basic Principles on the Independence of the Judiciary. In this context, the Special Rapporteur invited the Government to transmit his concerns to Her Majesty in Council, in view of the adoption of the Constitution before the Council's meeting on 14 December 2006, and urged the Council to address the serious concerns mentioned in his.

Communications received

381. On 3 April 2006, the Government replied to the urgent appeal sent by the Special Rapporteur on 1 March 2006. The Government stated that all cover investigations carried out in Northern Ireland are governed by the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police Act 1997 Part III. The Police Act Part III deals with interference with property and does not apply in this case because the property concerned was in the ownership and under the control of the police force concerned. A prima facie case must exist before the police engage in any type of covert operation. The principles to be followed are fully set out in the legislation and the Codes of Conduct and must be adhered to. Before granting an authorization the officer concerned must believe that the authorization is necessary for one or more of the purposes set out in RIPA and that the action sought is proportionate to what is sought to be achieved by carrying it out. The authorization specifies the description of the surveillance to be undertaken and describes the circumstances in which it is to be carried out and the investigation or operation for the purposes of which it is carried out. The law provides that legal professional privilege does not afford protection to communications made in pursuance of crime or for criminal purposes. If such communications are suspected to be taking place then, in appropriate circumstances and subject to proper safeguards, surveillance is lawful, proportionate and necessary. The Code of Practice governing RIPA envisages situations in which communications would lose legal privilege. Paragraph 3.4 of the Code states : "Legal privilege does not apply to communications made with the intention of furthering a criminal purpose... Legally privilege communications will lose their protection if there are

grounds to believe, for example that the professional legal adviser is intending to hold or use them for a criminal purpose". The Government asserted that in this case the circumstances were fully considered and that authorization for surveillance was granted in accordance with the appropriate principles which included full protection of the confidentiality of clients being interviewed by Mr. Sandhu. It added that complaints brought under RIPA 2000 or the Police Act 1997 Part III were dealt with by the Investigatory Powers Tribunal. The Government stated that it contacted the Tribunal which confirmed that it had received no complaint from Mr. Sandhu. The Police Ombudsman received a complaint from Mr. Sandhu concerning a subsequent search of his home and associated publicity which she is currently investigating and that she has also received a complaint from a person who was interviewed by Mr. Sandhu and is also investigating that matter. The Government stressed that police action in conducting covert surveillance on members of the legal profession is undertaken only in rare and extreme circumstances.

Special Rapporteur's comments and observations

382. The Special Rapporteur thanks the Government of the United Kingdom for its cooperation and its detailed reply to his urgent appeal of 1 March 2006. The Special Rapporteur invites the Government to provide substantive and detailed information on his letter of 15 December 2006 before 15 February 2007, as indicated in his letter.

United States of America

Press releases issued by the Special Rapporteur

383. On 16 February 2006, the Special Rapporteur issued the following press release:

> "HUMAN RIGHTS EXPERTS ISSUE JOINT REPORT ON SITUATION OF DETAINEES IN GUANTANAMO BAY
>
> "The following statement was issued today by the Chairman-Rapporteur of the Working Group on Arbitrary Detention, Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Asma Jahangirl and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt:
>
> "Five independent investigators of the United Nations Commission on Human Rights are calling on the United States to close immediately the detention centre in Guantánamo Bay and bring all detainees before an independent and competent tribunal or release them.
>
> "The call comes in a report published today following an 18-month joint study by

the experts into the situation of detainees at that United States Naval Base. The report's findings are based on information from the United States Government, interviews conducted by the experts with former Guantánamo Bay detainees currently residing or detained in France, Spain and the United Kingdom and responses from lawyers acting on behalf of some current detainees. It also relies on information available in the public domain, including reports prepared by non-governmental organizations (NGOs), information contained in declassified official United States documents and media reports. The experts expressed regret that the Government did not allow them the opportunity to have free access to detainees in Guantanamo Bay and carry out private interviews, as provided by the terms of reference accepted by all countries they visit.

”The five experts – specializing in issues related to arbitrary detention, freedom of religion, the right to health, torture and the independence of judges and lawyers – conclude that the persons held at Guantánamo Bay are entitled to challenge the legality of their detention before a judicial body and to obtain release if detention is found to lack a proper legal basis. The continuing detention of all persons held at Guantánamo Bay amounts to arbitrary detention, they state, adding that – where criminal proceedings are initiated against a detainee – the executive branch of the United States Government operates as judge, prosecutor and defence counsel in violation of various guarantees of the right to a fair trial

”According to the experts, attempts by the United States Administration to redefine ‘torture’ in the framework of the struggle against terrorism in order to allow certain interrogation techniques that would not be permitted under the internationally accepted definition of torture are of utmost concern. The confusion with regard to authorized and unauthorized interrogation techniques over the last years is particularly alarming. The interrogation techniques authorized by the Department of Defense, particularly if used simultaneously, amount to degrading treatment. If in individual cases, which were described in interviews, the victim experienced severe pain or suffering, these acts amounted to torture as defined in article 1 of the Convention against Torture. Furthermore, the general conditions of detention, in particular the uncertainty about the length of detention and prolonged solitary confinement, amount to inhuman treatment and to a violation of the right to health as well as a violation of the right of detainees to be treated with humanity and with respect for the inherent dignity of the human person. They add that force-feeding of competent detainees violates the right to health as well as the ethical duties of any health professionals who may be involved.

”Among their recommendations, the experts say terrorism suspects should be detained in accordance with criminal procedure that respects the safeguards enshrined in relevant international law. Accordingly, the United States Government should either expeditiously bring all Guantánamo Bay detainees to trial or release them without further delay. They also call on the Government to close down the Guantánamo Bay detention centre and to refrain from any practice amounting to torture or cruel, inhuman or degrading treatment, discrimination on

the basis of religion, and violations of the rights to health and freedom of religion. The investigators also request full and unrestricted access to the Guantánamo Bay facilities, including private interviews with detainees. Consideration should also be given to trying suspected terrorists before a competent international tribunal.

”**Chronology leading up to report**

”The five mandate holders have been following the situation of detainees held at the United States Naval Base at Guantánamo Bay since January 2002. In June 2004, the Annual Meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures and the advisory services programme of the Commission on Human Rights, decided that they should continue this task as a group because the situation concerns each of their mandates.

”In studying the situation, they have continuously sought the cooperation of the United States authorities. They sent a number of letters requesting the United States Government to allow them to visit Guantánamo Bay in order to gather first hand information from the prisoners themselves. By letter dated 28 October 2005, the Government of the United States of America extended an invitation for a one-day visit to three of the five mandate holders, inviting them ‘to visit the Department of Defense's detention facilities [of Guantánamo Bay]’. The invitation stipulated that ‘the visit will not include private interviews or visits with detainees’. In their response to the Government dated 31 October 2005, the mandate holders accepted the invitation, including the short duration of the visit and the fact that only three of them were permitted access, and informed the US Government that the visit was to be carried out on 6 December 2005. However, they did not accept the exclusion of private interviews with detainees, as that would contravene the terms of reference for fact-findings missions by special procedures and undermine the purpose of an objective and fair assessment of the situation of detainees held in Guantánamo Bay. In the absence of assurances from the Government that it would comply with the terms of reference, the mandate holders decided on 18 November 2005 to cancel the visit.”

384. On 14 June 2006, the Special Rapporteur issued the following press release:

“UNITED NATIONS HUMAN RIGHTS EXPERTS REQUEST URGENT CLOSURE OF GUANTANAMO DETENTION CENTER

"The simultaneous suicide of three detainees in the Guantánamo military base on 10 June 2006 was to a certain extent foreseeable in light of the harsh and prolonged conditions of their detention and reinforces the need for the urgent closure of the detention center", the five human rights experts of the United Nations in charge of following the situation of Guantánamo detainees said today.

”The experts -- the Chairman Rapporteur of the Working Group on Arbitrary Detention, Leila Zerrougui; the Special Rapporteur on the independence of judges

and lawyers, Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Asma Jahangir; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt -- have repeatedly requested, without success, that the Government of the United States allow them to interview Guantánamo detainees in private, according to the terms of reference applicable to all special procedures for their country visits.

”As they were not allowed to carry out such a visit, the five experts produced a report on 27 February 2006 (E/CN.4/2006/120) in which they pointed out the arbitrary nature of the detentions; the violation of judicial guarantees and other elements of the right to a fair trial; the lack of access to competent and independent tribunals established by law; the inhuman and degrading nature of the conditions of detention, in various cases amounting to torture; the harmful impact of those conditions on the health and life of those persons; and the attacks against the religious beliefs and dignity of the detainees. They urged that ill-treatment ceases and that detainees be brought before and tried by ordinary tribunals. They also insisted upon the importance of allowing the experts unfettered access to the detention facilities as well as interviews with detainees in private. Since the issuance of the report and pursuant to its main recommendation, the experts have repeatedly asked for the immediate closure of the Guantánamo detention facility.

”Given the three suicides on 10 June, the experts wish to draw particular attention to the report's findings concerning the mental health of detainees. The report warned that "the treatment of detainees since their arrests, and the conditions of their confinement, have had profound effects on the mental health of many of them" (paragraph 71). The report also concluded: "The totality of the conditions of their confinement at Guantanamo Bay constitute a right to health violation because they derive from a breach of duty and have resulted in profound deterioration of the mental health of many detainees" (paragraph 92).

”The suicides of 10 June confirm the relevance of the report's recommendations and the urgency for their implementation. Many of the detainees continue to carry out a prolonged hunger strike to protest against their conditions of detention, while others have attempted to commit suicide.

”The experts await the judgment of the United States Supreme Court in the Hamdan case. A ruling on this matter could have far reaching consequences for the protection of human rights in times of emergencies, conflicts and global tension. At the same time the experts recall the need for norms of fair trial and access to detainees to be ensured in counter-terrorism measures in all instances.

”In this context, the experts reiterate their request for the immediate closure of the Guantánamo detention facility.”

385. On 6 July 2006, the Special Rapporteur issued the following press release:

> “The Chairman-Rapporteur of the Working Group on Arbitrary Detention, Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Asma Jahangir; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, issued the following statement today:
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> "In our report of 27 February 2006, we recommended that the detention facilities at Guantanamo Bay be closed without further delay. Some five months later, the facilities continue to hold more than 450 prisoners in breach of international human rights law. We take this opportunity to reaffirm the grave concerns and recommendations set out in our report.
>
> ”We are encouraged by the recent decision adopted on 29 June 2006 by the United States Supreme Court in the case of *Hamdan* v. *Rumsfeld*. We are also encouraged that an increasing number of highly influential figures and institutions, such as the Secretary-General of the United Nations and the High Commissioner for Human Rights, as well as regional organizations including the European Parliament and the European Union Presidency, have called in recent months for the closure of the detention centre in Guantanamo Bay. We especially welcome recent indications from the highest levels of the United States Government of their wish to close Guantanamo Bay as soon as possible.
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> ”While the United States Government has legal responsibility for the detainees in Guantanamo Bay, we urge the international community – including Member States of the United Nations, the United Nations Secretariat and the specialized agencies, and the International Committee of the Red Cross – to collaborate actively, constructively and urgently with the United States authorities with a view to ensuring that the closure of Guantanamo Bay can indeed take place as soon as possible.
>
> ”In particular, we encourage the United States, in consultation with the international community, to develop a detailed plan of action, with timeframes, for the closure of Guantanamo Bay. As the plan is developed and implemented, due regard must be given to all relevant international law.
>
> ”The plan should address a range of issues. Where the United States Government decides to press charges against a detainee, it should provide for his transfer to the United States and his fair and expeditious trial, in accordance with international law.
>
> ”If not subjected to trial, detainees should be allowed to return to their country of citizenship or residence. While doing so, it is critical that the views of the detainees are obtained and taken into consideration and, insofar as possible, respected. It is

also of utmost importance that the detainees are not returned to countries where they are at risk of torture or other serious human rights violations, such as disappearance, summary executions or arbitrary detention, in accordance with the principle of non-refoulement. Where such a risk does exist, it cannot be overcome by seeking so-called 'diplomatic assurances'. In these cases, we call upon other States to assist by accepting Guantanamo Bay detainees for resettlement.

”Throughout, all detainees and former detainees must be provided with adequate health conditions and care, including mental health care. For example, receiving States should be willing to make available counselling and rehabilitation services, as well as other legal and social support as long as appropriate to former detainees and families. The recent tragic reports concerning the simultaneous suicide of three detainees in the Guantánamo military base on 10 June 2006 confirm both the urgency of closing the detention centre and the importance of providing long-term assistance to the detainees."

Special Rapporteur’s comments and observations

386. The Special Rapporteur is extremely concerned at the situation of the detainees held at Guantánamo Bay. He regrets that the recommendations included in the report (E/CN.4/2006/120) issued by him jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on freedom of religion or belief have not been implemented by the Government of the United States. In particular, the report calls upon the Government of the United States to close urgently the Guantánamo Bay detention centre, in light of the serious human rights violations that are taking place in those detention facilities and that are detailed in the report, and to bring those held in Guantánamo Bay before an independent tribunal or release them. In this regard, the Special Rapportuer is seriously concerned about the Military Commision Act adopted by the Congress of the United States of America on 28 September 2006, which deprives Guantánamo detainees of the right to be tried by an independent tribunal that affords the fundamental fair trial guarantees required under United States and international law. Finally, the Special Rapporteur regrets that the Government has still not allowed the Special Rapporteurs who have requested a joint visit to Guantánamo to undertake that visit under the terms of reference for the visits of special rapporteurs. He urges the Government to allow such a visit as a matter of urgency.

Uzbekistan

Communications sent

387. On 18 January 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Saidjahon Zainabitdinov, Chairman of the Andijan

human rights group Apellatsia (Appeal), an organization working on religious and political persecution. Saidjahon Zainabitdinov was the subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention on 26 May 2005. According to the information received, it is alleged that Saidjahon Zainabitdinov was arrested on 21 May 2005 by the Uzbek authorities after he had recounted his version of the events in Andijan on 13 May 2005 to some Western media sources. It has been reported that on 4 January 2006 the trial of Saidjahon Zainabitdinov began in Chirchik, a town near Tashkent, where he was reportedly charged with defamation and anti-Government activities. It is believed that on 12 January Mr. Zainabitdinov was found guilty and sentenced to seven years' imprisonment in what appears to have been a closed trial as information about the proceedings did not become available until after the fact. It is further alleged that the trial was held at a secret location and that no official information concerning the proceedings was made available to relatives of Saidjahon Zainabitdinov. Concern is expressed that Saidjahon Zainabitdinov's trial may be linked to his activities in the defence of human rights, in particular his descriptions of the events in Andijan and of the general human rights situation in Uzbekistan, which have appeared in the press.

388. On 6 February 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Ms. Mutabar Tadjibayeva, head of the Ut Yuraklar human rights organization, an unregistered women's rights organization, member of the Organization for the Defence of Rights and Freedoms of Uzbek Journalists, the Human Rights Society of Uzbekistan (HRSU) and the Committee for Freedom of Speech and Expression. Ms. Tadjibayeva, also a Nobel Peace Prize laureate (part of the initiative "1000 Women for the Nobel Peace Prize") was the subject of a communication sent by the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders on 18 July 2005 and of a communication sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders on 27 October 2005. According to new information received, on 30 January 2006, Uzbek authorities prevented people from observing the trial of Ms. Tadjibayeva. It is reported that a Human Rights Watch representative (whose name is known to the experts) was stopped at a police checkpoint and refused entry to Dustobod when he told the police that his purpose for visiting was to observe Ms. Tadjibayeva's trial. It is alleged that the police stopped each car entering the town and asked the occupants what their reasons were for visiting Dustobod. It is also alleged that an Uzbek human rights defender (whose name is known to the experts) was prevented from entering the courthouse where the trial was taking place. Ms. Tadjibayeva is facing 17 charges, including slander, extortion, swindling, tax evasion, polluting the environment and violating rules on trade and land use. Her lawyer was initially denied access to Ms. Tadjibayeva and when she was able to see her client on 1

February it was in the presence of four guards. In addition, the defence lawyer was only given one day to review and prepare the case for trial. It is further alleged that during the trial the judge demonstrated preferential treatment by granting motions in favour of the prosecution and denying all applications made by the defence. Concern is expressed that access to the proceedings has been denied to the public, including relatives, friends, colleagues and independent trial monitors, which may result in Ms. Tadjibayeva being denied the right to a fair and transparent hearing. Further concern is expressed that the charges against Ms. Tadjibayeva are a political attempt to discredit her and prevent her from carrying out her human rights activities and may be linked to her open criticism of the events that occurred in Andijan on 13 May 2005.

389. On 30 June 2006, the Special Rapporteur sent a joint allegation letter together with the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning Azam Formanov and Alisher Karamatov, Chairs of the Syr-Darya and Mirzaabad regional branches of the Human Rights Society of Uzbekistan. Mr. Formanov and Mr. Karamatov were the subject of an urgent appeal sent jointly by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders on 10 May 2006. According to the allegations received, both men were arrested in Gulistan in the Syrdaryn region on 29 April 2006 and held in the office of the Gulistan city police department. They were transferred to investigation isolator UY 64/SI-13 of the city of Havast, near Yangier. During their detention the senior investigator of the Office of the Public Prosecutor of the Dzhizak region, K. Mallaev, and the inspector of the Syr-Darya Department of Internal Affairs, B. Kodirov, beat them on their legs and heels with truncheons, put gas masks with closed air valves on their heads and threw them in the air, letting them fall on their backs on the concrete floor. In a trial marred by shortcomings such as severely restricted access to case files and extremely limited time to prepare the defence for the defenders and their lawyers, they were convicted and sentenced to nine years of imprisonment. Concern is expressed that the above-mentioned events may represent an attempt to intimidate, punish and prevent the men from carrying out their legitimate human rights activities.

390. On 11 August 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Ikhtior Khamroev, son of Bakhtior Khamroev, head of the Djizak section of the Human Rights Society of Uzbekistan, and a student at the Technological University of Djizak. According to the information received, Ikhtior Khamroev was arrested on 2 August 2006 in Dizak by agents of the police. On 23 July 2006, Ikhtior Khamroev was allegedly insulted and then severely beaten by a group of young men. Ikhtior Khamroev and his parents decided not to complain. The authorities have opened an inquiry against Ikhtior Khamroev. He was interrogated for more than eight hours without having access to a lawyer. Later, he was charged with “hooliganism” under article 277 of the Criminal Code (Chapter XX: Crimes against public order) and is facing between five and eight years in

prison. On 8 August 2006, Bakhtior Khamroev was summoned by a police investigator to be interrogated as a witness in the case involving his son. It was further reported that on 22 May 2005, the home of. Bakhtior Khamroev was broken into by a group of 70 people, under the orders of the head of the administration of the Djizak region. He and other members of his family were beaten, threatened with death and insulted. Concerns is expressed that Ikhtior Khamroev's detention may be aimed at sanctioning his father's legitimate human rights activities, in particular his father's work monitoring legal proceedings and demonstrations concerning the rights of the citizens of Djizak.

391. On 15 November 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Komiljon Usmanov. According to the allegations received, Mr. Usmanov disappeared at the beginning of May 2006. With the assistance of human rights organizations, his relatives found out that he was detained incommunicado by the Tashkent City Department of Internal Affairs (GUVD) for 30 days. During this time, he was detained without his relatives being notified, and was under investigation without access to a legal counsel. On 6 November, Mr. Usmanov was sentenced to 10 years in prison on charges including attempting to overthrow the constitutional system, after a trial marked by numerous violations of the Criminal Procedure Code of the Republic of Uzbekistan and international human rights instruments. In particular, the public prosecutor (assistant to the Prosecutor of the Shaikhontahaurski district of Tashkent), Abdulazys Kalandarov, did not attend the first phases of the trial. Also, the judge in charge of the case, Abduvokhid Sharipov, allegedly performs the dual functions of public prosecutor and judge. During the trial the accusations were not confirmed by any fact or evidence in accordance with the Criminal Code of the Republic of Uzbekistan, and the court did not allow defence witnesses to appear, nor did it allow human rights defenders, journalists and many of the accused relatives to observe the proceedings. At the first court session, Mr. Usmanov rejected the accusations, stating that his confessions had been obtained as a result of torture and ill-treatment. Four witnesses stated that they had witnessed Mr. Usmanov being subjected to torture in the GUVD facilities, including being hung from the ceiling by his feet and with electric wires attached to his ears. However, the judge refused to order any investigation into the allegations of torture. Kamiljon Usmanov and his lawyer, Rukhiddin Komilov, intend to appeal the case.

Communications received

392. On 19 April 2006, the Government replied to a joint urgent appeal sent on 6 February 2006 concerning the criminal proceedings against Mutabar Tajibaeva. On 6 March 2006 Ms. Tajibaeva was convicted by the criminal court of Tashkent province under articles 165, paragraph 3 (a), 167, paragraph 3 (a), 168, paragraph 2 (b), 184, paragraph 2 (b), 189, paragraph 3, 197, 209, paragraph 1, 28, 209, paragraph 2 (a), 216, 228, paragraph 2 (b), 228, paragraph 3, 229 and 244-1, paragraph 3 (b), of the Criminal Code of Uzbekistan, and sentenced under articles 59 and 61 of the Criminal Code to eight years' deprivation of liberty and stripped of the right to occupy managerial and financially responsible posts and to engage in business activity for a period of three years. According to the court judgement, Ms. Tajibaeva used the pretext of defending the rights and interests

of Akhmadullo Abdullaev and Khafizidin Koraboev during investigation and in court to extort from them first 100,000 sum (the Uzbek currency), then US$ 900, by means of deceit and abuse of their trust, thereby causing particularly extensive losses. With the aim of unlawfully taking possession of half the fish bred by T. Mamadaminov, a lessee of the company Andizhonbalik, in lake N-7, Ms. Tajibaeva used threats and coercion to make him sign a contract transferring his ownership rights to her name. She also demanded that Mr. Mamadaminov pay her 5 million sum. On 6 October 2005 Ms. Tajibaeva obtained 350,000 sum from Mr. Mamadaminov by extortion. The next day Ms. Tajibaeva was arrested in flagrant delicto by law enforcement officers in the act of receiving 250,000 sum from Mr. Mamadaminov. In 2002 Ms. Tajibaeva set up an illegal voluntary association called the "Ardent Hearts Club". She thereupon used funds received from abroad to organize unauthorized demonstrations in front of buildings housing local authorities and government bodies in Tashkent and Fergana provinces for the purpose of putting pressure on them and their representatives. During these demonstrations she disseminated information that she knew to be false, aimed at provoking panic and destabilization. Furthermore, Ms. Tajibaeva did not declare the financial assistance received for organizing the activities of the "Ardent Hearts Club" to the tax authorities and deliberately evaded payment of taxes and other charges to the value of 2,042,900 sum. Ms. Tajibaeva set up a multiproduct trading and manufacturing company and used forged documents to obtain a loan of 8 million sum from the National Bank in Margilan, which she withdrew in cash and diverted for improper use. Ms. Tajibaeva unlawfully used 6.8 hectares of land belonging to the Nomuna shirkat farm in the Akhunbabaev district of Fergana province. This plot of land had originally been allocated to the Tursunbai farm, and then to the Bokijon Ota farm. Having unlawfully taken possession of this plot of land, Ms. Tajibaeva left it untended, as a result of which it became waterlogged, heavily salinated and infested with weeds. In consequence the productivity of this farmland fell and the provisions on land use and regulations on soil protection were directly broached. The Nomuna shirkat farm suffered a total financial loss of 1,601,512 sum and the Bokijon Ota farm 8,579,304 sum. Land tax of 191,130 sum was deliberately evaded. The criminal prosecution against Ms. Tajibaeva is not related to her human rights work. She has been convicted for perpetrating specific criminal acts. This criminal case is currently being prepared for review by the court of appeal.

Special Rapporteur's comments and observations

393. The Special Rapporteur thanks the Government of Uzbekistan for its reply of 19 April 2006 to the joint urgent appeal sent on 6 February 2006. While the Special Rapporteur appreciates the Government's detailed information in response to this urgent appeal, he wishes to draw attention to the fact that four of the five joint communications sent in 2006 concern individuals having worked as human rights defenders. In this context, he reiterates his serious concern about the generally deteriorating human rights situation in the country. On the basis of the information received in 2006, he remains concerned regarding the conduct of the executive and prosecutorial authorities and the legislative framework in relation to the conduct of trials. The Special Rapporteur wishes to remind the Government of his repeated requests to visit Uzbekistan and encourages the Government to agree to such a visit. He assures the Government that recommendations to be provided as

the result of such a visit would facilitate the Government's efforts in implementing the necessary structural reforms affecting the role of judges, prosecutors and lawyers.

394. The Special Rapporteur regrets the absence of any official reply to his communications of 18 January 2006, 30 June 2006, 11 August 2006 and 15 November 2006 and urges the Government of Uzbekistan to provide substantive detailed information at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

Yemen

Communications sent

395. On 1 November 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Ali al-Dailami, Executive Director of the Yemeni Organization for the Defence of Human Rights and Democratic Freedoms. According to the information received, on 9 October 2006 Mr. al-Dailami was arrested at the Sana'a airport while he was heading for Copenhagen in order to participate in a conference organized by the Danish Institute for Human Rights about its programme of cooperation with some Yemeni NGOs. Mr. al-Dailami remains detained by the political security forces (al-Amn al-Seyasi) at an undisclosed location without contact with his family or a lawyer. Considering the alleged incommunicado detention at an undisclosed location, the Special Rapporteurs were very concerned that Mr. al-Dailami might be at risk of torture or other forms of ill-treatment. The Special Rapporteurs were further concerned that the arrest of Mr. al-Dailami may be connected with his legitimate activities as a human rights defender, and may represent an attempt to prevent him from being able to meet and communicate with other international human rights defenders.

396. On 4 December 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding Ibrahim Sharaf al-Din who was sentenced to death by the Specialized Criminal Court in Yemen on 23 November 2006 after a trial whose proceedings reportedly fell short of international fair trial standards. The case is now subject to appeal. If his sentence is upheld he will be at risk of execution. According to the information received, Ibrahim Sharaf al-Din was among 37 members of the Shi'a Zaidi community charged in connection with an alleged "plot to kill the President and senior army and political officers". Ibrahim Sharaf al-Din was arrested in May 2005 and held incommunicado for several months at al-Mabahith al-'Ama (General Investigation unit) in Sana'a. It would appear that while detained incommunicado, all 37 defendants were interrogated without a lawyer being present. During a trial that started in August 2005, lawyers were reported to have been prevented from obtaining a copy of the court file, including full interrogation records, to enable them to exercise an effective right to defence. Thirty-four of the defendants were sentenced to prison terms of up to eight years while two others were acquitted.

Communications received

397. None.

Special Rapporteur's comments and observations

398. The Special Rapporteur invites the Government of Yemen to provide substantive detailed information at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, in relation to his communications of 1 November 2006 and 4 December 2006.

Zimbabwe

Communications sent

399. On 7 July 2006, the Special Rapporteur sent an allegation letter concerning a situation affecting Roy Bennett, an ex-parliamentarian who was sentenced by Parliament to 15 months' imprisonment with hard labour on grounds of contempt of Parliament, and the existence of quasi-judicial powers for Parliament, acting in first and last instance. Accoring to information received, during a parliamentary debate held on 18 May 2004, the Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa, reportedly stated that Mr. Bennett's forefathers were thieves and that what he claimed to be his property, Charleswood Farm, was an "inheritance of stolen wealth accumulated over a century and a half". The Minister also reportedly said that Mr. Bennett would not be allowed to "set foot" on Charleswood Farm. In response, Mr. Bennett pushed Mr. Chinamasa, who fell to the floor. It is reported that Mr. Bennett himself was kicked by another parliamentarian, but no one was hurt in the scuffle. On 20 May 2004, a Committee of Privileges is said to have been set up to investigate Mr. Bennett's behaviour. The Committee decided unanimously that Mr. Bennett was guilty of contempt of Parliament and the majority of its members recommended a sentence of 15 months' imprisonment with hard labour, of which three months were to be suspended. Afterwards, the Committee presented its conclusions to the Parliament while Mr. Bennett presented apologies to Mr. Chinamasa. In an unprecedented decision, the Parliament decided to adopt the recommendations of the Committee, voting 53 to 42, following party lines, On 1 November 2004, Mr. Bennett reportedly filed before the High Court a claim seeking his release. The Court is said to have answered that it was not competent in the case since the Parliament's Speaker had issued a certificate of privilege in accordance with section 16 of the Privileges, Immunities and Powers of Parliament Act, which states that any proceedings have to be immediately stayed upon production of the certificate and be deemed to be finally determined. Nevertheless, the Court stated that the Parliament's faculty to exercise quasi-judicial powers to deprive a person of his liberty without due process could be an issue. It is reported that Mr. Bennett filed a constitutional complaint against section 16 of the Privileges, Immunities and Powers of Parliament Act and that the Supreme Court rejected it. Furthermore, it is alleged that several court rulings ordering the vacating of Mr. Bennett's farm were not executed

and that the statement by the Minister of Justice to the effect that Mr. Bennett could never "set foot" on it again goes against these judicial decisions. Finally, it is reported that Mr. Bennett was released from prison on 28 June 2005, on the basis of the usual one-third remission of sentence for good behaviour. He has reportedly sought political asylum abroad.

400. On 7 December 2006, the Special Rapporteur sent a joint 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 Representative of the Secretary-General 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 regarding the situation of members of Women of Zimbabwe Arise (WOZA) and Men of Zimbabwe Arise (MOZA). WOZA, and its subdivision MOZA, is a grass-roots organization working to promote and protect women's activism whose members have already been the subject of previous communications by the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 15 September 2006, 16 February 2006, 28 June 2005, 20 May 2005, 29 September 2004 and 26 September 2003. On 31 August 2005, the Government replied to the communication of 28 June 2005, which concerned events similar to those being addressed in the present communication. While the Special Rapporteurs welcomed that reply, it does not allay their concerns, as explained below. According to the allegations received, on 29 November 2006, more than 60 WOZA members and four MOZA members were arrested while marching peacefully through central Bulawayo to the government offices at Mhlanhlandlela. The demonstration, composed of 200 participants, was to mark the launch of the People's Charter and the "16 Days of Activism Against Gender Violence", an international campaign running until Human Rights Day on 10 December, as well as to protest against the Public Order Security Act. A large group of riot police officers allegedly assaulted the group with batons, forcefully dispersing most of it. Many people – including a young baby – were beaten, and received medical care at Mpilo Hospital. Forty-one persons were reportedly taken to Drill Hall by police officers who subsequently beat them, before releasing them without charge on the same day. The other marchers, including WOZA leaders Ms. Jenni Williams and Ms. Magodonga Mahlangu, were taken to Bulawayo Central Police Station and 36 members, including six mothers with babies, spent the night there. On 30 November 2006, the six mothers with babies were released. As of 1 December 2006, 34 WOZA/MOZA members reportedly remained in police custody, beyond the 48-hour limit provided for by law. The WOZA and MOZA members, including the six mothers released, were charged on 1 December 2006 under two separate sections of the Criminal Law (Codification and Reform) Act: chapter 46, section 2 (v) – "employing any means whatsoever which are likely materially to interfere with the ordinary comfort, convenience, peace or quiet of the public, or does any act which is likely create a nuisance or obstruction" and chapter 37 – "participating in a public gathering with the intent to cause public disorder, breach of peace or bigotry". If found guilty, the members could be fined or imprisoned for a period not exceeding six months, or both. A lawyer for WOZA was also threatened with arrest for "interfering with the course of justice" whilst trying to attend to her clients. She only

managed to see the group on 30 November 2006, in the afternoon, after several hours in police custody. Serious concern is expressed that these new arrests of WOZA/MOZA members and the charges against them are in connection with their legitimate activities in defence of human rights, in particular the promotion and protection of women's rights. This concern is reinforced by the fact that this incident took place on 29 November, the first International Women Human Rights Defenders Day. Further concern is expressed that this new instance of repression against WOZA/MOZA members may form part of a campaign of harassment and intimidation against human rights defenders in Zimbabwe.

Communications received

401. On 14 December 2006, the Government replied to the joint urgent appeal sent by the Special Rapporteur on 7 December 2006, with respect to the arrest of 40 members of WOZA in Bulawayo for carrying out an illegal demonstration. The Government indicated that on 29 November 2006, WOZA members numbering more than 40 were dropped at the corner of Herbert Chitepo and 11th Avenue in Bulawayo by a white T35 lorry and a red kombi. Neither vehicle had a registration number, but it was noted that a white man was driving the lorry while a black man was driving the kombi. Soon after, the women started singing, shouting and waving placards and a big banner. They were also distributing flyers to passers-by while marching towards Mhlahlandlela Government Complex. On arrival, their leader, Jennifer William, addressed them, urging them not to run away [text missing] and illegal gathering, they managed to arrest 40, and not 41 members of WOZA. Among the arrested was Jennifer Williams. The members of WOZA were taken to Bulawayo Central Police Station where they were detained in police cells. They were all charged for contravening section 37 (1) (b) of the Criminal Codification Act chapter 9:23, "Participating in gathering with intent to promote public violence, breach of peace or bigotry." The Government therefore denied that they were released without charges and that they were released on the same day. The Government indicated that it has on record that they were taken to court on 1 December 2006 when the Public Prosecutor declined to place them on remand, advising the police to proceed by way of summons. The Government stated that none among the arrested was ever assaulted by the police and there is no record of any child having been among those who ran away from the police and were never arrested. The police in this case are therefore not answerable for something that happened without their knowledge. There is no report of any complaint against the police from any member of WOZA who had participated in the illegal demonstration. The group's lawyer, Perpetua Dube, was allowed to see her clients and at no stage was she ever threatened. There is also no record to indicate that she ever made a complaint about the alleged threat.

Special Rapporteur's comments and observations

402. The Special Rapporteur thanks the Government of Zimbabwe for its reply of 14 December 2006 to the joint urgent appeal sent on 7 December 2006. He is, however, concerned at the absence of an official reply to his communication of 7 July 2006 and urges the Government to provide substantive detailed information at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council.

"El acceso a la justicia, en tanto derecho humano fundamental, representa para las personas la puerta de entrada a los distintos cauces institucionales provistos por los Estados para la resolución de sus controversias. Ello implica que además de abstenerse de incurrir en violaciones, los Estados tienen la obligación positiva de remover los obstáculos que impiden o limitan su acceso. En tanto medio para exigir el goce o restablecimiento de otros derechos (civiles, políticos, económicos, sociales, culturales, etc.), el acceso a la justicia no se agota con el ingreso a la instancia judicial, sino que se extiende a lo largo de todo el proceso, que debe sustanciarse de conformidad con los principios que sustentan el estado de derecho (juicio justo, garantías procesales, etc.), y se prolonga hasta la ejecución de la sentencia. Ello implica que el principio de igualdad, y las condiciones de accesibilidad y efectividad que deben reunir los medios establecidos para el tratamiento de las controversias deben darse no sólo al inicio sino a lo largo de todo el proceso de su resolución. La ausencia de medios idóneos de acceso a la justicia, en última instancia, priva a las personas del "derecho al derecho", al negarle los medios reales para su efectivo ejercicio".

Leandro Despouy

Esta publicación recopila los Informes presentados entre 2006 y 2007 por el Relator Especial sobre la independencia de los magistrados y abogados, el jurista argentino Leandro Despouy ante el Consejo de Derechos Humanos y la Asamblea General de las Naciones Unidas.

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